



Tasmanian Small Business Council Inc

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"Uniting Small Business"

Committee Secretary

Senate Economics References Committee

PO Box 6100, Parliament House

Canberra ACT 2600

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By email: economics.sen@aph.gov.au

**Tasmanian Small Business Council (TSBC) submission to Senate Economics
Legislation Committee Inquiry into the Small Business and Unfair Contract Terms Bill
2015**

The TSBC is recognised as the peak body representing the majority of the small business sector in Tasmania.

Its membership is comprised of trade and industry bodies whose membership is predominately small businesses.

The TSBC has, in concert with COSBOA, been very supportive of the Government's commitments to extend the unfair contract provisions to the small business sector however we have some significant concerns that the thresholds outlined in the draft exposure legislation are manifestly inadequate.

Thresholds issues

The Meaning of small business contract outlined in the Detailed Explanation of the new Law in the Explanatory Material provided with the Exposure draft, is:

a small business contract if, at the time it is entered into, at least one party is a small business, and the upfront price payable under the contract does not exceed either \$100,000, or \$250,000 if its duration is more than 12 months.

The decline of strip shopping in suburban Australia, which usually was well populated with small business landlords, has evolved to be much more shopping centre focused where landlords are large corporations with very large centres. Subsequently lease amounts are significantly more expensive than the strip and usually require a significant commitment of lease term. The contract terms, in the vast majority of cases and even for micro businesses, would well exceed the proposed thresholds.

We agree on the Ministers assertion in the Explanatory Material that:

1.4 Small businesses often lack in-house legal expertise and the cost of obtaining legal advice, particularly for low-value contracts, can be disproportionate to the potential benefits of entering into such contracts. Where small businesses decide to not enter into contracts due to their lack of confidence in understanding and negotiating terms or the cost of obtaining legal advice, they may miss out on market opportunities.

These businesses must be protected from large organisations who wield near monopolistic power with the support of clever legal teams to draft their contracts.

However, we disagree with that assertion in clause 1.7 that anything over the proposed thresholds constitutes a ‘high-value’ commercial transaction. In many cases a rental for just a small retail premises in a modern shopping centre is in excess of \$100,000 per year and often the term of the lease is 3years or more. Both cases well exceed the proposed upper thresholds and should not, in 2015, be considered a high-value commercial transaction in this context.

A proposed tenant in the example cited above may well seek some legal advice on the appropriateness of the contract but will have no power to alter the terms.

The same tenant, on renegotiation of the contract, will be in an even more invidious position as the landlord will recognise the significant lack of negotiating power of the tenant because of the established nature of the business. The losses and costs associated with moving will in many cases cause the business to fail.

Similarly, the proposal that the thresholds proposed are high-value are inconsistent with other definitions used in legislative thresholds by the Commonwealth. For example:

- the ATO and small business tax cuts are \$2 million in turnover
- the privacy act is \$3 million in turnover
- unfair contract term protections for consumer purchases have no threshold limitation
- the small business collective bargaining notification regime provides a scale with a \$3 million basic threshold of annual transactions or expected transactions. Whilst this last example may be considered outside the norm for these comparison purposes, the differences to the current exposure draft on small business Unfair Contract Terms are significant.

Consultation

Issues raised by the TSBC and other like small business representative bodies may well have been identified some months ago if an appropriate consultation process had been conducted. To our knowledge, the TSBC nor any of its members were invited to consult on the proposed legislation and announcements by the Minister that States and Territories had signed off on it whilst on the surface may be true, the Tasmanian Government failed to conduct any meaningful dialogue with the sector. It would do well for the Commonwealth to seek some proof that the sector had been adequately consulted prior to writing the draft legislation.

TSBC Recommendation

That the proposed thresholds for the **Small Business and Unfair Contract Terms Bill 2015** be amended to read **\$300,000 for one year contracts and \$1,000,000 for multi-year contracts.**

We urge your consideration of the submission.

Yours sincerely

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TASMANIAN SMALL BUSINESS COUNCIL