

23 May 2014

Manager
Small Business Ombudsman and Procurement Unit
Small Business, Competition and Consumer Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir/Madam

We write to you in relation to the discussion paper proposing a transformation of the existing Australian Small Business Commissioner into a Small Business and Family Enterprise Ombudsman. We refer to the Federal Government's proposed new entity as the 'new ASBC'.

Executive Summary

Business SA supports the Federal Government's intention of expanding the existing ASBC to take on a dispute resolution role. It is important that the Commonwealth provide a low cost and effective means for small businesses to resolve disputes with Federal Government agencies; which is beyond the jurisdiction of State small business commissioners. We are also encouraged by the Federal Government's attention to ensure the new ASBC does not introduce regulatory overlap between the States and Commonwealth.

However, we are concerned that the new ASBC's proposed role will extend to areas beyond where a demonstrated market failure exists, particularly with respect to small business advocacy. Furthermore, the new Government intends for the ASBC to liaise with business and provide advice to the Federal Government on matters pertaining to regulatory impact on small business. In our view this should not be a function of the ASBC as it is the role of business organisations such as Chambers of Commerce and Industry. This would mean that the ASBC, a statutory body would be competing with organisations such as Chambers of Commerce and Industry (CCIs) and would be doing so with an unfair competitive advantage given the ASBC is government funded. In the lead up to last years Federal Election, the now Prime Minister the Hon. Tony Abbott said that if elected his government 'would get out of the way of business and let business get on with business'. In our view such a proposed role for the ASBC is in conflict with the Prime Minister's undertaking to the business community.

Business SA represents over 5,200 businesses and will this year celebrate its 175th anniversary. Business SA's, like other Chambers of Commerce and Industry (CCI) and other industry associations', viability is dependant on the fundamental role of being the representative of business and providing advice, to all levels of government on behalf of the business community.

We are trusted by our business members and through constant contact with them, ensure we are always effectively articulating their issues and needs to government.

We also advocate and lobby on their behalf through numerous government and private advisory boards and committees and are constantly appearing before tribunals such as the Fair Work Commission to represent their interests.

Although the Federal Government is well intentioned in trying to assist small business through the new ASBC, it is important to ensure that limited government resources are allocated to where there is demonstrated market failure.

The new ASBC should be consulting with organisations such as Business SA and other CCIs rather than competing with us and the services that we provide to the business community.

Background

1. Business SA supported the establishment of South Australia's Small Business Commissioner as an alternative means of dispute resolution at no or low cost for small businesses. The costs associated with pursuing court determinations are often prohibitive for small businesses, particularly when taking on much larger companies or Government entities. For this reason, there needed to be an alternative to the court system to restore a market failure where small businesses were limited in options to resolve disputes through an independent entity at low cost.
2. Importantly, Business SA only supports a new ASBC in so far as addressing the need for small businesses to have a low cost means of dispute resolution with Federal Government entities. For this reason, any new ASBC should have its role restricted to resolving disputes between small businesses and the Federal Government.

There is already an effective Small Business Commissioner operating in South Australia which can resolve disputes emanating here between businesses domiciled in different States or countries. While we cannot speak for other States, and note that not all States have a Small Business Commissioner, there is no demonstrated market failure which the Commonwealth needs to fill, aside from providing a means of dispute resolution between small businesses and Federal Government agencies which the State Small Business Commissioners do not have jurisdiction over.

In relation to international business disputes, the Federal Government's primary role should be to ensure that its Free Trade Agreements are actually working as intended.

3. It is critical for the Federal Government to continue to reduce regulatory overlap between the States and the Commonwealth. We have supported the Federal Government's recent moves to reduce regulatory overlap in a broad range of areas, in

particular the environment, which aim to reduce costs on business and realise administrative efficiencies. In that context, we would see any moves for a new ASBC to provide services which either overlap with the States or compete with the private sector as an unnecessary and retrograde step.

Duplication between the States, or for that matter services provided by other Commonwealth entities such as the ACCC, will also mean small businesses can shop jurisdictions for a better outcome which is an inefficient use of limited Government resources.

4. Any new ASBC will need to be a statutory appointment to ensure independence from the Federal Government. All State Small Business Commissioners are statutory appointments and the Federal Government should adopt the same approach.
5. The new ASBC must have appropriate powers to resolve disputes between small businesses and Federal Government agencies. Although the intention of a new ASBC should not be to wield a big stick, it will need to have the necessary powers to ensure parties to a dispute are incentivised to deal with the ASBC in good faith.
6. Membership organisations such as CCIs provide strong representation of small business issues to all levels of Government. CCIs are independent and funded by membership subscriptions. This means that CCIs have to provide relevant services, including advocacy and lobbying otherwise they will cease to exist.
7. In our view a new ASBC should not, nor could it, replace the advocacy and lobbying role of business representative organisations such as Business SA in terms of providing suitable and direct representation of small business.

Given the ASBC is Government funded, there is no underlying motive for it to ensure optimal outcomes for small business. Furthermore, the ASBC's role should only be in relation to dispute resolution so how can it effectively advocate on the broad range of issues impacting upon small business? Organisations such as CCIs have specialist policy teams which use a range of means to ensure they effectively canvas and articulate the views of their members to all levels of government. They have access to their business members through vehicles such as committees, surveys, member events and direct contact databases, all of which are very difficult to replicate in an entity such as the ASBC, which is not (nor should it be) a membership based organisation.

One of the most resource intensive aspects of policy formulation in organisations like Business SA is actually distilling the wide range of issues impacting all size businesses and ensuring that the collective voice of business is effectively articulated to Government. It is unlikely (nor should it be) that the new ASBC would be resourced to the degree required to provide effective representation of small business needs to the Federal Government.

Furthermore, one of the fundamental roles of an organisation like Business SA is providing advice to members on issues pertaining to awards and industrial relations. Part of this role is to represent members in the Fair Work Commission. If a new ASBC was to truly represent small business, it would also require significant industrial relations capacity which in any case would not be part of its remit.

8. Small businesses place a much higher degree of trust in organisations they pay memberships fees to represent them as opposed to Government entities. For this reason, they are much more comfortable in providing feedback to organisations such as Business SA who will protect confidentiality but ensure that the collective needs of small business are heard by governments. Business SA, like other Chambers of Commerce and Industry, also has a strong media profile which gives a high platform for the voice of small business.

While the Federal Government is well intentioned in trying to give the new ASBC an advocacy role for small business, it cannot nor should it effectively replace the private not-for-profit organisations like Business SA which already provide a voice for small business. This voice is strengthened on a national level through the chamber movement represented by the Australian Chamber of Commerce and Industry (ACCI). However, it will be important for the new ASBC to liaise with business representative groups to ensure they properly understand the needs of small business.

9. Business SA is also concerned that the proposed role for the new ASBC will abrogate the responsibility of the Federal Government to liaise with actual businesses and business representative groups in relation to issues of regulatory impact. It is critical that the Government improves consultation with business on regulatory changes but this cannot be achieved simply by extending the scope of the ASBC to advise Federal Government entities on issues of regulatory impact.

Although the new ASBC may be well placed to advise the Federal Government on issues pertaining to its dispute resolution interactions with small business, it is unrealistic to expect the ASBC will be able to adequately represent the very broad needs of small business on government advisory councils, committees and the like.

10. We are concerned that the role of the ASBC will be used to shoulder the entire Federal Government's responsibility to be small business friendly. By virtue of having an ASBC does not alleviate any government entity from the need to ensure it focuses on reducing the regulatory burden on small business.
11. The proposed 'ombudsman' name for the new ASBC is misleading in terms of the perception of what an ombudsman actually is. An ombudsman typically makes determinations and it is not proposed the new ASBC will have power to make determinations. Calling the new ASBC an ombudsman will also cause confusion with the role of the Commonwealth Ombudsman.

Business SA is also perplexed as to why the Federal Government is proposing that the ASBC title be changed to incorporate family business. While family businesses are very important to Australia, segregating family and small business issues is arbitrary in terms of relevance. As the majority of businesses are in some way, shape or form, a family business, there is no need for the Federal Government to spend its limited resources in trying to assist what it perceives are the unique interests of family businesses.

Succession is often mooted as a key issue for family businesses but this is equally relevant in businesses where the principal is not planning to pass the business onto family members. So when does a business start or stop being a family business?

It is suggested that the ASBC retain its existing name which should be sufficiently clear to describe its new role as a provider of dispute resolution services.

12. In the discussion paper, the Federal Government defines ombudsman as;

- Independent and not subject to the direction of, and not be, or perceived to be an advocate for any group.

This definition is precisely why the new ASBC should only take on a dispute resolution role and not be given a function of being a quasi advocate for the small business sector.

The discussion paper also advises an ombudsman should have a 'clearly defined jurisdiction' which should be as a provider of dispute resolution services for small business trying to deal with Federal Government agencies.

13. In relation to the enforcement of industry codes of practice, either the ASBC should replace the ACCC's role or not have any jurisdiction over such codes.

There is no need for duplication in respect to the administration of industry codes of conduct. If the ACCC is not adequately addressing the needs of small business in terms of them being able to resolve disputes under such codes then this matter should be taken up with the ACCC. There is no need to create an overlapping regulatory function at the Federal level to address any suggested shortcomings in the ACCC's management of industry codes.

14. The discussion paper cites disputes with Federal Government agencies amongst four options that the new ASBC could focus on.

Further on in the discussion paper, it states that the proposed new ASBC would not have a role in investigating complaints regarding maladministration by Federal Government agencies but could have a role in reviewing broader practices of Federal Government agencies such as the timeliness of payments to small businesses or the channels used by agencies and regulators to communicate with small businesses.

If the ASBC is not given broad responsibility to resolve disputes between small businesses and Federal Government agencies, then Business SA questions the need for an ASBC at all.

15. We support the Federal Government having a concise single on-line entry point for business. If the ASBC is to administer this function, then other Commonwealth entities with similar websites such as business.gov.au need to be consolidated. Furthermore, any new on-line entry portal needs to efficiently provide information at both a State and Federal level. It should also allow for businesses to easily compare jurisdictions.

The New Zealand model for this type of website is quite user friendly and is an ideal starting point for the new ASBC website.

The key focus areas for any single entry on-line portal should be;

- Starting/closing a business
- Employing people
- Exporting
- Incentives to Research and Innovate
- Tax considerations
- Other Legal Considerations (licences, permits)
- Resolving disputes

Who we are

As South Australia's peak Chamber of Commerce and Industry, Business SA is South Australia's leading business membership organisation. We represent thousands of businesses through direct membership and affiliated industry associations. These businesses come from all industry sectors, ranging in size from micro-business to multi-national companies. Business SA advocates on behalf of business to propose legislative, regulatory and policy reforms and programs for sustainable economic growth in South Australia.

Should you require any further information or have any questions, please contact Rick Cairney, Director of Policy, Business SA on (08) 8300 0060 or rickc@business-sa.com.

Yours sincerely

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