

# **Achieving Best Practice Consultation with Small Business:**

## **A Guide for Government**

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## Why consult with small business?

- Australia has approximately 2.13 million active small businesses; (and approximately 3 million small business according to the ATO);
- This equates to almost 96 per cent of all businesses;
- Small business contributed close to 34 per cent of private industry value added in 2010-2011 and provided employment for 4.8 million people (at June 2011), around 46 per cent of private sector employment.

Small businesses are different to larger businesses. Small businesses:

- can be disproportionately affected by the costs of regulatory decisions and unnecessary red tape;
- have fewer resources – be it time, information, money or staff – at their disposal to cope with their regulation obligations; and
- are very diverse and cut across all sectors of the economy, up and down the supply chain.

The Australian Bureau of Statistics defines small businesses as those businesses with less than 20 full time employees.

The Tax law however defines a small business as one with a turnover of less than \$2 million.

## Why is this important?

Developing policy that is consistent with a government's long-term strategic policy priorities helps sustain economic growth through improved productivity and participation.

Considering the impacts of policy on small business is a key element in ensuring this outcome; consultation with small business is vital to the policy development process.

### **The cumulative effect**

When a new policy is developed in isolation, without consultation, it is easy to think that it is no big deal and that the regulatory impact will not be significant.

On the other hand small businesses will be looking at this new regulation, adding it to the pile of everything else they are required to do.

Consultation can help to achieve efficient and effective regulation and inform debate by examining the costs, benefits and appropriateness of regulatory options, especially if consultation occurs early on in the policy development process.

Any issues of concern and potential deficiencies can be identified in the consultation phase, and can then be addressed in the development and design of regulation. Consultation also increases stakeholder buy-in and promotes better compliance.

## **Think small first**

Governments need to work with the small business community and listen to what they have to say.

Many government departments and agencies ask, 'How do we consult with small business?'

It is intended that this document can help to change the thinking of government departments and agencies by inviting them to think small first. That is, 'how can your policy accommodate and affect small business?' New regulation or policy should minimise the adjustment or compliance costs imposed on small business and should not unnecessarily impose further obligations on small business.

Creating a culture within government agencies to develop an in-depth understanding of small business issues is a key element of this guide.

All jurisdictions have dedicated small business policy units committed to the development and enhancement of the small business sector. These small business policy units can help you establish an ongoing culture of accommodating small business. Refer to the small business office within [your jurisdiction](#) for more detail.

The Australian and State and Territory governments are committed to improving processes for consultation with business and supporting appropriate consultation with relevant stakeholders.

All governments have in place whole-of-government policies on consultation that set out best practice principles that need to be followed by all agencies when developing regulation.

While the advice in this publication is focused on achieving effective consultation with small business, the benefits of consulting on regulatory change and development apply to all stakeholders affected by regulation on a wider scale.

This document should be read in combination with the Best Practice Guide to Regulation, which all jurisdictions have in some form, as part of their regulation framework.

[Commonwealth](#)

[New South Wales](#)

[Victoria](#)

[Queensland](#)

[Western Australia](#)

[South Australia](#)

[Tasmania](#)

[Northern Territory](#)

[ACT](#)

# Benefits of consultation

The benefits of consultation with small business include:

- bringing perspectives and ideas for alternative options from small business and giving a voice to this less easily identifiable group of stakeholders;
- facilitating a risk based approach to regulation ensuring that small business are considered differently to large business and therefore not unnecessarily regulated;
- changing the culture of regulation to be more inclusive of the needs of small business by using open and transparent methods to develop and adopt solutions to a public problem;
- improving government awareness of the regulatory needs of small business and enabling faster responses to changing conditions;
- identifying interactions between different sets and types of regulations impacting upon the operating environment of small business;
- providing a check on the regulator's assessment of costs and benefits to small business and whether the proposed option will work in practice;
- enhancing voluntary compliance from small business through greater understanding and acceptance of a proposal, and thereby reducing reliance on enforcement and sanctions, and
- ongoing consultation processes may aid in the development of an open and trusting relationship between small business and government.

## When should I consult?

The answer is 'when you are considering changes to a regulation' or thinking about 'developing a new regulation'. And the earlier you consult, the better.

Early consultation is one of the best ways to reduce the regulatory burden on small business. By talking to and engaging with small business before a regulation is designed, it actually provides an opportunity to get first hand insights into the real-life workings of a regulation and its impacts.

As a policy maker within government, you can use this information to influence the final design of a regulation. By understanding the real world impacts, you can ensure that small businesses will not be exposed to any unnecessary burdens.

At the end of the day, the best way to reduce the red tape burden on small business is to not impose the burden in the first place.

# How do I consult with small business?

Small businesses want to be consulted.

They are however, time poor.

This means that you have to take a considered approach in how you engage with small business.

Simply uploading a 25 page document outlining your proposed policy to your agency website will have limited reach within the small business community.

When you consult with small business there are four areas you should be looking to tick off.

Your consultation should involve:

- sharing relevant information with small business;
- giving small business a reasonable opportunity to express their views, raise relevant issues and contribute to the decision making process;
- taking their views into account; and
- providing information on the results of the consultation.

The [Best Practice Consultation Principles](#) outline this in more detail.

# What do small businesses want?

When you engage with small business, the information you provide needs to be

- simple, and
- in plain English.

Many small businesses want information to be provided online so that they can deal with it, and learn what is going on, in their own time, often after hours.

Small business also obtain information through their trusted networks – that is, industry and professional associations; business intermediaries like accountants and tax agents; business enterprise centres and through their local business networks and chambers.

## Consultation tools

All jurisdictions have in place a suite of [consultation tools](#) to assist you in engaging with small business. There is no magic bullet in this regard. Small businesses are very diverse and they cut across all sectors of the Australian economy and for this reason it is often best to adopt a multi-faceted approach.

# What should I be asking small business?

Regulations will impact upon a small business in a variety of different ways.

If you put yourself in the position of a small business owner it will assist you to better understand the compliance obligations of a small business and what the impacts of your regulation may be.

Asking the right questions will help in this regard. For example:

How difficult would it be to obtain the information needed to register/apply?

Would the proposal require your business to undertake additional record keeping or incur printing costs?

Is the information already provided to another source? If yes, how often do you report?

Would the proposal require your business to notify a regulatory authority when certain events take place?

Would you need to change your business practices/model? For example training/employment conditions/ costs.

Would the proposal change your relationship with your suppliers/distributors/customers?

Would your business need to purchase a service or product to comply with the proposal?

Would the proposal place any restrictions on your business? For example types of product/service/hours of operation/client base.

If the rules were to change, where would you go to find out about the change?

# Consultation tools / mechanisms

All jurisdictions have a common goal to reduce the regulatory burden on small business and they all adopt different approaches in this regard.

## Commonwealth

Business Consultation Website

[consultation.business.gov.au/consultation/Common/About/Default.aspx](http://consultation.business.gov.au/consultation/Common/About/Default.aspx)

Annual Regulatory Plans

<http://ris.finance.gov.au/2012/10/02/annual-regulatory-plans/>

## New South Wales

Business consultation websites

[www.betterregulation.nsw.gov.au/better\\_regulation\\_requirements/current\\_consultation](http://www.betterregulation.nsw.gov.au/better_regulation_requirements/current_consultation)

[www.nsw.gov.au/haveyoursay](http://www.nsw.gov.au/haveyoursay)

## Victoria

Business consultation database

[www.business.vic.gov.au/permits-licences-and-registrations/join-our-business-consultation-network](http://www.business.vic.gov.au/permits-licences-and-registrations/join-our-business-consultation-network)

Small Business Ministerial Council

[www.dbi.vic.gov.au/business-units/associated-bodies/small-business-ministerial-council](http://www.dbi.vic.gov.au/business-units/associated-bodies/small-business-ministerial-council)

## Queensland

Business Consultation websites

[www.business.qld.gov.au](http://www.business.qld.gov.au)

[www.getinvolved.qld.gov.au/](http://www.getinvolved.qld.gov.au/)

Regulatory Framework

[www.qca.org.au/OBPR/](http://www.qca.org.au/OBPR/)

## Western Australia

Business consultation website

[www.smallbusiness.wa.gov.au/have-your-say/](http://www.smallbusiness.wa.gov.au/have-your-say/)

## South Australia

Better Together: Principles of Engagement, a Foundation of Engagement in the South  
Australian Government

[http://saplan.org.au/better\\_together](http://saplan.org.au/better_together)

Your Say – SA Strategic Plan

<http://saplan.org.au/yoursay>

## Tasmania

[www.development.tas.gov.au/economic/economic\\_development\\_plan/achieving\\_our\\_vision/supporting\\_business/small\\_business](http://www.development.tas.gov.au/economic/economic_development_plan/achieving_our_vision/supporting_business/small_business)

[www.business.tas.gov.au](http://www.business.tas.gov.au)

[www.development.tas.gov.au/economic/business\\_point](http://www.development.tas.gov.au/economic/business_point):

[www.treasury.tas.gov.au/domino/df/df.nsf/v-ecopol/13E0011D833DCF7BCA25747F00210576](http://www.treasury.tas.gov.au/domino/df/df.nsf/v-ecopol/13E0011D833DCF7BCA25747F00210576)

## Northern Territory

To ensure that the Department of Business effectively engages with the small business community, the Department of Business has a Business Liaison Unit that maintains contact with businesses large and small, and relays their feedback to the appropriate government agencies.

In addition, the department utilises a database and mailout program called MAXIMIZER. The program has a list of associations, businesses and industry groups which information can be sent to regarding developments affecting small business and business support programs offered by the department to assist the business community of the NT.

## Australian Capital Territory

Consultation (small business dialogue)

[www.economicdevelopment.act.gov.au/](http://www.economicdevelopment.act.gov.au/)

# General

Green papers, issues papers and exposure drafts

There are specific government requirements for policy 'green papers' and exposure drafts.

## Green papers

For regulatory proposals of major significance, a policy options paper, or 'green paper' is required to be released as a basis for consultation. Like other consultation documents, a green paper can be used to ask questions to fill information gaps and elicit specific feedback from stakeholders. It should be made clear where stakeholder input would be especially valued. Responses are likely to be more useful and focused if stakeholders know where to concentrate their effort.

## Issues paper

Issues papers or an information paper may be an appropriate form of consultation for less significant proposals. Examples include draft assessments of business compliance costs or draft Regulation Impact Statements.

## Exposure drafts

Consultation and analysis of the implementation options is an important part of the policy development process. Prior to finalisation, the details of complex regulations are required to be tested with relevant business interests. This allows the 'devil in the detail' to be made transparent. Releasing exposure drafts of complex regulations for significant matters is one approach departments and agencies can use to allow businesses and other stakeholders to provide more detailed comments and advice on how a regulation will work in practice. Where an exposure draft is required, in most cases a decision – informed by a Regulation Impact Statement (RIS) – choosing a regulatory option has already been made. Consequently, a two-staged decision-making process might occur. The existing RIS could be amended for the implementation decision to include the regulatory impact analysis and consultation processes associated with the exposure draft of the regulations. It is the amended RIS (covering both decision stages) that would be made public to make the entire policy development process transparent.

# Best practice consultation principles

## 1. Continuity

Meaningful consultation with small business should be a continuous process that starts as early as possible in the policy development process. Consultation should continue through all stages of the regulatory cycle, including when detailed design features are being bedded down. This will assist in identifying and understanding potential problems, and in designing and implementing better regulation.

Departments and agencies/regulators need to consider appropriate mechanisms for ongoing consultation with small business. Some options to achieve ongoing consultation may include establishing working groups, advisory/consultative councils, or local business 'partnerships'.

Terms of reference for ongoing consultative arrangements should be clearly articulated (for example, whether the consultative group meets on a regular or ad hoc basis). The criteria for determining membership of the consultative groups should also be transparent.

## 2. Targeting

Small businesses that are likely to be affected by proposed regulatory changes should be carefully targeted for consultation.

Small businesses are extremely diverse with key differences including industry sector, the size and age of the business, geographical location and the characteristics of the owner(s). These factors will influence which issues are important, as well as the most appropriate means to consult with small business.

Departments and agencies/regulators should consider adopting consultation strategies that can best identify small businesses potentially affected by the regulatory proposal(s) they administer.

The size of a small business will influence the time and resources available to consult with government on regulatory proposals, as well as the impact of regulatory change. Considering the size of businesses may aid in targeting an appropriate method of consultation.

A good starting point is to contact industry associations and small business lobby groups. However, it is worth remembering that many industry associations represent the interests of both small and large businesses and may not have a consistent view on all aspects of a regulatory proposal. Furthermore, regulators should recognise that not all small businesses belong to a representative organisation. Consideration should therefore be given to engaging a number of individual small businesses in the consultation process.

Consultation should not always take place with the same group of businesses or representative organisations. There is a danger that agencies can be perceived to have been 'captured' by the interests of a representative organisation if they consult with the same groups on every regulatory proposal. If the consultation process is limited in this way, it is likely that the agency will fail to gain a true picture of the needs of small business.

If possible (and it is appropriate) agencies should work together on consultative processes. For agencies and departments that are intending to carry out consultations on similar projects it may be possible and appropriate for them to work together. Joint consultation exercises may provide more efficient use of departmental resources and make better use of stakeholders' time.

### **3. Timeliness**

Consultation should occur early in the regulation making process when the policy objectives and different approaches to an issue are still being considered.

Timeliness is crucial to achieve effective consultation with small business. This ensures there is maximum opportunity to identify the relevant issues, options and potential impacts. In general, departments and agencies/regulators should commence consultation at the point where options are being considered. Consultation should also occur when proposals have been formulated and perhaps also once the regulation has been drafted.

The amount of time required for consultation will depend on the nature and detail of the proposal (for example, the diversity of interested parties or the complexity of the issue). However, where prompt consideration of a proposal is required, some limitations on periods and timing of consultation may be unavoidable.

Timeframes for consultation should be realistic to allow small business sufficient time to provide a considered response (including time for representative bodies to contact their members). Holiday periods and the end of the financial year should be avoided - consider whether there is scope to delay a consultation until a less busy time of year for small business stakeholders.

Further, consultation programs are likely to be more effective if small businesses are systematically and periodically notified of regulatory measures that regulators are developing or plan to develop in the future. While it may not be always appropriate to consult, even on a restricted basis, (for example, for new initiatives to deal with tax avoidance) it may still be possible to undertake restricted 'early options' consultation with specialists outside government.

### **4. Accessibility**

Information about regulatory proposals and the consultation process should be easily available to the small businesses that are likely to be impacted on.

Departments and agencies should inform small businesses of proposed consultation via the most appropriate means, including, press releases and advertisements in the media; newsletters of industry associations and lobby groups; trade and professional magazines; and the business consultation website.

Information provided to small businesses should be easy to understand — it should be in a format which is easy to read, be written in plain language and clarify the key issues, (particularly where the proposed regulation addresses complex issues). Written consultation documents should include summaries to allow those consulted to quickly assess whether the

material is relevant to them and whether they need to read further. Where appropriate, the publication of relevant information or issues papers on the website of the department or agency sponsoring the proposal will assist with accessibility.

The medium selected should be appropriate to effectively consult with the identified small businesses. Alternative methods of consultation may include stakeholder or public meetings, working groups, focus groups, surveys or web forums. The appropriateness of each approach will depend on the issues under consideration, the nature of the groups being consulted and the time available. Be aware that small businesses may not be well resourced and attending meetings or digesting long consultation documents, for instance, may not be possible.

Consultation strategies should include a range of methods. These approaches can be combined as needed to suit the regulatory issue under discussion and within the resources available for consultation.

An increasingly popular way for government to seek input from (and have dialogue with) the community/stakeholders is through websites and online forums.

## **5. Transparency**

Involving small businesses from the earliest possible stage in the policy development process will promote transparent and comprehensive participation.

To manage the expectations of small businesses, the objectives of the consultation process should be clear from the outset. Small business participants are entitled to know what use is to be made of the views and information they provide. To avoid creating unrealistic expectations, any aspects of the policy proposal that have already been finalised and will not be subject to change should be clearly stated. For example, if a decision to regulate has been made already, small businesses should be made aware that their views are sought primarily on regulatory design and implementation, not on the merits of the policy itself.

Being clear about the areas of policy on which the views of small business are sought will also increase the usefulness of responses. For example, explicitly stating any assumptions made about those likely to be affected by the proposed policy or identifying particular areas where input would be valuable will encourage respondents to address these issues.

Small businesses should also be made aware that policy development is guided by a regulation policy framework and that consultations will take place within this framework. Departments and agencies should respect the confidential nature of information provided.

Information or issues papers — such as draft assessments of business compliance costs or draft Regulation Impact Statements, green papers (policy options papers) or draft legislation — should, wherever possible and appropriate, be made available to stakeholders to enable them to make informed comments on policy proposals and proposed legislation.

To provide credibility to the consultation process, policy agencies should also show stakeholders how they have taken consultation responses into consideration.

A common complaint of small business is that their suggestions are rejected without explanation by regulatory agencies that have entered the consultation process with a pre-determined view of the outcome. Departments/agencies should have an open mind in the consultation process, and be in a position to demonstrate to small business that they have considered all suggestions and responded to specific concerns and questions.

## **6. Consistency and flexibility**

Consistent procedures can make it easier for stakeholders to understand and participate in consultation. Consistent processes also permit better coordination of regulatory quality initiatives across a wide range of policy areas (avoiding the effect of regulatory 'capture' of departments/agencies by specific interest groups). However, consistency must be balanced with the need for consultation to be designed to suit the circumstances of the particular proposal under consideration.

In instances where ministers have made a commitment to a particular policy, consultation can improve the design of the proposal and help ensure that it minimises the compliance burden on business and costs to the community.

Public consultation for some proposals may be inappropriate (for example, where there is a need for Cabinet confidentiality, such as for national security or commercial-in-confidence matters). In some of these instances, an alternative may be for departments or agencies to consult with stakeholders in confidence. However, in other instances, it may not be possible to consult even on a restricted basis (for example, for new initiatives to deal with tax avoidance) although it may still be possible to undertake restricted 'early options' consultation with specialists outside government.

Consultation may not be appropriate for minor or technical amendments to regulation, for example, amendments that remedy errors or defects in existing regulation.

## **7. Evaluation and review**

The consultation process should be evaluated to consider its effectiveness, and agencies should continually look at ways of making consultation more effective. Departments and agencies need to be careful, however, that any evaluation involving further participation from small business is not perceived as an additional burden.

Evaluation of consultation processes may include examining the number and types of responses; whether some methods of consultation were more successful than others; and how consultation responses clarified the policy options and affected the final decision. For example, better use of information technology can improve the cost-effectiveness and timeliness of consultation processes. Departments and agencies may wish to consider publishing consultation protocols on their website.

# Where can I get more information?

## Commonwealth

Manager, Small Business, Competition and Consumer Policy Division  
The Treasury

## New South Wales

Office of the NSW Small Business Commissioner  
1300 795 534  
or  
[we.assist@smallbusiness.nsw.gov.au](mailto:we.assist@smallbusiness.nsw.gov.au)

## Victoria

Small Business Victoria  
Trade and Industry Development  
Department of Business and Innovation  
[www.business.vic.gov.au](http://www.business.vic.gov.au)

13 22 15

## Queensland

Department of Tourism, Major Events, Small Business and the Commonwealth Games  
[www.business.qld.gov.au](http://www.business.qld.gov.au)  
13 25 23

## Western Australia

Director, Policy and Advocacy  
Small Business Development Corporation  
(08) 6552 3300  
[policy@smallbusiness.wa.gov.au](mailto:policy@smallbusiness.wa.gov.au)

## South Australia

Department for Manufacturing, Innovation, Trade, Resources and Energy – Small Business  
[southaustralia.biz/small\\_business\\_home](http://southaustralia.biz/small_business_home)  
(08) 8303 2400

## **Tasmania**

[Business Point:](#)

Freecall: 1800 440 026

SMS: 0408 916 980

[businesspoint@development.tas.gov.au](mailto:businesspoint@development.tas.gov.au)

## **Northern Territory**

Manager, Business Liaison

Business, Industry Development and Engagement Division

Department of Business

(08) 8999 7970

[businessinfo.ntg@nt.gov.au](mailto:businessinfo.ntg@nt.gov.au)

## **Australian Capital Territory**

Small Business Policy

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