

INQUIRY INTO SMALL BUSINESS EMPLOYMENT

*ACCI SUBMISSION
TO THE
SENATE EMPLOYMENT WORKPLACE RELATIONS AND EDUCATION
REFERENCES COMMITTEE*

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EXECUTIVE SUMMARY

The Australian Chamber of Commerce and Industry (ACCI) welcomes the opportunity to provide a submission to the Senate Employment, Workplace Relations and Education References Committee on Small Business Employment.

Although Government Agencies and Departments differ in their representations of what is a small business, and subsequently, the impact of this sector to the vitality of the Australian economy, there is no denying that Small to Medium Enterprises (SMEs) dominate the Australian organisational and economic landscape, both in terms of their mass and impact.

When reviewing what factors impinge upon and stimulate small business employment, it is necessary to take a holistic view. The answers to this question are as broad as they are numbered - for small businesses, amongst other unique characteristics, assume operations in all sectors and industries, operate in different jurisdictions often with heterogenous regulations, and are often subject to distortions and externalities peculiar to their own market and locality.

Although there is a need to introduce policies at a micro level to overcome such problems as market distortions, it is imperative that policy importance is placed on the macro environment, or the parameters in which small business operate, to ensure an environment conducive to investment and employment growth.

This submission outlines, against a number of broad policy headings, how small business employment is inhibited. Barriers to growth are discussed, and a number of recommendations are suggested.

Key Issues

Fiscal Policy

ACCI believes the fundamental principles to underpin improved growth prospects for small businesses are:

- Economic and fiscal stability;
- Maximisation of competition in the market place;
- Minimisation of regulatory burden; and
- Minimisation of impediments to employment.

Recent increases in the cash interest rate and award wages are detrimental to the interests of small business, especially when employment is the key consideration. Upwards movement in these

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key economic instruments will commonly lead to higher prices, lowered investment and a slowing in the demand for labour. The economy is not yet to a point where interest rate increases are justified or needed. Moreover, further wages growth without a correlating increase in productivity must be viewed with considerable caution.

Taxation Compliance

The frequency and complexity of changes to the tax laws and rules consistently ranks as the number one constraint by Australian small business proprietors according to ACCI surveys. Measures such as entity taxation must not be introduced if it cannot be suitably demonstrated that the changes are not only simpler but also more certain, more efficient and less complex, and provide substantial economic benefits as a whole. ACCI strongly believes that the proposed Tax Value Method (TVM) should not proceed. Although not opposed to taxation reform, ACCI believes small businesses must be given an opportunity to assimilate to recent tax changes before new legislation is introduced.

Uniform taxes or regulations can impose very different burdens on small business. Where the application of uniform tax schedules or business regulations is likely to result in significantly and demonstrably higher proportionate costs for some businesses than for others, discrimination in the application of those taxes and regulations may be appropriate.

Small Business Growth

Small businesses grow when there is a suitable *need, ability* and *opportunity* to do so. Although little can be done to influence the *need* or motivational components of a proprietor's psyche, governments, via the creation of a business environment that facilitates small business' *ability* and *opportunity* to expand, can readily impact upon small business growth.

Regulation Impact Statements

Completed by Government Agencies and Departments, Regulation Impact Statements (RISs) should include an assessment of the impacts of proposed regulation, and alternatives, on different groups and the community as a whole. To date, RIS completion is not to an acceptable standard of robustness or effectiveness. When formulating Regulation Impact Statements (RISs), regulators should attempt to:

- Better define the objective and rationale of the regulation;
- Apply more rigour into the assessment of costs and benefits of alternative options;
- Seek greater community and business consultation;

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- Engage in better monitoring and evaluation of the regulation;
- Embark upon an education and skills development programme to improve RIS formulation; and
- Reinforce the notion that RISs should not be used as a means to justify regulation, but as a means to validate the need for regulation.

Self Regulation

ACCI favours self-regulation over prescriptive, in-flexible regulatory regimes for the following reasons:

- It allows industry to respond to concerns by consumers and identify solutions to problems by utilising the resources and expertise that is unavailable to government;
- It empowers users, whether business or householders, through market-mechanisms; and
- Interventionist government regulatory approaches lack the capacity to respond to such changes in consumer sentiment – often distorting the market and diminishing the capacity to deliver benefits to consumers.

'More Time for Business'

Government progress in relation to those initiatives it 'Agreed' to implement and those that it agreed to 'In Principle' as contained in the 'More Time for Business' report must be called into question. ACCI calls for a review of progress to date and for these findings to be released publicly.

Competition Policy

Greater consistency and certainty is required with the Trade Practices Act (TPA). Removing the uncertainty and inconsistency and not increasing the breadth of the ACCC's powers through increased regulatory powers is essential. With protection already offered to small business under Section 46 and Section 51AA(1) of the TPA, increasing the powers of the ACCC is not an effective solution for increasing employment or growth opportunities in small business.

Workplace Relations

Despite commitments from governments to improve the regulatory environment in which small businesses operate, Workplace Relations appears to have been largely immunised against significant regulatory reform to better reflect the needs and circumstances of small business. ACCI believes the following measures warrant closer governmental scrutiny:

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- The WR environment needs to be made less prescriptive, legalistic and detailed to accommodate the unique characteristics of small business;
- A larger role for small businesses in how the Australian arbitral system determines award standards, and the way in which awards apply employment standards in workplaces must be granted. Award simplification, to circumvent the current 'one size fits all' award system should be pursued as a government priority;
- A full exemption from Federal and State unfair dismissals legislation;
- Greater information dissemination so that small business employers are more properly informed of their WR obligations. Employers generally need greater assistance in finding, interpreting and implementing their regulatory requirements;
- The transition between regulatory systems adds to compliance costs and added inflexibility and complexity. A system of minimum employment standards, underpinned by a simplified, unitary-national system would have considerable advantages for small business; and
- AIRC decisions to have a closer consideration of the particular needs of small business.

Occupational Health & Safety

Governments with responsibility for Occupational Health and Safety (OH&S) regulation affecting small businesses should review their policies and programmes with a view to ensuring that an open, accessible and educational approach to OH&S compliance is taken. The following OH&S problems act as a deterrent to small business employment: lack of expertise in implementing the technical aspects of OH&S legislation - resulting in risk and employment adverseness; and severe penalties for non-compliance in lieu of prevention strategies.

Education & Training

As a result of globalisation and the advent of new technologies, the importance of an appropriately skilled workforce is gaining increasing prominence within Australian industry. Industry today is seeking input into the skills development framework as well a guarantee that the framework will remain flexible and rigorous. Amongst other important measures, ACCI seeks full implementation of the current User Choice system and further reforms that encourage a nationally consistent education and training system.

*SENATE INQUIRY INTO SMALL BUSINESS EMPLOYMENT****Regional Development***

Attracting businesses to regional locations is the objective of many governments and communities. Opinion is divided as to how this might best be achieved. The default solution is the provision of financial or other incentives to attract new businesses, often without clear justification. The decision to locate is complex and influenced by many factors not all of which are economic. Survey work on what factors influence people's decisions to locate a business in regional Australia would indicate that the reasons are far more related to intrinsic factors, such as lifestyle and family. If this is the case, it is clear that some issues must also be attacked at the State and local government level and Federal Governments must re-consider the value of current regional investment strategies that place an emphasis on financial incentives such as subsidies and tax relief.

Government Procurement

Government Procurement is a major market place for Australian business. The Commonwealth Government spends approximately \$8.8 billion on goods and services per annum. It is estimated that the three tiers of government spend \$45 billion per annum on goods and services. A more systemic approach by government procurement agencies needs to be taken when procuring goods and services from domestic and international markets. Measures that would bolster small business participation in the substantive government procurement market include: a legal and administrative framework that facilitates the integration of procurement entities; better training for procurement staff to reduce the current 'risk adverse' culture; resources to improve the GaPS system; and, a cessation of 'mega-contracting'.

Innovation

It is widely accepted that innovation is the key to success for the modern economy. The OECD has estimated that innovation accounts for 50% of long-term economic growth in advanced industrial countries. In order to promote innovation amongst SMEs, governments must:

- Firmly establish the R&D tax concession at 175% or higher to compensate for the reduction in company tax rates;
- Must look to programmes such as R&D Start to act as a vital catalyst;
- Improve the cost of and access to finance, skills, technology, research and research organisations;
- Place a greater focus on capacity creation through provision of appropriate education;
- Improve regulatory and taxation environments;

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- Ensure an open economy that facilitates Australia's easy access to new technology developed offshore.

Insurance

Perhaps the single largest threat to the vitality of small businesses today is the crisis associated with Public Liability, Professional Indemnity and Directors & Officers Insurance. This problem is essentially two-fold, small businesses in some instances cannot gain appropriate cover and if an insurer is found, the increase in the premium and excess is often financially insurmountable. Measures such as further tort law reform, co-insurance pooling, and reductions in stamp duty should be pursued as a matter of priority by State and Federal Governments.

E-Commerce

Electronic commerce (E-Commerce) offers enormous potential to improve the efficiency and competitiveness of small business. To date, government delivery of information to SMEs on the benefits of e-commerce has been poor. More needs to be done to assist small business to overcome the current barriers to e-commerce. These barriers include: understanding of technology; training; awareness of potential benefits; security concerns, and inability to manage technology. ACCI also believes that there is enormous potential for Government to reduce the compliance cost on business from regulation by allowing businesses, where appropriate, to comply with regulations online.

Privacy

The *Privacy Amendment (Private Sector) Act 2000* came into effect for most organisations on 21 December 2001. Except for health service providers, government contractors, and those that trade in information, the small business sector has until 21 December 2002 to determine whether they are exempt from the legislation. ACCI is concerned that the privacy regime is too complex and costly for business to implement. ACCI calls on the Office of the Federal Privacy Commissioner to prepare an adequate education and awareness campaign that will clearly identify the steps necessary for organisations to comply with the Privacy Amendment (Private Sector) Act 2000. The focus should be on education rather than enforcement.

Cost Recovery

The trend of Government regulatory agencies charging business for the cost of regulation has become a significant financial burden on business, particularly small business. The Government has continued to introduce new charges on business for activities which they receive little of no benefit from. Governments should not be charging business for activities which are public goods.

1 BACKGROUND

The Australian Chamber of Commerce and Industry (ACCI) is the peak council of Australian business associations. ACCI's members are employer organisations in all States and Territories and in all major sectors of Australian industry.

Through our membership, ACCI represents over 350,000 businesses nation-wide, including the top 100 companies, over 55,000 enterprises employing between 20-100 people, and over 280,000 enterprises employing less than 20 people. That makes ACCI the largest and most representative business organisation in Australia.

Membership of ACCI comprises State and Territory Chambers of Commerce and national employer and industry associations. Each ACCI member is a representative body for small employers or sole traders, as well as medium and large businesses.

ACCI is well positioned to play a leadership role on the issues affecting the growth, investment and competitiveness of Australian small business. ACCI has a dedicated Small Business Adviser within its Industry Policy Unit and provides key support to two important Small Business committees – the ACCI Small Business Committee and the Small Business Coalition (SBC).

Through member consultation, committee meetings and small business surveys, ACCI is fully aware of the issues surrounding small business employment. ACCI has a vested interest in ensuring that impediments to small business employment are removed and policies that encourage their growth and efficiency are implemented.

2 INTRODUCTION

For the purposes of this submission, a small business will be referred to as a business with fewer than 20 employees, and in manufacturing, a business with less than 100 employees. A micro business will be referred to as a business with five or fewer employees.

ACCI believes the fundamental principles to underpin improved growth prospects for small businesses are:

- Economic and fiscal stability;
- Maximisation of competition in the market place;

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- Minimisation of regulatory burden; and
- Minimisation of impediments to employment.

ACCI's overarching small business policy objectives are to: provide national leadership on issues affecting the growth, investment and competitiveness of small business; achieve recognition by government in its policies that the circumstances, strengths and weaknesses of small business are different from those of medium to large firms, and policies which recognise these differences can promote economic efficiency and growth; and, reinforce the issue of regulatory reform with government particularly from compliance and cost burden perspectives.

3 ROLE OF SMALL BUSINESS

The small business sector makes a critical contribution to the Australian economy. In broad terms, small business accounts for around one-third of Gross Domestic Product and approximately 50% of total private sector non-agricultural employment¹

It is commonly accepted that small businesses also provide the following advantages:

- Because they are fast and flexible, and close to their customers, they can be a competitive spur to large firms;
- They perform important sub-contract functions;
- They can perform an important import substitution role; and
- Some small firms are innovatory – creating new ventures is critical for getting new ideas into the economy.²

According to the Australian Bureau of Statistics (ABS), small business employment growth is slowing. The ABS Report – *Small Business in Australia (1321.0)* – indicates that on average small business numbers and employment grew by 3.7 and 3.1 percent between 1983-84 and 1998-99 respectively. However, between 1995-96 and 1998-99, the percentage of new small businesses commencing and employment growth fell to 2.0 and 1.6 per cent respectively.

¹ Professor Scott Holmes, Faculty of Commerce, University of Newcastle, November 2001

² Scott, M. (1991) 'A European View', Proceedings of the 1991 Conference of the Small Enterprise Association of Australia and New Zealand, Wollongong, NSW, September, pp. 10-19

4 VARIABLES RELATED TO SMALL BUSINESS GROWTH AND EMPLOYMENT

When examining what factors enhance the capacity of small businesses to employ more people, it is first necessary to understand that not all small businesses wish to hire more staff. Although there is little empirical data from Australia to support this notion, research undertaken in nations of comparable small business proliferation and composition would suggest that there is always a small percentage of small business proprietors who do not want to grow their business operations. Alternatively, there will be varying percentages of small businesses that will be strongly growth orientated, those that will pursue growth whenever possible and those with proprietors which will concentrate on ensuring their current market position is maintained.

ACCI believes that small business growth should not be taken as a self-evident phenomenon, but instead as something that is dependent upon a number of factors.

Microeconomic theory would suggest that enterprises tend to grow until they reach an optimal level where both marginal revenues and marginal cost is in equilibrium. A less inflexible view might suggest that enterprises will tend to grow when there is a suitable *need, ability* and *opportunity* for the small business to do so.

In terms of *need*, research would indicate that small business proprietors will, according to certain personal characteristics, values, demographic factors and levels of motivation, have a greater or lesser propensity to want to grow. Further, *ability* - for example, the education and skill level of the proprietor - will influence the propensity of the small business to achieve or fail. Finally, there are external factors, or *opportunities* (eg regulation, taxation and the labour market) that can have a very large bearing on whether a small business that wants to grow can do so.

Although little can be done to bolster the motivational components, such as the *need* to grow, improvements to those factors that influence *ability* and *opportunity* can be made. Below are a number of *ability* and *opportunity* type factors that ACCI believes could be improved to facilitate improved small business growth and employment.

5 REGULATION

There can be no denying that the imposition of regulation and taxes is necessary to achieve certain societal, economic, operational and environmental goals. Economic regulations can help to improve the efficiency of markets by increasing competition and by minimising externalities. Social regulations can protect social values and rights, and administrative regulations can assist governments to collect, manage and allocate funds and property. Environmental regulations can assist to achieve objectives such as ‘sustainable development’.

In complying with regulation, small business, indeed all business, incur costs. These costs stem from a number of sources, including: the time, effort and financial costs involved in complying; the negative effect of a decrease in productivity arising from the disincentives, distortions and duplications that regulation can impose; and the various other non-economic costs such as the stress and anxiety caused by the uncertainty about a firm’s obligations.

Small businesses have a number of defining characteristics that make them unique from larger organisations. For example:

- Legal structures tend to differ between small and large businesses. Partnerships and sole proprietorships account for 47 per cent of small businesses but less than 11 per cent of medium and large businesses. In contrast, over 70 per cent of medium and large organisations are proprietary companies compared to 40 per cent of small firms. Just over 10 per cent of small firms are trusts or other incorporated bodies. Hence small business owners tend to be personally liable for business decisions and do not tend to have in-house corporate and legal expertise;
- Small business is generally financed with debt financing in contrast to large business. Statistics show that 17% of funding comes from Banks: 33% of funding comes from other debt sources and 50% is retained and owners’ equity. Small businesses usually represent the main wealth of the business operators and loans are frequently secured against personal assets, often the family home; and
- Small businesses typically operate in localised markets and from a single location. Most small businesses operate in State or local markets rather than national or international markets. They then tend to be more vulnerable to changing market conditions.

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Unfortunately, in terms of absorbing the day-to-day economic and non-economic costs of regulation, it is these characteristics listed above which make them vulnerable and needy of specialised assistance. For example, as small businesses are usually operated by an 'owner/manager', and are having to compete in increasingly more open and competitive markets, they do not have the financial or human resources to effectively, as compared to larger businesses, investigate, understand and implement their regulatory obligations.

Although businesses generally have a lot more to gain from government policies aimed at promoting the interests of the business community as a whole, ACCI believes that the current level of regulation imposes a very different burden on small business.

A conducive business environment with efficient taxation and industrial relations systems, responsible fiscal and monetary policies and a well educated and trained labour force will deliver to small business more opportunities for growth than a myriad of policy prescriptions on issues affecting the operations of small business.

However, business policy should aim to achieve neutrality and efficiency by recognising that apparently uniform taxes or regulations can impose very different burdens on different types of businesses. Where the application of uniform tax schedules or business regulations is likely to result in significantly and demonstrably higher proportionate costs for some businesses than for others, discrimination in the application of those taxes and regulations may be appropriate. In addition, the benefits to Government of administering taxes or regulations should be well in excess of costs, including recognising the costs to business of compliance.

ACCI believes that while small business operates in the same commercial, economic and legal environment as larger businesses, policies must allow for the different needs and capacities of smaller enterprises. Small business policies must be an adjunct to broader industry policies and recognise the characteristics of small business.

Small businesses are not just miniature versions of larger enterprises and not all small businesses necessarily want to expand. The competitive and entrepreneurial spirit of small business is the vital underpinning of Australia's economic future as the level of growth in larger corporations has steadied, with restructuring more in favour of medium and smaller enterprises and the exploitation of specialist skills and niche markets.

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Small business policy should then be primarily directed at those characteristics of small businesses which are usually or typically different from medium and large businesses.

ACCI believes that small businesses understand the merits of regulation when it is apparent that the benefits exceed the costs. The problem is often that when Government Agencies and Departments formulate their Regulation Impact Statements (RISs), regulators (please see also page nine) do not accurately estimate the true costs that a small business may incur. Subsequently, there is often an assumption made that the cost incurred will be uniform (regardless of the size of the business) and that a uniform regulation is the best means to achieve a desired outcome. ACCI suggests that when formulating regulation, Government Agencies and Departments should attempt to:

- Better define the objective and rationale of the regulation;
- Apply more rigour into the assessment of costs and benefits of alternative options;
- Seek greater community and business consultation; and
- Engage in better monitoring and evaluation of the regulation.

ACCI also encourages more market-based or self-regulation where appropriate. Self-regulation, or the development of regulatory regimes by industry (at times in conjunction with government), but exclusively enforced by industry, has many advantages over detailed regulation prescribed by governments. ACCI favours the 'subtlety' of self-regulation for the following reasons:

- It allows industry to respond to concerns by consumers and identify solutions to problems by utilising the resources and expertise that is unavailable to government;
- It empowers users, whether business or householders, through market-mechanisms; and
- Interventionist government regulatory approaches lack the capacity to respond to such changes in consumer sentiment – often distorting the market and diminishing the capacity to deliver benefits to consumers.

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ACCI therefore encourages governments to apply self-regulation as an alternative to direct, prescriptive regulations where appropriate. Self-regulation will assist in reducing the onerous facets of regulation, and the associated costs, which small businesses currently struggle to comply with.

5.1 Small Business De-Regulation Taskforce

In April 1996, the Commonwealth Government established a Small Business Deregulation Task Force to review the compliance and paper burden imposed on small business.

The Task Force was required to report to the Government on revenue neutral measures that could be taken to reduce the paper and compliance burden on small business by 50 per cent. The Task Force, as part of its reference, was to gather extensive information on small business red tape and attempt to quantify the red tape compliance burden.

The Task Force handed its report, 'Time for Business', to the Prime Minister, The Hon John Howard MP, on 1 November 1996.

On March 24, 1997, the Government's response to 'Time for Business' was handed down.

'More Time for Business' was a series of initiatives aimed at changing the Australian regulatory culture and compliance burden placed upon small businesses.

Today, there has been little evaluation of the success of 'More Time for Business'. Subsequently, its success in reducing the regulatory burden on small business by '50%' is very much unproven.

ACCI calls on the Federal Government to review progress in relation to those initiatives it 'Agreed' to implement and those that it agreed to 'In Principle' (as contained in the 'More Time for Business report), and report these findings to the general public.

5.2 Regulation Surveys

Every three months, ACCI conducts a survey of its small business members to gauge business conditions and to identify those issues that are inhibiting small business investment at that given time. *The Survey of Small Business*, since its commencement in November 1999, has consistently ranked *Business Taxes and Government Charges* as the first or second most critical issue to small business in terms of inhibiting further investment.

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ACCI believes it is of serious concern that Australian small business consistently identifies regulation as its main constraint to investment.

This sentiment was reinforced after ACCI's *Pre-Election Survey* that was completed just prior to last year's Federal Election. This survey asked 2300 small businesses to rank 63 core concerns in order of most importance. The results were as follows:

**ACCI Pre-Election Survey
September 2001**

Relative Ranking of 10 most critical issues facing small businesses today

| RANK | AREA OF CONCERN |
|------|---|
| 1 | Frequency and Complexity of Tax Changes |
| 2 | Level of Taxation |
| 3 | Telecommunications Costs |
| 4 | Complexity of Government Regulations |
| 5 | Unfair Dismissals Legislation |
| 6 | Superannuation Guarantee |
| 7 | Cost of Compliance with Government Regulations |
| 8 | Energy Costs |
| 9 | Penalties for not complying with Government Regulations |
| 10 | Workers Compensation Payments |

The overriding theme within the survey results is that apart from telecommunications and energy costs, regulation of some variety dominates the concerns of Australian small businesses. The need for further simplification of the tax regime, further streamlining and cost reduction of government regulation, and further changes to the Workplace Relations system in which small businesses operate are just three areas identified as areas needy of urgent reform. These issues will be elaborated upon later in this submission.

The Organisation for Economic Co-Operation and Development (OECD) in April 2000 reported a number of preliminary findings in relation to its international SME/Regulation work that it had undertaken.

Titled *The OECD Public Management Service Multi-Country Business Survey: Benchmarking Regulatory and Administrative Business Environments in Small and Medium-Sized Enterprises*, the report involved a survey of 11 OECD countries (including

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Australia), attempting to identify which countries have the highest/lowest *Taxation, Employment* and *Environmental* regulatory demands. Whilst Australia in comparison to Austria, Belgium, Finland, Iceland, Mexico, New Zealand, Norway, Portugal, Spain and Sweden had a relatively low compliance burden when firms of 1-19 employees were compared, Australia ranked poorly against these countries when the estimated annual administrative compliance costs for SMEs and larger firms, when expressed as a percentage of Gross Domestic Product (GDP), were considered.

The report indicates that Australia's estimated annual administrative compliance cost for all firms with 1 to 499 employees, as a percentage of GDP, was 3.7%. Out of the eleven countries surveyed, this was the fifth highest percentage. ACCI believes that although Australian small businesses rank well against other OECD countries in terms of hours spent complying with regulation, due to their prevalence in the Australian economy, they will rank poorly when a GDP index is used to calculate the relative regulatory impost. ACCI believes that no two regulatory systems are alike, and it is thus misleading to compare countries on hours spent complying alone. That is, for a cross-nation comparison to be truly representative, it must be based on some sort of index - for example GDP. ACCI is concerned that Australia ranked so poorly when the more useful GDP measure of regulation compliance was adopted.

5.3 Regulation Impact Statements (RIS)

The primary role of an RIS is to improve government decision-making processes by ensuring that all relevant information is presented to the decision-maker. RISs should include an assessment of the impacts of the proposed regulation - and alternatives - on different groups and the community as a whole. It has been mandatory since March 1997 for all Federal departments and agencies to prepare an RIS for all reviews of existing regulation, proposed new or amended regulation, quasi-regulation and proposed treaties involving regulation.

The Productivity Commission (PC) in November 2001 released its annual review of Government regulatory processes. The report – *Regulation and its Review 2000-01* – focuses predominantly upon departmental and agency success in meeting their RIS obligations.

Major findings of the 2000-01 PC report include:

- Overall compliance with Federal Government RIS requirements were comparable to the previous year;

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- Of those regulatory proposals requiring an RIS, only 82% of completed RISs were deemed ‘adequate’; and
- Of those regulatory proposals requiring an RIS, and where the impact was considered to be ‘significant’, only 60% of completed RISs were deemed ‘adequate’.

In response to these findings, ACCI believes that:

- Although a relatively new concept within the Federal Government bureaucracy, their implementation, success and effectiveness is not yet to an acceptable standard. ACCI would consider a result ‘comparable to the previous year’ as a shortfall by the Office of the Regulation Review (ORR) and Federal Departments and Agencies to successfully promote and heed the importance of RISs to policy development;
- The low percentage of ‘adequate’ RISs perhaps denotes a need for greater education and skill development within those 11 departments and agencies identified as having produced ‘inadequate’ RISs; and
- The ORR, in conjunction with Department and Agency Heads, needs to address the mentality within certain departments and agencies that RISs can be used as a means to justify regulation, as opposed to the original intention to validating the need for regulation.

Another concern that ACCI has is in relation to the impartiality of the State jurisdiction ORR equivalents. Whilst the Federal ORR, through its operation as an independent body, has formal independence from other Federal Departments and Agencies, its State jurisdiction counterparts do not. These State ORR equivalents are currently co-located within policy departments such as the Premier’s Department, State Development or Treasury. ACCI believes that in order for these bodies to operate impartially and effectively, there must be clear lines of separation.

5.4 ACCI Red Tape Index

In an attempt to quantify the high regulatory burden that ACCI believes still exists on small businesses today, ACCI is proposing to undertake a comprehensive longitudinal survey of small businesses that would seek to quantify increases/decreases or no movement (in terms of time and cost spent complying) of a number of ‘generic’ regulations. The survey would be completed once per annum and would explore taxation, environmental, employment and general operating type regulations.

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The survey may also be used to benchmark the 1996 Yellow Pages 'Small Business Index – The Paperwork Burden on Small Business' survey and report that was undertaken on behalf of the 1996 Small Business Deregulation Taskforce. This survey found that on average, small businesses spent 16 hours a week on administration and compliance activities. Of this, government paperwork and compliance account for approximately four hours. Further, the report found that taxation matters absorbed three hours and one hour was spent on other activities.

ACCI believes that with the introduction of the New Tax System, and the introduction of a number of new environmental regulations, it is likely that the regulatory burden on small business may have increased, not decreased, since 1996 when these findings were released. Although this would be difficult to calculate, anecdotal findings from a number of recent surveys would indicate that regulation matters remain very high on issues of most concern to small businesses today.

6 FISCAL POLICY

Regulation comes in many different forms. ACCI believes that fiscal policy, together with the other broad policy areas that are addressed in this submission, form the macro environment in which small businesses operate today. ACCI believes that improvements in the legislative and implementation framework underpinning these broad policy areas (and thus the macro environment) would enhance the ability of small business to increase their efficiency and competitiveness, would assist in reducing bottom-line costs, and would ultimately provide for more small business employment opportunities through improved operability.

The over-riding imperative for small business in terms of fiscal policy is that policymakers continue to practice economic management that fosters a stable and certain economic environment. Business requires the Government to maintain a surplus budget and reduce the tenacity with which the Reserve Bank of Australia (RBA) employs interest rates to combat inflation. While the budget is in surplus, inflationary pressures will be reduced and the hand of the RBA will be stayed from slowing the economy.

While a budget may inadvertently fall into deficit during a year because of a development that lowers tax revenues or raises outlays, it would be unacceptable for a Government to budget for deficits. This would lead to reduced confidence and would hinder economic

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development and investment. A fall off in confidence and a reduction in activity would directly affect employment levels both current and future.

Business confidence is a critical ingredient in investment intentions which is the primary driver of future economic growth.

While a deficit may be acceptable in an abstract theoretical sense, in practice it is unlikely that government would be able to undertake productive uses of the nation's savings that would be greater than private sector uses. Deficit spending by government is, at best, funded through bond issues, that draw in savings from the public that would otherwise have gone towards private sector investment, except in the most abnormal situations. These private investment projects are much more likely to create value since they are tested in the market, whereas public sector spending is not.

The diversion of the nation's savings to the public sector would instead be poured into wasteful spending which neither offers a return nor creates value in the economy. This deficit spending in practice drags the economy down and only serves to reinforce economic imbalances. Employment growth, rather than being promoted by an increase in public spending and budget deficits, is in fact kept lower.

6.1 Safety Net Decision

The recent Safety Net decision will raise minimum wages by 4.4 per cent. With inflation running at under 3 per cent, it is an increase in real terms of 1.5 per cent.

As the Australian Industrial Relations Commission itself made clear, it is a decision not conducive to small business employment growth as it will lead to slow economic growth and reduced investment. Because it will add to inflationary pressures, the decision will lead to higher rates of interest as the year unfolds.

ACCI estimates that this increase through the Safety Net decision will add \$1.6 billion to the cost of employment – much of which will be borne by the small business sector. The AIRC has decided that the Federal Minimum Wage, plus all award rates of pay (without exception), be increased by \$18 per week. This is the highest dollar increase the AIRC has ever ordered to the Federal Minimum Wage. Moreover, the decision is not targeted at the low paid and is not limited to the Federal Minimum age. It applies to all award rates of pay and will flow to at least 1.7 million employees – including those on wage rates of almost \$1,000 per week.

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The decision means that over the past six years employers have been forced to pay increases of \$82 in award wages. The combined increase has been 23.5 per cent, resulting in the scenario where Australia's inflation rate is at the upper end of the Reserve Bank of Australia's target range.

This decision will mean that Australian employers must pay at least \$1.6 billion more in wages over the next year, with no productivity increases or cost offsets. Every wage increase also means employers also pay higher payroll taxes, higher superannuation, higher workers compensation, higher overtime and higher penalty rates. Consequentially, this increase in the cost of employment will need to be paid for by higher prices, reduced employment and less investment. This decision, when coupled with the recent increase in interest rates, and the already legislated July 2002 increase in employer superannuation payments, will seriously compromise Australia's economic recovery.

7 TAXATION REFORM

Taxation in Australia has undergone a much-needed overhaul but with this having being said, the process has been a major source of uncertainty for small business since the reform process began. There are more tax issues yet to be addressed but within small business, there is growing resistance to changes that do not immediately provide direct and tangible benefits. The small business sector, and the broader business community in general, has indicated that there is a degree of fatigue for major alterations to the tax system. The ongoing changes to the various taxation regimes have resulted in significant compliance costs being met from business' bottom lines.

ACCI conducted a pre-election survey to gauge the relative importance of a list of 63 major areas of concern to business. *The ACCI Pre-Election Survey* disaggregated by business size was released in the November 2001 ACCI Review. Small business clearly identified tax issues as the major concern for their businesses.

While payroll tax was not identified as a primary issue for small business from the ACCI survey, a recent CPA Australia study into small business employment revealed that 40 percent of small businesses found payroll tax to be a major impediment to hiring more staff.

Entity taxation has again emerged on the tax reform agenda, and again appears as though it will add to the complexity of legislation for small business. It is almost inevitable that those businesses

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operating from a trust will be subjected to additional compliance costs since the anti-avoidance provisions elsewhere in the taxation legislation have traditionally created complexities and changes to familiar rules and processes.

ACCI opposes the introduction of the TVM. If the TVM were legislated, it would have serious repercussions for small business. The TVM requires a complete shift in the way income tax is calculated and how records are kept. The transitional costs would be enormous, and particularly onerous on small business which may not have sufficient information in their current records to easily calculate income tax payments under TVM. In addition, the transition costs from new software and training would also be of some consequence. The significant changes that would need to be digested by the small business community and their preoccupation with dealing with a tax change of this magnitude would tend to reduce hiring intentions as businesses seek to maintain the status quo during the transition period.

7.1 Superannuation

The superannuation scheme is a barrier to employment and is regarded by small business employers as no more than an additional layer of payroll tax. Superannuation arrangements also add to the administrative burden of hiring employees and is a source of ongoing compliance burden. The study by CPA Australia found that small business employers felt that superannuation added significantly to the cost of employing and added too much paperwork and was overly complex. Employers also found that employees tended not to consider superannuation guarantee payments to be part of their salary package. With an increase in superannuation guarantee payments already legislated to begin at the start of the next financial year, superannuation will continue to interrupt the hiring and shift patterns of employees.

Small business employers also argue that the 15 per cent superannuation surcharge severely disadvantages small businesses. The surcharge does not adequately take into consideration the fluctuating nature of small business income. That is, small businesses, when they have a good year, will be subject to the surcharge if their income reaches the appropriate threshold, but in leaner years, superannuation payments may have to be foregone to keep the business afloat. The superannuation surcharge should be abolished so that small business proprietors are not penalised in those years where they are able to produce a moderate level of profit.

8 COMPETITION POLICY

Proposed Changes to the Trade Practices Act: the Effect on Small Business Employment

The Review of the Trade Practices Act and its administration is one of the most sensitive issues now on the political agenda. The Review has been brought on because of perceived inadequacies in the structure of the Act and in the manner in which it is administered. It will provide an important opportunity to clear the air in regard to the approach taken to regulate competition in Australia.

In regard to employment, excessive regulation which inhibits firms from seizing opportunities in the marketplace will lower employment growth. So too will the creation of uncertainties amongst firms about whether a regulator will determine that their actions have been anti-competitive.

The body with the responsibility for monitoring and regulating competition by administering the Trade Practices Act is the Australian Competition and Consumer Commission (ACCC).

However, to safeguard firms from arbitrary actions of the ACCC, successful prosecution must require the regulator to prove it was the purpose of the firm to act in an anti-competitive manner. The issues that will be before the Review will include a number of matters which will have consequences for employment, not just for small business but for all business.

The issues that will be at the core of the Review will be whether the manner in which the Trade Practices Act is administered is adequate, whether it creates needless uncertainty and whether it harms business without compensating gain. There will then be the further issues of whether there is a need to extend the powers of the ACCC because there are insufficient powers available now, particular where there are direct dealings between small business and large.

There needs to be careful consideration of where additional powers may be needed, but such additions to the power of the ACCC must be specifically tied to addressing particular forms of abuse of market power. The ACCC is currently seeking blanket powers unrelated to specific forms of abuse and these should be opposed, not only because they will be harmful to economic growth and employment, but because they are in direct contravention to the operation of a market economy.

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Creating uncertainty within markets by providing very large powers to deal with vaguely interpreted abuses will lead to a large increase in uncertainty and a consequent reduction in the willingness of firms to expand within Australia. The effect on employment would be a direct result.

The ACCC states that with 'cease and desist' powers their ability to enforce the TPA would be enhanced, as companies could not gain benefit from reduced competition during the period before the court hearing. This power has been sought previously by the Trade Practices Commission and was rejected. The Hilmer Inquiry also rejected this proposal in 1993. The Australian Law Reform Commission (ALRC) found that enforcement tools, such as urgent judicial injunctions and enforceable undertakings under section 80 of the TPA from the Federal Court, already allow the ACCC to respond quickly and effectively to contraventions of the TPA. The ALRC reported that the ACCC can obtain an interim injunction in less than 48 hours³. It also recommended against granting cease and desist powers⁴.

The Hilmer Inquiry reached the same conclusion. It also described such orders as being particularly harsh where complex economic matters are involved⁵. The burden of excessive compliance costs and uncertainty leads to deadweight losses in the economy by firms and consumers alike and is not conducive to employment growth in the small business sector.

The ability for firms to compete is what allows for the productive use of an economy's resources. Competition will lead to more sustainable levels of employment within the Australian economy as less competitive and efficient firms or industries give way to more competitive firms and industries. This type of vitality is needed if employment is to be created by the small business community and not stifled through over-regulation.

Employment growth will expand due to increasing international competitiveness, a hallmark of strong and fair domestic competition. Small or large businesses that are able to compete globally have the advantage of not being as vulnerable during slowdowns in the domestic economy. Small business can then develop a stable work force, in which skills can be readily accessed

³ Standing Committee on Economics, Finance and Public Administration "Competing Interests: is there balance? Review of the Australian Competition and Consumer Commission Annual Report 1999-2000". Chapter 4 Enforcement Issues, Cease and Desist (4.38). Pg 53.

⁴ Ibid Pg 52

⁵ Ibid

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and nurtured, meaning small business can take advantage of investments in education and on the job training.

Differences in power do exist between small, medium and large business but the existing powers of the ACCC are strong enough without the need for cease and desist orders or an 'effects test' to deal with potential market power abuses. Moreover, in 1998 the ACCC appointed a full-time commissioner for small business which has helped alleviate this problem. The ACCC has also strengthened unconscionable conduct section 51(AC) to apply where the transaction price does not exceed three million dollars instead of one million dollars previously. The franchising section 51(AD) has also been strengthened in order to help small businesses interact with big business.

Other institutions and commissions have recognised and identified this power difference between small and large business and that time and financial constraints play a large part in the unequal economic balance. As such, the ACCC can now intervene in private actions where there is an issue of public interest. The ACCC has the right to take action on behalf of a third party for most breaches of the Restrictive Trade Practices provisions.

The proper balance must however, be struck between the needs to preserve competition and the intrusive role of regulation. Small and large businesses depend on each other and when one is faced with uncertainty so too is the other. This uncertainty in regulation leads to inefficient businesses, lower and less secure employment, investment and income in the community.

The successes of small and large businesses are intertwined, as part of the supply chain it is imperative for large business that small business operations run as smoothly and efficiently as possible.

9 WORKPLACE RELATIONS

The overwhelming reaction of smaller businesses, when advised of the operation of the Australian workplace relations system, continues to be one of fear, and to some extent, cynicism and disinterest. Small businesses regularly want to keep the formal workplace relations system, and especially the involvement of trade unions, at arm's length from their operations.

Key questions this inquiry should address include why small businesses so fear formal workplace relations, and what this should tell us about the relevance of the current system to the smaller

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employers who constitute the overwhelming majority of Australian workplaces?

In 1990, the House of Representatives Standing Committee on Industry Science and Technology observed that “Industrial relations is a very difficult area for small business”.⁶ Despite over a decade of legislative reform, and the modernisation of working relationships in many workplaces, industrial relations is still a very difficult area for small business, and an inhibitor to the capacity of many smaller businesses to grow and contribute to employment.

Regulatory reform must be an essential component of any small business policy, especially where an avowed aim is to encourage job creation in small business. This includes reforming regulations to ensure that:

- They still have a relevant and essential regulatory purpose;
- Obsolete, or unmerited regulation is abolished; and
- Where still relevant, regulation is rendered as modern, and as simple to understand and to comply with as possible. This includes consideration of the impact of regulation on smaller businesses.

An extensive and diverse range of regulations affecting smaller businesses have been reformed throughout Australia during the past decade, including some reforms to workplace relations regulation at the Federal and State level.

As mentioned, various inquiries have also been held into the impact of regulation on smaller business, including an express recognition of the need for reform to stimulate growth and employment.

There is also an ongoing recognition of the importance of small business to the Australian economy, labour market, and society in the policy commitments of Australia’s major political parties.

- **Opposition:** The ALP Platform contains a recognition that “Small and Medium Enterprises (SMEs) generate a significant proportion of Australia’s national income and employment”. It indicates that:

“Labor recognises that small business plays a central role in the Australian economy. Through individual

⁶ House of Representatives Standing Committee on Industry Science and Technology (1990) *Small Business Challenges, Problems and Opportunities*, Canberra Publishing and Printing Company, Canberra. p.269

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effort, small business owners provide employment for themselves and many thousands of employees. The dynamism of small business cannot be underestimated and should be encouraged. Its potential to further invigorate the Australian economy must be explored through active assistance from government.”

...

“To maximise the economic dynamism that flows from the personal enterprise of small business operators, the sector must be free from unnecessary government regulation and interference, provided that firms meet their social and industrial relations obligations by implementing fair and cooperative relationships with workers and their representatives.”

...

“Labor acknowledges that there are significant government compliance costs associated with running a commercial operation. Small businesses are not as well equipped as larger businesses to cope with this burden. Labor will constantly audit compliance measures and work towards minimising those costs.”

...

“Labor acknowledges that the capacity of small business to generate increased employment is sensitive to overall economic conditions. Labor will implement policy in such a way as to provide small firms with opportunities to generate secure jobs that complement the objective of small businesses to operate in their markets profitably and efficiently.”

- **Australian Democrats:** Various Australian Democrat policies stress the importance of smaller business and the need for regulation to be better targeted to smaller business. This includes policies on tenancies and trading hours. Within these policies, the Democrats appear to stress the importance of small business views being considered, the importance of regulation not being disproportionately geared to the needs of larger enterprises, the importance of plain English regulation to small business, the relevance of low cost “mediation” style approaches for smaller businesses, and the benefits of uniform national regulatory systems.

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Despite such commitments from parties, and very real improvements in a number of areas of government regulation, workplace relations appears to have been largely immunised against significant regulatory reform to better reflect the needs and circumstances of small business.

Indeed, were it not for the work of business organisations such as ACCI and its members, the voice of small business in the workplace relations system and in stressing realistic and comprehensible employment regulation would be very faint indeed.

Despite over a decade of reforming various regulatory structures with a firm eye to the unique challenges for smaller businesses and significant reform of workplace relations at both the statutory and workplace level, smaller businesses continue to be asked to operate under a remote and highly challenging workplace relations regulatory system.

In many areas, workplace relations regulatory systems are acutely at odds with the needs of smaller businesses, and acutely in need of targeted workplace relations reform to further encourage small business growth and employment.

In 1997, then Minister Prosser stated that:

“Real job growth in this country will come from small businesses, and our job as a government is to create the right environment for business to grow and employ.”

This remains imperative. All areas of regulation affecting small business, including workplace relations laws (and regulatory instruments such as awards) should, as a starting point, be subject to the same level of reform as other areas of Government regulation have experienced during the past decade.

The Small Business Deregulation Taskforce stated that, from a small business perspective, an appropriate workplace relations framework based on sound regulatory principles is one that:

- is simple, straight forward and user friendly;
- is capable of being complied with at a minimum cost and without complexity;
- provides for resolution of industrial issues at the workplace;
- is flexible and has regard to the diversity of the small business sector; and

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- ensures that subordinate regulation is not unnecessarily complex and legalistic requiring costly professional advice.⁷

These remain valid guidelines to improve the contribution which workplace relations can make to the capacity of smaller businesses to operate more efficiently and have the capacity and confidence to generate more jobs.

Another key question which this Committee, and the parties which appear before it should ask themselves, is how the workplace relations system could better accord with the needs and circumstances of small business, whilst continuing to provide an appropriate safety net of minimum standards to protect employees.

This section of the ACCI submission outlines various challenges existing workplace relations regulation pose for smaller businesses. It concludes with various broad recommendations on areas for genuine change. These reforms would enhance the capacity of small business to grow and employ more people through meaningful amendments to the operation of the workplace relations system (Term of Reference 4).

9.1 The Limited Role of Small Business in Setting Employment Standards

Small business continues to have a comparatively limited role in the Australian arbitration system which determines award standards, and the way in which awards apply employment standards in workplaces.

In 1990, the House of Representatives Standing Committee on Industry Science and Technology found that small business had difficulty “in putting a viewpoint” to the industrial tribunals which make awards governing the terms and conditions under which work occurs in their workplaces. This included State tribunals making common rule awards, and the AIRC in the making of residency based Federal awards.⁸

ACCI and its members have a key role in the representation of small business in proceedings before industrial tribunals. Where employer representatives do appear in award matters, the views of small business, where apparent, are articulated. However, the 1990 House Committee observation remains valid even after over a

⁷ *Time For Business- Report of the Small Business Deregulation Task Force*, November 1996, p.48

⁸ House of Representatives Standing Committee on Industry Science and Technology (1990) *Small Business Challenges, Problems and Opportunities*, Canberra Publishing and Printing Company, Canberra. p.269

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decade of widespread reform, when one looks to the outcomes of arbitration and award making, and the extent to which decisions of industrial tribunals generally reflect the concerns of small business.

(With the exception outlined below) There have been no major changes in the operation of the arbitration and award system which have provided the small businesses that increasingly account for the major segment of workplaces covered by awards, to have a greater role in the determination of the rules which apply to them. This holds true both for:

- The level of obligation which must be observed; and
- The associated rules that industrial tribunals continue to apply to the implementation of award standards.

Awards continue to be made and varied based substantially on applications from unions, often based on multi-industry approaches and agendas, and without due regard to small business. This is not only a source of resentment for small business, but inherently leads to employment regulation at odds with their needs and modes of operation.

Small business is not homogeneous. There is a diversity of circumstances and challenges. This diversity further underscores the extent to which the absolute and one-size-fits-all nature of industrial awards is increasingly unsuited to the needs of small businesses, and to encouraging further growth and innovation in this sector.

There are also considerable barriers to the participation of smaller businesses in the making of the rules which govern them, most particularly in the making of awards. Industrial relations tribunals are set up like courts, operate based on complex and arcane procedures and language, and are inherently adversarial. For the vast majority of small business people, this is not an arena in which they can participate and have any say, save where they are represented by an employer organisation.

Evidence to the Small Business Deregulation Taskforce indicated that:

*Small businesses advised that the AIRC is not user friendly or tailored to their needs. One submission suggested it was adversarial and very threatening to the uninitiated.*⁹

⁹ *Time For Business- Report of the Small Business Deregulation Task Force*, November 1996, p.48

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In the formal hearings, to find the existence of a dispute for example, some small business people do attend following the directions for the hearing of the matter which may have been sent to them. They are faced with a procedure in which they must bow to the Coat of Arms above the Bench (which they would not know), the formal taking of appearances, not knowing how to address the Commissioner etc. Even before legal argument grounded in the Australian Constitution¹⁰ and an Act of over 500 sections¹¹ commences, they are often lost. Whilst treated with respect by the Commission and all parties, self-represented small business often plays little or no effective part in the determination of standards which affect them.

Dispute findings are just one example. Both Federal and State proceedings more generally are effectively inaccessible for many of the smaller businesses who are the increasingly the only parts of the economy reliant on arbitrated awards for their day-to-day workplace relations.

Of particular concern is unfair dismissals. It appears to be in this area in that an increasing number of smaller employers seek to be self-represented. The formality of the unfair dismissal process - and the paperwork involved - are particularly taxing to such smaller enterprises.

The Small Business Deregulation Taskforce also reported that:

Small business operators say that AIRC hearings are held at unsuitable times and locations, its proceedings and documentation are too formal, and legal representation is essential in order to participate in the process¹²

9.2 Access to Information

Considerable information resources are available to employers on workplace relations. Principal sources include:

- Information, advice and representation from employer organisations. ACCI members help many thousands of small businesses with information on their employment obligations on a daily basis; and
- Wageline services provided by Federal and State governments.

¹⁰ Section 51(xxxv).

¹¹ The *Workplace Relations Act 1996*.

¹² *Time For Business- Report of the Small Business Deregulation Task Force*, November 1996, p.49

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A particular area of improvement in recent years has been the growth in internet information resources, including access to awards and other information resources. This is a positive contribution to providing employers with further access to the regulation with which they must comply.

However:

- It is still very complex to understand an industrial award, even where a smaller employer has successfully found it. Awards continue to be too prescriptive, too detailed and too legalistic. Small business people are particularly disadvantaged by the form and structure of awards. It is not uncommon for an industrial award governing the employment of, for example, a shop assistant, to still be some 5,000 words in length;
- Access to information is worthless if employers do not know where to look for the regulatory obligations that govern them. How, for example, is an employer to navigate the 2000+ Federal awards to find that which they must comply with? How is a smaller employer to know whether he or she should be looking to a Federal or State instrument?; and
- Not all employers are on the Net, especially smaller businesses. Internet information is very important but it does not remove imperatives for fundamental reform.

As the 1990 House of Representatives Committee inquiry found:

Small businesses have difficulty in obtaining information about current award conditions applicable to small business. Federal and State Governments do provide some information services in this regard. However, the information available from them is often outdated due to delays in processing awards and orders. Small businesses relying on this information can be unwittingly involved in breaches of the law.

The Small Business Deregulation Taskforce reported on research that:

According to one survey, only 27 per cent of small business operators read the award, 39 per cent use industry

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associations, 8 per cent ask their peers and 20 per cent use government agencies.¹³

These observations still appear valid. It is inevitable in our current system that even the best intentioned small business employers will continue to unwittingly make errors in their administration of labour laws. When such errors are made, smaller employers can lack the financial capacity to redress them whilst continuing to be able to viably offer employment. Substantial back pay or compensation payments to dismissed employees may threaten business viability.

The system could do significantly more to properly inform smaller business employers of their obligations, and to assist them in finding, interpreting, and implementing their workplace relations regulatory requirements.

Better access to awards and other regulatory instruments is of course irrelevant if once accessed, they remain objects of incomprehensible jargon, repetition and levels of proscription at odds with the management of a small business. Reform must address both access to regulation, and the form of the regulation.

The Small Business Deregulation Taskforce found that:

Small business operators need help to effectively manage workplace requirements. The assistance must be accessible, in summary form and in plain English, and should be made available through their advisers, community-based organisations and industry associations.¹⁴

9.3 Employment Regulation By the State

Small business also do not often comprehend the separation of industrial tribunals from Government and from trade unions. Nor do they often comprehend that the Government does not control the obligations on employers to provide particular levels of pay and entitlements (some of these are set by Parliament, others by independent industrial relations tribunals). This is particularly understandable when you consider that a proportion of employers and employees often look solely to Government for advice on their obligations/entitlements (e.g. ringing “Wageline” services).

¹³ *Time For Business- Report of the Small Business Deregulation Task Force, November 1996, p.47*

¹⁴ *Time For Business- Report of the Small Business Deregulation Task Force, November 1996, p.47*

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Smaller businesses often perceive industrial tribunals as the preserve of governments and trade unions (“the insiders”), who make rules with little understanding of their businesses, the pressures they face, and the unique nature of their working relationships with staff. Despite the efforts of their employer representatives, smaller businesses regularly report dissatisfaction with outcomes in industrial matters, and simply cannot understand how the State could raise their labour costs and regulatory obligations in such an arbitrary manner. (The current debate about paid maternity leave is an example of how small business cannot comprehend the notion of mandatory employer payment even being contemplated by authorities).

Small business can particularly resent the level and pervasive-ness of regulation by industrial tribunals. Increases in labour costs when many smaller businesses are struggling to survive are a particular cause of resentment. This is amplified when one considers that many small business people may effectively be in the same income brackets as their staff, and take little more (and often less) home from their businesses than award covered employees. Proprietors also lack the scope to automatically increase their income from the business by over 3% per annum as they are required to do for their award staff by AIRC safety net adjustments.

There is also a fundamental inconsistency between the collective foundations of the arbitration system and industrial awards and the practice of workplace relations in most smaller businesses. Awards are creatures of union claims and arbitration by industrial tribunals. Variation of awards to increase standards is almost always at the initiation of unions and is a function of union resources and issue prioritisation.

However, unions continue to operate based on collective representation and based on collective priorities at an industry (and even multi-industry) level. There is a divergence of interests between the collective priorities set by unions, and those for individual employees in workplaces, this is especially so in small business. This is illustrated by the regular recourse of smaller business to unregistered and informal workplace relations. Put simply, the formal regulatory process often fails to meet their needs and is ignored or bypassed.

Union coverage in smaller business is also at an all time low. ACCI understands that unionisation is now increasingly concentrated in a minority of medium and larger enterprises. Therefore, small businesses are operating under a set of rules which largely vary only at the initiation of unions, when it is precisely in

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small businesses that employees have substantially rejected union coverage.

The failure of unions to properly comprehend the needs of smaller businesses is hardly surprising if it is employees in larger enterprises that return union officials to office and that supply the majority of union membership funding.

9.4 Award Respondency

A particular source of dissatisfaction for smaller business is the transition between regulatory systems and the costs, complexity and reduction in flexibility often involved.

The arcane and contrived system of creating respondency to Federal awards (paper disputes, ambit logs of claims) is particularly difficult for many smaller businesses and is markedly unrelated to their circumstances and operational priorities.

Smaller businesses often ignore inflated logs of claims on the basis that:

- There is no unionisation in their enterprise so any correspondence from the union must be irrelevant to them; and
- The entitlements sought in the log are so unrelated to the realities of their business as to appear fanciful (the ambit). Most conclude, prior to even finishing reading the log of claims document, that if implemented, they would be bankrupted and all employees put out of work. Employer associations are regularly advised by smaller employers that logs of claims have simply been “thrown in the bin” on the basis that the proprietor thought they were some form of joke.

For example, the current log of claims in the Victorian retail industry¹⁵ seeks the following conditions from employers:

- Termination Allowance: Four (4) weeks pay for each year of employment for termination of employment by the employer¹⁶. If awarded, this would be payable to employees dismissed for demonstrated incompetence, including where dismissal would stand as perfectly fair and lawful before the AIRC/Federal Court;

¹⁵ *Shop, Distributive and Allied Employees Association – Log of Claims*, February 1998

¹⁶ Excluding “proven and arbitrated gross misconduct”.

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- Retiring Gratuity: A retirement payment of 26 weeks pay. This would be in addition to superannuation;
- End of Year Bonus: Five (5) weeks pay as an annual bonus each December;
- 35 Hour Week;
- Paid Breaks: A Paid meal break of one hour in every four worked;
- Overtime Penalties: Triple (3) wages for any overtime over 35 hours per week, and any holiday, Saturday or Sunday work;
- 8 Weeks Annual Leave;
- Shopping Leave: 2 days per year;
- Weather: Work must cease when the temperature exceeds 30 degrees Celsius;
- Amenities: Free parking, TV, radio, CD and cassette players, and “the daily newspapers”; and
- Union Shop Stewards: 5 hours paid leave per week for shop stewards (in a 35 hour week!).

A current log of claims in the scientific and engineering area seeks conditions including the following:

- Wages of between \$132,000 and \$252,000 per year.¹⁷
- A 30-hour week; and.
- Leave totalling at least 92 days. This is over 35% of the 260 days which could be worked during any year (52 x 5).

It is no wonder that reading such documents at face value, small businesses are either furious, dismissive or simply bemused.

Logs of claims can give rise to complex, long-running and costly proceedings. In the hearing of the Victorian retail industry log of claims for example:

¹⁷ Salary rate + a weekly performance payment of \$1000.

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- 37,877 companies were served with the log of claims, many of which would have been small businesses. This is the equivalent of 1/6th of all businesses that operate in Victoria;
- 24 advocates appeared before the Commission on the first day of proceedings; and
- 28 different organisations were represented.¹⁸

It is also the case that logs of claims are often not well researched or prepared prior to being served. The Commission received evidence of the Victorian shops matter of the log of claims being served on:

- Companies with no employees;
- Companies outside the retail industry;
- Companies outside the coverage rules of the applicant union;
- Companies already respondent to federal awards;
- Companies already subject to dispute findings by the Commission;
- Companies with pre-existing enterprise agreements.¹⁹

None of these employers should have been included in the log of claims. Clearly this can be a confused and inappropriate process.

Smaller employers are often particularly surprised to learn that their single enterprise of, for example five employees working peacefully in a single workplace could be party to an interstate industrial dispute for which resolution by a dedicated national tribunal, and by a highly paid Commission member, is required.

Many smaller employers fail to pursue their available avenues to object to Federal coverage, or indeed do not even know they have been covered by a Federal award, until they are called on to make some substantial change in their payments (e.g. back pay, or ceasing work under a mutually agreed State agreement).

The Small Business Deregulation Taskforce observed that:

¹⁸ Transcript, C No 75644 of 1998, pp.1-36.

¹⁹ Transcript, C No 75644 of 1998, pp.12-13

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Small business does not understand the logs of claims process or its implications, and operators can have legal responsibilities and obligations of which they have no knowledge.²⁰

One submission to the Small Business Deregulation Taskforce described smaller employers' response to logs of claims as follows:

“Employers, upon receipt of them, often throw them away because they do not understand or do not want to understand. Many employers are often caught in an award that they should not have been caught in and subsequently attract legal liabilities of which they have no knowledge ... and once caught there is virtually no way out.”²¹

Small business operators often understandably perceive the system of “roping in” as a substantial source of injustice and imbalance. Particular resentment can be linked to:

- Unions making the unilateral decision to transfer a small businesses' employment arrangements into the Federal system where they have no members; they have no history of involvement in the enterprise; they have never met with the employer; and they have never attempted to negotiate an agreement with the employer under the existing coverage (e.g. a State level version of a certified agreement with a union);
- Unions making the decision to transfer a small businesses' employment arrangements into the Federal system where they have no support from the employees to be affected, and in the many cases where employees are perfectly happy with existing arrangements, or actively opposed to change; and
- Unions making the decision to transfer a small business' employment arrangements into the Federal system with no regard to employment arrangements agreed between employer and employees. Of particular concern to small business is that what they perceive as “the government” on one occasion registers their State agreement and some period later, tells them they cannot work under this agreement and must either work under a Federal award or some higher Federal agreement. To such smaller enterprises “the

²⁰ *Time For Business- Report of the Small Business Deregulation Task Force*, November 1996, p.48

²¹ *Time For Business- Report of the Small Business Deregulation Task Force*, November 1996, p.48

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state/the authorities” may appear to be acting schizophrenically.

In his April 1999 discussion paper “Getting the Outsiders Inside”, then Minister Reith expressed the difficulties with the current constitutional arrangements as follows:

“...the use of the conciliation and arbitration power confers rights on third parties over and above the rights of actual employers and employees, promotes dispute creation rather than dispute settlement, forces extreme and artificial demands to be made on workplaces and adds layers of complexity and cost. These are all undesirable policy outcomes, at odds with a rational, let alone best practice, regulatory framework.”

More importantly, this structure isolates actual employers and employees from the machinations of the system, discrediting it in the eyes of the very parties who should be its principal beneficiaries – the employers and employees. It is no wonder that they (together with the unemployed) see themselves as outsiders in this system. It is no wonder that small business and the community is cynical about governments of any political persuasion saying that they will clean up red-tape and complexity in the industrial relations system.²²

Bill Kelty also expressed the problems with the system eloquently in 1991:

“The result of wages being totally controlled by people workers don’t know, by people who have never visited their workplace, and through a process which workers do not understand or have direct input into, I believe has reduced workers capacity, willingness and confidence to use their creativity and put forward new ideas...A more decentralised wage fixing system will put the spotlight back on the only place where Australia’s real economic battle will be won – in Australian workplaces.”²³

²² *Getting The Outsiders Inside - Towards A Rational Workplace Relations System In Australia* Issued by the Hon. Peter Reith MP Federal Minister for Employment, Workplace Relations and Small Business April 1999 (published from a Ministerial Address to the National Press Club, Canberra (24 March 1999), p.6

<http://www.simplerwrsystem.gov.au/discussion/outsidersistem.htm#flawed>

²³ *Getting The Outsiders Inside - Towards A Rational Workplace Relations System In Australia* Issued by the Hon. Peter Reith MP Federal Minister for Employment, Workplace Relations and Small Business April 1999 (published from a Ministerial Address to the National Press Club, Canberra (24 March

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This is simply no longer good enough. It is incumbent on any regulatory system that attempts to impose such tight regulation on so important a part of any business as employment, to properly support observance/compliance, through:

- Only targeted, modern and refined regulation, which is expressed in a minimum of instruments in the simplest and clearest terms;
- Non-prescriptive and non-detailed regulation wherever possible, which allows business the maximum possible flexibility in the application of standards;
- Comprehensible regulation which supports and encourages compliance, which eschews complexity, and has a guiding principle simplicity and reduction of complicated issues to the maximum extent possible;
- Stable and non-volatile regulation, under which the regulatory requirements change only rarely and with due periods of stability between variations;
- Proper information, publication and promotion of regulation in plain and appropriate terms which properly supports observance / compliance by business; and
- Proper information, publication and promotion on changes in regulation, including an appropriate level of notice before any increased obligation comes into effect. It is also essential that any changes of regulatory effect be prospective in their operation to not compromise the interests of smaller business. For example, it would significantly aid small business if:
 - i) There was a mandatory period of introduction before new awards, and new award regulations (variations) come into effect which would allow them to properly inform themselves, and adjust their processes where necessary. For new awards this could be a period of six (6) months, and for changes to award conditions some lesser period of months may be appropriate (for example, three (3) months).
 - ii) There was proper information geared to smaller businesses concerning changes to regulation which

1999), p.7
<http://www.simplerwrsystem.gov.au/discussion/outsidersoninside.htm#flawed>

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would better support compliance. This could include industry targeted publicity, mail outs etc.

iii) There were less instruments to comply with, and it was significantly clearer to small businesses precisely which instruments they needed to look to on an ongoing basis to determine their obligations.

- Compliance focused on assisting employers to come into line with regulatory requirements, and which emphasises problem solving and continuous improvement. Voluntary compliance rather than prosecution also appears to have an important role to play. Old fashioned emphasis on sanctions and punitive approaches appears inconsistent with effective small business regulation in this area.

It is no longer good enough to place the onus on employers to satisfy themselves of regulatory changes in this variable and ever changing area.

- Changes to other comparable areas of regulation affecting small business are properly supported by information and funded promotional campaigns, and only occur with due notice and an appropriate period for business to adjust to change.

For example taxation reform was supported by various initiatives including a dedicated website, a mail out to all Australian businesses, and the GST Start-Up Assistance Office. \$500 million in assistance was set aside by the Commonwealth to assist small and medium enterprises, the community sector and education institutions in preparing for the GST.²⁴

Other major regulatory changes, especially where business will be required to comply with varied or increased regulation are also properly supported by due notice and proper information.

The whole process of securing a federal award: the service of documents, representation, the time and expense of the AIRC and the Commissioner, publication to members etc, occurs with no gain to the business – no gain at all. The process of generating a federal award does not generate a single cent for a small business, and in terms of time spent in addressing claims and complying with new standards, is in almost all cases, a very costly exercise.

²⁴ Source: <http://www.gststartup.gov.au/>

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ACCI can see no reason why workplace relations regulation should not be expected to meet the performance standards to which other regulation is increasingly subject, particularly where it affects small business. ACCI can see no reason why this area is not subject to the full scope of regulatory reform.

There would clearly be benefits for smaller businesses in a significantly simplified system in which issues of Federal and State coverage did not arise, and there was no prospect for changes in obligations based on changes of coverage; no prospect for unions to drag employers in more advantageous forums; and no prospect for changes in labour costs purely through contrivances or devices in the system. ACCI policy calls for the rationalisation of State and Federal labour relations systems, and for a rationalisation of industrial instruments. At the end of the day, small business seeks a simpler, less regulatory system that takes account of the needs and circumstances of its enterprise.

This should be considered by the Committee as a measure to better support small business in their application of minimum employment standards. The right form of simplified, unitary-national system would have considerable advantages for small business and could offer considerable scope for additional employment and growth creation.

9.5 Ignoring Employer and Employee Preferences

A related concern is governments denying small business the right to continue to work under agreements properly made under law and supported by employees.

During the 1990s legally made State agreements were overridden by unilateral union decisions to shift industries to Federal award coverage in Victoria and WA.

Despite tens of thousands of small businesses and their employees having freely chosen to enter workplace agreements in WA, the Gallop Government is about to abolish them. The decisions of various States to reverse reform, and to cut flexibility in their State systems is a massive concern for small businesses:

- Not only do they lose the agreed approach, and the flexibility and productivity that may have been agreed (clearly retarding their capacity to generate jobs); but
- They also suffer the difficulty of chopping and changing systems. Labour relations is hard enough for small business without needing to learn new rules.

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In addition to requiring more appropriate levels and forms of regulation, and an ability to more easily enter agreements, small business also require stability and an end to the threat of see-saw legislation in the area of labour relations. Small business needs more confidence to embark on formalising consensual working relations based on the knowledge that a change of government is not going to render their efforts a waste of time and money.

9.6 Employment Conditions

Small business not only has problems with the operation of the system, but also with the regulations which are the product of the system. The principal concern is in the area which remains most remote from the needs and interests of workplaces: industrial awards.

There is a proliferation of awards in Australia, as the following table illustrates:

Numbers of Awards Per Jurisdiction

| | |
|---|------|
| Federal Awards ²⁵ | 2191 |
| NSW State Awards ²⁶ | 614 |
| Queensland State Awards ²⁷ | 329 |
| South Australian State Awards ²⁸ | 174 |
| Western Australian State Awards ²⁹ | 362 |
| Tasmanian State Awards ³⁰ | 97 |

Award simplification in the Federal system represented a major achievement in addressing award proliferation, and in reducing the number of awards of the AIRC. The current 2191 Federal awards is down from 3818 as recently as 1997.³¹

²⁵ Source: www.airc.gov.au Award Simplification Statistics

²⁶ Totalled from <http://www.dir.nsw.gov.au/awards>

²⁷ Totalled from <http://www.wageline.qld.gov.au/awards/list/index.htm>

²⁸ Totalled from http://www.eric.sa.gov.au/wage_info

²⁹ Totalled from <http://www.wairc.wa.gov.au/>

³⁰ Totalled from <http://www.pat.tas.gov.au/awards/privateawds.htm>

³¹ Source: www.airc.gov.au Award Simplification Statistics

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However there clearly remains an over proliferation of awards as outlined in the above table. It is no longer the case that awards are the resolution of specific disputation with specific redress based on industry or workplace circumstances, to the extent that it ever was. This is now the role of agreements in contemporary labour relations.

Awards are now a safety net which underpin bargaining, and which operate largely only for those workplaces that do not enter into agreements. An effective contemporary safety net requires a level of commonality between minimum standards which is at odds with the continued proliferation of awards in all systems. There are for example, simply not over 2,800 different regulatory instruments required to underpin bargaining and employment in NSW.

The effectiveness of the safety net also appears to be compromised by the proliferation of awards. There are simply too many awards to be an efficient form of contemporary regulation. There are also too many awards for proper maintenance. Many awards, especially in the State system, remain legally enforceable and subject to observation by employers, but have not been varied consistently over time. Simply having too many regulations (awards) has led to an inconsistency of regulation which can be contrary to the interests of smaller business.

The safety net protective role of awards is also compromised by the proliferation of awards rendering compliance unduly complicated. Anyone who has worked in determining award coverage under the Federal or any State system will report that this is a complex business, and that clear answers are not always available. Not only are the regulations hard to comply with, but it is hard to work out which one of 2000+ different regulations to apply. In any other area of Government regulation this would have gone out with the Ark.

This is simply not a good enough form of regulation to meet the needs of the smaller businesses which are increasingly the only remaining users of awards. Awards are a form of regulation and should meet the standards for sound regulation which smaller businesses as tax payers and citizens are entitled to expect from the State.

Employment standards in awards are set on a one size fits all basis, and that size is often medium to larger companies. Awards provide little or no differential treatment between small business and the largest Australian companies. There is, for example, no difference in many of the award standards and requirements upon large national companies and smaller businesses in areas such as

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minimum wages, leave, hours, overtime etc. It is very difficult to believe that one size can fit all in this area.

Awards often require particularly complex behaviours by employers which may have been modelled on approaches of larger employers and unions in larger workplaces. One example of this is skill-based classification structures, which can require complex assessments of employee skills to determine appropriate wages. In practice, even in awards which have implemented such structures, smaller employers often continue to look to the previous simple occupational descriptors to determine their obligations.

9.7 Exemptions

One very good exception to this is the exemption of smaller businesses from award standard severance pay payable in cases of genuine redundancy. By a 1984 arbitration, smaller employers (of less than 15 employees) are exempt from the payment of up to 8 weeks severance pay under the widely applied award standard.

It is a pity that the approach taken by the Commission in awarding this provision with sensitivity to smaller businesses was not followed in more major decisions since 1984, and that a differential effect for smaller businesses does not appear in more award provisions.

It is also a telling indictment on the system that in some industries, this pro small business and pro small business employment measure has been removed over time, and all businesses must now make substantial redundancy payments.

Another area in which there is an express recognition of the unique circumstances affecting smaller business is in one of the recent additions to the Workplace Relations Act 1996. Section 170CG(3) of the Act now provides that:

“In determining, for the purposes of the arbitration, whether a termination was harsh, unjust or unreasonable, the Commission must have regard to:

- *the degree to which the size of the employer's undertaking, establishment or service would be likely to impact on the procedures followed in effecting the termination; and*
- *the degree to which the absence of dedicated human resource management specialists or expertise in the undertaking, establishment or service would be likely to impact on the procedures followed in effecting the termination; ...”*

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Again, such an approach may be relevant in a number of other areas of the Act, and may provide a model to ensure that the regulation of labour relations is better attuned to the needs of smaller businesses into the future.

Examples of flexible small business specific standards, or of general standards being modified to cater for the flexibility required by small business, are few and far between. For example, the 2002 Safety Net Review recently delivered by a Full Bench of the AIRC did not even mention in its decision small business employees, yet the highest wage increase yet awarded was applied to industries characterised by small business.

It should also be recalled that the protection offered to employees by awards would not inherently be compromised through regulatory reform of the award system or other elements of the labour relations system. There is scope for ongoing balance between appropriate, effective and modern regulation and continued protection of employees. Indeed, more rationalised, targeted and efficient employment standards could better protect employees.

9.8 Unique Circumstances

[2] There are also many unique circumstances governing workplace relations in smaller businesses. These include the following:

- Small businesses are often started with barely sufficient financial resources; find capital hard to access on an ongoing basis, and often run on very narrow margins. Small businesses often rely on incoming payments to meet their liabilities, and can be financially endangered at very short notice by delays in payment. Smaller businesses may not have the capacity to absorb the financial shocks which can be a function of the difficulties of complying with existing workplace relations regulation;
- Smaller businesses often rely on their borrowings, or incoming cash flows, to pay wages. There is often little room in small business finances for wages reserves to be held in hand. Back payments and the lack of appropriate prospectivity in the awarding of wage increases/new regulatory obligations may be particularly financially challenging for many such employers. Wage increases are often paid for by increasing the overdraft. Where a record high national wage increase is ordered (as it was this year) in the same week that the Reserve Bank increases interest rates,

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smaller employers pay a heavy price – higher cost of borrowing to pay higher wages, for no productivity change;

- Small business has a reduced capacity to cover employee absence. When an employee is absent it is often the proprietor that is forced to cover for them through harder work and/or through additional hours;
- The people working longest in small business are often the proprietors. In many cases, small business people appear to work harder than significantly higher paid persons in other sectors of the economy; and
- Additional regulatory imposts would be particularly difficult to implement for smaller business.
 - i) There is a current debate underway on options for paid maternity leave. It would be simply impossible for smaller businesses to assume either sole or shared responsibility for any such new entitlement.
 - ii) In addition, small business proprietors are themselves working women. It is incongruous that these working women would be paying a benefit to their female staff when they would be unable to access the benefit themselves.
 - iii) On introducing her recent report on these options, the Sex Discrimination Commissioner noted that:

Another clear message from those with whom I have consulted is that any national scheme of paid maternity leave should not be funded by individual employers.³²
 - iv) The HREOC report also recognises the potential impact of any scheme on employers, particularly smaller enterprises:

“It should be emphasised that most of those consulted in the preparation of this paper were concerned that an individual employer funded scheme would prove disadvantageous to women in

³² Valuing Parenthood: Paid Maternity Leave - Interim Options Paper Launch. Speech by Pru Goward, Federal Sex Discrimination Commissioner, 18 April 2002. http://www.hreoc.gov.au/speeches/sex_discrim/valuing_parenthood.html

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employment and to commercial competitiveness generally.”³³

...

The International Labour Organization does not support a funding model for paid maternity leave in which employers are individually and directly liable for payments to employees unless such an arrangement is negotiated at the national level.³⁴

- v) Some of the options for the protection of employee entitlements, including any form of compulsory insurance or giving priority to employee creditors, would also have a very negative impact on smaller businesses and their capacity to employ.
 - (1) Raising priority of employee creditors would raise the cost of capital to smaller businesses, which is a direct drain on their capacity to expand, remain viable and generate jobs.
 - (2) It would also create inequities where small business trade creditors receive no priority whatsoever, despite being as vulnerable to the financial losses created by unpaid debts and income that have fallen due.
 - (3) Given that small businesses fail and proprietors who risked personal equity and mortgaged their personal property lose out, there is a frustration within small business at the direction of the employee entitlements debate. For small business, a law protecting 100% of employee entitlements on insolvency is as unrealistic as a law protecting business from insolvency.

There are many other ways in which smaller enterprises differ from their larger counterparts. These crucial differences are not properly reflected in the current workplace relations system which fails to provide appropriately differentiated regulation which meets the needs of these enterprises. Awards in particular could be

³³ HREOC *Valuing Parenthood - Options for Paid Maternity Leave*: Interim Paper, 2002 p.9

http://www.hreoc.gov.au/sex_discrimination/pml/valuing_parenthood.doc

³⁴ art 6(8) International Labour Organisation *Convention Concerning the Revision of the Maternity Protection Convention (Revised) 1952* International Labour Conference (88th: 2000: Geneva Switzerland).

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significantly more sensitive to the needs of small and medium sized business.

9.9 Casual and Part-Time Employment

Smaller businesses are significant employers of casual and part time employees. This is hardly surprising given that many smaller business have very little capacity to shift labour resources to meet fluctuations in demand and, have little capacity to viably absorb labour costs during downturns. The flexibility of casual and part-time employment is particularly important to small business.

Casual and part time work in smaller businesses can also be a positive measure for balancing work and family commitments for women in particular. Smaller businesses often offer the scope for flexible employment for women, close to home and schools.

The operation of the award system, and the labour relations system more generally, can be at odds with the capacity of small business to generate employment through casual and part-time work. In 1990, the House of Representatives Standing Committee on Industry Science and Technology observed that³⁵:

“Many awards contain limitations on the ability of small businesses to employ people as casuals or part-timers. This increases labour costs incurred by small businesses and inhibits their flexibility to structure themselves in a way which best serves the needs of their customers.”

This remains the case. Recent decisions have amended awards to increase the cost of casual employment to employers by 25% (5 percentage points), and have given employees a unilateral right to convert casual employment to part-time or full-time employment after a period of some months.

This is a particularly concerning development for smaller businesses. It cuts precisely the flexibility needed to create employment. It is a clear example of a large business based prescription being inappropriately applied to smaller enterprises. ACCI strongly believes that this approach should not be applied more widely.

Such increases in award regulation make it difficult to escape the conclusion that pejorative attitudes to casual and part-time work remain part of the workplace relations system.

³⁵ House of Representatives Standing Committee on Industry Science and Technology (1990) *Small Business Challenges, Problems and Opportunities*, Canberra Publishing and Printing Company, Canberra. Paragraph 8.162

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This should not continue. An important contribution that the workplace relations system could make to employment growth in smaller enterprises would be to properly support and facilitate casual and part-time employment. When regulation through awards and interpretations of statute, have the practical effect of limiting or discouraging casual or part-time employment, they should be subject to review and remediation.

9.10 The Unique Workplace Relations of Smaller Business

Smaller businesses have significant capacity for non-conflict based, personal relationship based workplace relations which fundamentally differs from the dispute focused system which has characterised Australian workplace relations since the first decade of the 20th century.

The 1990 House of Representatives Standing Committee on Industry Science and Technology report contained the following quote from a small business person:

“I never pay employee wage rises as a consequence of a decision handed down by the Arbitration Commission but pay employees as a consequence of what they produce. I have 60 people working and I know the Christian name of every employee in the company. If I thought hard enough I would know the names of their wives and the number of kids they have. They come to Christmas parties at my place. I go to their place for weddings and things like that. That is how small business operates. One has really got to come to grips with that relationship and we should be promoting and fostering it rather than trying to fracture it by imposing decisions of other tribunals that never listen this or understand this.”³⁶

Employment relationships in small business can be less polarised than may be the case in some larger operations. Small business workplace relations is characterised by daily interpersonal relationships, by employers and employees working side-by-side, and by a level of personal commitment and interdependence at odds with traditional conflict based labour relations paradigms.

One of the key characteristics of small business labour relations can be informality, and scope to address the application of rights and

³⁶ House of Representatives Standing Committee on Industry Science and Technology (1990) *Small Business Challenges, Problems and Opportunities*, Canberra Publishing and Printing Company, Canberra. p.269, Evidence of Mr Boyle, Australian Small Business Association, Transcript p.2001

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duties based on the informal and co-operative personal relationships which are used to work productively on a daily basis.

Small business often has an inherently superior capacity to structure work around the changing needs of employers and employees. This includes a well developed, and largely unheralded, capacity to accommodate work and family responsibilities.

Some small businesses may have had the capacity to eliminate restrictive work practices and to render the operation of awards more relevant to their workplaces. Whilst this may have been a reasonably simple approach, the problem for these businesses is of course that there is often no formalisation of agreed arrangements. The system should attempt to better protect both employers and employees by ensuring that the regulation of employment in smaller workplaces supports and fosters compliance and formalised agreement making, whilst supporting less formalised approaches to the implementation of regulation where appropriate.

Another element of the unique workplace relations in small business is the lack of time and resources to dedicate to the management of workplace relations, and to proper compliance. In addition to a heavy and complicated regulatory approach being at odds with the informality of relations in smaller workplaces, it is also not capable of being properly observed in many smaller workplaces.

9.11 Human Resource Management Expertise

One of the key challenges for small business is comprehending and complying with a wide range of regulation which proprietors may lack the experience and expertise to comply with efficiently and effectively.

In the area of employment, small business people are often made sharply aware of their lack of human resource management / industrial relations expertise. For proprietors, this often compounds the burden of other regulatory requirements (for example, taxation).

Small business people approach the management of employment with very little training, and often very little experience. Previous experience in commercial or business life often does not prepare small business people for actually employing someone.

Many ACCI members provide major information and training resources to employers of all sizes.

However, many smaller businesses do not access this expertise, and rely on less detailed advice from Government advisory services,

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word of mouth from small business colleagues (which is often wrong or out of date), or on only periodic information.

Examples of the types of problems this can create include:

- Small business paying wages based on previous advice from a government advisory service which may be out of date by some months or years. This can create scope for underpayment and the need for back pay;
- Small business operating on an understanding of the operation of the workplace relations system frozen at a fixed point in time, which fails to reflect changes in the system. This includes, for example, fixed and often flawed understandings of how dismissal should be undertaken; and
- Small business incorrectly seeking to reduce complex regulatory requirements to simple operating rules. This would include, for example, an understanding that you can dismiss any employee with impunity as long as he or she is given three warnings.

The simplest option for small business is often blind compliance or the “just tell me what I need to pay” approach. This is neither innovative nor conducive to job creation, but it is the product of cynicism born by alienation from the system that creates the rules.

At a more general level, smaller business people have less time and resources to operate within the formal system that currently constitutes Australian employment law.

Whilst smaller businesses have the advantages of consensual and less formal employee relations, they also lack the advantages of sophisticated human resource thinking which has led to operational and cultural improvement in larger enterprises.

The comments of one small business person to the Small Business Deregulation Taskforce summarises the situation facing smaller businesses perfectly:

“I can tell you why most of them (small businesses) are not creating more jobs. It’s too bloody hard, too bloody expensive and too bloody dangerous. While we are required to operate and adhere to the same laws and regulations as major corporations such as BHP and Coles, we do not have the benefits and luxuries of a department full of experts in industrial law, common law, taxation law, superannuation law, work safety law, rehabilitation programs, workers’

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compensation insurance, or experts in staff training procedures.”³⁷

9.12 Recruitment and Selection, Performance Management and Termination

Considerable attention has been focused on small business and the use of the unfair dismissal system. This is a significant issue, and ACCI continues to support amendments to improve the operation of the dismissal system for smaller enterprises (most recently in our submissions supporting the passage of the 2002 Workplace Relations Amendment Bills).

However, this focus should not disguise the unique position of small business in regard to the management of employees and employee performance more generally, which precedes issues of dismissal.

Smaller businesses can have considerable problems in managing performance in the formal area expected by the system. They lack the sophisticated human resource policies and processes which larger companies use to redress poor performance and to turn around employee performance. They also lack the time and resources necessary to manage poor performance consistent with unfair dismissal law.

Smaller companies also lack the resources for the sophisticated recruitment and selection undertaken by their larger colleagues. Organisation/employee fit for smaller businesses is in many cases purely a function of employer instinct and employee availability. In many cases this leads to mutually beneficial and productive employment relationships which can be sustained for some years. The life experience of many small business people does stand them in good stead in employing people.

However, for many other small business people, running a small business is a matter of trial and error. Recruitment and selection is an area in which many have made errors that sees them come into conflict with the unfair dismissal system. Instinct alone in employing people does not provide a substitute for the sophisticated HR approaches the dismissal system has often required. Reforms such as s.170CG(3) of the Workplace Relations Act 1996 are important and should be spread further.

In managing performance, and where necessary dismissing employees, smaller employers also see the reverse side of the

³⁷ *Time For Business- Report of the Small Business Deregulation Task Force*, November 1996, p.47

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informal relationships which are in many areas the primary strength of their business. When one works side by side with someone on a daily basis, it can be particularly difficult to formally manage performance as required to not unfairly dismiss an employee. As a pure exercise of interpersonal relations, issuing warnings and monitoring performance can be very challenging and difficult in a small business workplace.

It is also challenging for small business people to properly document performance management and dismissal. The regulatory burden on smaller business is already well documented, including many smaller business people who may not have a natural inclination towards record keeping and administration.

Properly documenting performance management compounds this challenge and comes on top of what many small businesses continue to view as a regulatory overload. There is also the difficulty that small business people may not properly reduce particular conversations or actions to writing in the comprehensive and accurate manner required by legal practitioners.

Small business employers remain fearful of unfair dismissal regulation and the impact it can have on their businesses and financial lives.

This is the practical impact of regulation in this area for many small businesses, including:

- Paralysis: Many smaller businesses are simply keeping on poorly performing employees who are not growing their business and not contributing to expanding capacity to create jobs. This is bad for the business, and bad for all concerned;
- Aversion: Many smaller employers are simply choosing not to employ anyone as they fear the risk of cost and being stuck with an under-performing employee; and
- Overwork by proprietors to undertake work not entrusted to under-performers, to re-do defective work or to redress mistakes, or simply working more hours as a proprietor.

ACCI has supported various amendments proposed for the ongoing improvement of termination of employment redress under the Federal system. This includes support for both the Workplace Relations Amendment (Fair Dismissal) Bill 2002, and the Workplace Relations Amendment (Fair Termination) Bill 2002.

ACCI has also advanced a set of additional proposals for reform in this area which could be implemented either in conjunction with the

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existing bills, or in the absence of their passage on this occasion. We again commend these to the Committee's consideration, and have attached them in full to this submission (**Attachment LR1**).

9.13 Agreement Making

One key division in the labour relations system that is emerging is that it is increasingly smaller businesses that are left reliant on the "one size fits all" award system.

Larger and medium sized enterprises have increasingly opted to access the benefits of agreement making. These larger enterprises have the expertise, financial and time resources to invest in changing their employment regulation. They are able to access the benefits of abandoning award approaches in favour of regulation geared more specifically to their enterprise. This includes those medium to larger enterprises that have chosen to enter agreements with trade unions.

Many smaller businesses have not been able to practically participate in agreement making with their staff.

Any procedural and substantive barriers to efficiency and productivity are magnified for small business. Smaller businesses prefer the less formal to the formal - the unregistered to the registered. Within this paradigm there are a range of options for the operation of an agreement making system.

What small business reports to ACCI and its members is that agreement making remains too skewed towards the regulatory, the procedural and the bureaucratic, and this is discouraging them from using available agreement making options. The paperwork and compliance requirements for agreement making continue to be particularly unduly challenging for smaller employers. Based on a cost benefit analysis, many of them are simply not bothering to bargain.

This includes a particular fear that the formalisation of any particular agreement making option will invite the involvement of trade unions in their business.

The no-disadvantage test is also a barrier to bargaining, and thereby job creation in many smaller businesses. This must be understood plainly and clearly. Many smaller enterprises lack the financial margins and economies of scale to make the limited efficiency dividend offered by the current bargaining system cost effective. Major labour costs and brakes on employment in smaller businesses, including costs such as penalty rates cannot be

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bargained away – and for some small businesses this ends their interest in formal bargaining.

A disproportionate number of smaller businesses therefore remain either on awards or outside the formal system. Small business has to a significant extent failed to access the flexibility and operational efficiency that agreement making should offer, and is thereby restricted in its capacity to generate employment.

The irony of all this is that small businesses are increasingly the only clients of an award system which was arbitrated based on developments in larger enterprises in previous decades. They are the main ones left using a system that they have been historically isolated from and resentful of.

Exceptions to this are the use of agreements by smaller businesses under State systems such as that in Western Australia, and growing small business use of Australian Workplace Agreements. The interaction of the Federal Office of the Employment Advocate and small to medium sized employers has been a very positive development. The lesson of this appears to be that where an agreement making system is properly geared to the needs of smaller business, and does not attempt an unduly regulatory approach, smaller employers will want to make agreements and to improve their productivity, flexibility and capacity to generate jobs.

The regulation of agreement making could reflect considerably more balance between the needs of both smaller businesses and their employees.

9.14 The Bottom Line for Small Business

Finally, in this analysis of smaller business and workplace relations, it should be recalled that the traditional oppositional paradigms of workplace relations are shattered by the reality of small businesses.

The belief apparent from some quarters that employers are a monolithic group with an unlimited capacity to accommodate additional regulatory imposts is wrong for all employers and is particularly not borne out for small business.

The overwhelming experience for small business employers is one of struggle, and a continual competitive, management and compliance challenge. Small business people often work very long hours, and often can take very little from their businesses in terms of earnings. A large percentage of small businesses fail, with heavy personal losses.

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Employing someone is not a trivial matter, and is not to be entered into lightly. It is a difficult task for small business people, and comes on top of their existing challenges of management, ordering, marketing, pricing, taxation and other regulatory requirements. A small business person is genuinely required to be a Jack or Jill of all trades.

The onus on all regulatory systems, including the labour relations system, is to properly support the small business person to the maximum extent possible whilst still achieving its primary regulatory purpose. State and Federal workplace relations systems continue to fail this challenge.

A minimum expectation which smaller users of the system should have is that their regulatory requirements should be easily determined, contained in a limited set of sources, and simply comprehensible. This would provide a sound starting point for the reform of workplace relations regulation to better support the capacity of smaller businesses to create jobs.

9.15 Directions For Reform In The Interests of Small Business Employment

This Inquiry's final term of reference asks submitting parties to advance measures that would enhance the capacity of small business to employ more people. A number of broad directions for further workplace relations reform in the interests of additional small business employment are set out below. These are based on the above analysis, on reform proposals advanced by ACCI over some years, and on wider workplace relations debate.

This is not intended to be an exhaustive list of reforms to ensure that workplace relations regulation supports rather than hinders the capacity of small business to contribute to growth and employment. ACCI's full labour relations policy is set out in full at **Attachment LR2**, and provides further ideas for the reform of workplace relations regulation to increase the capacity of all enterprises (smaller, medium and large) to operate more efficiently and create more jobs.

9.16 Simpler, Clearer Regulation Governing Small Business

The Workplace Relations Act 1996 has over 500 sections and is many hundreds of pages long. It remains a complex and challenging piece of legislation for all users, let alone those in small business. This stands in contrast the simplified labour relations legislation which has emerged in recent years including the Employment Contracts Act 1991 (NZ), the Minimum Conditions of

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Employment Act 1993(WA), the Workplace Agreements Act 1993(WA), and the Employee Relations Act 1992(Vic).

Even within the established framework, there appears to be considerable scope for the plainer and clearer expression of employment rights and duties under State and Federal legislation. Employment regulation which affects small business should be re-examined for opportunities to simplify and better target obligations and entitlements to enhance the capacity of smaller business to simply and confidently meet their employment obligations.

This should include an ongoing process of statutory reform to ensure employment laws better meet contemporary regulatory expectations of:

- Clear, plain English expression, geared to the small business proprietors who will apply the regulation in their day to day operations:
 - A plain English re-write of the Workplace Relations Act 1996 would be an important contribution to regulatory reform in Australia, perhaps starting with those provisions which most directly impact on smaller businesses.
 - Small business must be able to better understand and apply the statutory rules under which it must operate on a day to day basis. Simplified workplace relations legislation passed in the Victorian and WA jurisdictions during the 1990s provides a model for plainer English expression of employment rights and duties.
 - Specialist advice should need to be accessed only for unusual or contentious situations.
 - Simplified and modernised statutory provisions may also have scope to contribute to future ongoing amendment of comparable legislation at the State level, and to ongoing harmonisation of federal and state systems.
- Measures to address the proliferation of regulatory instruments (awards) at both the Federal and State level also need to be considered.

This should include both ongoing efforts to reform statutory regulation, and delegated legislation such as awards and other industrial instruments.

Complexity is also not inherent in employment. As a general principle, any complex award provisions should be subject to

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serious questioning as to their legitimacy and necessity. In the award system in particular, where an obligation cannot be properly simplified, serious questions need be asked as to whether it remains a legitimate and necessary regulation.

Parliament should carefully consider the scope of any proposed statutory amendments to better support compliance by smaller businesses, and take this into account in supporting ongoing amendments. Improved scope for small business to more clearly and confidently comply with their employment obligations would add to their capacity to confidently create new employment opportunities. This would include a clearer capacity to assess the cost of creation of new employment.

Improved statutory regulation is not simply an exercise in plain English redrafting. It must extend to re-examining the provisions of the Act and to subjecting them to a rigorous regulatory re-examination. Where on balance they can no longer be sustained they should be excised.

9.17 Improved Statutory Recognition of Small Business

The Workplace Relations Act 1996 identifies various priority considerations in its objects as matters of principal importance in the application of the legislation.

Consideration should be given to the incorporation of a consideration of the particular needs of small business to the guiding principles which govern the work of the AIRC, and in particular to provide additional scope for parties to argue that small business considerations should taken into account in decisions of the AIRC.

Various other areas of the Workplace Relations Act 1996 could also require an express consideration of small business, including in guiding provisions such as s.88B (the establishment and variation of the safety net) and s.90 (the public interest).

The Workplace Relations Act 1996 should also be reviewed more generally to identify areas in which its operation should be adjusted to better provide for small business. This should include reviews of the following provisions to better provide for a consideration of the unique circumstances of smaller enterprises in:

- Award making;
- Agreement making, registration and approval;

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- Unfair dismissal, in the absence of any small business exemption; and
- Industrial action, including the indirect effect of industrial action against medium and larger enterprises on their small business clients and dependent traders.

ACCI labour relations policy also supports the creation of statutory minimum conditions of employment. This would provide considerable simplification of employment obligations for smaller business, and an enhanced capacity for simplified compliance, and agreement making. Despite not going forward as proposed in the original version of the Workplace Relations and Other Legislation Amendment Bill 1996, this should remain an ongoing consideration for employment law reform.

This submission has concentrated substantially on awards and on the inadequacies of the award system as it currently stands for many small businesses. It has stressed that small businesses are increasingly the primary clients of an award system:

- Originally arbitrated based on industrial relations in larger enterprises in many industries; and
- Varied on an ongoing basis by unions whose membership is increasingly concentrated in medium to larger enterprises, and whose imperatives do not often reflect those of employers and employees in smaller enterprises.

9.18 AIRC Accountability For Impact on Small Business

There may also be scope to in the future require the AIRC to better account for the impact of its decisions on small business and their capacity to create employment. Government more generally accounts for the impact of its regulatory activities on smaller businesses, and there is reason to conclude that the AIRC must inherently be free of such scrutiny.

This may complement requirements to specifically consider small business in many of the Commission's activities.

There are examples of the AIRC having regard to the needs of particular groups which could form a model for an express consideration of the needs and employment creation capacities of smaller business:

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- Section 88B(2)(c) of the Workplace Relations Act 1996 – the low paid;
- Section 93A of the Workplace Relations Act 1996 – workers with family responsibilities; and
- Former s.170MG of the Industrial Relations Act 1988, which required the Commission to protect the interests of certain prescribed employees (women, persons whose first language is not English, and young persons).

One suggestion worthy of consideration would be to institute a statutory requirement that at least one of the members of the Bench in all AIRC test cases be a person who was appointed with prior experience in small business issues.

9.19 Further Refine Awards To Minimum Standards

The International Labour Organisation sets two forms of labour relations instruments:

- Binding conventions which set out the quantifiable legal obligations for national labour laws, and
- Additional advisory recommendations which guide national systems in the application of the Convention obligations, including where appropriate in interpretation.

There may be value in considering this as a future model for the application of employment standards through awards. This may for example see a system in the future which provided for both:

- Binding awards, which set out only genuine minimum standards, in a very simple and clear cut manner. For example an award may set out only that there must be four weeks annual leave per year, and that there is scope for single day absences where agreed; and
- Additional non-binding recommendations or codes on the application of the minimum award standards which employers could apply if they want to, but which do not form part of the day-to-day obligations on employers. There would appear to be considerable scope for these supporting documents to be expressed in very plain and simple English, and to make extensive use of examples and a question and answer format.

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9.20 Incapacity to Pay

There has been long running debate on the extent to which the award system in particular should be flexible in its application of minimum standards in situations where employers (including smaller employers) are experiencing pressing financial difficulties such that applying an increased entitlement would endanger business viability.

There are various specific avenues in the Workplace Relations Act 1996 that employers and employees can use to have minimum standards effectively adjusted to meet the needs of their enterprises (e.g. s.170LT(3)&(4) and s.170VPG(4))

There may be options for additional scope to customise the application of award standards, in particular to reflect the challenges facing some smaller enterprises, including where a formal agreement with employees would be too costly or would take too long. Statutory scope to argue incapacity to pay, and for the making of orders varying the application of award increases, may be something which should be incorporated into the workplace relations system in the future as a measure to retain more employment in smaller businesses suffering adversity.

For smaller businesses, it would be important that such cases be able to be pursued at an individual or a collective level for industries, sub-industries and regions.

Many areas of the workplace relations system involve a balance of the interests of employers and employees where they may diverge. There is no reason to conclude that a statutory avenue to argue genuine cases of incapacity could not be similarly balanced.

9.21 More Help For Small Business In Compliance - Prospectivity

The system is complex and repetitive, and contains considerable scope for small business employers to be uncertain as to:

- Which system (Federal or State) they must comply with, and in relation to which employees;
- Which regulation (industrial award) smaller employers must comply with within the Federal or State system, and in relation to which employees;
- Having determined which regulation they must follow, how to interpret the often archaic language and construction of many awards; and

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- How to reconcile the level of detailed prescription and complexity in industrial instruments with the consensual and informal workplace relations found in many smaller workplaces.

Complexity makes it particularly difficult for small businesses to keep track of their changing obligations, particularly in regard to wages.

The system could do significantly more to assist small business in determining their ongoing employment obligations. One important reform could be additional time between the decision to increase regulatory obligations and the increased obligation coming into effect.

Guaranteed prospectivity in the Workplace Relations Act 1996, or a statutory presumption for a minimum period of notice unless exceptional circumstances exist would provide far better opportunity for smaller business to properly familiarise themselves with their obligations. Options for future consideration could include a statutory requirement that there be (for example):

- Six (6) months notice between the decision to rope an employer into a Federal award / the making of a new Federal award, and the coming into effect of the new obligation; and
- Three (3) months notice between a decision to vary an award obligation for existing respondents, and the coming into effect of the new obligation.

9.22 More Help For Small Business In Compliance - Better Publicity/Information on Changes in Regulation

The system could do significantly more to assist small business in complying with their workplace relations obligations, and thereby enhancing their capacity to confidently and accurately create employment (that is, employment based on the correct standards on an ongoing basis).

It is simply no longer good enough that small business be expected to satisfy themselves of their obligations in an area with so complex and repetitive a series of regulations. Reform should proceed in two concurrent directions into the future:

- Reform of employment standards to ensure they are less complex, better targeted and reflected in significantly less instruments; and

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- Better information and compliance support for employers whilst the system is transformed.

Consideration should be given to options to better promote changes to regulatory obligations in employment upon small business. This could include further obligations on parties seeking to increase standards to better inform those businesses that will be affected.

New technologies may provide some scope to improve the regulatory exchange between the State and smaller employers. However, any efforts would also need to be sensitive to the needs of those small businesses without access to the Internet.

Any information resources would also need to be specifically formulated for small business readers. Again, genuinely targeted, simple and plain English regulation must become the norm in all employment regulation and explanatory information.

Although more controversial, consideration could be given to the creation of a statutory defence for breach of a provision of the Act or an award where an employer did not know and could not have been reasonably expected to know of the relevant requirement.

9.23 Less Paperwork

Senators will be very familiar with the burden of paperwork on smaller business. Employment regulation paperwork comes on top of taxation, superannuation, workers compensation and other regulatory requirements.

Ongoing reform should encompass a continuing effort to minimise paperwork for smaller businesses in the area of employment.

9.24 Logs of Claims

Small business needs a system that does away with ambit logs of claims. In the interim, small business operators need further help with logs of claims, including superior information on what the log is, what it means, what it may lead to and who can help them. Whilst the creation of a Federal award does rely on the creation of a dispute, there should be scope to provide smaller employers with realistic and useful guidance information.

Further obligations on applicant unions should also be considered. This could include an obligation to circulate prescribed explanatory information / information agreed with employers.

Other possible directions for reform may include:

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- A requirement for unions to have members in an enterprise before they could take action for the making of awards at either the Federal or the State level. This, perhaps allied with an express direction to consider the effect of an award on small business productivity and scope to employ, may contribute to better employment regulation for small business; and
- An express statutory requirement to consider the effect on smaller business in the AIRC's consideration of making any new award, or varying an existing award.

ACCI also welcomes growing debate of a change in the constitutional foundations which underpin the labour relations system. A system which did not rely on the artificiality and contrivance of the log of claims process, and which may offer smaller businesses the clarity of a single regulatory regime, would appear to carry significant benefits. Serious consideration should be given to any reform proposals in this area.

9.25 Unfair Dismissal Regulation

ACCI's primary recommendation to improve termination of employment/unfair dismissal regulation in the immediate term is the passage of the Workplace Relations Amendment (Fair Dismissal) Bill 2002, and the Workplace Relations Amendment (Fair Termination) Bill 2002.

In addition to these reforms, or in the absence of these reforms, ACCI urges consideration of the additional reform measures contained in **Attachment LR1**.

There should be an ongoing recognition of the need for refinement of unfair dismissal regulation and termination of employment information more generally. Government, Parliament and all interests should remain engaged in a process of ongoing reform in this area.

9.26 Improving Agreement Making

There should be more balance in the extent to which smaller businesses should be asked to comply with complicated regulatory requirements for the making of agreements with their staff.

Particular attention should be given to options to simplify agreement making in the interests of maximising smaller business productivity and efficiency, and thereby scope for additional job creation.

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Measures such as those contained in the Workplace Relations Amendment (Australian Workplace Agreements Procedures) Bill 2000 appear to represent valuable reforms for smaller business. There should be an ongoing statutory refinement and improvement of agreement approval regulation into the future, including the passage of reforms such as those proposed in 2001.

9.27 Balancing the Awarding of Redress

Consideration should be given to the extent to which smaller businesses should be asked to redress non-compliance with employment regulation in those rare cases where this may endanger the capacity to employ on an ongoing basis.

There may be scope for further flexibility and balance in this area. Options may include capacity to apply for adjusted, discounted, or gradual payment of redress to employees in the areas of underpayment or unfair dismissal.

9.28 Further Consideration

We have appended a copy of Minister Reith's 1991 report "Getting the Outsiders Inside" for the Committee's consideration. (**Attachment LR3**) The report provides an interesting and relevant analysis of the operation of the current workplace relations system, particularly as it affects smaller employers. More importantly it raises some fundamental considerations for reform of the system to make genuine regulatory improvements. Such a fundamental reconsideration of the operation of the workplace relations system is required if this area of regulation is to properly support an enhanced capacity for smaller businesses to create employment.

Also attached is then Minister Reith's letter to the Prime Minister of 17 February 1999 outlining a wide variety of employment initiatives in the interests of employment, including by small business (**Attachment LR4**).

We have also appended Chapter 4 of the 1996 report of the Small Business Deregulation Taskforce (**Attachment LR5**). Again, consideration of the brakes that the existing workplace relations system regulatory is placing on small business is not new, and the Committee has considerable existing resources to draw on in making recommendations for further reform in this area. We also commend this material to you for your consideration, with the caveat that it does precede the substantial reforms since 1996.

10 OCCUPATIONAL HEALTH & SAFETY AND WORKERS COMPENSATION

10.1 Regulatory vs Prevention Issues

Protecting the company and the owner/operator against any potential future legal liability as a result of employee action or inaction is a key Occupational Health & Safety (OHS) concern for small business in making employment decisions.

Action by an employee, that may breach OHS regulations and result in a workplace injury and a consequent workers compensation claim and/or penalties under OHS legislation, is a day-to-day risk in small business operations.

It is inherent in the concerns of small business that the control of employees in meeting the complex regulations related to OHS is a key issue and one that becomes a factor in employment decisions.

Small businesses are also concerned that they do not have the expertise to deal with technically complex OHS regulations. They are not able to translate the regulations into effective workplace management strategies without the additional cost of hiring professional advisers/consultants. This has significant implications as it can affect the safety of their employees and result in lost productivity, increased costs and increased worker's compensation premiums.

This focus on regulation rather than prevention is a regrettable consequence of the jurisdictions' overwhelming focus on their enforcement strategy.

The current jurisdictions' strategies that incorporate complex OHS regulations enforced by increasingly heavy penalties and sanctions act as a deterrent to providing employment opportunities in the small business sector.

Regrettably the authorities' strategies, encouraged by trade union campaigns and political activities, are focused on a belief that increased enforcement activity, with the threat and fear of excessive penalties, will improve OHS performance. This strategy is contrary to modern management philosophy, which is based on the twin principles of good open communication and working together - a philosophy which the jurisdictions themselves recommend as an

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effective management strategy for employers in dealing with workplace OHS issues.

The application and enforcement of penalties and sanctions in most administrations and jurisdictions is seen as the last resort when education, advice and guidance have failed, not as the preferred strategy.

Small businesses operating on State borders face even more complexity when working in a workplace in one State but based for employment purposes, in another State – the difference in OHS regulations and issues of Workers Compensation coverage and duplication of costs is yet another deterrent to operating a small business and in turn to hiring additional staff.

The net effect on small employers of these issues is that when reviewing plans to increase production and a possible increase in staff they take into consideration increased labour on-costs of staff and the high downside risks, as outlined above, and consider other options including a decision not to increase production or to achieve the increase without hiring additional staff including the scheduling of additional overtime.

10.2 Employer Concerns – Regulatory Complexity, Compliance and Enforcement

The subject of over regulation by Government and the wide interpretation of the ‘duty of care’ obligations act as a deterrent to the employment of additional workers.

The issue of the complexity and the compliance with Government regulations including OHS relationships is clearly demonstrated in the *ACCI Pre-election Survey of Business* conducted in August 2001 in which Australian Business ranked OHS and related regulations very highly as matters of concern to employers.

The complexity of OHS regulations compounded to by the differences in regulation between States and Territories could be addressed and simplified by a nationally consistent approach as recommended in the *Industry Commission Report No 47* in 1995.

OHS is of course still an operational and management issue for small business operators but the level of concern on this issue is exasperated as in most cases all the operational and administrative matters including OHS are substantially if not exclusively handled by the owner/operator or single manager of the business.

10.3 Potential Liability – Based on ‘Duty of Care’

The onerous legislative obligations of ‘duty of care’ exercised by many jurisdictions, coupled with the responsibility of providing and recording all the OHS induction and training and taking full responsibility for the actions or inactions of the employee, are decisions not to be taken lightly. As a result, it is necessary for small business proprietors to closely supervise and monitor the actions of the employee to ensure that OHS regulations are complied with at all times. ACCI believes that this acts as a strong deterrent for small business to take on new employees.

As a result many small employers look for alternate ways to meet their work requirements and often find it is easier and more practical to either schedule more overtime for the current experienced and trusted employees, or just do a little more work themselves. Many small employers are tradespeople accustomed to hard work and risk taking. In many cases, small business proprietors will take up their own trade tools or use their industry expertise to work in the business rather than expose themselves to further legal liability or be subjected to the onerous regulations and legislative responsibilities imposed by Workcover Authorities.

It is these wealth producing entrepreneurial characteristics of small business owners that drive and grow the economy - and with it employment opportunities - that are being stifled by draconian bureaucratic regulations.

The strategy of the jurisdictions, whilst aimed at reducing the risk of exposure to increased workers compensation and OHS cost and risks, is misdirected and ultimately detrimental to the long-term growth potential of the individual business. The operator ends up working in the business and not at the business – a recipe for business failure or negative growth and serves to restrict the entrepreneurial activities of the vibrant innovative small business community at large.

It is not that small employers are not aware of their OHS obligations and ‘duty of care’ because the data shows that the overwhelming number of small businesses have not had any accidents. In the event that they do have an accident, they are such a small tight-knit community that they look after the employee and often the employee’s spouse to ensure that they get good care and attention and the employee invariably responds by being well motivated to return to work as soon as possible.

During any absence through illness or work injury the employer simply arranges for other employees to work some overtime or

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again personally returns to work alongside the employees to meet the work requirements rather than hire an extra short-term employee with the attendant regulatory onerous increased on costs and time consuming legal obligations.

10.4 Hiring Issues

One of the most difficult and high-risk issues facing small employers is the hiring of competent and reliable staff.

The hiring of staff for small business is a very personal decision, as the new hire must be seen to be able to fit into the small workplace community in addition to having the right level of skills and experience.

The difficulties are further complicated by the inability to gather a full personal profile on the potential employee to be able assess the potential OHS risks of hiring a new employee.

Employers are currently restricted from gaining personal information including the inability to gain full disclosure of prior worker's compensation claims, health issues, external problems and pressures and personal habits including smoking, drugs and alcohol dependence. Access to this data is essential for the employer in order to make an assessment based on any workplace and non-workplace vulnerabilities that the worker may have that may affect the employment decision.

In any other decision making process the employer or proprietor is entitled and expected to expert due diligence in assessing the risk before making such a long term and binding commitment.

To provide a measure of protection in this hostile environment the employer must have the ability to gain a full profile on a potential employee

This is becoming an increasingly important part of the employment process as Work Cover Authorities continue to implement an increasingly harsh regime of penalties with some jurisdictions now considering 'corporate manslaughter' as the ultimate sanction for breaches of OHS regulations.

Without the ability to assess the risks of hiring a new employee and to control employees' actions in the workplace many small employers take the easy option and avoid hiring.

All Australian governments with responsibility for occupational health and safety regulation affecting small businesses should

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review their policies and programmes with a view to ensuring that an open, accessible and educational approach is taken to constructively assist smaller employers with OHS compliance.

11 EDUCATION AND TRAINING

Driven by technology, diverse product offerings, and an increasing focus on 'service' capability, the employment environment in Australia is changing. Recent research would indicate that it is the knowledge and skills of the workforce that will drive growth and competition in the marketplace now and into the future.

A recent Australian Business Limited (ABL) survey of 276 NSW small businesses found, for the first time, that the number one issue for small businesses in the current operating environment is the importance of a skilled workforce. Of all the businesses surveyed, 76% said a skilled workforce was either *extremely important* or *very important* to their business.

According to this cross-sectoral survey, the critical issues for small businesses are:

- Access to an appropriately and adequately skilled workforce;
- Confidence that the skill development framework is flexible, yet rigorous; and
- Meaningful input into the planning process to determine current and future skill requirements.

This notion is also reflected in recent ACCI surveys. The ACCI Survey of Investor Confidence (Small Business) consistently identifies the availability of suitably qualified employees as one of the most serious constraints on small business investment.

The Small Business sector employs over half of Australia's private sector workforce. A Productivity Commission Report (Small Business employment) found that between 1983-84 and 1994-95 Australian firms with less than 20 employees accounted for 53 per cent of new employment. This report also identified several factors that have influenced the expansion of employment in small enterprises including: the contraction on the share of public employment; increases in the sectoral employment share of services; and a reduction in the average manufacture form size.

Employment opportunities and conditions found in small enterprises differ from those in medium and large enterprises. For example: labour turnover tends to be higher in small enterprises;

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small enterprises tend to expend less on staff training than large enterprises; and casual employment (ie. employees not entitled to paid sick leave) is more prevalent in small enterprises. Employees in small enterprises also receive lower average hourly earnings than employees of large enterprises.

11.1 The National Industry Skills Initiative

Significant progress has been made in bringing together industry and government to tackle the problem of skill shortages through the National Industry Skills Initiative (NISI). Since commencing in 1999, nine industry led working groups have undertaken research to identify the nature and causes of skill shortages in their industries. Of these, six industries have implemented strategic plans to address skills shortages in their industries. It is expected that the remaining three industries will implement similar plans later in 2003.

One of the major lessons learned from NISI is that skill shortages are the norm rather than the exception across all enterprises, including small businesses. A major finding of the NISI is that skill shortages can and do exist at most stages of the business cycle in skilled occupations.

A second significant finding across all of the industries involved is that there are two main implications for skill formation arising from globalisation and the rapid changes in technology. These include:

- The need for all skills training programs (including New Apprenticeships) to be continually developed to meet the very rapidly changing skill requirements in the workplace arising from new technologies; and
- That as much attention needs to be given to the upgrading and renewal of the skills of existing workers as the acquisition of qualifications by new entrants to any skilled occupation.

11.2 Small Business Participation in Training

Statistical data demonstrates that training is not a predominant component of small business activity. Surveys conducted by the Australian Bureau of Statistics (1997/1998) indicate that there has been a progressive decline in the amount of resources small businesses are devoting to employee training in comparison to larger firms.

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According to the ABS only 13 per cent of small employers spent money on structured training for their employees in the three-month period July-September 1996. This compares with 50 per cent of medium-sized employers and almost 90 per cent of large employers. Small Businesses count for 89 percent of all private sector businesses but only 10 per cent of the total training expenditure. According to the ABS (1997), only 2 per cent of small businesses which regarded themselves as successful identified education and training as a factor which lead to their success.

ACCI believes that there are a number of demand and supply-side factors that deter small businesses from investing in greater employee training.

Demand-side factors include:

- Economic factors – tighter margins forcing a low priority for investments (such as training) which don't seem to provide immediate returns;
- Structural factors - the size and operation of small businesses, and the nature of their workforce, and
- Attitudinal perception factors – negative or uninformed employer and employees perceptions about the value and relevance of training.

Supply-side factors include:

- Economic factors – issues of scale which make it difficult for providers to supply cost-effective training to low numbers,
- Product factors – perceived inflexibility on the part of training providers in being able to deliver training in forms which are appropriate to the circumstances of individual businesses, and
- Business culture factors – lack of business skill and discipline means that products are inadequately researched, designed, resources, marketed and delivered.

Even though small businesses are vastly under-represented in formal training, they are engaged in productive learning. Small Businesses use strategies, other than formal training to gain the skills, knowledge and aptitude they need to function.

To maintain its applicability to small business, the Vocational Education and Training (VET) system needs to be kept broad and based on the principle fundamental that structured and/or accredited training is important, but not the only pathway to success. Other

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paths of activity should include: recruiting people with the skills knowledge and aptitude needed; gaining advice and information from business advisors, industry associations, accountants, friends, family, participating in networks; and getting non-accredited training from suppliers, customers and consultants.

11.3 Small Business Participation in New Apprenticeships

One of the major objectives of the national VET system is to increase employment opportunities through New Apprenticeships. New Apprenticeships were introduced in 1998 to establish a single integrated system of employment and training that incorporated what were formerly separate apprenticeship and traineeship systems. New Apprenticeships cover all occupations where a contract of training applies and can be applied to varying training periods (usually from one to four years) and various qualification levels (from Certificate 1 to diploma).

According to the National Centre for Vocational Education Research (NCVER), in the year to 30 June 2001, small businesses accounted for 24.3 per cent of all contracts of training commencements. It should be noted that 22.5 per cent of contract of training commencements are unknown.

11.4 ACCI priorities for to enhance small business participation in Vocational Education and Training and New Apprenticeships

ACCI and members organisations have committed significant resources, as well as those of government, to continuously improve and reform the national training system to ensure that it meets the current and future needs of small business employers and employees. ACCI is committed to following through at the National and State/Territory levels the following training reform priorities which will cement reforms and maintain an employer-led focus.

11.4.1 Allocation of Government Resources

Effective allocation of Commonwealth and State/Territory Government resources is critical to the ongoing success of the national training system. Traditionally, this matter has been at the heart of Commonwealth and State/Territory Government dispute with states and territories reserving their right to allocate resources irrespective of national considerations. However, the issue of resourcing education and training activity now lies at the heart of real reform. Implementation of User Choice, a more client responsive allocation of funding between New Apprenticeships and

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other VET activities, and a real examination of overall resourcing approaches to the three education and training post compulsory sectors represents the challenges for government and the small business sector.

Under User Choice, public funding for training would flow to an individual training provider as selected by the employers involved in New Apprenticeships. The shift in funding arrangements under the User Choice policy promises to;

- Allow employers to select the provider of their choice;
- Empower employers to negotiate about aspects of training including content, location and timing; and
- Provide a greater level of contestability amongst training providers, therefore improving responsiveness and diversity between public and private providers.

However, the implementation of User Choice has been stalled as State and Territory Governments show resistance to any significant moves on freeing up the training market. Major issues of contention are:

- Lack of clear definition of User Choice and its purpose;
- Concerns of the impact of any introduction on TAFE, particularly in regional areas where it is claimed ‘thin markets’ will threaten the viability of some TAFE campuses;
- Need to ‘control’ training activity through central planning processes or ‘managed competition’ through select tendering;
- Issues over quality of training provided, particularly by small private training providers; and
- Fundamental flaws in the pricing system of training through ‘nominal hours’ allocated to training undertaken by provider rather than a set fee based on outcome.

ACCI has developed a new approach to User Choice which includes:

- The current set fee based on outcomes represents a fundamental flaw in the pricing system. Fees should be determined through ‘nominal hours’ worked by the provider;
- The establishment of a transparent funding arrangement for New Apprenticeships through State and Territory Governments setting a fixed unit cost for training activity;
- Publication of training provider scope (ie. type of training) and regional servicing availability for employers to easily

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- identify the most suitable provider with the ability to offer relevant services; and
- Places all information on-line with an e-business capability to facilitate New Apprenticeship opportunities with suitable providers.

Funding issues relating to VET, including the projected future demand for New Apprenticeships and the proportion of monies allocated to New Apprenticeships in relation to other VET activities, needs to be examined. It is not envisaged that the overall budget for VET should be increased in 2002/03, rather pressure be exerted on the respective government to allocate resources to priority areas with the best outcomes - in particular New Apprenticeships. Currently, from the \$4 billion available each year, New Apprenticeships are around 25% of the total VET funding expenditure.

Finally, the relationship between post compulsory education systems needs to be examined. The relationship between higher education, VET and schools offering years 11 and 12 are becoming increasingly blurred. 2002/2003 provides an excellent opportunity to closely examine these aspects, including resources and better ways to integrate and coordinate VET and higher education activities. Increasingly, students and employees are moving between sectors, often to gain a single qualification or complementary ones. For example, a significant number of undergraduates are entering the workforce after university through a New Apprenticeship.

11.4.2 Measures to increase national consistency and effectiveness

ACCI and members continue to encourage reforms which will lead to a nationally consistent education and training system. The three key priority areas are:

- Finalisation of the work leading to the implementation of a nationally consistent training system. One major issue which needs a national response is the interface between licensing and the national training system. Some work has commenced in this area, but significantly more needs to be done. In some instances, completely different arrangements apply between regulatory systems. Another key initiative is the development of a national training portal as a single point for employers to access the VET system. This single point of entry should provide overarching national

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information, links to relevant existing and developing State, Territory and Commonwealth Government sources, and should be supported by a customer contact service through a telephone facility;

- ACCI supports group training as an integral component of entry-level employment or skills development for small businesses. Group Training Companies (GTCs) are a key component in the overall policy platform in relation to New Apprenticeships. The concept of Group Training emerged in the 1970s as a response to the needs of small businesses which could not afford to employ apprentices and trainees in their own right. The concept was to create a company which would recruit and employ apprentices and then place them with one or more host employers for the duration of their training.

Since the introduction of group training arrangements, GTCs have played an integral role in implementing entry-level training policy in Australia. As the apprenticeship and traineeship system has grown to over 300,000 and the occupations participating in the system have diversified, GTCs have also grown in size, quantity and diversity of service capabilities.

According to various State/Territory group training associations, there are almost 200 GTCs currently employing New Apprentices in Australia. GTCs are used almost exclusively by small businesses. Group Training Australia's 1996 survey of host employers found that host employers tended to be 'small' or 'medium' – sized businesses, with almost 90 per cent employing 50 people or less, and over half employing five people or less. Only 6 per cent of host employers had an employment size greater than 100.

Group Training arrangements in Australia are currently being reviewed by ANTA. The National Review of group Training is examining the current regulatory, operational and funding requirements of GTCs and what changes to these arrangements are required to ensure the most effective operations for the future. ACCI and members are working towards establishing improved arrangements for Group Training organisations, particularly clarifying the government purchasing arrangements at the national and State/Territory levels.

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- Consistent and transparent incentive arrangements are a key ingredient for the full and effective implementation of the National Training System and lead to better outcomes for employers and employees. It is universally recognised that government incentives have an important part to play in encouraging employers to participate in the formal training system. Therefore, it is imperative that the level of Commonwealth financial commitment to this is maintained. ACCI commends the approach of Minister Nelson in conducting a targeted review of Commonwealth incentives and supports the proposal to limit revised arrangements for entry-level training to existing budget allocations. There is also potential in establishing a new learning bonus scheme which encourages existing employees to gain a qualification and thereby encourage the upgrading of skills of the existing workforce. This proposal builds upon the new IT Skills Voucher for Older Australians outlined in “Skilling Up Australia” released as part of the 2001 election platform.

11.4.3 Employer Engagement

Effective mechanisms to gain employer engagement in the national training system is critical to its future success. ACCI have identified two key issues to take forward in 2002/03.

- More effective industry advisory arrangements at the National and State/Territory levels. ACCI remains concerned about the framework for Industry Training Advisory Bodies (ITABs) and believes that serious consideration needs to be given to fundamentally revising National and State/Territory arrangements. Reforms should include streamlining performance indicators for National ITABs to focus on developing, monitoring, reviewing and promoting the relevant Training Package and support materials. Other issues such as employer and RTO engagements should flow from measurement against this key outcome. National arrangements should be adequately resourced to allow effective arrangements to be implemented as appropriate, at State/Territory level. State/Territory VET planning processes should also be improved and involve a validation process involving industry and employers with material prepared by relevant Government agencies. It is important that any changes by governments involve appropriate transition arrangements to any new structures and are undertaken in close co-operation with industry; and

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- ACCI members involved in NISI have received Commonwealth funding to investigate the nature and extent of skills shortages in their respective industries and to develop strategies to address these issues in the future. This initiative has provided the opportunity for employers, particularly those in traditional trade areas, to become engaged in developing targeted strategies which will benefit their industries in the future. There are nine industries currently participating in NISI. Initiatives which have emerged from the project include:
 - the development and implementation of comprehensive marketing campaigns aimed at school leavers encouraging them to consider careers in these industries; and
 - marketing campaigns to complement the career projects aimed at employers for the purpose of selling the benefits of training, particularly New Apprenticeships, in their industries.

12 REGIONAL DEVELOPMENT

12.1 Small Business in Non-Metropolitan Australia

One in five Australians reside in areas where urban centres are less than 20,000 in population.³⁸

The dominant sources of employment in these areas are primary industries, public sector organisations, retail, services and manufacturing. The largest employer, by industry, in non-metropolitan Australia is the retail sector. The majority of businesses in non-metropolitan Australia are small.

In recent decades there has been significant industrial restructuring in non-metropolitan Australia resulting from changes to national policy settings (ie, financial deregulation; tariff reform; competition policy), population movements, technological change and market signals.

The cumulative effect of these changes has been significant shifts in employment between industries, changes in the relative contribution to GDP by industries - such as agriculture and mining - and changes in population.

³⁸ ABARE (1999) Changes in non metropolitan population, jobs and industries: report to the Department of Transport and Regional Services

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As a result, the industrial base of non-metropolitan Australia is more diversified although some communities, particularly in remote areas, remain predominantly dependent upon agriculture and mining.

Studies by ABARE have found that mining employment has decreased in all regions, but that there are more jobs in manufacturing. Jobs growth has occurred in services, retail, wholesale, property and business services. Strong growth has occurred in accommodation, cafes and restaurants – reflecting changes in lifestyle and growth in inland tourism.³⁹

There is also considerable variation in average income across regional Australia, with the non-metropolitan average income of \$28,539 (1996-97) being \$4,200 lower than metropolitan cities.⁴⁰

Examination of shifts in population of working aged Australians (15-64) shows an increase in the population located in peri-urban areas, and clustering in coastal areas. The largest declines in the working age population are in the dryland farming areas, wheat-sheep belt and parts of the rangelands.⁴¹

These trends have significant implications for businesses operating in non-metropolitan regions. Employers cite issues such as employability skills, skills shortages, access to specialist advice and services, access to affordable and efficient infrastructure, flexibility in workplace arrangements and predictability and transparency in their operating environment (including the regulatory framework) as matters that have a significant impact on the operation of their business.

Yet, in recent years, much of the available data and public debate about regional communities has focused on the negative impact of adjustment – loss of population, loss of jobs, decline in services, decline in economic activity. As a consequence, the discourse has painted a bleak picture of regional economic activity and the prospects of regional communities even though many community leaders and local councils challenge this view.

In all of the information and analysis published on regional development there has been little available data that looks specifically at regional business performance and what influences regional business activity.

³⁹ Ibid

⁴⁰ BRS, *Country Matters – social atlas of rural and regional Australia* (1999)

⁴¹ Ibid

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Thus, in 2001, ACCI undertook this ground-breaking study of business in regional Australia. To ACCI's knowledge this was the first nation-wide survey of regional business activity across all industry sectors and business sizes.

The study was divided into three sections. The first section asked owners about their expectations for their business in the short to medium term. The second section asked businesses to identify the factors that influence their decision to locate. The third section asked business respondents to rank their areas of concern from most important to least important, and areas of no concern.

12.2 Where is Regional Business Heading?

These measures of business expectations and confidence are based on circumstances at the time the ACCI survey was undertaken – that is, in July and August 2001. The ACCI survey asked businesses to indicate their growth expectations in terms of sales, employment and investment one year from now and five years from now. The answers to these questions were the most revealing and striking of the entire survey.

In broad terms, the results reveal considerable optimism in the regional business community and strong expectations of growth and expansion in both the short term and the medium term.

Over 55% of respondents expected sales to increase in the next year. A further 37.4% expected to maintain their current level of sales. Only 5% expected a contraction in sales. Sales expectations over the next five years were even more positive: around 78% of respondents expect sales to increase, 15.6% expect sales to remain unchanged and 6.4% expect sales to contract.

Business owners' employment expectations also were optimistic. Of the total responses only 7% expected a contraction in employment in the next year and 7.8% expected a contraction in the next five years. While the majority of businesses expected employment to remain stable over the next year (53.9%), five years from now employment was expected to expand in 64.2% of respondent businesses. There were 39.1% of respondent businesses expecting to increase employment one year from now.

The most important of the three indicators of business confidence and future business activity is investment. A clear majority of respondents to the ACCI survey indicated that investment in their business would increase in the short to medium term.

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Over the next year, 40.5% of respondents expected to increase investment in their business. Of the remainder, 54.2% of respondents expected to maintain the current level of investment and 5.3% expected investment to contract. In these latter cases the reasons for contraction included the sale or closure of the business.

Investment expectations were even more positive five years from now. Two out of three respondent businesses (61.7%) expected investment to increase. Of the remainder, 34.9% of respondents expected to maintain investment at the current level and 3.4% expected a contraction in investment.

These results indicate that business confidence in regional Australia is strong and likely to remain so in the medium term. Business confidence is not confined to any particular industry or business size but is evident across the board.

Businesses that export are somewhat more optimistic about their prospects, particularly in the medium term. For example, 93.8% of export businesses expected an expansion in sales, and 78.1% expect to increase investment, five years from now. Employment was also expected to expand in 71.9% of export businesses five years from now.

Table 1: Where is your business heading?

| | IMPORTANCE OF ISSUE | | |
|----------------------------------|---------------------|-----------|----------|
| | Expand | No Change | Contract |
| | % | % | % |
| Expectations | | | |
| Sales - One Year From Now | 57.5 | 37.4 | 5.0 |
| Sales - Five Years From Now | 77.9 | 15.6 | 6.4 |
| Employment - One Year From Now | 39.1 | 53.9 | 7.0 |
| Employment - Five Years From Now | 64.2 | 27.9 | 7.8 |
| Investment - One Year From Now | 40.5 | 54.2 | 5.3 |
| Investment - Five Years From Now | 61.7 | 34.9 | 3.4 |

Attracting business to a particular regional location is the objective of many governments and communities. However, opinion is divided on how that might best be achieved. The default solution is the provision of financial or other incentives to attract new businesses, often without clear justification.

Indeed, the results of ACCI's regional business survey suggested that the decision to locate is complex and influenced by many factors - not all of which are economic.

12.3 Factors in the decision to locate

For primary industries such as agriculture and mining, proximity to resources is a critical factor in the decision to locate a business. For other industries such as business services, construction and retail, these factors are not as acute. This phenomenon is broadly reflected in the survey response. Of the total respondent population, 27.9% identified proximity to markets as a critical factor in the decision to locate. A further 20.4% identified proximity to resources as a critical locational factor. Conversely, proximity to markets is of no concern to 23.1% and proximity to resources is of no concern to 23.6% of respondents.

Of particular note is the importance of lifestyle and family issues in the decision to locate a business. Lifestyle and family considerations are the top two factors influencing the decision to locate a business in regional Australia. Nine out of 10 respondents identified lifestyle and family as either important or very important. Almost 50% of respondent businesses identified lifestyle and family issues as a critical factor in locating their business. In a subsequent question, respondents identified quality of medical facilities, availability of jobs for children and quality of education for children as among the top 10 concerns of businesses in regional Australia.

Labour force stability was identified by 77.5% of respondents as an important factor in the decision to locate a business. The availability of specialised skills was also a concern for almost 70% of respondents. This result is broadly consistent with other ACCI studies on the education and training needs of employers and skill shortages.

The costs of operating a business in regional Australia vary according to the nature and size of the business, remoteness, and infrastructure requirements. For 30% of the businesses that responded to the ACCI survey, construction, land and transport costs had little or no influence on the decision to locate. However, a further 30% of respondents identified these costs as critical factors in the decision to locate. Lower construction costs were very important or critical to 30.1% of respondents. Lower land costs are very important or critical to 37.6% of respondents. Lower transport costs are very important or critical to 32.9% of respondents. The cost of finance is of importance to 41.3% of respondents and of no importance to 35.7% of respondents.

Of the top 20 factors in the decision to locate a business, access to good road infrastructure was ranked fourth. Road infrastructure is

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of considerably greater importance to the majority of regional businesses than rail or air transport and port facilities. Over 70% of respondents identified access to good roads as a factor in the decision to locate their business. Of those over 30% identified road infrastructure as a critical issue.

Access to rail transport was a critical factor for only 12.9% of respondents. Access to air transport was critical for only 14.3% of respondents and access to port facilities was critical for 10.7% of respondents. The nature of the business would have a significant influence on the use of these transport modes and the degree of dependency on road, rail, air or sea. However, for one in two respondents, access to rail, air services and port facilities was of no concern in the decision to locate their business.

The activities of government can and do play an important role in the decision to locate a business. These activities not only include various inducements to business but also the quality of government services, planning processes, leadership, entrepreneurship and understanding of the needs of business and an ability to work with business to improve the community's productive capacity.

Governments at all levels provide incentives in various forms to attract or to hold particular industries or enterprises, or to stimulate business activity generally. However, ACCI's survey revealed that this is not the major concern of regional business. The survey results in fact represent a divergence from the commonly held view that government incentives are a major factor in attracting business. Also of note was the significant number of comments and letters received from respondents on this issue.

More than one in three respondents to the survey said that government subsidies, tax relief and zone rebates were of no concern in the decision to locate. Tax relief was of critical concern to 24.5% of respondents but was of no concern to 42.3% of respondents. Changes to regional tax zone arrangements, through rebates, was of critical concern to 18.9% of respondents but of no concern to 46.4% of respondents.

Of all of the issues relating to activities of government, the quality of local government was of the greatest concern to business. Quality of local government was ranked as the ninth most important issue in locating a business. Over 50% of respondents identified quality of local government as an important or critical issue for business. The quality of local government was of no concern for 33.5% of respondent businesses.

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Table 2: How important are each of the following factors in deciding to locate your business in regional Australia?

| RANK | IMPORTANCE OF ISSUE | INDEX |
|------|------------------------------------|-------|
| 1 | Lifestyle | 76.9 |
| 2 | Family | 75.6 |
| 3 | Labour force stability | 62.2 |
| 4 | Access to good roads | 58.9 |
| 5 | Proximity to markets | 54.6 |
| 6 | Availability of specialised skills | 52.3 |
| 7 | Proximity to resources | 49.9 |
| 8 | Availability of low cost finance | 46.7 |
| 9 | Quality of local government | 46.6 |
| 10 | Lower Land Costs | 46.4 |
| 11 | Lower wages and other labour costs | 45.1 |
| 12 | Lower transport costs | 42.6 |
| 13 | Tax relief | 42.0 |
| 14 | Lower construction costs | 41.1 |
| 15 | Government subsidies | 40.6 |
| 16 | Local government rate relief | 37.8 |
| 17 | Zone rebates | 35.9 |
| 18 | Access to air transport | 34.4 |
| 19 | Access to rail transport | 33.2 |
| 20 | Access to port facilities | 26.8 |

To some extent there is overlap between the issues of concern to business in choosing a location from which to operate, and the ongoing issues that impact on the operations or growth of the business.

Not all of the ongoing issues are problems per se, but rather they are factors identified by regional business people that influence the running of their business.

12.4 Problems for Regional Business

Despite efforts to significantly improve telecommunications services in regional Australia, quality and access issues was a major concern for the majority of regional businesses. Telecommunications issues were ranked as the top three problems for business.

Over 43% of respondents identified telecommunication costs as a critical business issue, 46.9% identified quality of service as a

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critical issue and 49.7% identified mobile phone coverage and quality as a critical issue.

While businesses did not consider tax issues to be important in their decision to locate, the lack of incentive through the tax system was of major concern. Lack of adequate business tax incentives was identified as a critical issue by 66% of respondents. Concern about the adequacy of the tax system was a critical issue for 33.7% of respondents. However, access to public assistance was a critical issue for only 22.4% of respondents, and of no concern to 15% of respondents. This suggests that business is looking to governments to provide an effective and efficient taxation system that rewards achievement. They are not looking for handouts.

One in three respondents identified local government planning regulations as a critical business issue. Of the total responses, 74.1% identified planning as an important or critical issue. Only 13.9% of respondents said planning regulations were of no concern.

The survey responses on workplace issues highlighted the importance of finding and retaining skilled staff, providing training and flexibility in employment conditions. Almost 46% of respondents identified inflexibility in Award conditions as an important issue in their business. Finding skilled employees is a critical issue for 33.2% of businesses and very important to 28.1% of respondents. Getting training for employees is important or very important for over 77% of respondents, of which 25% identified training as a critical problem.

Concerns about transport are largely confined to transport costs and quality of roads. Access to rail and air are not major issues. Nor is access to major urban centres: 21.5% of respondents were critically concerned about this issue but more than 37% of respondents were not at all concerned.

Table 3: Please indicate how important each of the following problems is in running your business in a regional location.

| RANK | AREA OF CONCERN | INDEX |
|------|-----------------------------------|-------|
| 1 | Mobile phone reception / quality | 74.7 |
| 2 | Telecommunication service | 74.3 |
| 3 | Telecommunication costs | 74.2 |
| 4 | Quality of medical facilities | 73.4 |
| 5 | Quality of education for children | 72.2 |
| 6 | Lack of adequate tax incentives | 69.7 |
| 7 | Transport costs | 69.1 |
| 8 | Availability of jobs for children | 67.9 |

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| RANK | AREA OF CONCERN | INDEX |
|------|--|-------|
| 9 | Finding skilled employees | 67.9 |
| 10 | Inadequate tax system | 64.6 |
| 11 | Quality of cultural facilities | 61.9 |
| 12 | Getting training for employees | 61.5 |
| 13 | Cost of labour | 61.2 |
| 14 | Local Government Planning Laws | 60.3 |
| 15 | Inadequate roads | 58.5 |
| 16 | Inappropriate award conditions | 56.6 |
| 17 | Access to public assistance | 55.7 |
| 18 | Remoteness from suppliers | 55.2 |
| 19 | Cost of finance | 54.4 |
| 20 | Knowledgeable financial assistance | 53.8 |
| 21 | Accessing banking and financial services | 53.3 |
| 22 | Getting adequate finance | 53.1 |
| 23 | Access to major urban centres | 51.1 |
| 24 | Remoteness from markets | 45.0 |
| 25 | Inadequate air transport facilities | 39.3 |
| 26 | Inadequate rail transport facilities | 35.7 |

At a broader level, the responses to this question highlighted the fact that no single policy instrument will solve all of the challenges facing regional business. Nor will those solutions come from the Federal Government alone. Indeed, it is clear from the responses that some issues must also be attacked at State and local government level, where those governments have greater jurisdiction than the Commonwealth.

13 GOVERNMENT PROCUREMENT

Government Procurement is a major market place for Australian business. The Commonwealth Government spends approximately \$8.8 billion on goods and services per annum. It is estimated that the three tiers of government spend \$45 billion per annum on goods and services. ACCI believes it is critically important that government procurement policy allows for increased participation of Australian small business in this lucrative market.

Although difficult to gauge the likely impact on small business employment if small businesses were to gain a larger share of the Government procurement market, it would not be reckless to say that an increase in small business participation, over that of international and/or larger firms, would bolster small business output and would have a positive impact upon hiring intentions. Furthermore, greater small business participation could also stimulate:

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- Increased standards of living;
- The introduction of new and improved technologies (which in turn stimulate economic growth and employment);
- Skills enhancement; and
- New opportunities in other markets not previously recognized.

The Commonwealth Government has recently released new procurement guidelines. The guidelines place considerable focus on 'value for money' as the key government determinant when making purchasing decisions. Value for money is underpinned by four supporting principles: efficiency and effectiveness; accountability and transparency; ethics; and industry development.

While ACCI supports the core principles that Government says underpins its purchasing policy, ACCI believes in practice the principles are not commonly adhered to and do not result in maximum outcomes. Although the new guidelines encompass a range of welcome measures such as a lowering of the Model Industry Development Criteria from \$10 million to \$5 million, and a requirement for Agencies governed by the *Financial Management and Accountability Act 1997* to adopt maximum payment terms 'not exceeding 30 days', there has been little change within these guidelines that would facilitate greater small business participation in the government procurement market.

ACCI believes a more systemic approach should be implemented by those Government Agencies involved in procuring goods and services from domestic and international markets. ACCI believes this approach should:

- Have a legal and administrative framework that facilitates the integration of procurement entities in the public sector into a functional and coherent network with high professional standards that are consistent with international obligations. Such a framework should define the financial and legal responsibilities of all participants in the procurement process;
- Ensure that government procurement entities employ trained personnel who understand the need for efficient procurement systems. Creating these systems generates significant training costs but advanced industrial economies with well developed procurement systems like the OECD countries commit more resources to procurement training than Australia.

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- ACCI believes there are too many government officers making important procurement decisions without appropriate industry development experience or knowledge. ACCI believes that procurement officers must be made aware of the capabilities of Australian small businesses and the economic benefits that they can provide if afforded a greater share of the procurement market. Furthermore, leaving important procurement decisions to less senior staff can create a culture of ‘risk averseness’ that can stifle flexibility in the decision making process. This equates to an environment where procurers become comfortable with existing suppliers and fail to search for other potential suppliers offering better ‘value-for-money’;
- Provide for greater investment in information technology systems, that provide adequate access to data and information, and that facilitate professional networking within the public sector (the recently completed Strategic and Technical Review of the Gazette Publishing System (GaPS) found ‘data quality and system integrity...to be currently poor’. ACCI is hopeful that an appropriate level of funding will be afforded to the GaPS to rectify these problems);
- Give suppliers access to training and information that promotes their competitiveness (ACCI fully supports the role of the Industrial Supplies Office Network [ISONET], the Supplier Access to Major projects program [SAMP], and the Government’s commitment to inject an additional \$9.2 million into ISONET);
- Design and implement effective mechanisms to curb fraud, waste, abuse, corruption and general inefficiency that impedes competition. One such ‘inefficiency’, which is of growing concern to ACCI, is the growing practice of ‘mega-contracting’. While it may in the short term create cost savings for agencies, it means that they become entirely captive of a single large supplier with little or no technical purchasing expertise housed in the client agency. This reduces the ability of the Commonwealth to make strategic purchasing decisions, especially in relation to developing or regional industries. Further, this practice will result more generally in Commonwealth purchasing that does not maximise efficiency and effectiveness in the long run as the relative bargaining position of agencies will be weakened.

14 INNOVATION

Innovation can be defined as applying new ideas to products, processes, services, organisation, management or marketing. However, ‘newness’ by itself is not innovation. Innovation only becomes innovation when it yields market value. Successful innovation is a never-ending process and firms must continually innovate to retain their competitive edge.

ACCI believes innovation policy is not the same as research policy. Research policy is aimed at advancing scientific knowledge, whereas innovation policy is aimed at helping businesses innovate successfully. Put simply, research is a process which converts money into knowledge and innovation is a process which converts knowledge into money. Innovation is therefore what provides the return on the investment in knowledge generation.

The growing globalisation of the economy has increased the challenges and opportunities to Australian small business. Like big business, small businesses today operate in increasingly competitive international and domestic environments. The impact of reduction in trade barriers, and the advent of ‘new technologies’ such as the internet and e-commerce, mean that small businesses must look to innovation to maintain their competitive advantage and prosper into the future.

It is widely accepted that innovation is the key to success for the modern economy. The OECD has estimated that innovation accounts for 50% of long term economic growth in advanced industrial countries. Traditional sources of competitive advantage, like cost and quality, will yield only incremental growth for the firm whereas innovation will provide sustained growth.

In order to encourage innovation it is essential that the government provides an environment that promotes business to invest into research and development of new technologies.

The R&D tax concession system supports individual businesses, both large and small, which judge the market drivers for innovation and make investments in R&D accordingly. There is no element of “picking winners” by Government. The system is relatively flexible and has low compliance costs for industry and Government alike due to the low levels of detailed administration. The market place itself determines the direction of R&D.

The R&D Tax Concession serves three distinct purposes:

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- To promote a higher level of R&D take-up by the businesses sector;
- To signal to industry that R&D should be considered closely as a business investment option; and
- To increase the attractiveness of R&D investment as a home for venture capital from the financial community.

ACCI believes these are highly appropriate policy objectives for Government based on their accepted responsibility to correct market failures and nurture the innovation system.

Despite this, the benefits of the R&D tax concession has been greatly reduced over the past years. A combination of both reduction in the company tax rate and in the concession itself has resulted in a reduction in the Business Expenditure on Research and Development (BERD). Figures released by the Australian Bureau of Statistics (ABS) on 4 June 2001 show that for the last two years expenditure on R&D has declined.

The reduction in the company tax rate has meant that in order for the value of the concession to business to have remained constant, the R&D tax concession would need to be increased to 180%. Instead the Government has responded by reducing the concession to 125%.

The combination of these two factors has seen business respond rationally by reducing the expenditure on R&D.

If the Government does not provide the environment in which to promote investment into R&D, it will restrict the ability of Australian industry in the long term to improve its ability to compete internationally as globalisation continues.

This notion is supported by a recent Yellow Pages, *Business Index – Small and Medium Enterprises* Report which examined the relationship between SMEs and innovation. The survey of 1800 SMEs completed in February 2001 identified the taxation system as the largest inhibitor to innovation.

Further, the survey concluded that structural or supply side factors were particularly important in determining the level of innovation within the Australian SME sector. A major finding was that SME behaviour would be particularly responsive to industry policy settings by Governments. The report suggested that the following supply side factors should be given greater governmental attention if innovation among SMEs was to be enhanced:

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- Cost of and access to finance, skills, technology, research and research organisations;
- Greater focus on capacity creation through provision of appropriate education;
- Improved regulatory and taxation environments.

The Federal Government's Innovation Statement – *Backing Australia's Ability* – has three key elements: strengthening our ability to generate ideas and undertake research; accelerating the commercial application of ideas; and developing and retaining Australian skills. Although this Statement involves Government funding of \$2.9 billion over five years, ACCI is concerned that recent administrative problems with those programmes that promote innovation amongst small businesses may deter, or possibly exclude, small businesses from accessing these programmes.

15 INSURANCE

Without doubt, the current crisis within the public liability, professional indemnity and directors & officers insurance markets is an issue that will increasingly affect all business, especially small business.

Many of the issues associated with the current medical indemnity crisis, and the collapse of United Medical Protection, are systemic to the broader insurance problem and should be viewed with considerable concern.

ACCI believes that other insurance companies providing like cover (eg other forms of professional indemnity and public liability insurance [PLI]) may also experience severe financial difficulty in the future if a more equitable balance between the individual's right to sue, appropriate premiums, appropriate levels of compensation and appropriate allocations of risk cannot be found.

ACCI believes this issue has the potential to significantly increase small business operating costs to an unsustainable level – if it hasn't already done so. The consequence of this being many small businesses will choose not to take out insurance (leaving themselves and their customers vulnerable to financial hardship in the event of an incident); will leave the industry, sector or market altogether; or will be forced to absorb the high liability premiums, placing pressure on their ability to expand.

A recent Victorian Employers' Chamber of Commerce and Industry survey found that the mean (average) increase in PLI premiums

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across all Victorian industries was 80%. The largest increase reported by an individual business was an increase of 800%. A recent Chamber of Commerce and Industry of Western Australia survey of 350 West Australian organisations found that the median increase in PLI premiums was 35% over the last year. As the greater percentage of respondents to these surveys are small businesses, there is clear evidence to suggest that the financial impact of PLI premium increases on small businesses is substantial.

The recent PLI Forum attended by State, Territory and Federal Ministers has given formal recognition to the problems at hand. ACCI now calls on the State and Territory Governments to actively implement the agreed outcomes of this forum and seek to pursue other substantial reforms - for example, further tort law reform and co-insurance pooling.

16 PLANNING LAWS

Government planning laws, in restricting the development of shopping centres, create anti-competitive 'franchises' for shopping centre owners/developers. While such laws have been assumed to be for the public benefit, their resultant 'franchises' are jealously held and fiercely defended by the shopping centre owners holding the 'franchises'.

The anti-competitive forces characteristic of the 'franchises', impact negatively on small and specialty retail tenants' businesses in those centres.

High and escalating occupancy costs (for many small and specialty retailers, now their largest operating cost ahead of retailing's traditionally largest operating cost - labour) and other practices brought about by those anti-competitive forces have reduced the proportion of funds deployed on labour by those tenants and hampered their ongoing capacity to employ.

Particularly in respect of regional shopping centres, the planning laws have restricted development now to expansion of existing centres rather than any further greenfield sites. Such expansions have resulted in lower sales per square metre in such centres, reducing tenants gross profits and further exacerbating their capacity to employ.

*SENATE INQUIRY INTO SMALL BUSINESS EMPLOYMENT***17 E-COMMERCE**

Electronic commerce (E-Commerce) offers enormous potential to improve the efficiency and competitiveness of small business. Opportunities to reduce costs, via simplified accounting or invoicing procedures, or more efficient inventory management systems, marketing opportunities and trading efficiencies are all potential benefits to those trading online.

Whilst the Australian economy has already received significant productivity gains⁴² as a result of the application of e-commerce, there remains significant benefits particularly for small business who have been relatively slow at adopting this new technology.

The barriers to electronic commerce uptake amongst SMEs are numerous, including: understanding of technology; training; awareness of potential benefits; security concerns; inability to manage technology; and change management.

The Government has an important role in promoting the uptake of electronic commerce within SMEs. To date, efforts by the Government to increase the uptake of e-commerce by businesses has focused on four key areas:

- Raising awareness of the benefits of electronic commerce through case studies of successful SMEs
- Providing information regarding privacy and security online
- Encouraging SMEs to trade online with Government
- Identifying ways of obtaining further information about adopting electronic commerce.

Whilst there has been merit in these initiatives the delivery of the information to SMEs has been poor.

The Government does, however, have a role as an exemplar of e-commerce. Whilst efforts by the Government to lead in the field of e-procurement have not taken off, there is enormous potential for Government to reduce the compliance cost on business from regulation by allowing businesses, where appropriate, to comply with regulations online. Compliance with numerous Government regulations can be onerous and allowing electronic lodgement of compliance reports/returns can ease this burden and also provide the opportunity for Government to lead business to electronic commerce.

⁴² The new Economy: Beyond the Hype' Final Report on the OECD Growth Project, OECD, 2001

18 PRIVACY

Under the broad heading of regulatory impact, it can easily be glossed over how government regulation impacts heavily on small business, particularly the smaller end, often known as micro business.

An example of how a policy issue can get a life of its own and then disproportionately impact upon business is the introduction of the privacy regime to regulate the use of information by the private sector from last year.

ACCI supports a comprehensive data protection framework for the private sector. The amendments to the *Privacy Act 1998*, according to the Explanatory Memorandum and Second Reading Speech, were aimed at striking a balance between protecting privacy and allowing the free flow of information while not imposing a burdensome cost to business. ACCI is concerned that the privacy regime is complex and costly for business to implement.

The *Privacy Amendment (Private Sector) Act 2000* came into effect for most organisations on 21 December 2001. Except for health service providers, government contractors, and those that trade in information, the small business sector has until 21 December 2002 to determine whether they are exempt from the legislation. The object of the Act is to regulate the way private sector organisations can collect, use, keep, secure and disclose personal information.

During 2001, the Federal Privacy Commissioner developed various guidelines to interpret the law. The guidelines do not fully recognise the likely impact on business in terms of cost and compliance. There is lip service in various parts of the documents to costs for business. It appears, wherever there was an opportunity to err on the side of making it simpler on business in terms of compliance, the guidelines place the perceived interests of consumers ahead of business needs. The balance of interests always appears to favour the consumer.

In the guidelines, there are no assessments of the set up, implementation and ongoing costs of compliance to the regime, and a recognition that the consumer will ultimately pay.

In particular, the workability of the *National Privacy Principles Guidelines* in a practical sense is in doubt, especially for those small businesses covered by the legislation. They pre-suppose a level of resourcing and sophistication that many smaller businesses do not have.

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We are particularly concerned about how the sole-operator health service provider and the micro health businesses comply. Given that health information is a key focus of the privacy advocacy community, those businesses may find it difficult to comply.

ACCI advocates a private sector privacy regime for businesses that collect, use, purchase, disclose, or store personal information on individuals based on a light touch regulatory model that provides national consistency, minimal compliance costs for business, and certainty for consumers in the private sector's handling of personal information.

Australian Chamber of Commerce and Industry has called on the Office of the Federal Privacy Commissioner to prepare an adequate education and awareness campaign that will clearly identify the steps necessary for organisations to comply with the *Privacy Amendment (Private Sector) Act 2000*. This awareness program has not been forthcoming, and indeed this year the Federal Privacy Commissioner has stated that he is turning his attention to educating consumers about their rights.

Awareness by the business community of its obligations under the privacy regime has been growing. This is in part due to increased media coverage of the issue, ACCI and its Members, and other industry associations raising the issue, and also commercial providers, including the larger law and accounting firms, operating in the market place - not because businesses have received many complaints.

The cost for business of compliance is significant but there appears to be options other than the high cost solutions offered by some. For instance the Australian Information Industries Association's privacy toolkit developed in conjunction with Ernst & Young sells for its members at \$2000 (+GST) and for non-members at \$5000 (+GST). The Australian Privacy Network also offers businesses the opportunity to join its code for \$5000.

Some ACCI Members have developed advice and information for their members, including Australian Business Limited which has developed a CD Rom.

While initial set-up costs including an audit of existing procedures, development of a privacy policy, training of staff, re-engineering of processes and printing may be seen as either ongoing or not significant by some, for a small business, the impost of another issue on which to comply may be the difference between hiring another employee or not. Costs for businesses have to be borne

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across the business. Often not employing more staff may be the consequence of meeting regulatory obligations such as the privacy regime.

19 COST RECOVERY

The trend of Government regulatory agencies charging business for the cost of regulation has become a significant financial burden on business, particularly small business.

The Productivity Commission (PC) estimates that charges to business from Government regulatory and information agencies have grown by 24% in real terms over the past 5 years (PC report on Cost Recovery Page XXVIII). This growth has occurred without oversight or guidance resulting in a distortion of Government resource allocation and an impediment for businesses to innovate.

The Productivity Commission recommended that the Government adopt a set of guidelines to ensure a consistent whole of Government approach to cost recovery. These Guidelines were also aimed at ensuring that regulatory agencies operated in an efficient and transparent way. The Government released an interim response to this report on 14 March 2002. This response agreed in principle with the recommendations of the Productivity Commission and the Government is currently developing a more detailed response to these guidelines.

Whilst the policy vacuum surrounding this issue is now well documented in the PC Report on Cost Recovery, the Government has continued to introduce new charges on business for activities from which they receive little or no benefit.

In the Federal Budget of 1999/2000, the Government announced additional funding through the Tough on Drugs Policy for the “purchase of X-ray technology to enhance capacity for drug detection at the nation’s borders” (1999/2000 Budget Paper No. 2, Page 46).

Unfortunately the evolution of this policy through government has now resulted in business being forced to pay for ongoing costs associated with this policy.

The trend for the Government to charge business for activities which are ‘public goods’ - that is, activities from which everyone receives a benefit and from which no one can be excluded from benefiting - is contrary to the principles of good public policy.

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ACCI believes that it is inappropriate for the Government to impose a fee on business for an activity that provides a public good such as the detection of illegal drugs and other contraband. In this particular case the policy is even more questionable when it is recognised that the Government will receive a financial windfall in the form of increased revenue from the X-Ray activities.

ACCI does recognise that there may be some marginal benefits that flow through to specific industries as a result of some regulatory arrangements. However, in almost all situations, the primary reason for regulation is to protect public health and safety or the environment, all of which are public goods.

The logic of imposing a levy on business for an activity that has the primary purpose of protecting all Australians is not good public policy.

20 CONCLUSION

To increase small business employment small businesses need to be provided with an environment conducive to enhanced efficiency and stability, and opportunities for growth and expansion.

ACCI believes that the vitality of the small business sector is dependent upon a number of factors – many of which are raised in this submission. ACCI calls on all tiers of government to look to the small business sector as a key component of economic vitality and begin to assess more closely measures that will promote its well-being.