



**Small Business
Commissioner**
SOUTH AUSTRALIA

Reference: A648941

Senator the Hon Ian Macdonald
Chair
Legal and Constitutional Affairs Legislation Committee
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Dear Senator Macdonald

RE: Australian Small Business and Family Enterprise Ombudsman Bill 2015

Thank you for inviting the Office of the South Australian Small Business Commissioner ("SASBC") to comment on the *Australian Small Business and Family Enterprise Ombudsman Bill 2015* (Cth) ("Bill 1") and the Australian Small Business and Family Enterprise Ombudsman (Consequential and Transitional Provisions) Bill 2015 ("Bill 2").

My submission to the Committee reflects that previously provided to the Department of Treasury during the consultation process on the draft exposure bills.

The SASBC is broadly supportive of the establishment of the Australian Small Business and Family Enterprise Ombudsman ("the Ombudsman"). It is SASBC's understanding that the Bill 1 was intended to address issues, for example disputes relating to Federal Government agencies, which are beyond the reach of the state-based Small Business Commissioners, and in particular to address matters in jurisdictions which do not currently have a Small Business Commissioner. However, SASBC is concerned that the Bill 1 goes further than this and there remains the potential for overlap and confusion between the functions of the Ombudsman and the State-based Small Business Commissioners.



Clause 65 - “relevant actions”

The actions listed in cl. 65 of the Bill 1, in relation to which a person may request assistance from the Ombudsman under cl. 66, overlap significantly with matters that are currently dealt with by the SASBC as part of the functions conferred by the *Small Business Commissioner Act 2011* (SA). Whilst SASBC understands that the Bill 1 is not intended to confer on the Ombudsman exclusive jurisdiction in relation to these matters, SASBC is concerned about the potential for confusion for small businesses as to which body they should turn to in order to address their complaints. Further, SASBC is of the view that the Bill 1 opens up the potential for persons to “forum shop” for a better outcome. SASBC suggests that the Bill 1 be amended to prevent such overlap and clearly distinguish between the functions of these bodies. Alternatively, at the least, a Memorandum of Understanding should be developed between the Ombudsman and SASBC at a very early stage to ensure clarity for small businesses and this should be referenced in the Bill 1.

Referral of matters to State-based Small Business Commissioners

Clause 69 of the Bill 1 requires the Ombudsman to transfer matters to Commonwealth, State or Territory agencies where he or she “reasonably believes” that the request could have been made to that agency and “the request could be more conveniently or effectively dealt with by the agency” and that agency has power to deal with the request. SASBC is concerned about the significant discretion conferred on the Ombudsman in transferring matters. Furthermore the Bill 1 does not require any consent by the relevant agencies in receiving the requests. SASBC suggests inserting a specific consent clause and removing the phrase “more conveniently or effectively” so that if agreed, matters are referred by the Ombudsman to those agencies if they have power to deal with that request under their own legislation.

Express reference to State-based Small Business Commissioners

SASBC is concerned that the Bill 1 does not contain any direct references to the state-based Small Business Commissioners. Given that there is such overlap between their functions and services, and there is an important need to prevent duplication, SASBC suggests inserting direct references to these offices.

Should you have any further queries please do not hesitate to contact me

Yours sincerely

John Chapman
Small Business Commissioner

7th July 2015