Small Corporations: Better Controlling the Spigot of 'Red Tape'

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Abstract

Regulation in Australia appears to be increasing at an exponential rate. For small businesses that, are often resource poor and isolated, compliance is a burden. They face a paradigm conflict with regulators, who often are imbued with the objective of maintaining quality standards and perceptions of servicing an industry, while the regulated see regulation as an evil and a cost to doing business. Two case studies illustrate the political minefields in alternative approaches to regulation. Finally, the paper reviews changes in regulation internationally and in Australia and puts forward some innovative options for the future implementation of regulation of small businesses.

Keywords

Small business, regulation

Introduction

This paper examines the issue of the regulation of small corporations in Australia. Regulation has at its core a relationship to manage between the regulator on the one hand and the single firm, as a regulated entity, on the other. Whilst much of the analysis in this area focuses on the apparently relentless growth of regulation, the corollary is to seek a more simple set of regulatory rules, especially for small, resource constrained firms. Seeking to simplify rules, and to ensure they are tailored to commercial realities, remains an important aim for small firms; it is also useful to explore new ways of developing the working relationship between the regulator and the regulated market. This paper sketches some new possibilities for small firms to work more collaboratively with one another via the use of networks so as to reduce their individual regulatory burden. A possibility for promoting such regulatory networks may well lie with peak bodies, such as the Council of Small Business of Australia (COSBOA).

Principles Underpinning Small Corporations

Small corporations in Australia, as essentially resource restrained entities[27], are guided by four key operating principles, what might be called the 'four Ps':

[27] Small corporations are defined by the Australian Bureau of Statistics as having less than 20 employees http://www.cosboa.org/Resources/Small-Business-in-Australia.aspx. Section 45A of the Corporations Act (Cth) 2001 provides that a small proprietary company is a small proprietary company for a financial year if it satisfies at least 2 of the following paragraphs: (a) the consolidated revenue for the financial year of the company and the entities it controls (if any) is less than $25 million, or any other amount prescribed by the regulations for the purposes of this paragraph; (b) the value of the consolidated gross assets at the end of the financial year of the company and the entities it controls (if any) is less than $12.5 million, or any other amount prescribed by the regulations for the purposes of this paragraph; (c) the company and the entities it controls (if any) have fewer than 50 employees, or any other number prescribed by the regulations for the purposes of this paragraph, at the end of the financial year.

People – their people and their skills, including the directors, the board, senior managers, and other employees.

Plan – the business plan and the business portfolio. What is the nature of the business? Is it single or multi focused ? What are the business silos and how do they interact? How is planning carried out and decision-making achieved?

Property – What are the key property rights (real, personal and intellectual) which need protecting or asserting? In turn, what are the main contractual obligations and what are the intellectual properties that require protection, e.g. business name protection.

Profit – small business will first focus on the costs, before they turn to profits. Cost control provide the safety barrier which businesses must have before the business is safe to proceed. Other related issues include who is in competition now, and who is likely to in the near future? What are the margins of safety of operation, of profit, and increasingly of risk? For small firms, the margins of safety are small and the margins for error large. Start-ups often fail and the spectre of a business going bad haunts most businesses in the first cycle of their development.

Whilst there can be some argument about whether the 'four Ps' carry the day, a fifth indicia is increasingly central to the set up, operation and survival of small corporations; that is, it carries weight as a factor across all elements of the firm's life cycle. The '5th P' is policing or what we now term under the ever expanding rubric, regulation.

Although governments and their regulators, legal and economic theorists and others like to portray regulation as benign and business-helpful, as the friend of the start-up and the guide and friend of the small corporation, regulation is viewed by the regulated as the necessary evil, as a cost of doing business.. For the time and resource constrained business operator, taking time to see to regulation is time spent away from core business. It is marginal business at best, and significantly costly given the opportunity cost is measured by time spent away from overseeing core business functionality.

The stance of the regulator and the regulator are paradigm opposites. For the regulator, it is perceived as core business. The regulator asks, how can we maintain standards and the public interest, and, ideally not diminish business value? The business asks, how can we grow the business, and how can we comply with our regulatory requirements in the least time possible, so as to keep down the opportunity costs to be able play/compete in the chosen game/business field? [28]

Regulation Case Studies

These two opposing views are evident in the following two cases. They address the questions: What are the contextual imperatives of regulation in Australia? How is regulation set up and what are the political attitudes towards it and theoretical options available?

Case study 1: Childcare regulation in Australia

The National Childcare Accreditation Council (NCAC) regulates childcare services and the flow of Child Care Benefit to Australia's 9000 plus services which are typically small organisations. The NCAC's role is primarily as an accrediting agency reporting directly to the Federal Government. The NCAC also seeks to see standards improved, and provides commentary and advice to centres on continual industry practice improvement. In addition to the essential regulatory core of its business function and despite the NCAC's claim to provide an the industry with a quality/ excellence maintenance service, the regulated industry essentially views the organization as a regulator and as the overseer and enforcer of standards.

The service providers are almost exclusively small businesses. Their issues of concern, in relation to the regulatory cycle are legion: too much paper work, too many complex policies, too much technical material, too much reading, too paper based, regulated too often, and too many key staff kept from core business by the process. In response, the NCAC has tentatively promoted the concept of a

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28 This refers to game theory analysis, see for example, Cass Sunstein (ed), *Behavioural Law and Economics*, CUP, 2000.

responsive regulatory model, where its focus is less on more regulation, and more on problematic services.

In keeping with the theories of Ayres and Braithwaite[29] this approach has reflexively sensible appeal in a mass industry where 9000 services across Australia range in standard from gold class to some which might be called concerning outliers.

Nevertheless, policy options are limited. The reaction of the Ministers (of both major political parties at the Federal level) is not to be seen to dilute the standards required of all childcare centres, whether gold, bronze or other class. NCAC as a regulator, may want to be an educator and a flexible, responsive regulator, but the political frameworks are tight and costs, in terms of political risk, are very high.

Another tack is to simplify the regulatory mix between the Commonwealth's role as accreditor and standard setter and the States as signing off on licenses to operate and enforce OH&S issues. What has end up is an ever increasing arch of complex Federal compliance and a myriad of state and territory standards at the local level. As a final strategy to unlock the tangle, Council of Australian Government plans have been hatched so as to share, vest or transfer power, typically to the Commonwealth.

The relevance of this case study to small corporations is that they too share this basic model of good intentioned, simple regulatory frameworks and yet end up as another example of complex Federalism, and a myriad of political compromise. The *Re Wakim* litigation[30] is testament to the uncertainties of cross vesting of power, in that case, State to Commonwealth. That journey of power essentially being transferred to the Federal sphere has been a steady-state journey since 1901. If history is the guide, that is likely to continue for corporations regulation, including those applying to small corporations.

Case study 2: Accreditation of law schools

Australian law schools are not regulated except by their own organizations and, in terms of delivering the Priestley 11 units, that means each school has an irreducible core curriculum. However because of the perception of the increasing national and international focus of law, and legal education, it is seen as apt that the Council of Australian Law Deans (CALD) develop a set of national standards. The standards have been formulated, in the first instance, as a set of self accrediting benchmarks against which law schools can judge their own practices and delivery.. Whilst this low level, voluntary, self accrediting model is the starting iteration of the national scheme, how will the scheme evolve? Will it become compulsory? In differentiation to the regulation of childcare, the scheme has been set up not in a regulatory guise but as being a mechanism for improving standards. Whilst the first iteration is benign, what will the scheme entail as it evolves? What, for example, will be the sanctions for non participation in the scheme, or for failing on key benchmarks? Will de-accreditation become a necessary potential cost of involvement in the scheme?

These are all theoretical issues to be played out, and as yet remain unclear. But one can see that this is how regulation journeys and creeps into a central position. The arguments for standards being raised, transparency and consistency, give the regulatory model its first and powerful impetus; the second phase is the real world of resources needed to comply, and identifying the range of consequences for the regulated. As history illustrates, each market develops battle lines between the regulated and the regulator.

Regulatory Trends

A relevant question is: How does the regulatory environment in Australia compare with other countries?

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29 I Ayres and J Braithwaite, *Responsive Regulation Transcending the Deregulation Debate*, OUP, 1992.

30 R*e Wakim; Ex parte McNally/Re Wakim; Ex parte Darvall*
Re Brown; Ex parte Amann Spinks v Prentice High Court of Australia, 17 June 1999
(1999) 163 ALR 270

International trends

The global financial crisis (GFC) has seen the introduction of more 'lock-step' behaviour from national governments and from lawmakers. Whilst there are local exceptions and cultural imperatives, Governments and lawmakers are increasingly on safe ground when they discuss and act in the name of synchronized international action; this has been particularly prevalent in terms of financial regulation and re-regulation in Europe and the US. In terms of the area of corporate law regulation, an example of synchronization lies in the particular topic of directors' liability for corporate faults and defaults. Dr Helen Anderson has undertaken a wide-ranging international study, investigating various aspects of this topic.[31] These include capital raising, unremitted employee tax instalment laws, and environmental protection laws. These areas 'were selected because they represent a range of powerful stakeholder interests.'[32] Anderson found that in respect of these areas there was 'a considerable degree of similarity'[33] and that they showed 'marked similarities across the jurisdictions selected.'[34] The jurisdictions included Australia, Canada, New Zealand, China, South Africa, Hong Kong, the United States of America, Malaysia, South Korea, and France. By any reckoning, this is an extensive comparative survey with a selection of common law, civil law and 'emerging model' legal systems. Anderson concludes that:

> *'What is noteworthy from an examination of the legislation governing these areas across the jurisdictions surveyed is the stringency of the laws and the degrees to which they adopt a common form of words and structure.'*[35]

Anderson's study supports the thesis of increasing international synchronization in key aspects of corporate law regulation, to the point even of common words and structuring of the relevant legislation. She also finds some 'noticeable dissimilarities'[36] among the surveyed nations is certain areas, including insolvent trading law, recovery of employee entitlements and protection of tort creditors.[37] Therefore the thesis of convergence of laws in this area is not uniform. However, Anderson concludes that convergence is the broad trend. She notes:

> *'While there are many reasons for convergence and divergence of laws, based on political, economic, practical and evolutionary reasons, a pattern is suggested from the areas of law examined- that areas of stringent liability on directors broadly, but not precisely, correspond with widespread international adoption of similar laws, and conversely that more lenient laws are unlikely to be copied internationally.'*

That is, a trend internationally to tougher and more encompassing patterns of regulation is clearly in evidence in post GFC environment.

Australian regulatory trends

There are three discernible trends in Australian regulatory policy which are discussed below.

Regulators working together

In terms of the trends amongst regulators, it can be argued that regulators are sharing more information - and this trend is borne out by the case law and certainly the commentary on the relevant areas of legislation. For example, recently, under ASIC's use of transcripts, Section 22 of the *Australian Securities and Investment Commission Act 2001* (Cth) (the ASIC Act) ASIC can seek information on oath from people, and the examination is supposed to be, in fact, private, and ASIC has

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31 Helen Anderson, 'Directors' liability for corporate faults and defaults- An International Comparison,' 18 Pac. Rim L.& Pol'y J., 2, 2009, 1-51.

32 Above Anderson n 5, at 4.

33 Above Anderson, n 5, at 2.

34 Above Anderson, n 5, at 3.

35 Above Anderson, n 5, at 4.

36 Above Anderson, n 5, at 51.

37 Above Anderson, n 5, at 51.

to treat it as confidential. But that is not an absolute confidentiality requirement, because 'ASIC is permitted to disclose the transcripts of examinations to other persons or agencies in certain circumstances.'[38] Section 25 of the ASIC Act provides that disclosure may be made for the purpose of litigation. Andrew Eastwood argues[39] that the scope of this disclosure has been interpreted broadly by the Federal Court.[40]

Section 127 (2A) of the ASIC Act provides that ASIC is authorized to disclose information to other Australian regulators. Section 127 (2B) of the ASIC Act provides that ASIC is authorized to disclose information to overseas governments and their regulators The implication of these far-reaching practices is that whilst ASIC may be eliciting transcript information and related sensitive data, it is actually able to be shared with other domestic regulators including Australian Prudential Regulatory Authority, and the Reserve Bank of Australia, and there are Memoranda of Understanding with international bodies as to such sharing. The ability to disclose and share information is broad and the discretion vested in ASIC is fettered simply by the obligation to 'observe the rules of natural justice.'[41]

Whilst the ASIC investigation of an individual is ostensibly private, the information can in fact be systematically shared. This is an example of a complex network of regulators working together. The ASIC case study provides the actuality of more, and more connected, regulation knowledge sharing amongst the regulators. Taking these practices as exemplars of what the regulators are doing, there may be some useful implications for the small business sector generally.

More regulation

Australia has a well documented regulatory paradox, where there is a lot of debate around the reduction of red tape reduction, and yet there is an oft heard complaint of over regulation. Evidence can be found in the public address by Gary Banks, Chairman of the Regulation Taskforce[42] and the work done by the Productivity Commission (also chaired by Gary Banks)[43], corporate regulation review, and so forth. The paradox's core is whether it is politically achievable to actually reduce the applicable red tape, even if business and other sectors wholeheartedly seek it reduction? This growth of regulation in Australian corporate and political life seems inevitable, and it holds sway despite the particular hue of the national Government at any given time. For example, even during the Howard era of so-called economic reform, the political rhetoric focused on regulation reduction, but the actual practice was that of an increase.

The perceived need to reduce red tape, supported by the rhetoric of the business lobby and those in the government dealing with business portfolios, has been met with the operating reality of a neo-conservative restraint where finance has been in short supply, risk has been the catch cry, and the established banks have reasserted a low risk lending dominance.

Even before the GFC and during the course of several simplifications acts, things on the ground seemed to have got more complex for corporations and the directors. As Stephen Bottomley has noted[44], it is a curious Australian law making instinct to legislate and to regulate so that there is a matrix of ever-growing complexity; indeed, the impulse to regulate seems to form part of the Australian national culture as expressed through the political process.

So whilst we search to reduce red tape the opposite happens: the paradox in action. We assume minimal regulation – an aspiration or regulation optimism. What if instead there is 'regulation realism' i.e. that in the real world the impulse is to provide further rules, more law, more regulation.

Assume for a moment that more regulation and more complex regulations are, in fact, an inevitable corollary of 21st century civic life. That the production of red tape is always, just about at least,

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38 Andrew Eastwood, 'Potential uses of transcripts of ASIC examinations,' (2009) 27 C&SLJ 555-560, 555.

39 Eastwood, above n 12, at 556.

40 *Gray v. Australian Securities and Investment Commission (2002) 122 FCR 12* as discussed by Eastwood above n 12.

41 Eastwood, above n 12, at 556.

42 Gary Banks, Reducing the regulatory burden: the way forward, Monash Centre for Regulatory Studies, 17 May 2006

43 Corporate and Financial Services Regulation Review, November 2006

44 Most recently in *The Constitutional Corporation Rethinking Corporate Governance,* Aldershot, England: Ashgate Publishing, 2007.

guaranteed to follow a growth trajectory? Recently the High Court of Australia sought to shift personal responsibility to the public and the individual drinker away from the small/large business owner serving alcohol.[45] The political reaction was immediate. The impulse was to announce a legislative solution, to install a set of solutions to apply a framework to alcohol providers. The High Court sought a *de minimis* solution; in response, the political will however was to revert to the application of a set of rules. This was a rule-based legislative reflex on alcohol servers in response to a common law ruling favouring the principle of personal responsibility for adult behaviour and decision making.

Based on both analysis and practice, can we assume that regulation will always grow more complex to reflect a quicker more connected, more integrated and more complex social environment? If this assumption holds true, how then can the situation be best navigated by the legion of small corporations?[46] Given the numbers, it's a big problem and hence there is a big possible pay-off or solution.

With more regulation and more isolated small firms operating in relation to more networked regulators, the power imbalance between the regulator and the regulated are growing ever wider. How can this imbalance be redressed?

The pitch of less regulation, however, is now politically a very hard item to sell to the broader political electorate in the wake of the global financial crisis.[1] In other words, the political risk of a light touch regulation can often be seen as too high, especially in what are seen as traditionally high risk areas. These include childcare, education and the corporate law area. The corporate law area is characterized as being in the high risk category because every 10 years or so, the Australian public witnesses the excess of the Australian boardroom- and the catastrophes and subsequent litigation in the wake of high profile corporate collapses. Whilst these outlier cases tend to be at the public end of the market, their consequences tend to affect the regulation of the entire corporate sector.

Whilst we may be in the age of corporate social responsibility, the corollary of heightened ethical awareness, if not behaviour at the board level, there is a distinct lack of appetite to reduce the rules of the game of corporate compliance at the macro political level.

The conclusion is that whilst the focus on actually reducing or excising the burden of regulation, might make many in Australian so-called 'regulation optimists', is the reality in fact such that regulation is here to stay, that it will keep growing necessarily, and so, in a post-GFC society, that is what we essentially are stuck with, a tap that cannot be turned off or is very difficult to turn off because that is the reflex.

Isolated, under resourced small corporations

Between 2003 and 2007, approximately 777,000 companies did not survive. So, whilst the small business sector is a huge industry by size, it's got a persistently high failure rate. What is the genesis of that failure rate? Is regulation a factor? How do they control the spigot of regulation, federal and state, such that it truly is benign and does not take up the time of the best and possibly only people they have?

The operating paradigm is single businesses dealing with a gateway of regulators- the regulators form a network or federation. Yet, attempts have been made to make regulations accessible to small business. An example is the small business guide in the Corporations law which provides text specific to small firms. Further guidance is provided in the replaceable rules which replicate, in part at least, the fundamentals of business as seen from a business perspective.

Yet, under resourced small corporation directors can miss basic stuff. A start-up with a good idea talking to a big firm requires a confidentiality agreement as a threshold piece of legal protection. If the

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45 Judgment date: 10 November 2009, C.A.L. No 14 Pty Limited t/as Tandara Motor Inn & Anor v Motor Accidents Insurance Board; C.A.L. No 14 Pty Limited t/as Tandara Motor Inn & Anor v Scott [2009] HCA 47.

46 According to the Council of Small Business of Australia (COSBOA) there were 1.93 million active small businesses in Australia at June 2007, http://www.cosboa.org/Resources/Small-Business-in-Australia.aspx.

business owner cannot readily afford $300-600 an hour for legal advice, and there is no obvious peak body, the business may waste six months of time and effort pursuing a fruitless deal which is lost all because a director was not aware of a basic tool protecting commercial-in-confidence negotiations. A confidentiality agreement is a business-first tool; it can stave off a whole lot of regulatory consequences – contract, Trade Practices Act, Intellectual Property, other legal disputes potentially involving expensive litigation, insolvency, directors' duties and so on.

Network Theory and its Implications for Small Corporations

One of the interesting ideas to be gleaned from regulatory practices is the notion of networks and informal networks. That is, if the regulators are using networks and swapping information and collectively gathering information and using it, this practice may be usefully applied to the regulated market. It is potentially the case that small businesses can start to adopt such practices as well.

Network theory arises out of the broader field of complexity theory. It has been applied in economic contexts and more recently has branched into legal contexts. For example, Andrea M. Matwyshyn uses[47] network theory, a branch of complexity theory, to examine questions of internet jurisdiction in the context of intentional torts and intellectual property harms – the types of internet harms traditional personal jurisdiction frameworks have difficulty addressing. It then proposes a trusted systems approach to these jurisdictional determinations.

Network theory 'concerns itself with the study of either symmetric relations or, more generally, of asymmetric relations between discrete objects.'[48] This definition with asymmetry at its core neatly replicates the traditional regulatory relationship between the well resourced and informed regulator, and the isolated small business. Complexity theory 'recognizes that complex behaviour emerges from a few simple rules, and that all complex systems are networks of many interdependent parts which interact according to those rules.'[49] Again, this describes the core of the regulation of the small corporation market, which has been added to by layers of ever more complex rules.

The notion is that if small businesses can be seen as networks, they can begin to operate more effectively and collectively. That is, to behave more like the regulators who have begun to develop, between themselves, fairly complex and apparently efficient informal networks. Regulators are certainly leading the field in terms of making up business networks and working cooperatively together, but it may well be that networks have other business applications, particularly for small corporations.

The key is not to reduce regulation, nor to continue to hope that Australia can devise simpler federal-state bargains across a myriad of good, services and business sectors. This is still a slow moving, top down, political solution to the nimble business problem. The challenge is to develop the possibilities of networked solutions for the regulated sector so as to reduce the information and power asymmetries between the powerful cohort of regulators and the mass of small corporations.

The main improvement would be for *better networks, synchronization and co-operation at the business level* between often micro, resource-tight corporations, so as to provide more parity, less duplication, more efficiency, and richer databases of information that can be put to use for reporting and regulatory purposes. A networked regulatory response by small corporations could begin as an informal practice, and potentially become more formal. For example, it could be an informal practice based on a legislative scheme as evidenced by the ASIC's example of information sharing with other regulators. The networking agents for small corporations could be chosen from several potential sources including:

- Peak bodies such as COSBOA, the Council of Small Businesses of Australia, and other industry bodies;

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47 Andrea M. Matwyshyn, 'Of Nodes and Power Laws: A Network Theory Approach to Internet Jurisdiction Through Data Privacy,' The Wharton School, University of Pennsylvania, *Northwestern University Law Review, Vol. 98, 2004*

48 http://en.wikipedia.org/wiki/Network_theory

49 http://businessdictionary.com

- Professional advice providers, such as accountants working within peak body groups such as CPA Certified Practicing Accountants; or
- A combination of these two approaches.

COSBOA: a new role as a networked regulatory go-between?

As its website indicates,[50] COSBOA is primarily an educator of, and advocate for, the small business sector. It could also become a networked regulatory go-between acting in the space between the regulator and the regulated elements of the market. This potential third function could enhance the first two functions. COSBOA as a peak body enjoys a natural advantage. It is already working on the business commercial level of the market, rather than from on high as a regulator *per se*, and as such has insights into the common concerns facing small corporations.

This model of networked small firms with a common business platform providing data updates to their informal partner/educator i.e. the peak body, gives a single small company a direct interest in the wider business field; that is, it networks or links into multiple like businesses. The peak body becomes a hub for the hybrid reporting- regulatory-education-knowledge sharing aspects of small corporations. It is a social and commercial good to share information- good to talk- to help the sector collectively. Compliance and regulation is embedded in the business to peak body relationship, it is bottom up (and as such earthed and grounded in business reality) rather than the traditional top-down government/regulator to firm relationship (which is often seen as policing by the regulated market).

Does this idea of network nodes amongst the regulated market blur regulation and improvement models? Yes, but probably more productively than is currently the case where for example, ASIC is first and foremost a regulator, not an educator or disseminator of best practice. But more fundamentally, does it really matter at the practical business level?

The Federal Government could fund national peak bodies, in the first instance over say a phased five year period, to develop lean regulatory maps, diagnostics, compliance devices, which make sense to small corporations and different areas of activity because they are road tested, devised, authored, recalibrated at the industry level. We could stop thinking of geographic territories and the tyranny of jurisdiction, and think instead of the commonalities of say a food business in Melbourne and one in Marble bar, a wine distribution business in Weipa or Williamstown, or a chiropractor in Civic or Claremont. Those businesses and the way they are run will have a great deal in common, and their regulation should, as a secondary matter, reflect that underlying business realism.

Business specific regulation, via an agency network, makes a lot more sense to the business. It inverts the traditional model of regulation[51], but given the three realities of market- weak atomized small firms, networked regulators sharing information, and the steady increase in technical law and regulation requiring ever greater compliance costs, a radical revision of the present regulatory model is timely.

Conclusion

Just as the new tax system of 'exception reporting' by taxpayers is fast becoming the steady state, the fundamental notion of what is efficient regulation for business needs to be reconsidered. Moving the red tape reduction argument from the mode of the Government versus a single business, that is a 'David meets Goliath' narrative, to a more nuanced networked version, may be worth considering and is perhaps a point of confluence and further exploration for practical regulatory analysis and review, and for peak bodies to play a centrifugal part. In this way, just as the early 20th century was the period of collective strength for unions and employees, the urgency of making the relationship between the regulators and an individual small corporation, could herald the emergence of critically important peak bodies as networked 'go betweens.' The legion of small corporations situated at the interface of public power and private entrepreneurship in Australia could stand to gain exponentially from this re-figured regulatory landscape.

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[50] http://www.cosboa.org.au/default.aspx.

[51] See Appendix 1.

Appendix One (refer footnote 25)

A. The traditional 'vertical' top-down model of regulation

Top down model	**The Regulatory relationship**	**Characteristics of the regulatory relationship**
The regulator	The regulator oversee the regulated market via a budget, resources and expertise	Top down Often a complex and asymmetric system Most of the rules suit and apply to large firms *De facto* and by default- this system of regulation is applied to small corporations
The regulated	The small corporation acts in isolation; and seeks to comply with the regulatory burden. The demands of the business are constant and the first priority of the managers and shareholders. The regulatory burden is often a distraction from 'the business of the core business.' The business may not be able to properly resource its regulatory compliance effort (whether via in-house efforts or by resort to qualified third parties)	Act in isolation and often in ignorance whilst seeking to meet their compliance burden

B. Small corporations- using a 'networked' or bottom-up model of regulation

Bottom-up model	**The regulatory relationship**	**Effect**
The regulated	Advisors and relevant peak body- private entities, run by business experts; but with resources for excellent databases, material collection and dissemination- subject to privacy laws. Use of technology to drive the network Peak bodies are business enablers first and foremost; they educate, and seek to document best practice; they are reflective of improved standards; they operate with a 'business first, regulation secondary' mind set. (The tail does not wag the dog.)	Effect: the business works on its business primarily and complies with industry/sector relevant regulation in partnership/working collectively with its advisors/peak body. This model introduces the advisor/peak body as a networking hub
The regulator		The peak body provides a single, seamless industry relevant regulatory report to a single point of government e.g. ASIC for distribution to other regulators. This model reduces the asymmetries between the regulator and the regulated.