

**Ai GROUP SUBMISSION**

14 AUGUST 2013

Ai Group Submission on Regulator Engagement with Small Business

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## Executive summary

Ai Group has conducted a number of research pieces that touch on the subject of regulator engagement with small business in recent years. These include:

- *Policy priorities for business* (May 2013), in which 30 per cent of small businesses nominated regulatory burden as their number one policy priority area for the next three years;
- *Business prospects* (Feb 2013), in which 28 per cent of all businesses said they expected that government regulatory burden would be among the top three factors likely to inhibit their growth in 2013;
- The *WEF Global Competitiveness Report 2012-13* (Sept 2012, Ai Group is the Australian partner to WEF in this annual research report), in which Australia ranked 96<sup>th</sup> out of 144 countries for the burden of government regulation in 2012. Restrictive labour regulations and tax regulations were voted by 20.3 per cent and 9.4 per cent of businesses respectively as the most problematic factor in doing business in Australia;
- *CEO Survey of Business Regulation* (Sept 2011) (copy attached to this submission).

Of the studies listed above, our CEO survey of 2011 provides the most detail on this topic. This survey showed that:

- Small businesses engaged with an average of six regulators per year.
- Small business operators spent an average of 5 hours per week complying with regulation and spent 3.5 per cent of their annual total costs on hiring external consultants to help with compliance issues.
- Businesses reported that they find processing delays, a lack of involvement in the development of new regulation, and finding information to be among the most challenging aspects of the regulatory process. In fact, close to 30 per cent of businesses reported that information relating to regulation is typically difficult to find or does not exist.
- In terms of specific regulators, the ATO, local councils, and state regulators of OH&S were said to be associated with the greatest amount of red tape.
- When asked to identify the changes that would have the greatest impact on reducing their regulatory compliance burden, 25 per cent of small businesses requested the “establishment of reliable electronic and web-based reporting”. “Reduce the frequency of reporting requirements to a minimum” was the second most common response, while “developing a single location or website for all regulatory information and announcements” was also prominent.

- Avoiding information duplication and overlap between regulators was also an important issue for business.

In addition, to provide a flavor of the more detailed reflections of businesses in a specific sector, we asked our specialist regulatory and standards staff covering importing, manufacturing, distribution and servicing of electrical and electronic products to provide input based on their intensive dealings with businesses in this sector.

These key themes are discussed in greater detail below:

- The cost of compliance
- Cost and complexity of different stages of the regulatory process
- Red tape associated with different regulatory authorities
- Feedback from electrical and electronic product manufacturers and suppliers
- Duplication between regulators
- What changes do businesses want to see?

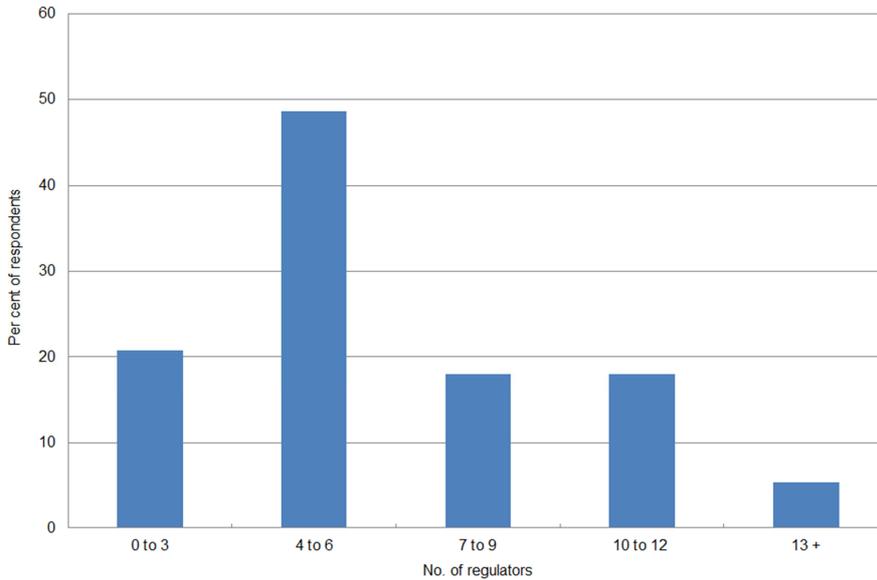
### **The cost of compliance**

In September 2011, Ai Group released the national CEO survey: *Business Regulation* (attached with this submission). The focus of the report was on how Australia's regulatory systems are working in practice and the areas of these systems that can be improved in order to minimise unnecessary compliance costs. Close to 140 small businesses were surveyed regarding their experience with business regulators across Australia.

Small businesses in this survey dealt with an average of 6 regulators per year. Close to 50 per cent of small businesses reported they dealt with between 4 and 6 regulators; 30 per cent dealt with between 7 or more regulators; while only 20 per cent had dealt with three or less regulators (Chart 1).

### Chart 1. Number of regulators

Question: How many regulatory authorities did you deal with in the last year?



Source: Ai Group (2011)

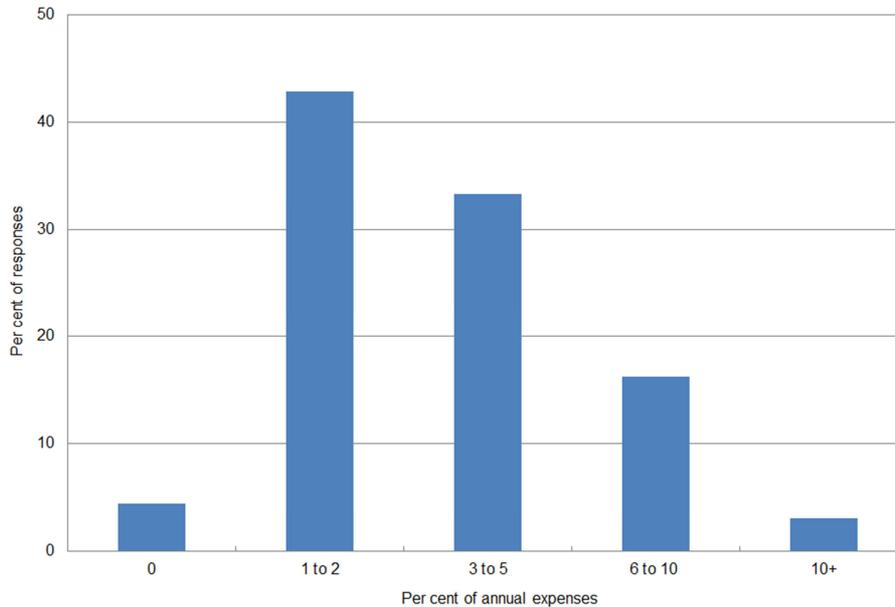
In order to comply with each area of regulation, small businesses typically go through a process including finding information, understanding regulatory obligations, implementing regulatory requirements, and the payment of any fees and charges. A number of these stages involve direct engagement with regulators.

For the majority of small businesses the amount of regulation and the associated cost of compliance had increased over the three years to 2011 and were expected to increase further over the following three years. 70 per cent of businesses reported that the cost of compliance had increased in the preceding three years and 75 per cent expected it to increase further. This appeared to have been due to various changes to OH&S implemented by state governments in the years leading to 2011.

Small business operators spent an average of 5 hours per week complying with regulation in 2011 and spent 3.5 per cent of their total annual costs on hiring external consultants to help with compliance issues. Just over 53 per cent of small businesses operators reported that they spent less than 5 hours a week on complying with regulation in 2011; 38 per cent spent 6 to 10 hours per week; while close to 10 per cent spent more than 10 hours per week (Chart 2).

## Chart 2. Cost of outsourcing for regulatory purposes

Question: Please estimate the financial costs of outsourcing activities related to regulatory compliance



Source: Ai Group (2011)

Close to 40 per cent of businesses reported that outsourcing costs represented 1 to 2 per cent of their annual expenses in 2011, while one third of businesses reported that outsourcing represented between 3 and 5 per cent of costs in 2011. Close to 20 per cent of businesses reported that outsourcing costs represented in excess of 6 per cent of their annual expenses.

These regulatory costs are a significant part of the general cost burden that is contributing to Australia's loss of international cost competitiveness in recent years. In the WEF's Global Competitiveness Report for 2012-13 (released Sept 2012) Australia ranked 96<sup>th</sup> out of 144 countries for the burden of government regulation. In the same report, restrictive labour regulations and tax regulation were voted by 20.3 per cent and 9.4 per cent of businesses respectively as the most problematic factor for doing business in Australia. These findings suggest that the time and financial costs associated with business regulation for small businesses in Australia is high, relative to our international peers.

### Cost and complexity of different stages of the regulatory process

In order to comply with different areas of regulation, small businesses typically go through a complex process that includes finding information, understanding regulatory

obligations, implementing regulatory requirements, and paying fees and charges. A number of these stages involve direct engagement with a regulator. In our national CEO survey in 2011, small businesses were asked to identify the relative costliness of the various stages of the compliance process (Table 1).

Waiting for a regulatory decision was considered to be by far the mostly costly part of the process, with over 60 per cent of small businesses considering it a ‘high cost’. Being involved in developing new regulations and finding information were considered to be the next two most costly stages of the compliance process.

Finding information was reported by 39.7 per cent of businesses as a high cost; by 48.1 per cent as a moderate cost; and by 12.2 per cent as a low cost. These results were found to be fairly consistent across Federal; State; and Local governments. For all of these levels of Government, between 25 and 30 per cent of small businesses said that the information they need is difficult to find or is not available. Around 60 per cent said the information is available, but requires some time to find and hence comes at a cost (Chart 3).

**Table 1. Costliness of stages of regulation**

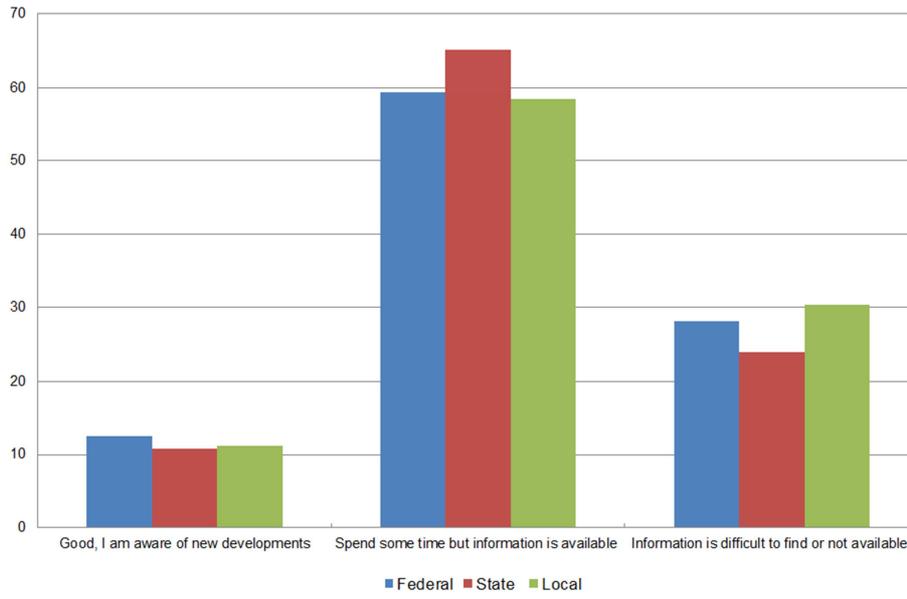
*Question: Please rate the costliness of various stages of the regulatory compliance process for your business.*

	High cost	Moderate cost	Low cost
Waiting for a regulatory decision	61.7	27	11.3
Involvement in developing new regulations	43.8	38.8	17.4
Finding information	39.7	48.1	12.2
Payment of fees and charges	38.0	45	17.1
Staffing for regulatory compliance	35.5	41.1	23.4
Audits and monitoring	35.2	45.9	18.9
Understanding the regulatory obligation	31.3	44.3	24.4
Completing paperwork and reporting requirements	27.5	49.6	22.9
Implementing the regulatory requirement	23.1	50.8	26.2
Waiting for a regulatory decision	61.7	27	11.3

Source: Ai Group (2011)

### Chart 3. Effective communication by regulators

Question: How effective are federal, state, and local governments in communicating and providing information about new or changed regulation that businesses are required to comply with?



Source: Ai Group (2011)

### Red tape associated with different regulatory authorities

Our CEO Survey of 2011 asked small businesses to identify the degree of red tape they believed was associated with various regulators (Table 2). The ATO, state government regulators of OH&S, infrastructure and building regulators, and local government were perceived to have the greatest amount of red tape. For example, 22.9 per cent of businesses that had dealt with infrastructure and building regulators reported contending with a high degree of red tape. Similarly, 22.7 per cent of businesses that had dealt with state government regulators of OH&S reported contending with a high degree of red tape.

**Table 2. Level of ‘red tape’**

*Question: How do you perceive the level of red tape surrounding your dealings with the following regulatory authorities?\**

	High	Moderate	Low
<b>IR, Employment, Work Cover</b>	29.7	30.5	39.8
<b>Infrastructure and building</b>	22.9	29.6	47.5
<b>OHS</b>	22.7	35.3	42
<b>ATO</b>	20.9	41	38.1
<b>EPA</b>	18.1	33.3	48.6
<b>Local government</b>	16.7	20.5	62.8
<b>State revenue</b>	15.9	30.8	53.2
<b>Road and transport</b>	9.9	25.9	64.2
<b>ACCC</b>	9.7	31.4	58.9
<b>Natural resources</b>	9.1	29	61.9
<b>Fair trading</b>	8.7	24.7	66.7
<b>ASIC</b>	8.2	23.4	68.4
<b>Food safety</b>	7.4	26	66.5

\* The costs associated with each regulator are only based on the responses of businesses that have engaged with them. Source: Ai Group (2011)

### **Feedback from electrical and electronic product manufacturers and suppliers**

In preparing this submission Ai Group has drawn on the feedback of our specialist staff covering the regulatory and standards obligations and responsibilities of businesses involved in manufacturing, importing, supplying and servicing electrical and electronic products.

The following points summarise the reflections of our staff on the regulatory obligations and responsibilities of members in this sector. A key factor in most, if not all of the points below, is that regulatory agencies often lack direct industry and small business experience including in relation to the industries they are regulating.

- Unreasonable expectations on businesses’ ability to meet regulatory requirements, especially timeframes (suitable timeframes are needed in order to run out old stock, re-design products, preliminary product testing, re-tool factories, order components, arrange supply contracts, pre-production

manufacturing, final product testing, product registration, production, shipping, warehousing, retail supply often taking between 2 – 3 years).

- Regulatory expectations that the information provided by regulators (or politicians) is sufficient for businesses to base hugely important investment decisions when this is not the case at all. Businesses require all of the following before making investment decisions (published standards, published Decision Regulatory Impact Statements and Ministerial Determinations) and cannot base decisions on untested announcements. Agreed milestones need to be completed before regulations are implemented.
- A lack of understanding by regulators of their own technical requirements resulting in rejected product registrations and costly delays in bringing products to market.
- An uneven market as regulatory officials do not understand their own regulatory technical details causing uneven application.
- Inefficient processes leading to increased administrative burdens (e.g. annual re-registration requirement for products on the market for ten years or more).
- A lack of understanding of the market they are regulating resulting in huge segments (up to 50%) of less visible market participants going unregulated whilst the highly visible market must try to compete with the additional regulatory burdens of specific compliant products, product testing and product registration.
- A lack of understanding of the cost required to meet regulatory obligations.
- Regulators do not understand the dynamics of supply chains. Poorly implemented regulations lacking sufficient time to allow compliance often causes larger players in the supply chain (e.g. large retailers) to place unreasonable or costly demands on small businesses and suppliers. In situations like this, small businesses are reluctant to take action under “abuse of market power” provisions as they do not want to damage existing relationships with their market networks and they feel the real cause of the market disruptions are the poorly implemented regulations. An example here is the recent changes to regulation 90 (Warranties against Defects, mandatory inclusion of text) of the Australian Consumer Law.
- A lack of trust by regulatory agencies of businesses and their feedback often leads to the dismissal of input including to RISs. More time should be allowed in the RIS process for regulators to seek further information about submissions and

comments made in submissions should not be able to be dismissed without first asking and allowing time for more information to be provided.

- There is a severe lack of compliance activity against non-compliant competitors. Under user pays regulations, legitimate businesses believe they are forced to pay for both their own compliance and that of their non-compliant competitors. Some regulators seem to have priorities and resources that rarely ever stretch to cover non-compliant products. Business viability and long term asset values are likely being impacted.
- A lack of coordination between different regulatory agencies is causing product design life to be shortened as costly product re-designs are required to meet continuously moving regulatory goalposts. For example the water heater industry is currently facing a wide range of state and federal regulation (electrical safety, gas safety, ACMA, Greenhouse Energy Minimum Standards, product rebate schemes, renewable energy schemes as well as the proposals to ban electric storage water heaters and the direct cost impact of the carbon tax on blowing agents, refrigerants and steel etc.). Between 2001 and 2011, this industry faced 60 uncoordinated regulatory regime and scheme changes.
- A lack of harmonisation across state boundaries causes duplication on the regulatory administration side as well as additional cost (time) on industry side. Also, businesses may incorrectly believe they are compliant with all states' regulations when in fact they only meet one state's regulatory requirements. The differences between states cause confusion, decreased compliance rates, additional costs. Industry supported the implementation of a national electrical safety system and we have ended up with two different regulatory systems that are diverging instead of converging.

### **Duplication between regulators**

Our CEO Survey of 2011 asked small businesses to identify examples of unnecessary duplication across regulators. A selection of their comments is below:

- *ATO, banks require just as much material and the tax office could supply all the info required*
- *ATO / state revenue office / workcover*
- *GIO insurance estimated for workers comp insurance calculator; use payroll or ATO to handle. Auditing process is very draconian.*
- *Tax, child and super requirements, could all be connected*

- *Local Gov. and NSW office of water too hard to deal with. Now would not negotiate and said we must comply with NSW requirements to the local council will have to shut our access to the sewer system.*
- **Overlap environmental laws/licenses between local, state and federal gvmnt**
- **State regulatory bodies** - RTA, electricity providers, **local councils** etc employ a consultant to deal with them all
- *WELS Scheme, Equipment Energy Efficiency Program and Watermark Scheme – the same product test report is required to be sent to three different agencies and three different registrations are required.*
- *ASIC and ACCC*
- *Mandatory reporting of compliance*
- *MSIC cards for port work, can't go onsite without a card, checks are done*

**What changes do businesses want to see?**

In our national CEO survey in 2011, small businesses were asked to identify the changes that would have the greatest impact on reducing their regulatory compliance burden (Table 3). Establishment of reliable electronic and web-based reporting was the most commonly proposed improvement (25.4%), followed by reducing the frequency of reporting requirements to a minimum (19.8%), and a single location or website for all regulatory information and announcements (12.7%). Avoiding duplication and overlap between regulators was also seen by businesses to be an important issue.

**Table 3. Measures to reduce the burden of regulatory compliance**

*Question: Please rank the item that would have the greatest impact on reducing your regulatory compliance burden?*

	<b>Per cent</b>
Establishment of reliable electronic and web-based reporting	25.4
Reduce the frequency of reporting requirements to a minimum	19.8
Single location or website for all regulatory information and announcements	12.7
One agency which collects all the required information	11.9
Reducing the duplication of regulation across local government boundaries and state borders	10.3
Better communication and consultation with businesses when developing new regulations	10.3
Agencies sharing information and ensuring there are no duplicate information requirements	4.7
Implement pre-populated forms and reports	3.2
Scheduled release of new and amended regulation	1.6

Source: Ai Group (2011)

In addition to these survey-based results, Ai Group would like to highlight the importance of ensuring all regulators engage in ‘best practice’ regulatory behavior and engagement, in accordance with established public policy guidelines. The following provides some examples of ‘best practice’ regulatory behavior that we would encourage all regulators to adopt, in all engagements with small (and large) businesses:

- The principles of best practice regulation must be adhered to in all dealings with business including: transparency; accountability; proportionality; consistency; and careful targeting.
- All regulations should be simply written in plain English, so they are easily understood, implemented and enforced.
- No inspection should take place without a reason.
- Businesses should only have to supply information that is necessary and that is unavailable through other sources (e.g. through other government agencies).
- Assessment of reductions in regulatory burdens should be rigorously and transparently validated by a process that includes industry-based feedback and assessment.
- Regulators should share a common objective of allowing and encouraging economic progress and should carry out their regulatory roles within that context.

- Businesses should feel encouraged to invite a regulator into their premises. Regulators should include this in their key Performance Indicators (KPI's) and measure it through regular stakeholder surveys.
- Regulators should always explain why they are there and what they are looking for.
- Regulators should have a consistent narrative that explains their objective, including the compliance behavior they are looking for, and shows the role of every interaction (visit, notice, prosecution) in the context of the overall task of influencing business behavior.
- Interactions with business should not be personalised or adversarial.
- If an inspection is undertaken following a third party complaint (by an employee, union or member of the public etc.), the regulator should not prejudge the situation and act as if the alleged breach has occurred, or the facts alleged are true, until they are shown to be true.
- Inspectors should act respectfully towards SMEs and seek to understand the limitations of a small management team. Conversely, regulators should not assume that small businesses are too unstructured or unsophisticated to understand compliance duties, or assume they will not have systems in place to meet them, until proven otherwise.
- Businesses should not be made to feel that they will be disadvantaged if they take responsibility for adverse incidents and seek ways to immediately learn from them and avoid them in the future. Taking responsibility should not be equated with accepting blame.
- Inspectors should not be afraid to admit they don't have particular technical expertise, and should call for assistance, rather than bluff their way through.
- Inspectors should actively acknowledge positive efforts, improvements or voluntary over-compliance by duty holders.
- Inspectors should acknowledge, respect and try to be consistent with rulings, notices or observations made to that business by other inspectors from the same regulator by another regulator dealing with the same issue (e.g. a similar regulator in another state). Inconsistency undermines authority.
- Internal review processes or appeal mechanisms should be openly and transparently communicated, as part of a strategy to make enforcement appear as objective as possible. Inspectors should actively encourage businesses to use appeal or review mechanisms if the business does not understand or agree with the regulatory action taken or the reasons given for it. Inspectors should feel confident to say: "If you disagree with what I have done, I encourage you to take it up with ...."