

21 October 2022

The Productivity Commission
GPO Box 1428
Canberra City ACT 2601

via email: productivity.inquiry@pc.gov.au

Dear Sir/Madam

5 Year Productivity Inquiry: The Key to Prosperity

99.6% of Australian businesses can be recognised as a small business.¹ Consideration must be given to the significant contribution these small and family businesses make to Australia's productivity performance, especially in the most inflationary environment since the Global Financial Crisis (GFC) compounded with the lowest national unemployment rate in 50 years.²

The effective implementation of small changes at scale across the small and family business sector can deliver significant productivity efficiencies. However, government intervention is required to facilitate a **productivity friendly business environment** and shift the focus of many small business owners from working in the business, to working on the business.

Small business productivity performance is disproportionately influenced by the compliance burden associated with government policy in comparison to that of their large business counterparts as compliance activities consume more resources relative to the direct and indirect benefits of the policy.

The tight **skilled and educated labour market** continues to present significant challenges as four-in-ten small and medium enterprises are reportedly significantly impacted by labour shortages.³ Figures from the National Skills Commission show that 470,900 jobs remained vacant in August 2022 resulting in a diminished small business ability to maximise workforce productivity and capitalise on growth opportunities.⁴

Data policy, digital technology and cyber security influence individual small business and supply chain resilience because they contribute to increased flexibility, create redundancy, form collaborative relationships, and improve knowledge acquisition and transfer.⁵ However, strategy and execution determine a small business' return on investment, their satisfaction with the implementation process and resulting productivity outcomes.

Small businesses have also identified many barriers to innovation, including a lack of funds; skilled personnel in the business and wider labour market; trading uncertainty; and government regulation

¹ Based on Australian Bureau of Statistics data and the definition of small business in the *Australian Small Business and Family Enterprise Ombudsman Act 2015* of fewer than 100 employees.

² ABS.(24 August 2021). Counts of Australian Businesses, including Entries and Exits, Reference period July 2017 - June 2021; The Hon Dr Jim Chalmers MP. (11 July 2022). Joint media release with Anthony Albanese MP Prime Minister of Australia, Jobs and Skills Summit to be held in September; ABS. (4 July 2022). Labour Force, Australia; ABS. (27 April 2022). Consumer Price Index, Australia, Reference period March 2022.

³ National Australia Bank. (20 July 2022). Four in ten businesses significantly impacted by labour shortages.

⁴ National Skills Commission. (August 2022). Recruitment Experiences and Outlook Survey

⁵ Corvello. V., Verteramo. S., Nocella. I., Ammirato. S. (5 March 2022). Thrive during a crisis: the role of digital technologies in fostering antifragility in small and medium-sized enterprises.

and compliance requirements.⁶ Rather than partaking in innovation to fuel growth, small businesses often focus on making existing practices more efficient and rely on workforce mobility to facilitate **diffusion of new processes and ideas.**⁷

As such, we recommend the Productivity Commission to consider the following comments and measures in the final report to government on Australia's productivity performance.

Measures to create a productivity-friendly business environment

1. Effectively measure national productivity

Consideration should be given as to how productivity is measured and the alignment of small business segmentation by size and industry division to better resolve impediments to business transformation and improve national productivity outcomes.

The Australian Bureau of Statistic's current measurement of multifactor productivity excludes output from three 'non-market' sectors; Public Administration and Safety; Education and Training; and Health Care and Social Assistance. Whilst historically, the case for the exclusion of these sectors was based on their output being provided free of charge, the recent pandemic has highlighted how they each support a productive national economy.⁸ There are also many small, medium and large, for-profit businesses that operate within these sectors, who should be engaged, and their performance measured in the effort to improve productivity outcomes.

Headwinds to effectively measuring productivity are also generated by inconsistent segmentation of businesses (by size) across government. Whilst variability of definition is at times necessary, it restricts capability to measure baseline productivity and design policy settings to maximise business performance outcomes. Government should consider methods to segment small and family business separately to industry divisions and businesses of medium and large sizes to better address headwinds to success throughout each phase of the business lifecycle.

2. Implement right-sized regulation

In all circumstances regulation should be 'right-sized', proportional, implemented with consideration for timing and to minimise cumulative or duplicative impacts.

The pandemic has highlighted the benefits of a dynamic regulatory environment in supporting economic resilience and reducing the risk of decreased productivity across the small business sector.

The burden of regulation falls disproportionately on small business, of which many lack the resources of their larger counterparts handle significant and frequent changes to the regulatory environment in which they operate. To ensure future regulatory changes do not negatively impact small business productivity we suggest improvements could be made by regulatory agencies to consult effectively with small business representative bodies to allow for the creation of 'fit for purpose' regulations, and ensure awareness of changes.

Consideration should be given to transitioning away from Policy Impact Analysis and towards a 'Policy Implementation Assessment' (PIA) model.

Formerly known as a Regulatory Impact Statement (RIS), robust and rigorous PIA processes provide opportunity for interested parties to comment on incoming regulatory changes, however the process is largely academic and often bypassed through other means such as government-initiated inquiries and Royal Commissions.

⁶ ABS. (8 July 2022). Business Characteristics Survey. Innovation in Australian Business. 2020-21 financial year.

⁷ The University of Queensland. (2022). Why we need to change the way we think about innovation.

⁸ ABS. (31 August 2020). Non-market output measures in the Australian National Accounts: a conceptual framework for enhancements.

Moving to a PIA process that acknowledges changes are going to be made and seeks feedback on how to implement the proposed changes with a minimum effective intervention lens would deliver better outcomes, particularly through reduced compliance burden for small business.

Consideration should be given to amending the preliminary assessment form so consultation with, and comments from the Australian Small Business and Family Enterprise Ombudsman (ASBFEO) regarding a policy's impact on small business are clearly captured in this initial assessment.

Under the advocacy function, ASBFEO promotes best practice government consultation, and undertakes research and inquiries into legislation, policies and practices affecting small businesses and family enterprises.⁹

ASBFEO was consulted on just 17% of RIS processes in the twelve months to September 2022.¹⁰ Further, closure of the Australian Government's public consultation portal has removed the 'single source of truth' for small businesses and their networks as to current and upcoming government consultation processes.

Improved early consultation by government policy teams with ASBFEO will strengthen consideration of small businesses in the development of new or revised policy and programs, improving the regulatory environment for small business.

Consideration should be given to the long-term implementation of temporarily simplified regulation where it is demonstrated to be the effective minimum intervention and achieves the desired standards.

The pandemic has highlighted several benefits of the implementation of temporarily simplified regulation, allowing small businesses to reallocate resources from compliance activities to innovating and adapting to the changing environment.

We recognise the work done through the deregulation agenda and are encouraged by the recent discussion on a RegTech solution for Modern Awards. A continued focus on the removal of overlapping or unnecessary regulation combined with the introduction of accessible and affordable RegTech solutions will support small business productivity growth.

3. Prevent unfair business practices

We recommend consideration be given to provisions that prevent 'unfair business practices' against small businesses and includes solutions on how best to educate businesses of their obligations.

Small businesses can face a significant power imbalance when negotiating outcomes with their large business counterparts. We are concerned that large businesses can utilise this imbalance to incorporate unfair business practices that have significant negative impacts on small business productivity and go unreported because it is difficult to seek remedial action for practices that are not illegal. It is also imperative to ensure any fair trading regimes do not exclusively pursue consumer outcomes to the detriment of small business.

Unfair business practices that are not covered by existing legislation, including under the *Competition and Consumer Act 2010* (Cth) (CCA) and *Australian Securities and Investments Commission Act 2001* (Cth) (ASIC Act), and work in favour of larger business' bargaining power. They are often practices that are not captured by the Unfair Contract Terms regime, and do not reach the high bar of 'unconscionability'. As a result of these practices, small businesses suffer from reduced competition, innovation, and investment.¹¹

⁹ Australian Small Business and Family Enterprise Ombudsman Act 2015. No. 123, 2015. Ch. 3 Simplified outline of this Act.

¹⁰ RIS processes listed on the office of Best Practice Regulation website between September 2021 and 31 August 2022.

¹¹ Australian Consumer Law. (6 November 2020). Meeting of Ministers for Consumer Affairs.

Consideration should be given to creating a Federal Small Business and Codes List in the Federal Circuit Court of Australia to provide affordable, determinative, and timely access to justice for small businesses and regulators.

As previously highlighted by this Office, the introduction of a Federal Small Business and Codes List (the List) would provide a low-cost alternative for small businesses and regulators to seek redress and timely enforcement action from ‘unfair’ conduct by large entities in a cost effective and timely manner.

These measures will reduce barriers to justice for small and family businesses by supporting them to protect their own commercial interests in a way that is affordable, timely and able to deliver adequate sanctions, interventions and recompense from counterparties engaging in anti-competitive or ‘unfair’ conduct that is a contravention of Codes and other regulatory mechanisms.

Regulators will also be enabled to initiate timely enforcement action that seeks to limit the harm or unfair and/or Code-offending conduct and to pursue enforcement and restorative action, supporting the effectiveness of statutory, regulatory and Code provision by genuine enforcement and the establishment of behaviour-guiding precedents.

Specific consideration should be given to how government can prevent large businesses making false claims against subcontractors’ insurance to increase their profits.

Globally, faulty workmanship is the second most frequent driver of insurance claims (accounting for 7% by number) and the third top cause of financial loss (accounting for 9% by value).¹²

In addition to the effects of a hardening insurance market, unaffordable insurance pricing for smaller subcontractors in the construction sector is being accelerated by instances of prime construction companies making false claims against subcontractor insurance policies. In these instances, prime companies engage the least-cost subcontractor, and claim against their insurance for faulty workmanship to boost profits. This behaviour is an unfair business practice as small subcontractors typically do not have equal financial resources as the prime company, to contest false insurance claims in court.

4. Co-operate across-jurisdictions

Where possible, regulations and licensing requirements should be harmonised across jurisdictions.

The introduction of the JobPass Scheme (the Scheme) in early 2022 goes some way to addressing the challenges small businesses and in particular, sole traders face in navigating varying regulations and licensing requirements across jurisdictions. The Scheme allows eligible work licenses and registrations to be automatically recognised interstate (excluding Queensland), without the burden of lengthy delays, additional fees, and unnecessary paperwork. Ongoing engagement between the states and territories will be vital to support effective application of the Scheme and to ensure changes to eligible occupations are communicated effectively with shared expectations for implementation timeframes.

The pandemic has also highlighted significant challenges faced by small businesses dealing with conflicting regulations across jurisdictions. Thoroughly considered harmonisation of ‘best practice’ regulations across jurisdictions will provide clarity for small business and reduce barriers to cross-border business activity.

Such clarity is essential for small businesses who are required to disproportionately dedicate resources to navigating the current complex regulatory environment.

¹² Allianz. (July 2022). Global Claims Review 2022.

5. Invest in enabling infrastructure

Strengthened government collaboration may deliver priority infrastructure in a timely manner with minimal opportunity costs.

Investment in regional infrastructure and transport, digital connectivity and water security projects with local content requirements can build capability and capacity of small businesses within the construction sector, and the commissioned infrastructure drives general business confidence by improving the distribution of, and customer access to goods and services.

Collaborative cross-jurisdictional planning, resource management and capital investment, is critical to delivering improved infrastructure to support connected and productive economies.

Analysis of a recently approved bypass project demonstrates the impact delays have on the economy. Since 'do nothing' was decided for the Coffs Harbour Bypass in 2004, the problems associated with the existing section of road have cost approximately \$55 Million annually.¹³ A large portion of this cost has been absorbed as productivity losses due to road congestion and associated vehicle operating costs. However, the delayed decision to invest will also increase the direct administrative and construction costs to the government as additional project scoping and inputs are subject to inflation.

Hardening infrastructure may increase productivity by minimising economic disruptions to communities affected by a disaster.

Flood levees and other resilience measures not only seek to address the physical threat to small business but can also alleviate some of the significant costs of insurance premiums. As an example, Roma, Queensland, experienced multiple flood events in the space of a few years surrounding 2010. Following this flooding the Government funded a flood levee to mitigate flood risk for the region, based on weather patterns in 2014. It was estimated this helped to avoid \$10.9 million in productivity losses resulting from disruption to services and access to businesses in the town and immediate surrounds.¹⁴ Recent flood events have identified a clear need for a considered approach to physical mitigation to minimise unintended consequences for surrounding areas.

Consideration should be given to how government can promote stakeholder co-operation to plan, invest in, and build fit for purpose telecommunications infrastructure.

Inadequate broadband and mobile network access significantly impacts regional small business' capability to adopt digital technology. Telecommunications service providers and regional communities have competing priorities on how to improve mobile coverage and internet speeds whilst promoting competition and reducing costs. Such competing priorities have been noted in recent submissions to the ACCC regarding Telstra and TPG's proposed sharing of mobile regional and non-urban network infrastructure.¹⁵ Service providers have identified that infrastructure sharing may reduce competition, whilst regional communities, including their cohort of small businesses, strongly support the infrastructure sharing opportunity to improve mobile coverage.

A government issued framework could establish shared expectations of telecommunication service providers to collaborate on infrastructure investment and address competing priorities with customers, delivering improved and financially competitive servicing capability.

Consideration should be given to how government can promote transparency of telecommunication and mobile service investment decisions.

The previously identified telecommunications investment framework could also be applied as a condition of funding where public co-investment occurs as part of Commonwealth-led network enhancement programs such as the Mobile Black Spot Program, Regional Connectivity program, and

¹³ Infrastructure Australia. (August 2021). Business case evaluation summary Coffs Harbour Bypass.

¹⁴ Urbis. (October 2014). Economic benefits of flood mitigation investments. Pg. 13.

¹⁵ ACCC. (2022). Submissions to Telstra Corporation Limited and TPG Telecom Limited proposed spectrum sharing. Accessed 27 July 2022.

other 'like' programs. This would act to improve transparency on how investment decisions are made, and should capture primary data sources to inform prioritisation of investment decisions.

An example of the need for additional primary telecommunications servicing data is the Commission's use of data collected under a different context to identify regions with digital infrastructure gaps. The data in Interim Report 2, Figure 3.2 was gathered from Infrastructure Australia's Regional Infrastructure Gap Prioritisation Framework; identifying regions by whether the relevant Regional Development Association identified telecommunications infrastructure gaps as a priority. We are concerned by the use of this as primary evidence as regions that did not prioritise telecommunications infrastructure gaps against the framework criteria may have sub-regions in-need of improved telecommunications service coverage.

6. Facilitate access to skilled workforce

Consideration should be given to ensuring industrial relations, education and migration policy settings allow for improved small business access to skilled workforce.

A lack of small business access to an adequate employment pool can result in substantial disruption to business hours and activities and restricts capacity for strategic thinking and the ability to identify productivity gains. Further, the reduction in staff availability is driving small businesses to operate on thinner margins and weakening return on investment; nearly half (46%) of employing small businesses with difficulties finding staff reported that this has impacted their business to a great extent.¹⁶

Migration policy settings, as well as policy regarding how we encourage younger residents to explore their potential trade-based career opportunities needs to consider a depth of current and future skillset requirements and ensure people are skilled in the areas that meet small business requirements.

Our research highlights that small businesses accounted for 43% of all apprentices and trainees-in-training at 31 December 2021.¹⁷ This proportion has been increasing over the last few years and is significantly higher than medium or large businesses. Skills development systems and support programs should ensure that they are more responsive to and accommodating of the circumstances and capacities of small business.

Developing formal capacity to recognise micro-credentials and transferable skillsets gained through other employment and life experience may expedite placement of skilled workers into vacant positions.

Government and business investment in formal training, education, and reskilling are necessary to maximise the efficiency, flexibility, and availability of labour, however there is scope for better recognition of skills that already exist within the workforce.

We welcome the Government's commitment to provide small businesses with an annual turnover of less than \$50 million a 120% deduction for the cost of external training courses delivered to their employees by registered providers, and are encouraged by existing commitments to the VET system. However, to help further alleviate small business challenges or difficulty in identifying suitably skilled employees, consideration should be given to government investment in a system of micro-credentialling. Such a system should be backed by the National Skills Agreement to better recognise and translate skillsets people have acquired during their working life.

¹⁶ ABS. (June 2022). Business Conditions and Sentiments, June 2022, Table 9.

¹⁷ ASBFEO has sourced data from NCEVER's VOCSTATS. We note that NCEVER states that it is not responsible for the correct extraction, analysis or interpretation of the data obtained from VOCSTATS.

Consideration should be given to measures that may improve essential workforce access to appropriate and affordable accommodation, such as a national housing strategy.

Small business' ability to attract, train, and retain essential employees is strongly correlated to the availability and affordability of appropriate housing stock. National vacancy rates are held at 0.9%; the lowest point on record, driven by a range of economic and structural factors including the rise of short-term rental investment properties.¹⁸

While the housing shortage is relevant to the whole Australian context, it disproportionately affects small businesses in regional areas where the skilled workforce pool is generally smaller.¹⁹ The consequence of the housing shortage for small business is reduced access to a skilled workforce; who are relied upon for day-to-day operations, as well as difficulty taking advantage of new growth opportunities.²⁰

7. Regulate adequate and timely access to essential services

Access to essential services such as insurance and banking products benefits small business productivity; a positive correlation has been found between financial inclusion and employment opportunities, and it is generally believed to positively affect economic growth.²¹

An appropriate entity should be empowered to, where appropriate, seek clarity from financial institutions around the robustness of their decision to withdraw or deny a financial service to a legally operating business.

De-banking, or the denial of essential financial services inhibits business productivity by creating an administrative burden, risking trading capability, creating a reliance on international financial markets, and promotes the shadow economy, or reliance on cash and avoidance of the tax system.²²

We welcome the Council of Financial Regulators (CFR) recent policy proposals for government to consider regarding de-banking, as it specifically relates to financial technology firms, digital currency exchanges, and remittance providers.

Although the advice is targeted to these industries, it is relevant and will have a positive impact on other regulated, but "high-risk" sectors that are subject to de-banking. Further to the CFR's advice, consideration should be given as to how small businesses will become exposed to de-banking if they fail to measure and meet Environmental, Social and Governance criteria for sustainable finance.

Consideration should be given as to how open banking technology may inform banks of small business credit risks when considering lending applications.

Traditional bank lenders have shifted away from small and medium enterprise (SME) lending due to the regulatory environment and difficulty assessing credit risk.²³ Although business bankruptcies reached a ten-year low of 1.9% in 2019, and non-performing business loans were 42% less than the ten-year average in 2020, SMEs interest rates are on average 159 basis points higher than those offered to large business.²⁴

Non-bank lenders have capitalised on data and technology to close this gap in the market, however additional data transparency would provide better informed small business credit risk assessments to the traditional banking sector and improve access to finance. Greater competition is particularly important for specific industry groups' access to finance, including culturally and linguistically diverse, and women owned and led small businesses.

¹⁸ Domain. (2 August 2022). Vacancy Rates July 2022; The New Daily. (21 August 2022). 'Bad news for renters' Landlords chasing big dollars with AirBnB.

¹⁹ The Daily Telegraph. (7 September 2022). Soaring interest rates add another hurdle to NSW housing shortage.

²⁰ Smart Company. (5 September 2022). Seven implications of 'the war for talent', according to a panel of SMEs.

²¹ Global Center on Cooperative Security. (November 2015). Understanding Bank De-Risking and its Effects on Financial Inclusion.

²² Black Economy Taskforce Final Report. (October 2021); Australia as a Technology and Financial Centre. Chapter 4. De-banking.

²³ OECD. (2022). Financing SMEs and Entrepreneurs 2022: An OECD Scoreboard, Australia. Pg. 6.

²⁴ RBA. (June 2022). Statistical Data, F7 Business Lending Rates 2022; OECD. Financing SMEs and Entrepreneurs 2022: Australia. Pg 6.

8. Establish a national data security policy

Small business should be specifically considered in the development of national data security policies.

The National Data Security Action Plan (NDSAP) has the potential to foster increased awareness of data security in small businesses while building structure around a national approach towards data security. While small businesses may not be best resourced when considering data security, the impacts of poor data security are keenly felt by this sector of the Australian economy, and their consumers.

Government data security policies need to consider industry specific impacts to small businesses, meet any additional requirements created by the strategy with equally supportive and fit-for-purpose measures, and have a flexible design so that it may be altered or scaled to suit enterprises of all sizes and industries.

9. Maintain access to mental health services

Consideration should be given to ensuring future funding of the New Access for Small Business Owners (NASBO) program, or like alternatives.

There is a growing focus on the role businesses can play in maintaining the mental health and wellbeing of their workforce, however just as important is the mental health and wellbeing of small business owners and operators.²⁵ In 2022, mental health was small and medium enterprise's leading concern and in industries that were more severely affected by COVID-19 (e.g., retail, hospitality, manufacturing, and wholesale) 71% of small business owners reported direct mental health impacts from running their business.²⁶

Beyond Blue's NASBO program is a proactive coaching service, offering straightforward problem-solving approaches to manage stress and overwhelm, delivered over six sessions by specially trained counsellors with a small business background, supporting an understanding of the unique challenges.²⁷

Measures to directly encourage small business owners to work on their business

10. Access professional business planning and continuity services

Improved access to appropriate and timely expert advice for small businesses will allow them to introduce a resilience and adaptation lens to business planning, development, and leadership as they evolve from the startup phase to navigating succession and exit.

The business of running the business is rarely the 'spark' that triggers a person's enterprise journey. Courageous and usually time poor small business owners often focus their energies working in their businesses, rather than on their businesses. Yet, working on the business is a vital pre-condition for long term success, making the most of commercial opportunities, and fulfilling their business ambitions.

Without exception, small businesses engaging with expert advice programs delivered by proven providers emphasise how valuable this know-how and guidance is. In this Office's work on small business natural disaster preparedness and resilience, it was clear that many small businesses would benefit from the type of business planning advice and support that is available immediately after a disaster, earlier in their business lifecycle. Such advice and support would give small business owners the tools to change course when their business viability was threatened, or encourage an early restructure or exit while there were still assets in the business and employees and creditors are able

²⁵ Productivity Commission. (30 June 2020). Mental Health Inquiry Report. Volume 1 No. 95.

²⁶ MYOB ANZ. (June 2022). Mental Health Report.

²⁷ Beyond Blue. (2022). NewAccess for Small Business Owners.

to be paid. It would greatly benefit the productivity of many small businesses to encourage their connection with trusted advisors, facilitate easy access to current support programs while identifying gaps in business owners' financial knowledge, and to remedy the shortcomings in the types of advice currently available through a specifically designed program focussed on future business planning in Australia.

Research indicates that most small businesses are not led by a strategic plan; 66.7% of businesses with 0 – 4 employees and 51.0% of businesses with 5 – 19 employees did not have a strategic plan in 2015-16. Of those with a strategic plan, only 6.1% and 12.9% respectively had it written down.²⁸

Streamlining access to expert advice would support small business access to appropriate and timely advice to facilitate small business sector wide development and implementation of 'fit for purpose' business plans that encourage resilience and adaptation.

11. Prepare for disasters and secure appropriate insurance cover

Natural disasters currently cost the economy \$38 billion per year and are predicted to cost a minimum of \$73 billion per year by 2060.²⁹ In addition to the immediate direct costs of a disaster including asset damages, disaster affected communities and economies suffer continued productivity losses from social upheaval and business disruption. A recent report commissioned by the Insurance Council of Australia shows a proposed five-year \$2 billion investment program to reduce cyclone, flood, bushfire, and coastal risks could reduce financial, health and social costs to the Australian Government and Australian households by at least \$19 billion by 2050.³⁰

Consideration should be given to how government can empower small businesses to prepare for the threat, exposure and aftermath of a natural disaster

A strong sense of community connectedness, including collegiate business relationships – which we have described as 'socio-commercial capital' – leads to more resilient and unified communities that work together to prepare for, and respond to natural disasters.

Rather than 'reinventing the wheel', small business owners could benefit from greater engagement opportunities and building of socio-commercial capital within existing structures, such as the Small Business Friendly Councils initiative, currently being run in conjunction with the Small Business Commissioners.

Consideration should be given to policy options to address the challenges associated with small business access to adequate insurance policies for natural disaster coverage.

Businesses insured against disasters recover faster than uninsured businesses, however, small business owners have reported challenges in accessing insurance – let alone affordable insurance – and in many instances, they are operating uninsured, underinsured, or with excesses payable that prohibit them making a claim.

One industry insight report claims that 57% of survey respondents acknowledged they were not completely covered for their insurable business risk.³¹ An example of premium increases is that of a lodge in Victoria's alpine region, where premiums increased 938% (\$13,000 to \$122,000) from 2018-19 to 2022 because of bushfire risk.³²

Further, governments at all levels have a role to play in ensuring small businesses are best prepared to mitigate the productivity lag resulting from natural disasters, including, where appropriate, through the use of government funded infrastructure. In conjunction with these efforts, it is critical that the Australian Government seek to continually assess the impact of the Cyclone and Related

²⁸ ABS. (25 August 2017). Management and Organisational Capabilities of Australian Business. Reference period, 2015-16 financial year.

²⁹ Deloitte Access Economics. Special report: Update to the economic costs of natural disasters in Australia. 2021. Pg. 1.

³⁰ Insurance Council of Australia. (22 February 2021). Greater investment required to lessen the impact of extreme weather.

³¹ Vero. Attitudes to Risk. 2022. Pg.5.

³² Ortolan, M. Insurance costs could rise by more than 1,000 per cent for Victorian alpine businesses. ABC News 2022.

Flood Damage Reinsurance Pool on small business insurance policies to ensure the success of the measure.

The viability of a National Injury Insurance Scheme could be reconsidered as a means to improve small business access to affordable public liability insurance products.

The hardening insurance market is making public liability premiums increasingly unaffordable for small business. In circumstances where a business must hold public liability insurance to legally trade, such high-cost premiums create a barrier to market entry and are forcing many existing small businesses to scale down or cease trading. Public liability insurance is particularly complex because the value of a policy claim is often disproportionate to the type and size of the business.

To alleviate extremely high or inaccessible public liability cover and enable more small businesses to trade and grow, we suggest consideration be given to reviewing the viability of the Productivity Commission's 2011 proposal for establishing a National Injury Insurance Scheme (NIIS), to cover all catastrophic no-fault accidents.³³

12. Address Environmental, Social and Governance requirements

Consideration should be given to how government can empower small businesses who operate in more traditional markets to strategise and articulate their Environmental, Social and Governance performance.

As Environmental, Social and Governance (ESG) performance standards are increasingly subject to government regulation and a key focus for big business, investors and consumers, small businesses risk falling behind and restricting their participation in the modern economy.

Consumer trust, environmental sustainability and doing 'good' by the community and employees can no-longer be implied – they need to be strategised and promotable to attract and retain customers, finance, insurance and engage in broader supply chains. Currently only 28% of Australian family businesses have developed and communicated a sustainability strategy.³⁴ Whilst pressure to address ESG may come from engagement within larger supply chains and projects, bank's finance agreement requirements and consumer expectations, small businesses need to be informed of what practical action ESG standards require within their business.

Providing voluntary reporting standards and practical readily-actionable guidance appropriate for small businesses will allow the sector to credibly demonstrate and better communicate their ESG performance without creating an undue impost of regulation or disproportionate market-led compliance requirements.

13. Digitalise business processes and systems

Timely and transparent data should be sought to inform government implementation of digital systems.

Given the accelerating rate of digital transformation, government needs to ensure decision making is informed by timely data-based evidence. A 2020 Government consultation paper suggested that the broad uptake of eInvoicing systems built on the Peppol electronic data interchange framework, could provide productivity savings of around \$2.8 billion per year.³⁵ However, it is likely this figure was derived from data which would have drastically changed through the pandemic; over 1.2 billion invoices were being exchanged annually, and 89% of SMEs were still processing paper-based invoices as of 2016.³⁶

³³ Productivity Commission. Disability Care and Support 2011. Pg. 88.

³⁴ PWC. (2021). Global Family Business Survey: Australian findings - An opportunity, not a cost: Why Australian family businesses must rethink ESG.

³⁵ PWC. (22 December 2021). Businesses that issue electronic invoices could have the right to require similar invoices from their trading partners.

³⁶ Treasury. (16 October 2018). e-Invoicing.

Developing a software product evaluation framework may encourage small businesses adoption of software as a service products.

Software as a service (SaaS) offers small business better access to digital tools that would otherwise be unavailable or unaffordable to them, however it is hard for small business owners to determine which SaaS product would best meet requirements, and fully measure the return on investment.

In May 2021, MYOB estimated that close to half a million SMEs could further digitise their business processes, and forecast that increasing the level of digitisation among those businesses would lead to a 0.6% increase in GDP.³⁷ None of this potential will be realised unless small businesses remain satisfied with their SaaS product and implementation experience; businesses need to understand the total cost of implementation and be educated on the potential productivity gains, or long-term return on investment.

As such, Government should seek to develop a SaaS assessment framework, and utilise extension through trusted advisors, funded programs, and business networks to increase SaaS adoption by small businesses.

14. Improve cyber systems and security protocols

Revision of the 2020 Cyber Security Strategy should specifically consider the barriers to small businesses improving their cyber security systems and processes.

Small business owners and operators occupy many roles, possess varied levels of digital competency in a business and usually lack the dedicated cyber security resources of their larger counterparts. Despite this, it is critical that small business understand that simple, practical steps can be taken to strengthen their cyber security systems and processes.

Any potential 'health checks' for small business must reflect consistent, whole of government messaging on cyber security. In acknowledgement of the limited resources, particularly time, that small businesses have to devote to improving their cyber security, the Government should seek to ensure it provides a single source of truth that small business can rely on.

Consideration should be given to introducing expectations of SaaS providers to build-in cyber security measures that improve software security and reduce the disproportionate burden of cyber threats on small businesses.

Greater adoption of two-sided (send and receive) eInvoicing by government and large businesses would improve payment times and reduce instances of invoice fraud.

eInvoicing delivers material productivity gains because it is more efficient, secure, and accurate than traditional invoicing practices.³⁸ Although Governments have recently made significant progress in their eInvoicing capabilities, greater adoption of eInvoicing would protect small businesses from false billing scams, which were reported to have cost businesses \$6.7 million in 2021.³⁹ Further, we suggest small business adoption of eInvoicing systems using the Peppol framework be encouraged through education, training, financial incentives, and exposure to pathfinder examples.

15. Engage with government procurement

Consideration should be given to how Government can improve small business awareness of, and access to procurement opportunities.

Seeking government procurement opportunities is currently complex, costly, and time consuming for small businesses. The House of Representatives Standing Committee on Infrastructure, Transport,

³⁷ MYOB. (May 2021). Closing the digital gap: an incentive for SMEs report.

³⁸ Treasury. (20 November 2020). Options for mandatory e-Invoicing adoption by businesses; Business.gov.au. (9 March 2022). eInvoicing.

³⁹ Australian Competition and Consumer Commission. (July 2022). Targeting Scams, Report of the ACCC on scams activity 2021; 16 November-2020. AusTender. PNL2299. The provision of Peppol Capabilities and Associated Services; Australian Local Government Association. (18 June 2021); Australia's first council to adopt e-invoicing; Treasury. (15 December 2021). Supporting business adoption of eInvoicing.

and Cities' (the Committee) inquiry into procurement practices for government-funded infrastructure recommended the introduction of industry sustainability and enterprise growth criteria within the early stages of procurement design. The introduction of this criteria would encourage international tier one contractors to partner with a non-tier one domestic company in the head-contract, increasing small business access to capacity building contracts.

To support South Australian small businesses seeking to engage with major procurement opportunities, Procurement Services South Australia has agreed to publish a Forward Procurement Plan on behalf of all public authorities to inform prospective suppliers about future procurement opportunities for a 24-month period.⁴⁰ This will allow local businesses time to consider methods to improve the likelihood of a successful tender process, and where necessary, develop new and innovative approaches to the work. This innovation is crucial for small businesses who lack the resources of their larger counterparts, and can drive productivity gains by reducing or removing unnecessary time burden and streamlining processes.

16. Participate in research and development

Further government investment in Cooperative Research Centre projects and revision of the Research and Development Tax Incentive program guidelines to capture digital technology may encourage increased small businesses participation in research and development activities.

Innovation backed by industry-led research and development (R&D) are primary drivers of a nation's productivity and growth. The Small Business White Paper 2021, prepared by the Institute of Public Accountants highlights Australia's private sector's persistently poor performance on innovation and R&D; Australian businesses rank among the least effective in the OECD at introducing product and process innovations.⁴¹

Encouraging increasing adoption of SaaS, expanding the Research and Development Tax Incentive definitions for eligible research to include software and technology development and further investment in Cooperative Research Centre (CRC) projects, would facilitate additional industry-led research collaborations that help improve the competitiveness, productivity, and sustainability of small businesses.⁴²

Reform existing university research funding through the University Research Commercialisation Action Plan, to strengthen genuine collaboration with industry and commercialise research outputs.

To support long-run economic growth as Australia recovers from COVID-19, Australia's outstanding research outputs need to be better translated and commercialised so that Australian innovations can be utilised to create new jobs, companies and drive productivity.⁴³

17. Protect Australian owned Intellectual Property rights

Consideration should be given to developing an overarching policy framework for registration of intellectual property and infringement dispute resolution.

Cost effective and timely processes including those for seeking patents, trademarks and designs defend small businesses from others infringing their intellectual property (IP) rights. However current IP regulations too readily grant exclusivity and allow the proliferation of low-quality patents

⁴⁰ Office of the Industry Advocate, *2020-21 Annual Report*. Pg. 6.

⁴¹ Institute of Public Accountants. (2021). Small Business White Paper, Post COVID Policy Options to Enhance Australia's Innovation Capabilities.

⁴² Institute of Public Accountants. (2021). Small Business White Paper, Post COVID Policy Options to Enhance Australia's Innovation Capabilities; Cooperative Research Centres (CRC) Grants – Round 23. (11 April 2022), Funding for medium to long-term, industry-led research collaborations; Australian Academy of Science, Submission—Evaluation of the Cooperative Research Centre (CRC) Program; David A Miles AM. (March 2015). Review of the Cooperative Research Centres Programme.

⁴³ Department of Education, Skills and Employment. (2022). University Research Commercialisation Action Plan.

with a low level of creative input. International commitments also limit Australia's IP flexibility, where IP usage across multiple jurisdictions have large transaction costs.⁴⁴

Improving governance through an overarching policy framework, would provide a more balanced approach to managing small businesses IP rights.

18. Invest in new assets

Retention of tax incentives such as the \$150,000 Instant Asset Write Off (IAWO) threshold may encourage small business to continue investing in new assets.

Business investment in high-value assets such as machinery and software enhance national productivity by creating more resilient, sustainable and safer workplaces that are less labour resource intensive.⁴⁵ However, small businesses only make 60% of non-mining asset investment which can be partly attributed to barriers accessing debt finance, including unsecured loans.⁴⁶

To date, the highest annual value of immediate tax deductions for company capital expenditure was \$14 billion in the 2009-10 financial year.⁴⁷ This investment was driven by a post-GFC tax incentive that allowed businesses to claim an extra \$6,000 upfront tax deduction for every \$30,000 investment in a new asset.⁴⁸ Since the initiative was wound back in the following financial years, the average year-on-year immediate deduction for capital expenditure has declined by \$1.1 billion.⁴⁹

Looking to 2019-20 when the IAWO threshold increased to \$150,000, the average small business claim increased by almost \$10,000 on 2018-19 figures, demonstrating that retention of a higher value IAWO could encourage additional, ongoing small business investment in new assets.⁵⁰

19. Have an exit strategy and navigate formal insolvency processes

The decision to close a small business can be influenced by a variety of factors that are not always in the control of owners and/or management. Some business owners will successfully execute formal succession plans, others will sell, but many will informally wind-up by personally taking on any outstanding business debt. Of the 305,085 business exits in 2021-22, ASIC formally wound up just seven (7) whilst in the same period, 4,911 companies entered external administration.⁵¹

Small businesses should be encouraged to routinely assess their financial viability.

Due to the perceived negative stigma of having failed in business and a lack of accessible information regarding individual business performance, industry benchmarks and insolvency processes, small businesses often continue trading after viability issues arise. This creates a productivity drag in that unviable or 'zombie' businesses remain trading, underutilising assets and reducing skilled workforce mobility.

Most business performance resources do not encourage early assessment of financial viability, and there is no distinction between who a small business owner should seek advice from regarding their insolvency process - whether it be ASIC or AFSA. Combined, this creates a disadvantage for business

⁴⁴ World Trade Organisation. (2022). Review of Agreement on Trade-Related Aspects of Intellectual Property Rights.

⁴⁵ ATO. (12 March 2020). Instant asset write-off for eligible businesses; National Farmers' Federation. (6 May 2022). Farmers & small business demand certainty on instant asset write-off.

⁴⁶ Tony Zhang. (12 May 2022). SMEs struggle to finance growth, navigate headwinds; Carpenter R and B Petersen (2002), 'Is the Growth of Small Firms Constrained by Internal Finance?', *The Review of Economics and Statistics*, 84(2), Pg. 298–309.

⁴⁷ Data.gov.au. (22 June 2022). Taxation statistics 2019-20 Companies: Selected items, for income years 1980–81 to 2018–19, 2. Immediate deduction for capital expenditure. 1996-97 to 2018-19.

⁴⁸ RBA. (9 December 2021). Which Firms Drive Business Investment? New Evidence on the Firm-size Distribution; PMC. (29 March 2022) Digital Economy Strategy. SME Digitalisation; Australian Government. Archive of Budgets.

⁴⁹ Data.gov.au. (8 August 2022). Taxation statistics 2019-20 Companies: Selected items, for income years 1980–81 to 2018–19, 2. Immediate deduction for capital expenditure. 1996-97 to 2018-19.

⁵⁰ September 2022. ATO. Instant Asset Write Off Statistics. Income years 2015-16 to 2019–2020. Calculated using data for businesses with aggregated turnover more than \$0 to less than \$10 million.

⁵¹ ABS. (25 August 2022). Counts of Australian Businesses, including Entries and Exits; ASIC. (29 June 2022). Companies that ASIC has wound up in the 2021–22 financial year; ASIC. (30 September 2022). Insolvency statistics - Series 1A Companies entering external administration and controller appointments by industry.

owners before their insolvency journey even begins.⁵² As such, consideration should be given to how government can improve extension services, or small business access to appropriate and timely expert advice that includes navigating business viability, succession, and timely and resource efficient exit processes.

Where appropriate, small businesses should be encouraged to investigate restructuring prior to partaking in an insolvency process.

Unfortunately, early assessment of business performance and restructuring cannot always prevent a small business from becoming insolvent, in part because some small business directors do not even know what insolvent trading is.⁵³

The United States of America, under Chapter 11 of the United States Bankruptcy Code allows a debtor to remain in possession of their business while they propose a reorganisation plan to keep the business alive and pay creditors over time, rather than entering into an insolvency process.⁵⁴

Consideration should be given as to whether the Simplified Restructuring Scheme introduced for eligible small business from 1 January 2021 is proving to be accessible, effective and affordable 'reorganisation' system, to allow Australian small businesses more of an opportunity to survive, or to exit on their own terms, instead of relying on insolvency practitioners who are often focused on liquidating businesses quickly or in a manner that will ensure there are assets available to pay the practitioner.

Statutory trusts could be implemented to protect payments to subcontractors in the event of their contractor's insolvency and to decrease payment times.

At present, little has been done to protect subcontractors from insolvency and misuse of funds that should be held to pay subcontractors, beyond specific measures embedded in government construction contracting procedures. This trend is particularly evident in the construction industry, which had the highest incidence of insolvency and payment default in the 2021-22 financial year, representing 28% of all insolvencies.⁵⁵

Consideration should be given to regimes that protect small business subcontractors from the consequences of creditors becoming insolvent by preventing late progress payments and providing protection from the hierarchical nature of contracts.⁵⁶ This would prevent cascading insolvencies through a supply chain and reduce the risk of significant declines in sectoral productivity.

Thank you for the opportunity to comment on Australia's future productivity potential. The majority of Australian businesses are small and family businesses, and have a significant opportunity to contribute to the national productivity performance. However, efficient and innovative adaptation of the sector will not be facilitated without bold government policy and program intervention, and coordinated endeavors that call small businesses to action.

If you would like to discuss this matter further, please contact Ms Sarah Blyton on 02 5114 6128 or at sarah.blyton@asbfeo.gov.au.

Yours sincerely



The Hon. Bruce Billson
Australian Small Business and Family Enterprise Ombudsman

⁵² Australian Financial Security Authority. Personal Bankruptcy and Liquidation of a Company - Information Guide for People in Business and Their Advisers.

⁵³ Australian Restructuring Insolvency & Turnaround Association. (202). Submission to the Review of the Insolvent Trading Safe Harbour.

⁵⁴ United States Courts. (2022). Bankruptcy Code, Chapter 11 - Bankruptcy Basics.

⁵⁵ Michael Bleby. (7 February 2022). Construction industry on notice as insolvencies jump 40 per cent.

⁵⁶ J Murray AM. (December 2017). Review of Security of Payment Laws Building Trust and Harmony. Pg 309.