



Economic Development,
Jobs, Transport
and Resources

Improving Small Business Interaction with Regulators

**Small Business Regulation Review
(Regulatory Interaction – Construction Sector)**

Discussion Paper

MAY 2018



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1. Overview

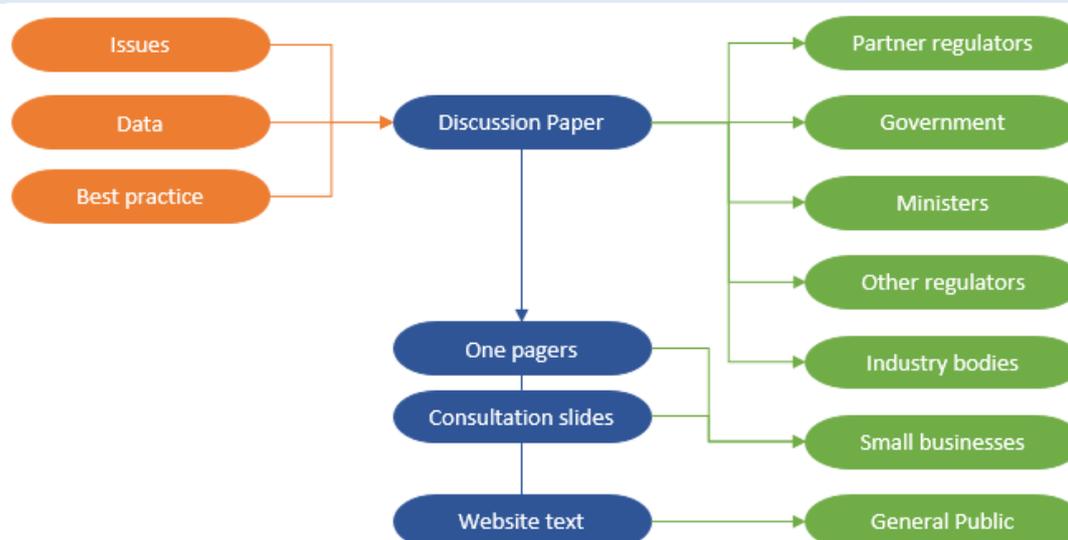
Introduction

This discussion paper sets out the scope of the Small Business Regulation Review (Regulatory Interaction – Construction Sector) project, which is being run by the Department of Economic Development, Jobs, Transport and Resources (DEDJTR). The primary purpose of this document is to:

- summarise the key regulatory issues that are anticipated to be further explored in the review; and
- facilitate discussion with stakeholders who are familiar with regulatory policy.

While small businesses are not the primary audience of this discussion paper, the content of this paper will inform the development of engagement materials, which will be tailored to meet the needs of small business stakeholders (see figure 1). Further information relating to this project, including an overview of the Small Business Regulation Review (SBRR) Program and project updates, will be made available at: www.engage.vic.gov.au/smallbizreview.

Fig. 1: Role of discussion paper



Background

Launched in 2016 as part of the Victorian Government’s Regulation Reform Program, the SBRR Program is a series of three to four sector-based reviews, which focus on addressing regulatory burden from the perspective of Victorian small businesses.

These reviews seek to identify reform opportunities that have significant potential to improve productivity, unlock new economic activity and create jobs.

Previous SBRR reviews

Two SBRR reviews have been completed to date, each with a focus on a specific sector, chosen predominately for:

- having a high proportion of small businesses
- there being significant scope for delivering practical and implementable reforms.

The retail sector was the first sector reviewed, with a second review building on these reforms, focusing on the visitor economy.

The reviews sought to identify regulatory issues of significant concern to small business owners, through intensive engagement with small businesses, their representatives and regulators. Practical, implementable reforms (see Figure 2) to address these issues were developed through a rapid co-design process.

Fig. 2: Small Business Regulation Review – Reforms from previous reviews

Retail Sector

1. Make it easier to discover what is needed to start and grow a business
2. Reduce the time taken for approvals
3. Make it easier to understand and comply with food safety regulations
4. Make retail leases fairer and easier to understand.

Visitor Economy

1. Make it easier to hold small events and festivals
2. Support innovative new ventures through regulatory frameworks
3. Improve the process of applying for tourist road signage
4. Make tour operator licencing fairer and easier
5. Save time and costs for small visitor accommodation providers.

These reforms are estimated to result in direct savings to small retail and visitor economy businesses of between \$74 million and \$141 million per annum, through reduced time and cost associated with complying with regulation. The bulk of these savings (between \$46 million and \$93 million) are associated with the Better Approvals project, stemming from reforms identified during the Retail Sector review. Further information on the reforms can be found in the SBRR Action Statements, which are expected to be released in early 2018.

In addition to delivering direct savings to small business, the reforms are expected to benefit businesses operating outside of the two reviewed sectors, as many of the issues addressed cut across multiple sectors of the economy. These broader reforms include improved access to regulatory information and transforming the approvals experience for small business.

Choosing the focus of the third review

Findings from the previous SBRR reviews revealed that the overarching factors resulting in the most significant issues for small business are not sector-specific. This is supported by several previous reviews¹, the work of Victoria’s Red Tape Commissioner, and work undertaken in other jurisdictions. These issues often relate to regular, day-to-day interactions between regulators and small business and share many common factors, such as:

- A lack of quality regulatory information, which is easily accessible to small business
- A lack of small business’ understanding of their regulatory obligations
- Difficulty faced by small business in meeting regulatory requirements, due to:
 - Poor compliance interfaces and regulator engagement channels
 - Prohibitive cost of regulation, compared to larger businesses.

As a whole-of-government program, the SBRR program provides an opportunity to address cross-sector regulatory issues relevant to small business, which would be problematic for

¹ See 2013 Productivity Commission report ‘Regulator Engagement with Small Business’

individual regulators to address unilaterally. Improving interaction between small business and regulators, and reducing the time and cost associated with regulatory compliance, offers potential for responding directly to the regulatory challenges faced by small business.

By working closely with specific partner regulators (see below) who share a high proportion of small business stakeholders, this review seeks to address specific regulatory issues in the focus sector (see below), while identifying reform methodologies and principles that can apply to broader regulatory reform initiatives.

Partner regulators

The partner regulators are as follows. Further details are provided in Section 2:

- Environment Protection Authority Victoria (EPA)
- EnergySafe Victoria (ESV)
- Victorian Building Authority (VBA)
- WorkSafe Victoria.

Focus sector

With approximately 92,000² small businesses in building and construction in Victoria, the construction sector is largely made up of small businesses, comprising small firms, partnerships and independent contractors. This includes over 22,000 registered builders, 26,000 registered plumbers³ and nearly 28,000 registered electrical contractors⁴, with a high proportion of these operating small businesses.

Focusing on the construction sector, this review seeks to identify and address regulatory burden arising from regulator interaction with small business, from the perspective of small businesses operating in the sector. As with previous SBRR reviews, while the initial practical and implementable reforms will predominantly benefit businesses in the focus sector, it is anticipated that reforms will likely benefit businesses in other sectors, which are also regulated by the partner regulators.

The SBRR project team will work with partner regulators to identify opportunities to develop targeted, practical and implementable reforms, which will benefit small businesses that are regulated by the relevant authority. These reforms will be developed through the lessons learnt during the previous SBRR reviews; and by identifying opportunities to implement best practice, including consideration of experiences in other jurisdictions.

The review will use the experience of the focus sector and the input from partner regulators to examine issues, and look for solutions that can be more broadly applied across other sectors and regulators.

² ABS data 8165.0 Counts of Australian Businesses, including Entries and Exits, June 2017

³ ABS data, ANZSIC classifications, June 2016

⁴ http://www.esv.vic.gov.au/wp-content/uploads/2018/03/REC_Register.pdf

2. Small Business Regulation Review (Regulatory Interaction – Construction Sector)

What do we mean by ‘regulatory interaction’?

The approach of regulators in engaging with regulated entities, through communication, advice and support, compliance and reporting requirements, can have a significant impact on how regulation is experienced by small business.

The former Office of the Australian Small Business Commissioner⁵ noted that approaches to the regulation of small business can be wide ranging, with some regulators adopting a facilitative role⁶. This is facilitated through assisting small businesses to meet their compliance responsibilities, while recognising that regulatory compliance activities often impose a disproportionate cost on smaller firms. Other regulators adopt a more traditional compliance-based regulatory posture, devolving responsibility for understanding and meeting regulatory obligations to the regulated entity.

Small businesses often rely on the owner/operator to manage regulatory compliance around their daily management of business operations. This can result in a significantly increased regulatory burden compared with larger businesses, which are more likely to have the expertise, revenue and staffing abilities to benefit from efficiencies by formally incorporating regulatory requirement into their operational model.

Regulators face significant challenges in tailoring and applying legislation, regulation and statutory instruments to businesses, to ensure the best outcomes for businesses and for the community. When similar business activities are undertaken by a wide variety of businesses, ranging from individuals to large corporations, there are many factors affecting the scope of regulation required to ensure public wellbeing, while still facilitating economic growth.

Even regulation that satisfies rigorous regulatory impact analysis can have a significant cumulative impact on small business when viewed in the context of the greater regulatory regime. This is particularly evident when regulators do not interact effectively with one another, resulting in duplicated processes, information requests and other regulatory requirements. Seen in a broader regulatory context, this can result in inefficient regulatory environments that place excessive regulatory burden on businesses and additional administrative burden on regulators.

Approach

The third SBRR review is based on the fundamental premise that the key sources of regulatory burden for small businesses are frequently common across sectors. The key project approach elements for this review (see figure 3) seek to address this by:

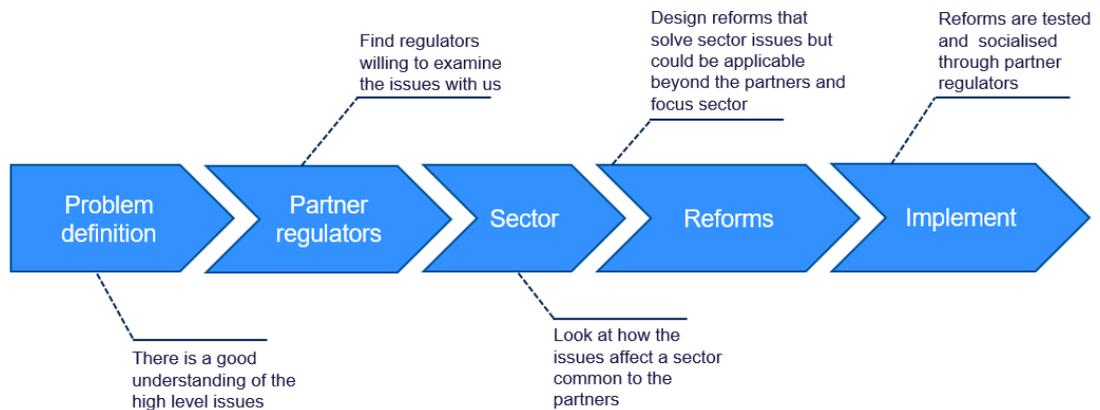
1. Working with partner regulators that recognise the unique challenges in reaching small business, and which are seeking to improve their engagement with small business
2. Exploring the development of small business regulatory interaction best practice principles, which are broadly applicable to cross-sector regulatory reform programs

⁵ Now the Office of the Australian Small Business and Family Enterprise Ombudsman

⁶ Regulator Engagement with Small Business - Productivity Commission 2016

- Identifying solutions that will resolve regulatory issues for small businesses in the focus sector in the first instance, based on best practice principles.

Fig. 3: Small Business Retail Review (Regulatory Interaction – Construction Sector) approach



Partner regulators

Working closely with partner regulators provides opportunities to address specific issue areas with implementable reforms, while simultaneously facilitating development of reform methodologies that can be applied in different regulatory areas.

Following analysis of the issues affecting small business, the partner regulators were selected based on:

- A demonstrated commitment to improving the regulatory experience for small business
- A shared stakeholder group of regulated entities to identify opportunities for determining a focus sector
- Scope for development of tangible reforms that will immediately benefit small businesses in the focus sector.

Environment Protection Authority Victoria (EPA)

EPA Victoria is responsible for administering the Environment Protection Act 1970, to regulate pollution. Based on EPA's regulatory risk model, they prioritise compliance and enforcement activity by addressing the biggest risk to the environment and health.

EPA is undergoing a significant transformation between now and 2022 - the biggest reform in EPA's 46-year history - by delivering the vision set by the Victorian's Government's response to the EPA Inquiry. A key change will be taking a preventative focus. This means that they will be looking to develop clear advice and guidance to industry and business around prevention of risk to human health and the environment to support this.

EPA will be implementing new legislation from 2018 (with the bulk of reforms to be fully implemented by 2020) that include *general preventative duty* provisions that will have new obligations for all businesses. This represents a fundamental shift for the EPA, which historically has not had significant dealings with small business. Working with EPA during this process presents an opportunity to ensure that the needs of small business are considered in the transition to the new regime.

EnergySafe Victoria (ESV)

ESV is primarily responsible for gas and electricity safety and energy safety awareness. It issues licences for electricians and electrical practitioners, as well as certificates of electrical safety (COES) and gas installation safety.

There are nearly 10,000 small businesses in the Electrical Services category⁷ who deal with the regulator for licensing and certification. With seven different licence types for electrical workers and over 600,000 COES lodged each year (of which approximately 50 per cent are lodged electronically), this presents a significant administrative burden both for the regulator and small businesses.

ESV employed a user-centric approach to identify opportunities to reduce regulatory burden, resulting in development of the ESV Connect program, which seeks to move the regulator's licensing functions online and meet the unique needs of small businesses in this sector.

Stage one of ESV Connect went live in November 2017, with further rollouts scheduled in 2017-18. This experience will help inform our assessment of best practice and provide genuine, practical insights from small business of how a regulator can genuinely make their processes friendly to small business.

Victorian Building Authority (VBA)

The VBA regulates building and plumbing practitioners to ensure the achievement of efficient and competitive building and plumbing industries in Victoria, which includes a large proportion⁸ of small businesses. The VBA is responsible for registration, licencing and monitoring compliance of building regulations, and manages hundreds of thousands of building permits and compliance certificates for plumbing each year.

In 2017, the VBA introduced the online portal *VBA360* as a new way for practitioners to access services online, including purchasing and lodging compliance certificates. The second stage of this project will include an app and a cloud-based system to allow better reporting from the field. While this system does not specifically target small business, it is part of VBA's strategy to reduce regulatory burden.

The VBA recently created a new executive position of *Chief Corporate and Regulatory Strategy Officer*. The department will work closely with the VBA to help identify opportunities to implement best practice in small business regulatory interaction, as the regulator focuses on refining its regulatory strategy.

WorkSafe Victoria

WorkSafe Victoria is the occupational health and safety arm of the Victorian WorkCover Authority (VWA). It takes the lead role in the promotion and enforcement of health and safety in Victorian workplaces. VWA is the manager of Victoria's workplace safety system.

The primary responsibilities of the organisation include:

- promoting workplace safety and injury reduction
- enforcing Victoria's occupational health and safety regulations (new Occupational Health and Safety Regulations 2017 and Equipment (Public Safety) Regulations 2017 commenced on 18 June 2017)

⁷ ABS data, June 2016

⁸ 9,839 Electrical services, ANZSIC classification 32, 0-19 employees, June 2016

- helping injured workers back into the workforce (under the *Accident Compensation Act 1985* and the *Workplace Injury Rehabilitation and Compensation Act 2013*)
- managing the workers' compensation scheme (also under the *Workplace Injury Rehabilitation and Compensation Act 2013*).

In 2017, WorkSafe Victoria announced *Strategy 2030*, which proposes to transform WorkSafe into a streamlined service delivery organisation. A key foundation of this work will be the incorporation of innovative and modern technology, enabling the regulator to deliver more effective digital services and benefit from efficiencies through better data utilisation.

The focus sector

The construction sector comprises a diverse range of small businesses, from sole traders to retail operations. Furthermore, many other stakeholders are affected by construction-related regulation, as licensing of builders, plumbers and electricians affects any business in the sector that employs trades practitioners.

Of the approximately 92,000 small businesses in the sector, approximately 50% are non-employing, or sole trader operations⁹. Regulatory burden is felt most keenly by these microbusiness operations, with sole traders in NSW previously reporting that they spend on average \$3,000 a year on regulatory compliance compared to an average annual cost of \$900 per employee for employing businesses with fewer than 20 employees¹⁰.

Engagement with regulators varies widely, depending on the type and structure of business. For example, while sole traders need to be aware of occupational health and safety (OH&S) guidelines, employing businesses are responsible for the OH&S of their employees and therefore have greater interaction with WorkSafe.

Identifying opportunities for meaningful reforms will rely greatly on identifying how small business in the sector interacts with regulators, which will be undertaken by working closely with partner regulators and small business stakeholders throughout the review.

Fig. 4: Number of small businesses and interactions with partner regulators

Regulator	Type of small business	Interaction type	Number of Interactions	Potential # of small businesses interacting with regulator
Victorian Building Authority	Building	Builder registrations	22,658	57,662
		Building Permits	109,696	57,662
	Plumbing	Plumber registrations	26,862	30,695
		Compliance certificates	372,702	60,735
EnergySafe Victoria	Electrical	Licences	45,020	47,190
		Electrical Contractor Registrations	14,771	47,190
		Certificate of Electrical Safety	727,705	47,190
WorkSafe	All	Website visits	3,214,464	35,371
		Emails	37,948	35,371
		Phone calls regarding OH&S, rehabilitation and compensation	191,716	35,371
		Claims	25,843	35,371
Environment Protection Authority	All	Anticipated provision of information relating to general preventative duty provisions, which will have new obligations for all businesses	TBC	TBC

⁹ ABS data, June 2016

¹⁰ 2014 NSW Business Red Tape survey

¹¹ ABS data, June 2016

3. How will this review benefit small business?

The SBRR program has a focus on recommending areas of regulatory activity where best practice regulator actions and compliance approaches can minimise regulatory burden; and identifying practical reforms that can be implemented as a matter of priority, as well as longer-term reforms.

This review will develop reforms that will reduce the regulatory burden for the focus sector. Using partner regulators and a focus sector as a mechanism to better understand the key causes of regulatory burden mean that the reforms developed have potential to be more broadly applicable across other sectors. Furthermore, addressing issues that cut across multiple sectors of the economy offers scope to identify reform opportunities that will benefit a significant number of small businesses, for example:

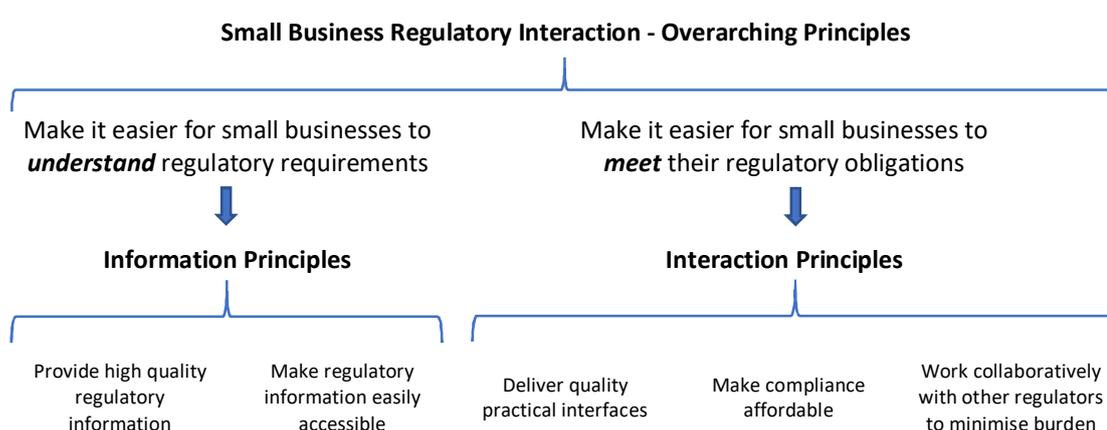
- Improving understanding of OH&S obligations is likely to benefit small businesses in construction, agriculture and manufacturing sectors
- Streamlining processes relating to occupational licensing is likely to benefit sole traders and tradespeople in multiple sectors
- Focusing on one area of regulation may result in efficiencies during the identification of reform opportunities (i.e. rather than reviewing multiple regulatory frameworks).

Regulatory interaction principles

To facilitate broader application of the reform concepts to other sectors, the review will explore the development of small business regulatory interaction principles (see figure 4).

These principles are primarily based on lessons learnt during the previous SBRR reviews, and on best practice articulated in previous reviews, including the Productivity Commission report on Regulator Engagement with Small Business.

Figure 5: Draft Small Business Regulatory Interaction Principles



Focus sector reforms

In concert with the development of regulatory interaction principles, the review team will work with partner regulators to identify issues relevant to small business in the construction sector. Following analysis of the issues, targeted reforms will be developed with stakeholders, based on the small business regulatory interaction best practice principles, using a co-design process.

4. Small business regulatory interaction issues

The cross-cutting issues in this section are faced by many small businesses, regardless of business activity or sector. These issues are usually not specific to any one regulator and relate to the unique challenges faced by small business in their dealings with regulators.

Although there is often significant overlap between these issues and the driving factors behind them, for the purposes of this review, they are collated into four key areas:

1. Access to information
2. Interfaces and engagement channels
3. Duplicative processes
4. Regulator join-up.

Issue Area 1: Access to information

Throughout the first two SBRR reviews, small businesses reported that finding information on their regulatory obligations was a significant challenge. While most regulators attempt to make this information available, there are significant challenges faced in ensuring that information on regulatory requirements is readily accessible, easily understood, regularly maintained and relevant to the needs of small business.

Lack of modern and mobile digital channels for accessing information

The way small business owners seek information about all aspects of running their business, including meeting their regulatory obligations, has changed significantly in recent years. Small businesses are increasingly embracing mobile digital technology¹² and expect government to do the same. The pace at which digital technology progresses, and at which those technological offerings are taken up by consumers – including small business operators – presents a significant challenge to regulators that are seeking to improve their engagement with customers.

Some regulators feel that they are meeting the technological needs of their customers merely by having an online presence or website. However, during the first two reviews, small businesses informed us that the experience of seeking information through government websites is often suboptimal for various reasons, including:

- Inefficient website design, layout and navigation, slowing the process of finding information and resulting in a frustrating experience for the end-user
- A lack of search engine optimisation and integration, resulting in broken links and incorrect information from online searches
- Lack of mobile-friendly sites, resulting in broken pages, text that is too small to read or impractical or non-operational navigation objects
- Inadequate ongoing website and database maintenance, resulting in the delivery of inaccurate or outdated information.

Inversely, some businesses noted that government entities' attempts to utilise advanced technology to engage better with their customers can sometimes create other issues for small business owners, for example by:

- Requiring account creation or website log-in to access relevant information
- Requiring use of proprietary resources, software or platforms, such as plug-ins (e.g. Adobe Flash) or social media platforms

¹² <http://www.digitalinnovation.pwc.com.au/small-business-digital-growth/states/victoria.html>

- A need to understand technical instructions, generally with no technical support.

Use of complex or technical language

Regulators have a responsibility to ensure that the information they publish about regulatory requirements is written in plain language and can be easily understood by small business operators. Guidelines and regulatory requirements that use overly-complex and technical terminology, acronyms, or poor syntax, where the content could be explained more simply, present compliance barriers and result in frustration for small business owners.

In recent years, governments have advocated the use of plain language in communication with regulated entities. However, there remain opportunities to improve the way in which regulatory information is delivered. By helping businesses understand their regulatory responsibilities at the 'front line', regulators will help reduce regulatory burden by:

- Reducing the need for businesses to engage directly with the regulator to understand their regulatory obligations
- Improving compliance rates and reducing the need for compliance activity.

While most regulators understand the need to communicate directly and effectively with their intended audience, challenges for policymakers in articulating technical regulatory requirements include:

- 'Traditional' regulatory culture, which focuses primarily on meeting the requirements of the relevant legislation, without seeking to offer a streamlined customer experience
- A lack of resources or capability for improving existing documentation
- A perception that consultation with peak bodies is sufficient to ensure that small business needs are met.

Siloed approach to communications

There is significant disparity between regulators on the quality of regulatory information being provided to small business. During the first two reviews, small business operators told us that their ability to access information about their regulatory responsibilities depended almost entirely on the regulator they had to engage with, including local government, land managers and state regulators.

This issue is exacerbated when small businesses operate across multiple jurisdictions, when there are variations in the provision of regulatory information by each regulator. For example, an event manager who is seeking to hold an event across multiple council areas, will not necessarily have the same experience when trying to find out the same regulatory requirements on different councils' websites.

Lack of second-tier regulatory information

Throughout the first two reviews, it became apparent that diverse business activities do not often sit neatly within regulatory frameworks. Businesses feel that, while they can find information relating to basic business operations, they face significant challenges identifying their regulatory responsibilities when their business activities sit outside clearly defined business operations.

This challenge is compounded when business activities cross over multiple areas of regulation. This was especially evident in multi-faceted businesses operating within the visitor economy. These businesses expressed frustration with the approach some regulators

took when regulatory requirements were unclear, which could significantly prolong the process of obtaining licences, permits etc.

Delays cost businesses potential revenue, and business owners report that they are sometimes obliged to obtain expensive professional advice to ensure that they remain compliant with the regulation. For example, during the Visitor Economy Review, one event organiser reported that they were unable to identify their regulatory responsibilities relating to serving cheese and wine at an event. As a result, they felt the need to seek advice from a professional dairy regulation expert; a process that cost the small business time and financially.

One issue of note, raised by small business stakeholders during previous SBRR reviews, related to 'Frequently Asked Questions' (FAQ) on regulator websites. Small business owners reported that they felt FAQ sections were used too often to present primary information, rather than addressing genuine follow-up questions from the small business community.

"If the questions are asked so frequently, why don't [regulators] do a better job of providing us with the information in the first place?" – Small business owner

Decentralised sources of information on numerous regulatory requirements

Regulators operating unilaterally across varying legislation and levels of government tend to publish information, including regulation guidelines, in a siloed manner. Without a coordinated approach to the delivery of information (such as through a centrally-managed portal) small businesses face additional challenges in identifying their regulatory obligations.

When the onus of fully identifying the regulatory requirements of relevant business activities is placed on small businesses, which may not have the capability to fully research their regulatory responsibilities, the risk of inadvertent non-compliance is increased, which could result in:

- Increased likelihood of adverse public outcomes, such as a risk to public safety or reduced market efficiency or effectiveness
- Increased possibility of adverse business outcomes, including fines or, in more serious circumstances, the revocation of an operating licence or premature closure of a business
- Increased need for greater regulatory compliance measures, such as inspections, increased reporting etc., resulting in increased costs for both small business and regulators
- Reduced public trust in small business, or in the regulatory regime or regulator.

Issue Area 2: Interfaces and engagement channels

Small businesses can find it difficult to integrate compliance activities into their operations and do not benefit from the economies of scale often enjoyed by larger enterprises undertaking the same business activity. The relative increased fixed cost of compliance mean that this burden is experienced more keenly by small businesses.

By improving the way regulators engage with small business and making it easier for small business owners to meet their regulatory obligations, there are significant opportunities for reducing burden and improving compliance outcomes.

Lack of modern and mobile digital channels for completing regulatory transactions

While most regulators understand the benefits of facilitating digital transactions, most regulatory transactions do not currently take full advantage of the efficiencies afforded by modern digital technologies.

Throughout the first two reviews, many small businesses indicated a strong preference for being able to engage with government digitally at all levels and for all transactions, wherever possible. For example, licence applications, event permits, signage permits, food safety certificates etc. could all be facilitated online, with no demonstrable need for printing, paper duplicate copies or postage.

Small businesses showed a high level of technical and digital literacy, and expressed frustration with the slow uptake of digital technologies by local government and state regulators.

“Why make me download a PDF form, require me to print it out, fill it in and mail it, only for it to be inputted manually into a system at the other end. Surely in 2017, this can be done digitally?” - Small business owner, SBRR (Visitor Economy)

In South Australia, the Office of the Technical Regulator is transitioning from paper-based plumbing, gas and electrical certificates of compliance to an automated online system¹³. Plumbing, gas and electrical contractors can access the free system from desktop and mobile devices to complete, submit, store and refer to certificates of compliance online.

Electrical, gas and plumbing contractors and workers complete a one-time registration and need to provide professional licence details one time, saving time during each future transaction. The SA Government estimates that the new system will result in savings to industry of over \$60 million per annum in the first year.

Time taken to make decisions

Throughout the first two reviews, the time taken for decisions to be made on approvals for licences, signage, planning, certification etc. was a key issue raised by small businesses during consultation. Small business owners felt frustrated that delays usually resulted in costs or other adverse outcomes for the business and often felt that the reasons behind the delays were either unreasonable or not well communicated.

Working closely with regulators and small business, we identified that there are various factors that contribute to delays in decision making, including:

- A lack of understanding of requirements on the part of the business, resulting in inappropriate or incomplete applications
- Poor linkages between regulators when more than one regulator is part of the decision-making process
- Poor interface with small business, presenting barriers to facilitate understanding or provision of information required to facilitate a decision
- Regulators’ expectations that businesses read long, technical guidelines and work out what their obligations are, prior to submitting their applications.

¹³ <https://www.mpasa.com.au/assets/documents/regulation-roundup-issue-38-august-2016.pdf>

Issue area 3: Duplicative processes

Short registration and licencing terms

Regulatory reform work undertaken in multiple jurisdictions¹⁴ has shown that businesses seek to minimise their interaction with regulators. The time and cost of renewing registrations and licences on an annual basis can be particularly frustrating to small businesses, who feel that they have already demonstrated their capabilities, eligibility and commitment to compliance.

The Productivity Commission has previously made recommendations that regulators review their licensing and registration renewal requirements¹⁵ to reduce administrative burden on small businesses and regulators alike. By taking a risk-based approach to renewal requirements, regulators can often identify opportunities for reducing regulatory burden.

This could be facilitated by:

- Extending licence or registration validity periods
- Simplifying renewal requirements
- Improving interfaces and maximising digital efficiencies
- Reducing requests for information.

Repeated engagement with different regulators

A significant source of regulatory burden for small businesses derives from dealing with multiple regulators, often at different levels of government. During previous SBRR reviews, small business owners reported that they are regularly required to provide the same information to different regulators on multiple occasions, including:

- Generic business information, such as contact names, contact details, ABN etc.
- Periodic reporting on business activities, customer details etc.
- Proof of licencing, registrations etc.
- Plans and other documentation for approval processes.

The cumulative burden of this sort of duplicative process can be significant to small business. This burden is further exacerbated when different regulators require similar information in a different format or method of delivery. For example, where one regulator requires the information in digital format, while another requires a signed hard copy.

By working collaboratively, regulators could identify opportunities to minimise the amount of information requested from their regulated entities. This could be implemented through:

- improved data management, usage and sharing
- aligning information requirements between related regulators
- implementing lead agency arrangements, whereby one regulator collects information on behalf of multiple agencies.

¹⁴ e.g. Canada, South Australia, SBRR 1+2

¹⁵ See 2013 Productivity Commission report 'Regulator Engagement with Small Business'

Issue area 4: Regulator join-up

Overlapping regulation

As evidenced by variations in regulatory requirements across jurisdictions, regulators often have flexibility in how they deliver regulation, such as setting licence conditions and codes of conduct. This provides opportunity for designing different regulatory requirements for differently sized business, based on appropriate risk/benefit matrices.

Information provided by regulators rarely acknowledges complementary regulation in a definitive way. Likewise, small business owners reported during previous SBRR reviews that regulators are often unable to address questions relating to how obligations in different regulatory areas conflict or interact with one another. This puts small business owners in the challenging situation of having to become regulatory experts themselves, or needing to rely on expensive regulatory consultants to be able to understand their full regulatory obligations.

“Nobody at VicRoads or the local council was able to tell me what I needed to do. I kept getting passed between the two as neither seemed to want to take responsibility. The process took so long and was incredibly frustrating.” – Small business owner, SBRR (Visitor Economy)

Sharing of information

The cumulative burden of regulation spread across multiple regulators is a particularly important issue for small businesses. While each individual category of regulation and regulator delivery may be tailored to small business, the cumulative effect of having to manage compliance across multiple regulators may still create unnecessary burden.

Efforts to address this issue have included the creation of information portals, lead agency arrangements, “one-stop shops” and client relationship managers.

(See also ‘Repeated engagement with different regulators’, above)

Lack of understanding of the needs of small business

Throughout the two previous SBRR reviews, small businesses stated frequently that they feel that regulators do not understand (or consider) the needs of small businesses. This was particularly evident in small businesses seeking to develop and innovative product or service, which does not fit neatly into existing regulatory frameworks.

Small business owners feel that many regulators do not appreciate the increased burden faced by small business through one-size-fits-all regulation. Existing RIS processes do not adequately address regulatory requirements to take a graduated risk-based approach to developing or reforming regulation

Issues out-of-scope

Regulatory policy

The focus on regulatory interaction keeps the scope of the review to issues of process and communication. The review is not looking at regulatory policy issues specific to the construction industry. For example, the review will look at the way small business experience the interactions related to OH&S regulations and workers’ compensation insurance, but not the underlying policy. Similarly, identifying policy issues relating to industrial relations is not in the scope of this review.

Complex legislative regulatory requirements

Complex laws and regulations generally increase the cost of compliance. Due to increased fixed costs of compliance, economies of scale mean that this burden is experienced more keenly by small businesses. Furthermore, small businesses that require technical specialists to understand their regulatory requirements are more likely to be noncompliant; or may face a disincentive to undertake the business activity that faces regulation.

While effective regulatory interaction principles may inform the future development of legislation and regulatory frameworks, the primary focus of this review is to address the strategic and operational implications of regulatory interaction with small business.

Other considerations

Cross-border issues

Approximately 215,000 people live in Victorian cross-border communities¹⁶, located next to NSW and SA. Small businesses in these communities operate in commercial networks that connect across state borders and face additional challenges due to overlapping or contradictory legislation between jurisdictions. This can result in duplicative regulatory environments that result in additional regulatory burden and costs for small businesses operating close to the border.

In June 2017, the Government committed to develop a business case to establish a Victorian Cross Border Commissioner's Office, to promote the interests of Victorian border communities, resolve issues and develop common approaches with neighbouring states. If this work proceeds, there may be scope to use the findings of the SBRR program to promote the needs of small businesses in these areas, during the development of cross-border strategies.

National Business Simplification Initiative

Launched in 2016, the National Business Simplification Initiative (NBSI) is a Commonwealth agreement between federal, state and territory governments to work together to make it simpler to do business in Australia.

The NBSI focuses on two areas:

- *Better regulation*—to reduce the complexity of regulation for businesses by streamlining regulatory and compliance requirements
- *Better business services*—to address business demands for simplified digital transactions and tailored information and advice.

The review will seek to work with the NBSI Business Simplification Team to identify opportunities for improving regulator interaction with small business.

Microbusiness

The Productivity Commission's report into regulator engagement with small business recommends that regulators acknowledge the unique position of micro businesses, classified by the Australian Bureau of Statistics (ABS) as those employing 1-4 employees. Many of

¹⁶ ABS, July 2017



these businesses are in the start-up stage of the business cycle, making them particularly sensitive to regulatory burden and requiring a facilitative approach from regulators¹⁷.

Although the ABS differentiates between microbusinesses and small businesses, there is no nationally consistent approach to engaging with microbusinesses, and Victorian Government datasets do not currently acknowledge this subsector of the small business economy. However, regulatory reforms that result in digital efficiencies and other improvements in regulatory interaction are likely to have a similar positive impact on microbusiness, as well as larger small businesses.

¹⁷ Submission from Master Electricians Association, to Productivity Commission report on regulator engagement with small business.

5. Next steps

Consultation

The SBRR project team will engage with small business and partner regulators to refine the identification of issues specific to the construction sector. This will be facilitated through:

- A comprehensive survey of small businesses in the construction sector, to understand regulatory interaction issues from a small business perspective
- A field study of regulators to examine what influences regulator behaviour when designing processes that will affect small business
- A consultation website at <http://engage.vic.gov.au/smallbizreview>
- A forum for small businesses (including regional opportunities) to hear directly from business owners about their experience of regulation
- An industry forum in June 2018, which will bring together industry representatives and regulators to share perspectives and identify opportunities for improvement.

Analysis of regulatory interaction issues and principles

Following industry and regulator consultation, the SBRR project team will work with partner regulators and industry stakeholders to further identify and refine opportunities for reform in the construction sector, along with broader small business regulatory interaction principles.

Development of reform opportunities

Once key issues have been fully identified, the SBRR project team will work with consultants and stakeholders to identify practical and implementable reforms in the construction sector. These reforms will be designed through a co-design process and will be based on the identified small business regulatory interaction principles (refer to figure 4).

Action Statement and reform implementation

Following completion of the co-design process and consideration by Government, an action statement will be published, which will detail the construction sector reforms and refined regulatory interaction principles. The SBRR team will then continue to work with regulators to support implementation of the reforms.

Appendix 1: Related small business regulatory interaction improvement activities (including in other jurisdictions)

Reducing the burden of regulation and red tape has been identified as a key priority in every state and territory in Australia. Furthermore, the Australian Government's regulatory reform agenda seeks to reduce regulatory burden by \$1 billion, guided by the principle that regulation should not be the default for dealing with public policy issues¹⁸.

Within Victoria

Ministerial Statements of Expectation

Ministerial Statements of Expectations aim to improve regulatory governance and performance by articulating the Government's priorities and objectives for regulators.

Statements are developed in collaboration with regulators and in consideration of the regulators' individual circumstances, including objectives, legislative basis, size of organisation, and current practices and processes. This ensures that statements are fit for purpose and ensures that regulators understand their expected outcomes.

Released in May 2017, the latest Statement of Expectation Framework incorporates a requirement for regulators to consider the needs of small business in the provision of compliance related assistance and advice¹⁹. As SOEs are updated biennially, there may be opportunities to use SOEs as a mechanism to develop a coordinated approach to improving small business regulatory interaction practices.

SBRR Better Approvals Project

Run by Small Business Victoria, the Better Approvals Project is a flagship component of the SBRR and will implement the approvals-related reforms of the retail sector.

Working in partnership with local councils, the Better Approvals Project will develop better approval processes and introduce greater efficiencies. This will reduce the time it takes small businesses to obtain the necessary approvals from councils, and the Victorian Commission for Gambling and Liquor Regulation, to open their business.

Streatrader

All food premises, water carter and vending machine businesses trading in Victoria are required to be registered under the *Food Act 1984*, by their registering council before selling food. *Streatrader* is a centralised online registration system for temporary and mobile food premises), which allows businesses and community groups to:

- apply for a *Food Act 1984* registration with the relevant registering council/s
- manage their registration
- lodge Statements of Trade for each of their events.

Prior to the implementation of the *Streatrader* system, businesses and community groups wishing to establish temporary and mobile food business were required to apply to register as a food business directly to each council, in which they sought to do business. This resulted

¹⁸ Guide to Regulation - Cutting Red Tape, Commonwealth Government 2014

¹⁹ Statements of Expectation Framework for Regulators, Department of Treasury and Finance 2017

in significant regulatory burden for vendors operating at farmers markets or catering to events in different jurisdictions, for example.

Service Victoria

Announced in November 2017, Service Victoria is a project to create a whole-of-government, one-stop shop for state government services. As a Whole-of-Government agency, Service Victoria will facilitate the processing of high-volume government transactions such as car registration, birth certificates, fishing licences etc., with the capacity to incorporate other transactions as the agency grows.

The development of Service Victoria has potential to offer opportunities to improve regulatory interaction for small business owners through:

- The potential for development of a centrally-maintained technology back-end for the delivery of portal solutions, which could be applied within the context of small business regulatory compliance
- Demonstrating to regulators the benefits of implementing digital interfaces to improve the efficiency of regulatory interactions, which could later be replicated in the small business context.

EnergySafe

Energy Safe Victoria is in the process of improving stakeholder interaction by implementing sweeping reform of their online customer systems, through development of the ESVConnect platform. The platform has been built to host all ESV's online systems, through which electricians, customers and other stakeholders can interact with the regulator. This includes registration of electrical contractors, electrical licensing and purchasing Certificates of Electrical Safety.

In other jurisdictions

'Digital by default' declaration (South Australia)

South Australia state government commits agencies to proactively transform their services, using digital technology. New or reformed government services will be digital by default. Digital services are expected to be:

- available online, mobile-ready, easy to use and accessible
- designed with customers
- offer value for money
- implemented so that, where appropriate, data can be made openly available.

Public sector agencies are now expected to:

- transition existing services and paper-based processes to digital
- develop new services in partnership with those affected from a digital by default perspective
- ensure their workforce is skilled in the use of digital technologies
- develop digital strategies to achieve this and report publicly on progress.

MyGov

MyGov is a service provided by the Australian Government, which acts as a single sign-on service and primary online entry point for individuals to access government information and services. By creating a single portal for multiple regulatory functions, MyGov has made it



easier for individuals to find information on their regulatory responsibilities and facilitate many of their regulatory interactions with different government agencies.

The implementation of MyGov was a whole-of-government project, led by the Department of Human Services in partnership with the then Department of Finance and Deregulation.

Government of Canada Small Business Lens

Implemented by the Canadian Government in 2011, the Small Business Lens seeks to ensure that regulators are sensitive to the needs of small businesses. Regulators are required to demonstrate to their relevant minister that they have sought to minimise the impact on small business during the regulations design process, and in how they engage with small business to facilitate compliance.

Regulators must complete a checklist at the earliest stages of regulatory development, which drives consultation with small business to facilitate understanding of their experience of regulation. Regulators must also demonstrate to ministers that due consideration was given to reduce the burden associated with the option imposed upon small business. If a less burdensome option is not adopted, regulators must justify why.

The requirements in the Small Business Lens are more prescriptive than the current Victorian SOE Framework and could provide a starting point for a discussion about future SOE Framework requirements.

Appendix 2. Key general regulation impacting small business in Victoria

Key taxation obligations²⁰:

- *Income tax* — Businesses are required to maintain records and submit tax returns to the Australian Tax Office (ATO). The regulatory burden of this is likely to vary depending on the structures used for business. For example, a business may be operated as a sole trader, partnership, company, trust or some permutation of these.
- *Goods and services tax (GST)* — Most businesses are required to charge GST on their sales and collect the revenue on behalf of government. Through business activity statements, businesses are required to report and pay their GST liability to the ATO. These statements are completed on either a monthly, quarterly or annual basis depending on a business's turnover and some other eligibility criteria.
- *Pay as you go (PAYG) withholding* — Businesses that have employees are required to withhold a portion of payments to these employees. Employers are required to report and send all withheld amounts to the ATO.
- *Fringe benefits tax (FBT)* — Businesses that provide fringe benefits to employees or associates are required to pay FBT and submit a return to the ATO.
- *Payroll tax* — This is a state tax that is levied on the wage bill of businesses who pay out wages over a threshold, and is collected by state revenue offices. While there has been some harmonisation of payroll tax and non-employing and many micro businesses would qualify for exemptions, the thresholds and rates still vary by jurisdiction. Despite a recent increase in the threshold, Victoria has the second lowest threshold in Australia²¹, applying payroll tax at a rate of 4.85%²² to businesses with a gross wage bill (including payments such as super) of \$625,000 or more (\$650,000 with effect from 1 July 2018)²³.

Key employment obligations²⁴:

- *Industrial relations* — Employment of staff is regulated under the Fair Work Act 2009. The Fair Work Commission is the national tribunal that deals with a range of issues, including setting minimum wages, enterprise bargaining and industrial disputes. The Fair Work Ombudsman provides information on employment obligations and investigates workplace complaints. There are a range of regulatory requirements surrounding the employment of staff. Under the National Employment Standards there are 10 minimum entitlements that apply to staff (although not all these apply to casual staff). There are also different awards that apply to staff. Dismissing staff is also heavily regulated and there are specific obligations that need to be met, although there are some concessions in the unfair dismissal regulations for small businesses.

²⁰ Productivity Commission (2013) Regulator Engagement with Small Business, Appendix E.

²¹ After South Australia, which has a gross wage payroll tax threshold of \$600,000.

²² reduced to 3.65% for businesses where at least 85% of their employees are 'regional employees'

²³ Victoria State Budget 2017-18, Payroll Tax

²⁴ See footnote 5

- *Superannuation* — Employers are required to forward employees' super entitlements to their nominated super fund on a periodic basis.
- *Occupational health and safety (OH&S)* — Employers have OH&S obligations to their employees. OH&S is regulated and enforced by state work safety agencies, but there is an intergovernmental agreement between the Commonwealth, state and territory governments to harmonise OH&S regulations. While there are general obligations that apply to all employers, there are additional requirements in higher risk areas, with training and accreditation required to undertake specified activities.

Employers are also required to pay workers' compensation insurance premiums. Other general regulatory requirements that may impact on small businesses include²⁵:

- *Financial reporting* — Small businesses with more complex business structures are subject to more onerous financial reporting obligations. For instance, a business operating through a company structure has additional reporting obligations to the Australian Investments and Securities Commission (ASIC), that do not apply to businesses operated as, say, a sole trader.
- *Business registrations* — There can be a range of regulatory obligations associated with starting a business. For instance, under the new national business name registration system, business names need to be registered with ASIC. Businesses have reported difficulties and delays in registering names since the commencement of the national system.
- *Planning and development* — In starting up or expanding a business, it may be necessary to lodge a development application or seek consent to construct new infrastructure or undertake a business activity at a given location. In addition to the business premises itself, planning and development requirements can cover aspects such as vehicle access to the property, car parking, hours of operation and noise levels. Development consent is usually granted by local governments.

²⁵ Productivity Commission (2013) Regulator Engagement with Small Business, Appendix E.