

7 April 2015

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

Dear Sir/Madam

We write in relation to the Exposure Draft of the *Australian Small Business and Family Enterprise Ombudsman Bill 2015* (draft bill) subsequent to our previous submission dated 23 May 2014.

Executive Summary

The primary role of the proposed Ombudsman should be to assist 'actual' small businesses deal with Federal Government departments and agencies. While this role should cover dispute resolution, it will be far more effective playing a role earlier in the process. Accordingly, not only should the Ombudsman provide a pre-mediation service, but rather than just transferring requests from small businesses to other departments and agencies, the Ombudsman should be a practical advocate in helping small businesses to overcome their difficulties. Many of the issues that small business face dealing with the Federal Government are not necessarily at the dispute stage, but rather emanate from inefficient responses from departments and agencies.

The Ombudsman should only have jurisdiction where there is a regulatory gap and should expressly avoid involving itself in disputes between small businesses, particularly where State small business commissioners exist such as in South Australia. Furthermore, there is no evidence to suggest a regulatory requirement for the Federal Government to arbitrate small business disputes across State borders. In relation to international disputes, firstly the Federal Government should be focussed on ensuring its free trade agreements actually work in practice, and secondly, any alternative dispute resolution process would be best handled by private sector organisations like Chambers of Commerce which already have an established and trusted international brand.

The Ombudsman can be a helpful advocate for small business to the Federal Government, but it will not replace the advocacy role of peak employer organisations which are trusted by small business, particularly where businesses may fear retribution.

Finally, considering the majority of small businesses are family businesses and that many family businesses can also be large businesses, there is no need for the Ombudsman to play any unique role in assisting family businesses. Furthermore, issues of succession are often cited as the main reason why family businesses need special attention but such issues equally apply to both family and non-family businesses.

Background

We recommend you address the following points in the draft bill:

1. As we have previously advised, the new ombudsman's title should be changed to the 'Australian Small Business Ombudsman' without reference to family enterprise. We point to your own statistics showing the vast majority of small businesses are family businesses so in any case they are already covered. Furthermore, such delineation only creates further confusion and raises additional bureaucratic processes which impose an unnecessary cost on tax payers.

Under section 14, the draft bill states the advocacy function of the Australian Small Business and Family Enterprise Ombudsman is to:

Identify the concerns of those operating small businesses and family enterprises arising out of relevant legislation, policies and practices.

However, considering family enterprises are not limited to small businesses, it seems inconsistent that the Ombudsman should be concerned with advocating on behalf of all family businesses which includes many large businesses.

The intent of a small business ombudsman is to provide a service for small business which is entirely consistent with the approach adopted by States including South Australia which already have a Small Business Commissioner. There is no justification for the Federal Government to adopt a different approach.

In addition, the definition of family enterprise in the draft bill does not actually define what constitutes a 'family enterprise' which only serves to further confuse the issue of separating small and family businesses.

2. We acknowledge that similar legislation at a State level does not necessarily define small business; however the proposed definition in the draft bill does not accord with the most broadly accepted convention being businesses employing less than 20 people.

Whatever the definition, the point is that a Small Business Ombudsman should be primarily concerned with assisting small businesses which do not necessarily have the resources or wherewithal to effectively resolve disputes with the Federal Government.

3. The Small Business Ombudsman should not have jurisdiction over small business to small business disputes which can be handled effectively at a State level. We are also unaware of evidence to suggest there is a legislative requirement for the Federal Government to provide support for disputes between small businesses domiciled in different States.
4. The information gathering requirements of the Small Business Ombudsman should be limited to reduce any unintended consequences for small business. The intent of a Small Business Ombudsman is to provide an alternative to court and there is no need for this entity to have far reaching powers to compulsorily acquire information from small business.
5. As we have previously raised with the Federal Government, we are concerned that the structure of the new Australian Small Business Ombudsman will abrogate the requirement for Federal Government departments and agencies to consult with business representative organisations.

While the Ombudsman may gain insights into small business issues through resolving disputes, that does not qualify it to comment on the broad range of complex policy issues which impact upon the success or otherwise of small business.

We support having a Government entity which is focused on assisting small business, but the reality is that organisations such as Chambers of Commerce & Industry (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.

Furthermore, small businesses are often guarded when dealing with Government entities for fear of retribution so the Ombudsman will not necessarily be able to replicate the 'trusted partner' role member based organisations play which is enhanced by our ability to assure anonymity.

The South Australian Chamber of Commerce and Industry (trading as Business SA) has been in existence for 175 years, over which time we have built a reputation and brand which businesses trust. Unfortunately such trust is not easily replicated and the Federal Government needs to be cognisant of the relative standing any Ombudsman would have within the business community.

6. The Australian Small Business Ombudsman must provide a pre-mediation service along the lines of what is provided by the South Australian Small Business Commissioner. There are always costs involved with formal mediation and arbitration which should be avoided, particularly considering the Ombudsman is supposed to be aimed at assisting small businesses.

7. The draft bill needs to be strengthened to put the onus on the Australian Small Business Ombudsman to actually assist small businesses in their disputes with other Federal Government departments and agencies. As the draft bill is currently written, the Ombudsman would transfer requests to other departments and agencies and while Business SA agrees the Ombudsman should not duplicate the operations of other departments and agencies, the fundamental reason for this Ombudsman is to actually assist small businesses to deal with the Federal Government which can only be achieved if the Ombudsman takes a lead role in driving outcomes from elsewhere within Government.

The draft bill does not provide confidence to Business SA that the Ombudsman would in fact act as a practical advocate for small business on their specific dealings with Federal Government departments and agencies.

While there seems to be an adequate dispute resolution process in place, many issues of small businesses dealing with the Federal Government are not necessarily at the dispute stage, but rather relate to inadequate responses from departments and agencies which the Ombudsman must be focussed on addressing.

8. Under section 57 of the draft bill, the Minister may refer the following matters to the Ombudsman for advice:
 - a) *The effect of relevant legislation, policies and practices on small businesses or family enterprises, or a class of small businesses or family enterprises;*
 - b) *Ways in which relevant legislation, policies and practices might be improved to assist small businesses or family enterprises, or a class of small businesses or family enterprises.*

For any consultation which is not otherwise managed by a department or agency, the Australian Small Business Ombudsman must be required to consult with peak business representative organisations.

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

However, small businesses do not necessarily have the resources or wherewithal to raise disputes up through the World Trade Organisation (WTO) which is where the real market failure lies.

Accordingly, the only role for the Australian Small Business Ombudsman in relation to international disputes may be to provide an alternative form of dispute resolution. However, the Federal Government may be better served by funding such a service through Chambers of Commerce and Industries which are established across the globe and are already considered a trusted partner for business.

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](mailto:rckc@business-sa.com).

Yours sincerely

Nigel McBride
Chief Executive Officer