



**Small Business
Development Corporation**

Our refs: D15/3592 & D15/1301

Senator the Hon Ian Macdonald
Chair
Legal and Constitutional Affairs Legislation Committee
Parliament House
PO Box 6100
CANBERRA ACT 2600

Email: legcon.sen@aph.gov.au

Dear Senator Macdonald

Submission to the Senate Committee Inquiry into the Australian Small Business and Family Enterprise Ombudsman Bills

I refer to the email from Ms Sophie Dunstone, Committee Secretary, dated 29 June 2015 inviting me to make a submission on the Australian Small Business and Family Enterprise Ombudsman Bill 2015 and Australian Small Business and Family Enterprise Ombudsman (Consequential and Transitional Provisions) Bill 2015.

The Small Business Development Corporation (SBDC) is pleased to contribute its views on the policy settings for the proposed Australian Small Business and Family Enterprise Ombudsman (Ombudsman) in a manner that effectively services small business clients and represents efficient use of government funds.

The SBDC is an independent statutory authority of the Western Australian Government established under the *Small Business Development Corporation Act 1983* and has over 30 years experience fostering the development and growth of small businesses in this State.

In April 2015, I provided a submission to the Australian Treasury on the exposure draft legislation, released in March 2015, to establish the Ombudsman. Please find attached a copy of this submission. It represents the third submission that the SBDC has prepared regarding the creation of the Ombudsman. The views presented on the earlier exposure draft of the Bill and related explanatory materials remain pertinent to this consultation.

To assist the Senate Committee, I have referenced and briefly summarised below the key matters discussed in my April 2015 submission. The SBDC:

- o supported the development of legislation to establish a Commonwealth small business advocate, offering limited dispute resolution services for small businesses (i.e. services that do not overlap with the services offered by state-based Small Business Commissioners);

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- o promoted the need to avoid duplication between State and Commonwealth-based services and the importance of collaborative working relationships and effective information sharing mechanisms during each phase of consultation on the creation of the Ombudsman;
- o believed that the role and functions of the Ombudsman as set out in the Bill require commensurate and ongoing resourcing (i.e. the budget allocated for the Ombudsman's office of \$2 million per annum, as detailed in the 2014/15 Federal Budget papers, seems insufficient to achieve all of the stated objectives of the Bill);
- o discussed the need for further clarification in relation to areas of clear State responsibility, especially regarding retail lease enquiries and disputes;
- o supported the manner in which the Bill required cooperation and participation (i.e. provided consequences for recalcitrant organisations that refused to provide information in reasonable timeframes or participate in dispute resolution in meaningful ways); and
- o believed the Ombudsman should have a formal role, similar to the SBDC's, in the Australian Government's regulatory impact assessment process (i.e. provide advice from a small business perspective to both the regulating agency and the 'gatekeeping' agency).

In addition to the summary material above, I would like to add that the SBDC remains strongly opposed to the inclusion of the term "Ombudsman" to identify the role, preferring that the title remain the "Australian Small Business Commissioner" or that "Small and Medium Enterprise Commissioner" be considered.

Traditionally an Ombudsman acts to investigate maladministration by a public authority. It does not provide business advice and assistance in resolving business problems that are not 'dispute related'. I am concerned that the use of the term Ombudsman may be problematic for small business operators, particularly those with a preconceived notion of what a 'traditional' Ombudsman does.

This confusion may result in small business owners missing out on obtaining the assistance available from the Ombudsman, resulting in an underutilization of the Ombudsman's services by its intended target market.

Thank you for the opportunity to provide feedback on the Bills. To discuss these comments further, please contact _____, Assistant Director Policy and Advocacy on _____ or by email _____.

Yours sincerely

David Eaton
SMALL BUSINESS COMMISSIONER

14 July 2015



**Small Business
Development Corporation**

Our ref: D15/1301

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**SUBMISSION ON THE AUSTRALIAN SMALL BUSINESS AND FAMILY
ENTERPRISE OMBUDSMAN BILL 2015**

Thank you for the opportunity to comment on the exposure draft of the Australian Small Business and Family Enterprise Ombudsman Bill 2015 (Bill) and associated explanatory materials.

The Small Business Development Corporation (SBDC) is pleased to contribute its views on the Bill to assist the Treasury to produce policy settings for the proposed Australian Small Business and Family Enterprise Ombudsman (Ombudsman) in a manner that effectively services small business clients and represents efficient use of government funds.

The SBDC is an independent statutory authority of the Western Australian (WA) Government established under the *Small Business Development Corporation Act 1983* (SBDC Act) and has over 30 years experience fostering the development and growth of small businesses in this State. In line with the SBDC Act, I perform the dual roles of Small Business Commissioner and Chief Executive Officer of the SBDC.

SBDC views on the Bill

It is noted that during 2014, the Treasury consulted with stakeholders regarding enhancing the role of the existing Australian Small Business Commissioner in order to establish the Ombudsman. As part of this process, the SBDC contributed two submissions in response to related discussion papers prepared by the Treasury on the proposed role of the Ombudsman.

The points that follow encompass the SBDC's views on the exposure draft of the Bill and the related explanatory materials. They are made with reference to the feedback provided by the SBDC in preceding submissions that remain pertinent to this consultation¹.

¹ Should further explanation of the SBDC's rationale be required, the full submissions can be accessed at <http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2014/Small-Business-and-Family-Enterprise-Ombudsman/Submissions>.

Further to this, I note that several teleconferences between senior members of the Treasury and the State-based Small Business Commissioners (Commissioners), including myself, have taken place in recent weeks in which discussions focused heavily on the interpretation and intended operation of sections of the Bill, in particular the potential interaction with State-administered legislation and the role of the Commissioners.

While it is agreed that the Bill is not intended to exclude or limit the operation of any State or Territory law, or to overlap with and duplicate the roles and responsibilities of other ombudsmen, Commissioners and the services provided by State and Territory Governments where there are no Commissioners, these discussions have highlighted the significant importance of the administrative processes and procedures that will formalise these arrangements and achieve the stated intent of the legislation.

The following comments are not a detailed dissection of each clause of the Bill but are rather the SBDC's views on the intended objectives of the Ombudsman role and the overall workability of the approach drafted.

Support for a Commonwealth small business advocate with limited dispute resolution services

1. The SBDC is pleased to observe that its advice on WA's model for advocacy and dispute resolution for the small business sector and its experiences have been reflected in the policy settings adopted in the Bill's provisions.
2. The establishment of a Commonwealth-wide advocate for small businesses and family enterprises that contributes to the development of small business-friendly Commonwealth laws and regulations and acts as a concierge for dispute resolution (providing limited dispute resolution services) is supported by the SBDC.
3. Overall, the SBDC believes that the rationale and underlying principles adopted by the Treasury are corroborated in the Bill, explanatory material and the (partial) Regulatory Impact Statement. However, the SBDC references its previous suggestions for the development of formalised information sharing processes between Commissioners and the Ombudsman's office, underpinned by Memoranda of Understanding (MOU) between the relevant entities.
4. It is appropriate for the Bill not to reference or detail the administrative processes and procedures that will be required to provide clarity and certainty across jurisdictions and agencies regarding respective roles, responsibilities and information sharing mechanisms. However, it is noted that the detail provided by instruments like MOU will determine the success or otherwise of timely engagement with businesses critical to achieving speedy resolution of disputes, preventing duplication of government and industry services across jurisdictions, and any inappropriate encroachment on areas of responsibility and activity amongst jurisdictions and agencies.

Resource requirements

5. The SBDC reiterates that the role and functions of the Ombudsman as set out in the Bill require commensurate and ongoing resourcing. The budget allocated for the Ombudsman's office of \$2 million per annum, as detailed in the 2014/15 Federal Budget papers, seems insufficient to achieve all of the stated objectives of the Bill.

Duplication and referrals

6. The SBDC notes the provisions of the Bill reflect the Commonwealth's intent to not allow the Ombudsman to duplicate the advocacy and dispute resolution activities performed by Commissioners.
7. In this regard, however, the SBDC believes that further clarification is specifically needed in relation to areas of clear State responsibility, namely regarding retail lease enquiries and disputes. In line with this, the SBDC shares the Victorian Small Business Commissioner's view that the Bill should clearly ensure that any retail tenancy dispute relating to (in our context) premises in WA should be automatically referred to me by the Ombudsman's office.

Accordingly, the SBDC would be supportive of the inclusion in the Bill of a provision permitting States to make a declaration in a State Act which has the effect that the Commonwealth law does not apply to the extent there would be an inconsistency.

8. Following on from this, further clarity is also required in relation to the appropriate jurisdiction for other types of dispute, particularly those involving interstate and international businesses. Presently, the SBDC provides dispute resolution services for *inter alia* incorporated businesses operating in WA, and believes it appropriate to continue to do so. Examples of the types of complaints that the Treasury considers would fall outside of the circumstances conceived in section 69 of the Bill (i.e. the impost on the Ombudsman to transfer requests for assistance when it *considers* they could be more conveniently or effectively handled elsewhere) would aid the SBDC's understanding.

For the reasons outlined in our first submission to the Treasury, the SBDC is of the view that a locally-based service is more likely to provide a higher quality of tailored advice, in a shorter timeframe, at more convenience and at a lower cost for small business operators than the Ombudsman's proposed dispute resolution service.

Having said that, the SBDC can conceive of circumstances where it would be more helpful and preferable for Commissioners to refer disputing parties to the Ombudsman and notes that the Bill cannot provide the mechanics of such referrals. The SBDC suggests that this be given due consideration in consultation with Commissioners when the governance arrangements to support small business dispute resolution services across jurisdictions are being developed.

Requiring participation

9. The SBDC supports the manner in which the Bill provides consequences for recalcitrant organisations that refuse to provide information in reasonable timeframes or participate in dispute resolution in a meaningful way. As the SBDC previously raised, these behaviours are invariably to the detriment of small business owners who generally have insufficient resources to pursue actions through the formal judicial system.

In the SBDC's opinion, the proposed dispute resolution powers to compel information and "name and shame" reflect an appropriate balance in influencing parties to voluntarily participate in the process.

The additional power to require a party's attendance at hearings for inquiries conducted in relation to the Ombudsman's advocacy role is also supported in principle by the SBDC.

Single entry point

10. Previous consultations on the role of the Ombudsman had focused on the creation of a single entry point for small businesses to obtain information about relevant services across jurisdictions. The SBDC had mixed views on this (particularly from a resourcing perspective), but is supportive of such a role not having been formalised in the Bill. Instead, reference is made in the explanatory material to the creation of appropriate governance mechanisms to facilitate these enquiries, especially through the Commonwealth's Single Business Service and "business.gov.au".

Regulatory Impact Assessment

11. The SBDC believes the absence of a formalised role for the Ombudsman in the Commonwealth's regulatory impact assessment (RIA) process is a missed opportunity and we reiterate our view that WA small businesses have benefited from the SBDC's role in this State's RIA.

Thank you for the opportunity to provide feedback on the Bill and associated explanatory materials. To discuss these comments further, please contact _____, Assistant Director Policy and Advocacy on (_____) or email _____

Yours sincerely

David Eaton
SMALL BUSINESS COMMISSIONER

10 April 2015