

Comments on Australian Small Business and Family Enterprise Ombudsman Bill 2015

The Procurement Policy Branch, Technology and Procurement Division, Department of Finance has 2 main concerns relating to the proposed legislation:

1. Definition of “small business”

There are already many definitions of small business used within the Australian Government and the one proposed in the legislation is not consistent with any of the current ones. The Explanatory Materials states:

Currently the *Farm Household Support Act 1992* defines a small business as a business with fewer than 100 employees. This is the largest employee based definition of a small business currently on the Commonwealth statute book, and so it was decided to use it in the current Bill.

In fact, this Act was repealed on 1 July 2014. The replacement legislation, *Farm Household Support Act 2014* does not appear to include a definition of small business.

Existing definitions of small business range from:

- Less than 15 employees – Fair Work Australia
- Less than 20 employees – Australian Bureau of Statistics, Australian Chamber of Commerce and Industry, Reserve Bank of Australia
- Less than 50 employees – Australian Securities and Investment Commission
- In the Commonwealth Procurement Rules, a small or medium enterprise in Australia and New Zealand is defined as less than 200 employees

Yet another definition of small business will only add to the confusion and require constant explanation of which definition is being used. A suggested solution to this is to change the term “small business” to an alternate name.

2. Overlapping Role of the Ombudsman with existing dispute processes

As there is an existing process for any business which has a dispute with the Commonwealth over the conduct of a tender process, the awarding of a contract or the management of any contract through the Procurement Co-ordinator, it appears small business will have an alternative avenue for dispute resolution in the procurement sphere.

A possible solution would be for the Ombudsman to define a hierarchy of dispute resolution for various issues which may commonly occur. This would provide small business with a clearly articulated pathway to seek redress, without allowing “shopping” for a solution to occur.