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EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION
REFERENCES COMMITTEE

Reference: Small business employment

Roundtable

FRIDAY, 13 SEPTEMBER 2002

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SENATE
EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION
REFERENCES COMMITTEE

Friday, 13 September 2002

Members: Senator George Campbell (*Chair*), Senator Tierney (*Deputy Chair*), Senators Barnett, Carr, Crossin and Stott Despoja

Substitute members: Senator Conroy for Senator Carr

Participating members: Senators Abetz, Boswell, Buckland, Chapman, Cherry, Collins, Coonan, Denman, Eggleston, Chris Evans, Faulkner, Ferguson, Ferris, Forshaw, Harradine, Harris, Hutchins, Johnston, Knowles, Lees, Lightfoot, Ludwig, Mason, McGauran, Murphy, Nettle, Payne, Sherry, Watson and Webber

Senators in attendance: Senators Barnett, George Campbell and Conroy

Terms of reference for the inquiry:

To inquire into and report on:

1. The effect of government regulation on employment in small business, specifically including the areas of workplace relations, taxation, superannuation, occupational health and safety, local government, planning and tenancy laws.
2. The special needs and circumstances of small business, and the key factors that have an effect on the capacity of small business to employ more people.
3. The extent to which the complexity and duplication of regulation by Commonwealth, state and territory government inhibits growth or performance in the small business factor.
4. Measures that would enhance the capacity of small business to employ more people.

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Committee met at 11.49 a.m.

GRIFFIN, Mr Malcolm Hepburn, Planning and Development Policy Officer, Local Government Association of Queensland

LEYLAND, Mr Mark James, Finance and Governance Adviser, Local Government Association of Queensland Inc.

JENTZ, Ms Helen, Principal Adviser, Public Policy and Economics, Commerce Queensland

PANITZ, Mr Mark James, Chief Advocate, Queensland Fruit and Vegetable Growers

WHITE, Mr David Michael, Member, Small Business Centre of Excellence, CPA Australia

CHAIR—I declare open this hearing on business regulation and employment issues. The Senate Employment, Workplace Relations and Education Committee is conducting a series of roundtable meetings with small business people and, in some cases, those who work with small business. The committee is also holding more formal public hearings with input from those who have made submissions to the inquiry. The purpose of this roundtable discussion is to provide an opportunity to explore the issues of reducing the burden of regulation in more detail with those who have some insight into different approaches to regulation and its reduction.

We are interested in your assessment of approaches to reducing or minimising the burden of regulation—what works and why, and what does not work and why. You may wish to comment on the benefits and, perhaps, limitations of different approaches such as: codes of practice, model legislation, regulation impact statements, SmartLicence and other approaches to streamlining licence applications, current consultative models for regulation makers, pilot testing of the implementation of regulations, a facilitative rather than punitive approach, one-stop shops, and other approaches to assist small business to understand and meet their compliance obligations. We would also welcome any insights you may have on why the burden of regulation appears to be increasing at a time when most governments appear to have introduced a range of different initiatives to reduce or minimise the regulatory burden, such as regulatory impact statements. Do the current initiatives not work or are they not implemented fully? Is there a need for a full audit of regulation at all levels of government? Is such a thing feasible?

Although these roundtable discussions are meant to be informal, we are bound to observe one important rule of the Senate with regard to privilege: this discussion is privileged, and you are protected from legal proceedings with regard to what you may say. Hansard will produce a verbatim transcript of evidence, which will be provided to participants and will be available on the committee's Internet site as official documentation of the committee's proceedings. This recording is not intended to inhibit informal discussion. We can go in camera if you want to put something to the committee in confidence. However, I point out that such evidence is often difficult to report in an inquiry of this nature and, in any event, the Senate may order the release of such evidence. I welcome the witnesses here today. Do you have any comments to make on the capacity in which you appear?

Mr White—I sit on a number of small business committees and on the state government Red Tape Reduction Task Force.

CHAIR—Throughout this inquiry, at all the roundtables and at some of the formal hearings, we have had a lot of businesses talk to us about the plethora of compliance issues they have to deal with. Some have gone to the extent of saying that the burden is so great that it is actually forcing them to operate illegally. In many respects, they have been forced into the black economy because of the whole burden of compliance: the GST, BAS statements, health and safety regulations—a whole raft of issues.

Back in 1996 or 1997 we had the Prime Minister saying that the government were going to cut red tape by 50 per cent at the national level; we have the red tape reduction approach in Queensland; we have other governments looking at regulatory mechanisms; and a number of state governments have introduced impact statements on small business in terms of their cabinet submissions. But, when we sit down and talk to small businesses, they all say that everything has gone in the opposite direction. So either the message is not getting out to them or the mechanisms being put in place by government to deal with red tape compliance issues obviously are not working. We are keen to hear from you about what is going on. What is happening in your working parties looking at this red tape reduction? Is there a real capacity to reduce it or are we filling in around the edges? Do we have to live with an environment where regulation is a way of life and find ways and means of coping with it?

Mr White—There is a lot of regulation. Regulation is coming about sometimes from business itself. Businesses are running it and they see their competitors not running it as well as they are. One way is that they will want to regulate and have a standard set and from that they get licences brought into play, which will then keep people out of business. So it can be an anti-competitive situation and I do not think it is all necessarily coming from government. We have to look at where the requests for regulation are coming from.

We have been doing some work the RISs. The process of RISs, I believe, should be the way the whole thing is done. There should not be a need for an RIS. If you took what is required in an RIS, if you have a problem you go and talk to people who are going to be affected by it at the very start. As I see it at the moment, we seem to be getting a lot of regulation written and the last thing to be done is a regulatory impact statement. This is then seen as a damn burden on everybody. It is not given much thought and a lot of people see it as a waste of time. People look at it as a *fait accompli*, the regulations will be coming through anyway, and doing that is not adding anything to it.

But if the process of the regulatory impact statement was the total process and you went at the very beginning and called the people together who were going to be affected by it and looked at it at that point, then you could be looking at some alternatives to black letter regulation—that is, you could have some codes of conduct, some guidelines, some self-regulatory situations. I like looking at the accounting profession. Good or bad, we are self-regulatory, and I think overall we have not got too bad a record. We might look at some of the audit situations of late, but overall I think the accounting profession does not do too bad a job at regulating itself.

Senator CONROY—Hasn't the CPA recently announced a position where it supported an oversight board to complement the existing self-regulation?

Mr White—I hope it stays within the accounting profession and does not go outside.

Senator CONROY—We will find out next week.

Ms Jentz—Firstly, I would like to support what Senator Campbell was saying in terms of a lot of research—particularly Queensland focused—that we have done over the last number of months, and I have brought some documents that I will leave with the inquiry to have a look over. In our most recent survey we have really focused on trying to get Queensland business views on non-wage on-costs that they saw as being a particular impost upon their business and their growth. Obviously, Queensland is predominantly made up of small business so most of the respondents to these questions were from the small business area.

You can very easily identify the key areas that they see as preventing their business from growing or expanding or even turning a decent profit, I would say. They are areas like taxation, for example, and workplace health and safety, which is an all-encompassing issue not just for small business but also across the board. To a smaller extent you have things like the training and superannuation imposts and those sorts of things.

I truly believe—and I would like to say, firstly, straight off the bat—that employers in the main wish to do the right thing. They wish to operate their business in a way that complies with government regulation and also makes money, which is the point of being in business. In particular, in small business they become so overwhelmed by what they have to address that they start to cut corners and not do things correctly.

How do we address this? I think there will have to be a whole-of government approach to this, and when I say ‘whole-of-government’ I do not simply mean from the parliamentary level. This really has to operate in terms of a departmental culture shift. You have to move the government departments into understanding that they are not working in isolation, that the regulatory requirements of their department, when combined with the regulatory requirements of five other departments, place business owners in a particularly onerous position of delivering and complying with all those regulations. As David said, the work of the RTRF has been to try to overcome that silo mentality that has developed within the departments. But that is a big cultural shift. I think it has to be led from the top, but there also has to be a groundswell of inspectors and people working with industry directly to create that balance and understanding of how these things actually affect business operation.

Mr Griffin—Certainly in the planning field, local government would acknowledge that there have been increasing expectations and demands in regulations and compliance, particularly with planning developments. Councils probably struggle just as much with the complexity of what land use planning schemes now require and the rolling in of environmental issues, licences and those sorts of issues, particularly as they are primarily responding to either state legislation or community expectation. In the last 10 years at least, there has been a significant increase in community expectations about environmental performance, amenity, urban design and those sorts of issues, which councils are seeking to implement in a policy sense and then apply. That is probably more a statement rather than a question, but councils would acknowledge that there has been an increase in regulatory control through planning schemes in that regard.

CHAIR—Is there anything that councils have done, are doing or are looking at in this area that might be helpful?

Mr Griffin—In response to state legislation, the way planning schemes are now being prepared is performance based. Previously they were very arbitrary, and they are now based much more on a system where it is relatively simple and easy for an applicant, if they can demonstrate that they are not going to have an impact, to go through that process. The difficulty for applicants is that in a performance based system it is not necessarily clear straight away—they have to go through a process to get the approval. So although there is increasing flexibility, there is probably increasing uncertainty.

Ms Jentz—Following on from what Mr Griffin was saying, the RTRF has recently become aware of a development—or we have been aware of it as the process has been going through—at the Environment Protection Agency in Queensland. That agency has been very much targeted by industry for their regulatory and licensing requirements, which are particularly onerous and complex and lacking consistency—there have been criticisms across the board. One process that they have instigated and the RTRF supported wholeheartedly was the development of a program where businesses have a case manager. The EPA is putting into place processes where a business will have one point of contact in that department, and that person will manage that business's case from beginning to end. That gives business the consistency they need to work through the process, and they know that if they have a problem with a licensing issue, they can contact their case manager. Whether their case manager can answer their question or not, the case manager then says, 'I will get back to you in 24 hours,' and they go and find the right person to get the information and deliver it to the business. I certainly believe that is affording business a security of consistency through the entire regulatory process, and that is a very positive strategy and process that the EPA has put in place.

Senator BARNETT—Does that only apply to big business or does it apply to all business?

Ms Jentz—All business: anyone who has any licensing requirements through the Environment Protection Agency are going through this process.

Senator BARNETT—Do you think it can apply to other government departments?

Ms Jentz—I think it should.

Senator BARNETT—Good.

Mr White—I would back Helen up on that. Further to that, as Helen mentioned a couple of times, businesses require consistency and being able to get a consistent answer. You often find that you will ring a department and get an answer on one thing and then you will ring another department—or even the same department—and there will be a completely different answer. Another thing that I find in dealing with small business, from the point of view of my own practice, is that we do not seem to have any consistency even of definitions. I like to use the example of 'wage'. The federal government, or the Taxation Office, will define a wage a certain way. The insurance industry, which are ex-government, will have a different definition of wage, because they are all raising premiums or revenue from it. When you go to WorkCover you will

probably find—I am not absolutely sure—that there is a different definition of wage in each of the state jurisdictions around Australia, and then you go to payroll tax.

I have often thought that, from a record keeping point of view, different definitions add a hell of a lot of expense to business. They are running their wage records, then they have to add on fringe benefits—grossed up or not grossed up and plus or minus superannuation, voluntary or under super guarantee—and they end up having to report to various bodies different answers for the same things, depending on definitions. I have often thought that we should have a dictionary in the law process that says, ‘A wage is a wage; this is the definition.’ If you want to raise so much revenue, change the rate, but for heaven’s sake do not change the definition of the activity. If you want to raise some more money, make it five per cent instead of 4.75 per cent.

Here in Queensland they have reduced the payroll tax rate from 4.85 per cent to 4.75 per cent, and we reckon we are all paying more because they have added taxable fringe benefits onto wage. From a business—not necessarily small business—point of view, that means that a new calculation has to be done. That calculation will be separate for payroll tax and it will be different for WorkCover, for insurance purposes—public liability or whatever—and for the ATO. That is a small example of what business runs up against. You can put it under the heading of consistency, I think.

Senator BARNETT—Has your task force made that recommendation, and have you received a response?

Mr White—No, we have not. It has always been more of a personal thing of mine, but I raise it whenever I get an opportunity. I think it is a serious situation. It is probably a small thing, and I know it is easier to sell 4.75 per cent than 4.85 per cent, but you still want to collect the same amount of money, if not a bit more, and I see it as a sleight of hand.

Mr Panitz—From the perspective of the fruit and vegetable industry—and we are typical of a lot of rural industry to a certain extent but atypical in other areas—there is a very strong feeling that the layer of red tape is a non-productive area of business. It is not facilitating business; it is inhibiting business, so it is an increasing burden. The main areas of concern are environment, employment and tax—three separate areas where changes or innovations in the last few years have increased the burden on producers. That is also overlaid by the interface between Commonwealth and state legislation in some areas, particularly environment. For example, the federal Environment Protection and Biodiversity Conservation Act is principally about environmental performance and protecting species; it does not take into account any social or economic impacts of those decisions. They are outside its scope, and any changes in environmental laws have no economic overlay. So the message that growers are getting is, ‘That’s the law; you now wear it,’ without any compensation or any acknowledgment of the impact it could have.

The other issue of significance, particularly to our people, is employment. We employ a lot of part-time and short-term labour because of harvest seasons, and the process of making sure that you are employing the right sort of person, who is legally able to work, is extremely onerous, particularly when you are at the peak time of year in terms of the harvest. It is very busy; you have a high turnover of people; your crop is in the ground, on the trees or whatever; and you do not have time to worry about ringing a hotline to find out whether or not somebody is able to be

employed—you have to get onto the job very quickly. Mechanisms need to be put in place to allow that to occur.

Senator BARNETT—You mentioned a third one—you were going to talk about tax as well.

Mr Panitz—The GST in our sector has been another overlay that has increased the tax burden. It was mentioned before that it is not just one increased burden; it is one on top of the other on top of the other.

Senator BARNETT—You have not mentioned competition issues. For small businesses in the fruit and vegetable and certainly the retail grocery sector, that has been a big issue in this inquiry and just from my own personal knowledge. Do you believe that fair trade is an issue, particularly with respect to section 46 of the Trade Practices Act, misuse of market power, and the need for a more level playing field and fair competition, particularly with the major chains? Do you want to comment on that?

Mr Panitz—Yes. There are some major issues in the supply chain from growers through to retailers, both at the retail end because of the concentration of market power and in the wholesale sector—the sector in between—to ensure that that sector provides transparency in and accountability of the transaction. So there are major issues there that are competitive in nature but also put extremely significant financial and economic performance pressure on an individual producer.

Senator BARNETT—Have you put in a submission to the Dawson committee?

Mr Panitz—Yes, we have. Also, the Retail Industry Grocery Ombudsman has been set up, and we have had a lot of interaction in that process. It is being reviewed next year, and we are starting our planning process about what that has delivered, where it has not delivered and what changes we need to get in place.

CHAIR—This is a set of circumstances where you are seeking more regulation?

Mr Panitz—It could be regulation; it could be codes of practice. We want better outcomes for our producers—that is the bottom line. How we get them might be a mix of regulation or some other matters. For the Dawson committee inquiry we have joined forces with some other small business groups to put forward a position there.

Senator BARNETT—Yes, I have seen that submission. So what you are saying is that tougher or fairer competition will be better for small business jobs growth—to make sure that it is fairer and that there is a level playing field?

Mr Panitz—Our people want to compete in a fair marketplace. They need to know that they are competing, as you say, on a level playing field. Then it is all out in the open; they can do business as they see fit.

Mr Leyland—I want to make a comment on the record keeping associated with the regulations. In local government and probably in most businesses around the place, we are required—to protect ourselves—to be able to give evidence of our due diligence in terms of environmental

protection law and workplace health and safety law. For our own purposes we do the same sort of thing for quality assurance to ensure that our operations are running smoothly. Record keeping and maintenance of records over a fair period of time is required in order to demonstrate due diligence. One thought that is out there in local government—in some councils, anyhow—is to try to combine those requirements into one procedure manual and one system. It strikes me that most organisations would have similar sorts of issues and that there might be some merit in a commonality, not just in record keeping for EPA purposes but also for workplace health and safety, because out in the workplace they all come together. If there is a chemical spill, it is a workplace health and safety issue, it is an environmental issue and it is a quality issue. There are councils who are working on this off their own bat, but maybe it is something that could be addressed at a higher level—to be able to demonstrate due diligence as well as make sure that there is no duplication of record keeping and no duplication of policy and procedures.

CHAIR—Mr White and Ms Jentz, was there any evidence in your inquiry of a lot of duplication occurring between the three layers of government? Could you identify any areas where this is happening?

Mr White—Our Red Tape Reduction Task Force has been going for about six years—it has been a continuing task force. When we have pretty well stuck to state legislation and left the federal level out of it, that issue has not really come up at all. It is mainly state regulation that we are looking at—and we have just begun to look at it with the Local Government Association. We have done an exercise with Logan City Council on the regulatory systems and what is required down there. The results of those exercises are only just out. We do find duplication; that is one of the big problems. The type of thing that Mark is talking about follows along, I guess, from my talk about the common definition. There is information out there being sought by a number of people which is virtually exactly the same, and records used for one thing can certainly be used for others without duplication. You will always find that somebody will want something slightly different from somebody else, but basically it ties down to being pretty much the same thing.

We have only just introduced *Queensland Regulations—Have Your Say!* We have set up a web site in Queensland now. All new legislation and regulations go onto that site, and people who have an interest in it can make their own comments. Where legislation was going to affect our members we would find out about it and we would be asked for comment. The comment period would be a week—a week in which to try to get a committee of volunteers together to have a look at that and come back with any meaningful comment. That has been a bug of ours, from the CPA point of view. You throw your arms in the air and say, ‘What’s the point?’ Then you feel that all the government want is to be able to say, ‘We consulted with the CPAs’—or the Law Institute, or the growers. Getting back to that RIS process, which starts where somebody has called for some regulation: at the very point where the call is made all interested parties should be pulled in together, such as the EPA, the local government authorities and the Department of Primary Industries—anybody who may have a particular interest.

You also have to look at where this request is coming from. Is it coming from business? Is it coming from the consumer? Is it coming from the parliamentarians? Is it coming from the bureaucracy itself? And why is there a need for it? These are the things that should be done, dare I say it, at the very beginning of the process of arriving at a regulation. Early notification that

these things are on the way is something we have been calling for for a long time. We see it as a step forward to have set up this web site where people are invited to have their say.

CHAIR—Are you getting much response to that?

Mr White—It has only just come up. In our own organisation, ourselves and the institute have had it demonstrated. I think it was only in July. Our people who are involved with it have commented that they are delighted with it. At this early stage it is probably only going to include the legislation that is coming on stream from now on. Legislation which is already in the pipeline is probably getting too close and it may be too late for that. I guess we have to let it work for a year or so to find out how it is being used.

Mr Leyland—I saw that regulated reform web site announced and checked into it. I would suggest an improvement be made that would enable people to register with it so that, as new information arrives, they get flagged about it. Many of us might be aware of it but will forget about it in two months time and not bother to go and check it.

Mr White—I understand that a facility where you can leave details is available. I know our people have given their areas of interest and they will be emailed when something drops onto the site. So I believe that facility is presently available and that you can register with it.

CHAIR—So that would give it a proactive role.

Ms Jentz—I would like to clarify that we have been focusing on regulation and the onerous nature of that government concept. Commerce Queensland has always said that there are areas that businesses work in that do require regulating. It is as simple as that. There are areas where businesses must know what their legal obligations are to enable them to be in business, obviously. However, over the years as regulations have developed and supposedly progressed they have become more and more complex. That issue has to be addressed. Perhaps there needs to be a step back to really assess how required regulations—and you can talk about workplace health and safety, taxation or the environment—are delivered into the marketplace.

My argument, and I believe it is the argument of the Red Tape Reduction Task Force, is that simplicity is the key here. You do have to put things in ‘plain English’, if you want to use the new catchphrase in the legal fraternity. The more simple the regulations the easier it is for business to comply. It is a basic premise. There has to be something put in place, leading on from what David has said, when we start at the front-end of the process—for example, a need has been identified, let us get all of the relevant stakeholders together and start nutting out what exactly that need is and how we are going to address it. For instance, do we need to regulate? Do we simply need a code of conduct that businesses can gain guidelines from? How will it be best to couch those words if we are going down a regulatory path?

Mr White—I guess at some point you have to ask: why regulation? If you look at the meaning of regulation it is to get people to move from a position here to a position there. We do that by rules and by regulation. In that moving, are there better ways than black-letter law to move a community, a group or a business from one point to another. Regulation is part of that, but there are other ways and means—either by self or by putting out examples of ‘this is a better way to

do things'. If it cannot be done by regulation, we want to be able to try ways other than beating the stick.

It is essential when bringing down this legislation that there is enforcement. We see that some people will adhere to the regulation but others will not, yet nothing will happen to them because there are no means of enforcing it. You can say, 'Yes, we will enforce this; there will be penalties,' but if you have a good look you find that there are no enforcers; it is a bluff. Because of that you can get a situation where you have part of a business community that will not be incurring costs, that will thumb its nose and say, 'I will run the risk. My chances of getting caught are one in 1,000 or one in 1,500.' So I do not think it is worth bringing in regulation unless it can be effectively enforced.

Senator BARNETT—Do you have a view on how many small businesses would be operating in the breach?

Mr White—It depends on which particular areas you want to run into. You will probably find that the areas not running into the breach will be those areas where there is more visible enforcement. If taxation is one particular area you want to run to, you just say, 'How is the black economy running?' That is only running because of lack of enforcement. You have to look at a cost-benefit analysis of how much tax we are losing against the cost of having every second Australian tax officer. You have to rely on people dobbing others in. The tax office does more through people dobbing in than it does through its own resources—currently anyway.

CHAIR—I do not know if this is something your task force has looked at, but how do you measure the extent to which you have to regulate to get the outcome? It seems to me that in some areas you have a lot of overregulation because people are uncertain that they will get the outcome. A classic expression of that is if you look at rugby league and compare it with American gridiron. American gridiron is regulated to buggery. It is regulated that much it is boring to watch whereas, with the other game, essentially you have the same outcomes but it is much more attractive from a spectator point of view because there is not the degree of regulation in it and there is a good degree of flexibility in the process. So it is a question of: to what degree do you have to put in regulations to ensure you get the sort of outcome that you are looking for—whether that is ever measured or attempted to be measured in the process?

Mr White—You have to say at the very beginning, 'What do you want as an outcome?' To me, that regulatory impact process should really be the whole process. As I see it, at the moment it is a separate situation. Rather than call it a process, let us say, 'These are the steps you take to get to regulations,' and tick them off as we go through. Right at the very beginning, one of those steps is to ask: 'What is the outcome we want?' We might want a clean creek or river or something like that. To do that, we have to ask: 'What have we got in place at the moment in the form of regulation, and is that regulation succeeding or failing to get to this outcome?' If it is failing, it may be that that regulation needs to be stiffened, without putting in any new regulation, or it may be that we should get rid of all of that regulation and bring in something else, but that should be done—as I see it—right at the very beginning. These things should be ticked off and we should say, 'Yes, we have gone through that and, out of that, this is what we see as the best process.' Then we would go on. Doing that in the early stages could change what we are faced with right now. I am working a little in taxation and I certainly see it in that area. I hate the word 'simple'. Whenever I see the word 'simple' I say, 'Here we go

again; it is complex,' and a lot of it is because too many words are put in the whole thing. Once you put an extra word in, there are extra meanings and people shuffle them. But you would have to go through those steps. I know that will not relieve the situation today, but it might have an effect in five years time if we can start doing that when we are looking at what we want to get to and how we are going to achieve it.

Ms Jentz—I attended the opening of Workplace Health and Safety Week on Tuesday. The minister called a summit to discuss issues relating to WH&S or OH&S. From a business perspective, what has emerged very clearly from that summit is that there has to be more to regulation than simply the avoidance of prosecution as the outcome. With a lot of the regulations that are put in place at the moment, particularly those in the OH&S area, that is how you get business to comply: the impetus to get business to comply is simply the avoidance of prosecution at the other end. From the summit's discussions—and to Commerce Queensland's way of thinking—that does not seem to be a particularly productive way to approach regulation.

There has to be more substance to a regulation than that. It has to relate to some form of public perception: by complying with workplace health and safety regulations do you (a) avoid deaths in the workplace and (b) avoid grievous bodily harm accidents, so your workers are safe and your business is productive? There is a community benefit in complying with that regulation, so you get more of a good corporate citizen concept, whereas the focus now is simply on this: I have to put workplace health and safety risk management processes in place so I do not get prosecuted at the other end.

Mr Griffin—To pick up that point, a number of primary producers are getting increasingly concerned about the level of regulation that local governments are starting to look at, particularly for the cotton, dairy and sugarcane industries. They were very keen on their concept of local governments accepting or acknowledging professional codes of practice and accepting that as the regulation, knowing that if the particular local government would accept that then it did not need to provide further regulations through its planning schemes. Certainly those codes of practice dealt a lot with the situation that if that was adopted and picked up by the producer then there was a market differentiation and they could trade on that as well. So there was a positive there for that particular industry, and certainly those industries were keen to look for councils to accept that as a self-regulation sort of process.

Mr Panitz—I can confirm that, particularly in the environmental performance area, a self-regulatory code of practice is the best approach, because of changing circumstances in different regions and with different crops. There is a range of different issues there. However, our industry would still be in favour of a base level of regulation in some areas, particularly in the area of workplace health and safety, where people's lives and health are at stake, so there would be a benchmark there but, on top of that, they could still implement that in their businesses with a code of practice type of approach.

Mr Griffin—To carry on that discussion, local governments are faced with increasing community expectations about environmental performance and so on, and it is always going to be the case that you are regulating as well for the bad operator who is always going to be a bad operator. I suppose the difficulty in that is that you have to introduce something which is uniform. It is the same situation across all industries; I suppose it is the same problem everywhere.

Mr White—Picking up on that, I sometimes believe, from the bureaucratic or administrative point of view of government, that the more resources in government that are tied up ticking the good boys takes away from the government resources in attacking the bad boys. I look at ASIC with its annual returns. Admittedly these forms have certainly reduced. We are still waiting but hopefully by next year we will not have to lodge any annual returns and lodgement will be on a change basis only. I would think that then, from ASIC's point of view, a whole lot of resources and moneys will be taken away from routine checking and will be able to be put into those.

I often think that so much money was tied up in ASIC in checking and in i-dotting and in asking where people were born that it was no wonder that Christopher Skase got away. The resources were all tied up in the wrong area and the actual enforcement area got little or none. Even people within government must be screaming over some of this legislation. Some of the employees of government have to go through, ticking things off and seeing to it that, yes, everything is okay and that that covers 95 per cent—'Yes, we have done that.' Whereas the other five per cent that are the rogues are getting away scot-free because there are not any resources: they are taken up with checking on the people who are doing everything properly. So there are areas like that that probably need to be examined. Coming back to codes of practice, we could even ask these questions. From a government point of view, why do we need this information? Are there other ways of doing it which would bring everybody into line with worthwhile regulation?

Ms Jentz—Following on from what David just said, under the current review of the Workplace Health and Safety Act going on in Queensland at the moment we have been pushing for a change in focus—exactly what David said. There is a large proportion of industry doing the right thing, trying to achieve the right compliance within their business to make their business a healthy and safe workplace, and there are the rogue industries or businesses that are not: they just thumb their noses at it. The division tends to focus on those that are complying to make sure they keep complying. We have put up several suggestions to the government, saying, 'Let's acknowledge that these businesses are doing the right thing. Let's look at the New South Wales model where businesses who put in risk management plans and successfully implement them and operate them for a 12-month period get a premium reduction on their WorkCover premiums.' So you actually set up the regulation to be something of benefit. You say: 'If you do the required steps under the regulation, you're going to get a benefit at the other end, rather than, "We are just going to keep hounding you until the point where we may catch you and then we're going to prosecute you."' So I really think that these are options. Those who enforce the regulations that do exist should go that one step further to see how we can make regulation a more positive thing to be complied with rather than such a negative thing.

Senator BARNETT—We had a witness in Tasmania who presented a scenario to us to establish a petrol station and general store. They had to obtain up to 22 separate licences, permits and approvals. I think to myself as a former small business person, 'Why do you want to be in the job? How can you survive the red tape quagmire?' I put this to the DSD people yesterday and they said, yes, they thought that that could be a similar number in Queensland. They did not have a view other than the fact that they thought it sounded consistent. I thought, 'This is tough going, isn't it?'

In regard to red tape generally, we have received a number of submissions putting forward ideas and initiatives. Would you comment on some of these that I am about to mention—and

perhaps you have others from your Regulation Review Taskforce. One is the use of model laws—and we talked about that this morning through the Local Government Association—in terms of local government laws and having model licences, permits and approvals that are consistent across local government municipalities, because consistency across different municipalities is an issue for small business. Another is a sunset clause, particularly in local government laws, such as a 10-year clause which expires and does not exist anymore or they have to withdraw it and go through the process again and have a regulatory impact statement and so on. They have been doing that in Tasmania for many years. The other one that was put to us, I think in Melbourne, was a regulatory impact statement, not just at the beginning of the process, as David White has been talking about, but on a regular basis; that is, on an annual basis so as to say, for example: ‘Well, the situation has actually changed. The environment in which this business is operating has changed, therefore the impact of this regulation has changed. Maybe we need to do things a little bit differently.’

The fourth one—going back to the licences—was a multipurpose licence. Rather than filling out these 22 separate forms and permits, have a multipurpose licence that you can fill out for occupational health and safety, for planning purposes, for registration purposes, for different departments, and have it all on the one document. Complete it that way. Those are four initiatives or ideas. Would you like to respond to those or add any others?

Mr Panitz—I would probably add one about getting consistency of a regulatory approach across the perceived risk or what is trying to be regulated. We find sometimes that the issue to be regulated might be fairly minor but the regulatory process is very complex. Some other regulatory issues might have a big impact, but the regulatory approach is quite simple. There might be a mechanism of having a standard approach based on the risk of whatever you are trying to regulate.

Ms Jentz—I want to pick up on a couple of the comments that Senator Barnett made. The concept of a multipurpose licence is probably a bit of a utopian concept, given the levels of government and the broad cross-section of issues that government deals with. But Queensland has probably gone, or attempted to go, one step towards that with the establishment—which I am sure the department mentioned yesterday—of the SmartLicence set-up. A business calls in to the SmartLicence unit and one of their advisers takes them through a stepped process and says, ‘You will require this licence, so we will send that form out to you.’ Probably it has gone that first step. It just has about 20 more steps to go.

Senator BARNETT—What DSD said yesterday regarding the SmartLicences was that, if you get on the Internet and say you need to set up a petrol station and general store, they actually complete all the forms for you. So, in a sense, it is like a multipurpose licence. They were saying that they do all that on the Internet for you. I think that is great. Good on them. Congratulations. What a great system. They are moving towards it, for sure.

Ms Jentz—Absolutely. The SmartLicence people still have to fill out X number of forms, but it is an exceptional first step. An issue that I would throw onto the table, and I voiced this opinion at the RTRF, is that it is well and good to have all these Internet concepts, and it is wonderful to have all this technology and this ability to access information instantly, but how many small businesses—particularly your micro operators, your ‘Mum, Dad and the kids’ operations—are actually getting online to do business? I think that issue also has to be

addressed—the educative role of government. There has to be something appealing to the small businesses to get them online to take advantage of these great developments. That is probably a secondary issue.

Mr White—It might be early days, but I think we are doing a little bit of work with model laws with the Local Government Association. We are working on those. Sunset clauses have been in place in Queensland for quite a number of years.

Senator BARNETT—Is that on state legislation?

Mr White—Yes. I am not sure about local government legislation. I think it is just state government. When the Red Tape Reduction Task Force was formed, there were a couple of things that we instituted. One was a red tape stocktake every year.

Senator BARNETT—Does your task force do that?

Mr White—It is under the auspices of the task force. The department does it. That is published every year. I do not have it here but you can probably acquire a copy of it. It shows what has been saved to business every year. How they do those calculations I am not sure, but they are done.

Senator BARNETT—Can I ask you about that stocktake. Does that summarise, for example, how many laws have been introduced and how many have gone off the statute books? Is that the sort of thing it is?

Mr White—That is the sort of thing it is. Basically, it is a demonstration of what has been saved to business.

Senator BARNETT—In dollar terms?

Mr White—In dollar terms. How that is measured and how that is calculated I have no idea, but there are some figures there.

Senator BARNETT—That is an annual report, is it?

Mr White—Yes.

Senator BARNETT—Can we get a copy of that, John? Would that be all right?

CHAIR—And a cost-benefit analysis.

Mr White—Some figures are not all that great.

Senator BARNETT—Is that part of your annual report or is it a separate document?

Mr White—It is a separate document. There is a bit of humour in there, I think. You mentioned doing the regulatory impact statement on a regular basis. I think that would be

something that could be looked at with some certain regulations because things do change. Tie it in with the sunseting: some regulations can go out of date because the outcome has been achieved, that quantum movement has happened. Then you can turn around and say: 'Yes, we've moved it there. Why do we still need the regulation? Is it purely just to keep it static in that position, or are we in this position and moving on?' This once again leads to review. I think there is something about the implementation as part of the steps and everything. Issue should be taken with implementation of regulation. I do not think the introduction of the GST regulations was a great example of good implementation. That is my opinion anyway.

The multipurpose licence: I know when we looked at the tourism industry, and particularly tourist islands, they beat the 22. They had 48 separate licences to operate a tourist island in Queensland. I believe that has been reduced by quite a deal. Right at the very beginning we got rid of about 50 licences. There have been some steps on it. For example, reducing the requirements for reporting, extending licence periods from one year to three years, payment of maybe just licence fees. If you are adhering to everything, why repeat ad nauseam your name, address, telephone number and email address when they are all on file? These are some of the things that I think irritate. They are irritants more than probably costs. They do not take that long, but having to repeat all those things ad nauseam is—

Senator CONROY—Does that work by having the form already filled in when it comes to you and you signing the form and saying, 'Yes, details still the same. Here's the money'? Is that how it works?

Mr White—I am assuming that is going to happen with ASIC with annual company returns. They are a bug, especially when you get the same information going ad nauseam.

Senator BARNETT—With the \$200.

Mr White—Yes. As I understand it, the legislation was before parliament before the last election. I went to a roundtable with some ASIC people and they said, 'Unfortunately, you're going to have to fill them in this year because all the paper is ordered.' All the forms were printed so we had to go ahead and complete them. There are those things. I guess some improvements that have occurred are through electronic means. It could be that you have your form and that you can go in and have a look at your form on there and put an email back saying, 'Yes, okay, and here's your \$200 direct debit out of my bank account.' I think some of those things in the electronic area can be an improvement for small business which would—

Senator CONROY—Electronic signature recognition is going to be a big help there, I would think.

Mr White—Yes.

Senator CONROY—Because literally, if you can just pull up your details and sign the screen, then bang—

Mr White—Even to the extent of possibly emailing back. We have to look at passwords, security matters and things like that. But they will be assistances; they will do it. I hope that we do not say, 'It is getting simpler. We'd better give you a bit more stuff to regulate business.' I

see regulation, in a way, stifling entrepreneurship and stifling people from going ahead. I have come across it with people when they say, 'I'm running a good business. There is an opportunity to possibly expand it but, cripes, look at what I have to do. Look at the steps I've got to go through.' You will probably find more one-man bands because, when you start taking on employees, there is a raft of forms, requirements and regulations and everything like that. I sometimes wonder at the end of the day whether or not it gets us anywhere, especially if it stops somebody from maybe taking that step. I see that regulation—and it needs to be looked at closely—is an opportunity for people to stop competition.

We had an example of that, early on with the task force, where there was a chap in North Queensland who wanted us to have licences to regulate four-wheel-drive tourist activity. He said that his vehicle was spotless and he was charging his price but there were other people coming in who were not up to his standard. So he wanted a regulation that they all had to be up to his standard. From my point of view, he was doing that as a ways and means of wiping out competition or not letting competition come into it so he could finish up in a monopoly situation. There are examples of non-competitive behaviour through regulation. I look at the taxi industry in Brisbane as being one. I see it as not being an easy one to fix. The cost of buying back all those licences would be horrendous.

Mr Leyland—I want to support some of what David has said. From a local government perspective, it strikes me that there are two phases of regulation. One is when people are wanting to set up or expand a business or an operation and there are a certain number of approvals—for example, you nominate 22 or so for a corner service station, general store and food handling licences and so on. The other is with an ongoing operation where you might have an annual licence for an environmentally relevant activity, and you would probably need an annual licence for your food handling premises and so on. There are plenty of councils around who are operating on the basis that—particularly with environmentally relevant activity licences—if businesses prove over a couple of years to be doing an exceptionally good job in complying with the licence conditions, they are given a holiday and a gold licence and they do not see anyone from the council for three years. But if they are not, they pay the full fare and get inspected every year or more often—which is sensible. But there are two phases. Certainly, in the set-up of a business, I see that there is a great deal of merit in all of the necessary authorities giving their approval to or setting conditions for a business so that there is a level playing field and that the outcomes that people are desiring—environmentally or in workplace health and safety or whatever other area: flood protection, river trusts and the environmental authorities—are in place as a business is set up. Then the ongoing contact could be, as David suggested, 'Here is an emailed licence renewal. Your conditions are the same. Is all this information correct?' and, bang, it goes straight back without a lot of hassles.

Senator BARNETT—Is that happening or are you saying that should be happening? Helen Jentz talked about what I saw as the carrot and the stick approach and whether the regulations are saying, 'If you don't do this, all these bad things will happen,' rather than the carrot approach—which is what you have just touched on. Are you saying that should be happening or that it is happening?

Mr Leyland—To an extent, it is happening. I am aware of councils that certainly have the environmental licensing. There are good examples around the place of plastic industries—or fibreglassing is another one that comes to mind—where they have all of the right equipment in

place, they are following all the right procedures, they have a good record and instead of paying \$500 a year, they will be paying \$200 for three years.

Senator BARNETT—Do others have a view on that? If you have a good record and things have gone well for so many years, do you think you should be exempted from paying or have some sort of reward system injected?

Ms Jentz—Absolutely. I think that is a very positive way to look at things. However, these things need to happen incrementally. As Mark was saying, this may be occurring in the environment area and that is excellent. Let us get it working in one area so that we can then move it to, say, the building development area or the development approvals area, and work across incrementally. Let us then tackle areas like OH&S and those probably larger, more complex areas of regulation. If you can pilot something or model it in a defined area and prove that it is working, I certainly cannot see why there would be any argument from any quarter as to why it could not then be rolled out into other licensed and regulated areas.

Mr Panitz—I agree with that. Recently, we had an example of a matter relating to quarantine in the fruit and vegetable industry where, if we wanted to get access to other states for certain products, there are some quarantine barriers that we had to certify for. The current situation is that the respective states can set the height of the bar at a level that they determine, so there are varying levels of regulation in the various states. When we approached the issue of whether a grower had done a good job and had no breaches of quarantine certification for three years the other states said, 'No, we don't accept that.' No real reason was given for it, despite a good track record being developed. So the adoption of that sort of process would be of great advantage.

CHAIR—I want to raise the question with all the people here as to whether or not, listening to the different arguments that have been put up, there is an argument to look at grading regulations or licensing arrangements. So you could have grade A type licences to cover health and safety aspects, such as dangerous substances, hazardous chemicals and those types of things, and then grade B and grade C licences. For example, if you had a light out the front of your shop for 24 hours, you could be treated a bit differently. There are a lot of regulations on licensing out there but there is no real compliance of them by people.

What sparked me to raise that question is that I addressed the plastics and chemicals council on Tuesday night and regulation is a huge issue for them. They say the time frame for the introduction of regulations alone could cost them substantial business opportunities because of the nature of the marketplace. They also told me that implementing the new regulations flowing out of the explosion at Longford is going to cost a couple of the companies that were there something like \$30 million. They are in a position because of resources to be able to do that, although they are not happy about putting the cost in. They see it again as more regulation piled on top of them. Their argument is that they are hugely overregulated. I do not think that those people living around those petrochemical plants would think they were hugely overregulated. In fact, they would probably want more regulations to keep control of them.

Mr White—Exactly.

CHAIR—But it is a dilemma. To some degree, you have to listen to their argument because I know where those petrochemical complexes are; they were there before the housing for the people was there, but the people have now moved in and they want their lifestyle. They get the smells and they want them removed. They will not take any explanation that says they are harmless because, if it is a bad smell, there has to be some harm in it. I wonder whether or not there is an argument for grading some of these regulations and licences that are required so that you can treat them somewhat differently and be a bit more flexible and relaxed about low-grade type licences?

Mr White—I would think that there is some merit in that. Taking your example of the A-grade licence, there are certainly regulations out there which I think we all agree we have to have. Anything to do with life threatening-type regulation probably has to be of the higher order, such as when you are dealing with explosives and things like that. We look at speed cameras, we look at random breath testing and things like that, and I guess they are all coming down to the life threatening ones. Certainly, you can get those that are not life threatening but could be financially threatening, and then you come down to whether you can have a light on at midnight or two o'clock in the morning. Even with that, some of the bigger life threatening things will probably affect fewer people, and although it is going to be expensive to carry them out, it might not be overburdensome, as opposed to some of the smaller, lower-grade ones that can be real irritants and nuisance factors. That is where you get this cry from the small business community, because you are generally falling on two or three people within the group. They know all about it because it affects them, and you can hear about it. Sometimes when you ask the question, 'What is it that is doing it?' you get the answer, 'Oh, aarrh, umm, err—I cannot give you examples, but, yes, there is regulation overburdening us.' They cannot necessarily be specific about it. It can be some of those lower-scaled ones that can be more of an irritant. If you graded them that way, we could certainly have a look at those and start asking what they achieve.

CHAIR—You start asking the question, don't you, whether or not the costs of the licence—which are substantial in the A-grade area—are about forcing the compliance or, when you get down to the lower grades, whether or not the cost of the licence for the regulation is about raising revenue and not so much about enforcing regulation of whatever that issue might be. It becomes a revenue-raising issue. It is a bit like the general tariffs that we have at the moment—the five per cent and the three per cent. It is just government tax collection. It has nothing to do with tariffs. It is no longer a protection measure for Australian industry, but it is an expensive exercise to get rid of it because it actually contributes substantially to the government coffers. You have to wonder sometimes, when you start looking at that lower level, how many of those regulations and licensing arrangements that are in place are purely revenue raising issues for local government or state government.

Mr Leyland—To suggest it is revenue raising is fine but, for instance, while a local government flat inspection fee or an annual licence fee for rental accommodation might be charged on every unit across a city, the funds are raised to pay the wages of people who have to go out and police problem accommodation or houses that are not up to standard or whatever. They are not tightly tied to it but the general purpose of those sorts of fees, whether they are for stables or whatever other licence fee you might have, are for policing some of those problem areas despite the fact that 99 out of 100 or nine out of 10 might be fine. But you have to devote a lot of resources—far more than the annual licence fee—to policing some of those problem

areas. I guess what worries me about grading regulations or licence fees or whatever they might be is that people might treat a grade-C licence fee as something that they really do not have to worry too much about, and consequently those funds are not there for the under-resourced authority to use to follow through on problems.

Mr Griffin—I do not know if there are any figures but our understanding is that local government fees generally are pretty much subsidised. I cannot be definitive about this, but it is our understanding that the true cost to local government of providing that service, whether it is regulation or sending inspectors out, is pretty much subsidised through general revenue or whatever else. There is a concern there from local councillors about starting to apply charges—they want to promote business and encourage people. Not charging is one way they can promote or encourage business.

Senator BARNETT—I have a question which is different to the one about regulation on red tape—we have focused totally on that, pretty much. I will raise a few issues with you and, if you do not want to respond, that is fine; if you do, tell us your views. One issue has come up in different hearings and I want to raise it with you: NEIS, the New Enterprise Incentive Scheme. Do you see merit in that? Do you have any comments on how it could be improved? Regarding the industrial relations system here in Queensland, unfair dismissals has obviously come up as an issue for small business, as well as maternity leave. I notice Commerce Queensland has a study for Central Queensland which says:

In the event that such a system was introduced, data from Central Queensland suggests that the funding should be borne by employees (42%) and to a lesser extent the Government (21%).

I thought that was an interesting response. The third issue is public liability insurance.

Ms Jentz—Senator Barnett, given that you referred to the documents I put forward, I suppose I should address your question. I attended a roundtable meeting with Ms Goward about the paid maternity situation. Obviously, given the media that that particular issue had been receiving, we felt it would be very topical to ask members. Given that we are an industry association, the results were not surprising. I do not think anyone was surprised that industry felt that this was a personal choice of an individual or a couple and, therefore, the cost should not be borne directly by industry per se. Each of those sheets is from a different area of Queensland—as you mentioned, there is a Central Queensland one. The results were fairly across the board. If the process of paid maternity leave were to progress, industry would approach it in such a way that it is either borne under the current government security payment system or employees are given options to contribute X amount of their salary—similar to a superannuation scheme—which could then be used for a paid maternity period. I am not going to comment on industrial relations. That is not my field of expertise.

Senator BARNETT—What about public liability insurance and NEIS?

Ms Jentz—Regarding public liability insurance, we have certainly been very active in that area and very supportive of the Queensland government's moves to look at introducing legislation that will control that area better. We believe that is an area that, given the incidents over the last few years, needs controlling. Certainly, we are very much in favour of the legal industry also having some controls placed upon them in the public liability area.

Mr White—I will not comment on maternity leave and the IR area. I did not know that NEIS was still in existence, to be honest. I had not seen much. In fact, it came up with a client this morning, and I asked him, ‘Is it still running?’ It probably needs a bit of publicity. Regarding public liability, I am probably more involved in the indemnity area, and we see areas where there is a capping on claims. I have been involved with a few things over the years in looking at capping—certainly in the indemnity area—and I think public liability may be looked at some more.

Mr Leyland—I will talk about the public liability issue more than any of the others as a matter that impacts on councils and small business. I have had phone calls from councils around Queensland which lease their swimming pools to private contractors and part of the contract conditions is that the lessee has to have public liability insurance. There is one council in Queensland where, at four o’clock on Sunday afternoon, that lessee’s insurance expires. There is no-one offering insurance to that group of people at the present time in Australia, and there are councils facing hard decisions about public swimming pools. It is also impacting on that businessman who cannot comply with the conditions of his contract and certainly is not game to keep running a pool without some insurance cover. The availability of insurance cover at any cost is of concern for that particular group—it is not there. The Local Government Association has made submissions to the state government with regard to the public liability issue, and it is pleasing to us to see some of those submissions actually reflected in the legislation that has been put in place.

Mr Griffin—I want to add to the issue of public liability. When councils are setting their fees, we understand that they can include an increase in premiums in their fees when they take on extra responsibility when they are picking up a regulation, particularly when that has been imposed from the state. That has resulted in increasing fees at a local government level. Their liability has increased or doubled because they are now looking at fire safety or something, which they previously have not.

CHAIR—We will have to conclude at this point. Unfortunately, some of us have planes to catch and I am sure you would like your Friday afternoon to do whatever you want to do. On behalf of the committee, I thank you all for making your time available this morning. It has been an extremely useful contribution and discussion. Hopefully we have got enough out of it to be able to make some recommendations in this area, which will help the task of reducing those regulations.

Committee adjourned at 1.13 p.m.