

Consultation on the Small Business and Family Enterprise Ombudsman - Thursday 8 May 2014

Professor Tim Mazzarol, Winthrop Professor in Entrepreneurship, Innovation, Marketing and Strategy at the University of Western Australia and President of the Small Enterprise Association of Australia and New Zealand (SEAANZ) – Comments were provided in Professor Mazzarol's private capacity and not as President of SEANNZ.

Key points

Concierge for dispute resolution

- The new Ombudsman should have broad scope and coverage to deal with all kinds of disputes e.g. international and interstate etc. It should not only have a role in dealing with federal issues but also an overarching role with broad powers, which could address the variation between the different state-based commissioners.
- The Ombudsman should have broad powers to investigate, mediate and enforce. Mediation should be the Ombudsman's primary role, similar to the role of the Family Courts in providing dispute resolution services to help resolve disputes without a court hearing.
- The Ombudsman should have strong powers to deal with the industry codes, which are not comprehensive enough and should be extended to cover a range of issues affecting small business, e.g. financial services – a "big gap" which could be filled by the Ombudsman. Other gaps – both federal and state – for example, in the area of commercial tenancies - are a big problem for small businesses that "are not getting a fair deal". Professor Mazzarol believes that government should take action through the development of the codes to address these gaps and give the Ombudsman a role in enforcing the codes.
- If the office is kept minimally resourced and relies more on outsourcing, careful consideration should be given regarding how the Ombudsman's work is to be outsourced e.g. to legal or accounting firms etc. and the office would still need sufficient resources to manage this oversight work, avoiding any conflict of interest issues.

Commonwealth wide advocate

- The Ombudsman should have a role in coordinating the small business impact assessment process, and government agencies should require the Ombudsman to carry out small business impact analysis. There is a red tape burden on small businesses, which have the same obligations as big business even though big business produce more red tape and should therefore share more of the burden. The Ombudsman could apply a risk based approach and ensure that the particular interests of small business are considered. The Western Australian Small Business Commissioner already has this role in reducing regulatory impacts and it could be the role of the Ombudsman to coordinate the deregulation activities of the Western Australian Commissioner and the other states to reduce red tape.
- SEAANZ has been exploring the possibility of undertaking a collaborative research study into the nature of small business disputes and their resolution in Australia. There is a need for stronger data and the Ombudsman could help gather data to guide state and federal research – e.g. on the nature of disputes, patterns of disputes etc.

- The Ombudsman could use its strong advocacy role to engage with big business to develop a small business code of conduct which would be a moral and ethical guide on how big businesses should deal with small businesses. This could improve for example, payment times, another big problem for small business when dealing with big businesses.
- The Ombudsman should have powers to investigate allegations of practices in the public and private sectors that negatively affect small businesses.

Contributor to Commonwealth laws and regulations

- More research should be done by the Ombudsman. This would be an ongoing process and involve engaging with the Australian Bureau of Statistics (ABS). The Ombudsman's role could be to coordinate data-sharing across state and federal agencies.
- Regulatory burdens should be assessed according to the size of the business and on a needs/risk basis.

A single entry point agency

- The single entry point should use all delivery channels – the website, hotline and social media – to communicate with all small businesses and cater for their differing needs. The Commissioner's website needs to be easier to access and should include social media. The ACCC's website is a good example for online educational content. Treasury should also consult groups such as the Accounting profession (e.g. CPA Australia) about the information needs of small business.
- The key information for the single entry point could include – FAQs, links to State Commissioner websites, links to relevant legislation – all combined in the one information source. The business.gov website can provide a benchmark for this work but it also has limitations, and the single entry point should be more small business friendly.

Method of appointment

- The Ombudsman should be a statutory appointment for a minimum of five years, to last beyond the term of any government and provide greater protection against the political whims of the government.
- The Ombudsman initiative is a very important one which is "long overdue".
- The Ombudsman's removal, if not properly managed, could potentially undermine the importance of the position. The position should be independent to prevent this risk from occurring and avoid the situation where big business puts pressure on the government to remove the Ombudsman.