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Dear Mr McTavish

Have your say on border closures during the COVID-19 pandemic

The NSW Small Business Commissioner (the Commission) is an independent statutory office of the NSW Government. It provides strategic advice, advocacy and affordable dispute resolution services across NSW.

The Commission's role includes:

- encouraging government agencies and larger businesses to enter productive working relationships with small businesses
- facilitating and encouraging the fair treatment of small businesses
- promoting a fair operating environment in which small businesses can flourish.

Throughout the last two years, the Commission has had in-depth conversations with small businesses, industry associations and other business representatives about the impact of border closures during the COVID-19 pandemic. As you would be aware, small businesses operating within or near border communities experience challenges where requirements are inconsistent across state boundaries. These challenges became increasingly complex as jurisdictions implemented different rules and approaches to managing the pandemic. Border closures were of particular consequence as many border communities operate as a functional economic region across more than one jurisdiction.

This submission outlines some of the key challenges experienced and reported to the Commission since the onset of COVID-19.

Back-office personnel were never considered essential workers

Border closures left many small businesses unable to conduct essential work because the necessary personnel were unable to travel, which led to operational, work health and safety and compliance problems. This was especially prevalent for small businesses in a network or franchise that required support from another location across a border. Examples included businesses being unable to comply with audit requirements, undergo training required for safe operations or have vital equipment serviced and repaired. In all of these cases, the necessary personnel were considered "non-essential" and could not cross the border.

Stakeholders suggested governments should have established faster and more direct channels for businesses to request travel exemptions for key staff, and that vital back office personnel should have been considered key staff in some instances. Governments should not have relied solely on a

“departmental/government” (list of approved essential worker categories) but should have allowed businesses to request exemptions where special circumstances apply.

Financial support for border region businesses was valued but needed to be timely

Small businesses heavily impacted by border lockdowns have expressed that financial support was helpful. However, support needed to be timely to assist them in meeting their most immediate challenges relating to cash flow.

Stakeholders also indicated that support programs were most manageable when the assessment criteria was both accessible and consistent. Where multiple rounds of support were given, business owners found it frustrating and difficult when the eligibility and supporting documentation requirements changed each time. Having consistent requirements would also speed up the design and implementation of any future grants.

Some small businesses could not access supports in the state where they operated

In border communities, many small businesses operate in a different state than where their business is registered. For example, many businesses operating in Albury had their business registered at an address in Wodonga, either their accountant’s address or their home. Initially, this left these businesses ineligible for financial support from any jurisdiction. While this problem was resolved, it should be an ongoing consideration for future financial packages applied to border regions.

Border bubble areas should have followed economic boundaries

When “bubble areas” were established around communities that straddle a border, they should have followed economic boundaries rather than geographic boundaries. Governments should have considered factors like where employees live, local supply networks and the area serviced by key trades. This would have minimised economic and personal disruption and allowed local communities to function better while the bubble was in place.

Stakeholders reported that constantly changing boundaries made it difficult to conduct business. Government should have consulted with key community leaders prior to establishing a bubble to minimise the number of boundary changes.

Consultation and communications

Stakeholders raised general concerns about the extent of consultation when making changes to restrictions such as regulations or public health orders. The absence of consultation meant that some requirements were unworkable upon release, including due to challenges related to the border. Stakeholders had frequently requested to view draft versions of public health orders under development but were only provided an opportunity to view a final version before it came into effect. Stakeholders understood the need for Government to move quickly. However, they indicated that advance notice would allow them to identify major problems and unintended effects to both industry and Government.

While stakeholders sought to provide direct feedback on regulatory instruments, the Commission has generally received positive feedback about the routine of meetings and additional communication channels established by the NSW Government during periods of lockdown. These tools enabled industry representatives to quickly raise concerns or areas of confusion and get rapid responses helping members comply with the intent of the regulations.

Past learnings should inform future policy

The Commission welcomes efforts to identify opportunities to improve the experiences of small businesses located in border regions. While COVID-19 presented unique policy challenges for governments, there may nonetheless be an opportunity to incorporate learnings into future initiatives. This includes ensuring cross-border considerations are front of mind when new policies and programs are under development.

Thank you for the opportunity to make a submission. If you require further information, please contact Megan Bennett at either megan.bennett@smallbusiness.nsw.gov.au or (02) 9372 8767.

Yours sincerely

Chris Lamont
Commissioner
NSW Small Business Commission

Date: 09/06/22