

SMALL BUSINESS COMMISSIONER BILL 2013

APESMA has long advocated for a body to assist with dispute resolution, to facilitate fair treatment of small businesses and to monitor and undertake research about small and micro-business. This submission sets out APESMA's support for the Small Business Commissioner Bill which establishes the Office of the Small Business Commissioner and sets out its functions and powers.

*INQUIRY BY THE
SENATE
ECONOMICS
LEGISLATION
COMMITTEE*

Contents

	Page
Foreword.....	2
Introduction	3
Why is APESMA interested in the Small Business Commissioner Bill 2013?	3
APESMA services for the self-employed and those in self-managing work arrangements.....	3
APESMA's submission.....	3
The Bill.....	4
A strong and effective voice for small and micro-business.....	4
Effective dispute resolution for small and micro-business in its dealings with the Commonwealth Government	4
Fair treatment of small and micro-business in its dealings with the Commonwealth Government	4
Cooperation with States and Territories where disputes have national implications.....	4
Small and micro-business research	5
Conclusion	5

SMALL BUSINESS COMMISSIONER BILL 2013

Foreword

In the coming decade, professionals in self-managing work arrangements and those operating small and micro-business will play a critical role in the dispersal of Australia's professional engineering, science and technology capability across industry and, in turn, to realising optimal levels of innovation, productivity, competitiveness and economic growth.

The Association of Professional Engineers, Scientists and Managers, Australia (APESMA) considers it critical that we play an active and considered role in responding to the challenges and changing workforce patterns in the Australian labour market by supporting those who choose to move into commercially-based as well as employment-based work arrangements. These challenges can only be tackled effectively with a strong voice for small and micro-business at the national level, cooperation across jurisdictions where disputes have implications at the national level, a regulatory framework which affords access to fair treatment for small and micro-businesses, Government procurement processes which provide access to effective dispute resolution and a reliable small and micro-business research base.

APESMA has long advocated for such a body and it is our view that the functions and powers assigned to the Office of the Small Business Commissioner in this Bill will support these objectives.

We thank you for the opportunity to make a brief Submission on behalf of our members.

Chris Walton
APESMA CEO



Introduction

Why is APESMA interested in the Small Business Commissioner Bill 2013?

APESMA is an organisation registered under the Fair Work Act 2009 representing over 25,000 professionals including professional engineers, scientists, veterinarians, surveyors, architects, pharmacists, information technology professionals, managers and transport professionals throughout Australia. In 1995, the Australian Industrial Relations Commission approved the amendment of APESMA's eligibility rules to provide coverage for independent contractors. APESMA can cover any professional engaged as an independent contractor who would be eligible for membership of the Association if they were an employee performing the same work.

As the only industrial association representing exclusively the industrial and professional interests of these professionals, assisting those who operate as self-employed contractors or micro-businesses in our areas of coverage is fundamental to APESMA's contemporary approach to representing the diverse interests of its professional membership.

In the late 1990s, in response to changes in the labour market¹, extensive outsourcing, downsizing and contracting out largely in state-owned instrumentalities and the Australian Public Service, and the significant and growing number of consulting professionals setting themselves up as micro-businesses, APESMA allocated significant resources to providing targeted services to these members. Since that time, the number of those in self-managing work arrangements and self-employed APESMA members has grown to over 3,500. We estimate that around 50 per cent of these operate through a company structure, around 40 per cent operate as sole traders and around 7 per cent operate through a partnership or trust. Of those that operate through a company structure, most are micro-businesses while a small number own and manage small businesses generally with fewer than five employees. The scope of our comments is therefore limited to these member segments.

APESMA services for the self-employed and those in self-managing work arrangements

Services to APESMA's self-employed members are provided via the Connect special interest group and include:

- advice on business startup and managing the transition from employee to consultant;
- information and advice on risk management practices and documentation;
- access to discounted professional indemnity insurance;
- an online business mentoring program which matches experienced self-employed professionals with those transitioning to self-employment;
- assistance with debt collection;
- information on recommended hourly rates;
- review of contracts for service by a solicitor with commercial expertise;
- general advice on the Alienation of Personal Services Income tax rules;
- information on business planning, invoicing, preparing cash flow statements, etc.;
- networking services; and
- a professional development scholarship to help members develop a portfolio of transferable skills in the absence of a sponsoring employer.

APESMA offers these services through a comprehensive website of resources and information which is available at www.apesma.com.au/groups/contractors-and-consultants.

APESMA's submission

This submission outlines the key imperatives APESMA believes the Small Business Commissioner Bill 2013 should address, and details the powers and functions set out in the proposed Bill which support these objectives.

The Bill

The Association holds the view that the proposed Bill will facilitate:

1. a stronger and more effective voice for small and micro-business at the national level;
2. access to appropriate dispute resolution in the Commonwealth's commercial dealings with small and micro-business;
3. a regulatory framework which supports the fair treatment of small and micro-business in their commercial dealings with the Commonwealth Government;
4. cooperation with the states and territories where disputes have implications at the national level; and
5. relevant and reliable small and micro-business research.

A strong and effective voice for small and micro-business

The Association believes it is critical that the Office of the Small Business Commissioner's powers and functions support a stronger and more effective voice for small and micro-business at the Federal level.

This includes the power to monitor and investigate market practices that may adversely impact small business and a formalised process for reporting to the Minister for Small Business.

Section 9 of Division 2 provides this power in the proposed Bill.

Effective dispute resolution for small and micro-business in its dealings with the Commonwealth Government

APESMA believes it is critical that the Bill facilitates more effective dispute resolution for small and micro-business in their work with the Commonwealth.

To do this, the Bill should clearly set out the dispute resolution functions and powers of the Office of the Small Business Commissioner in receiving and investigating complaints from small and micro-business about their dealings with the Commonwealth. APESMA sees it as essential that Government procurement processes are supported by access to low-cost effective complaints procedures and dispute resolution for small and micro-business in their commercial dealings with the Commonwealth.

Section 8 of Division 2 sets out the Commissioner's power to receive, investigate and resolve complaints from small business in their dealings with the Commonwealth Government.

Fair treatment of small and micro-business in its dealings with the Commonwealth Government

APESMA is firmly committed to the fair treatment of small and micro-business in their commercial dealings with the Commonwealth.

The Association is of the view that the regulatory framework, procurement processes and contract terms of those engaged to provide services to Government - either by direct tender or contracted to provide services via a third party - should be fair to small and micro-businesses.

Section 8(1)(c) and (d) of the Bill provides for the Office of the Small Business Commissioner to facilitate the fair treatment of small businesses in their commercial arrangements with the Commonwealth and other businesses (subject to certain constitutional constraints set out in Section 8(2)). APESMA holds the view that this should be one of the most important functions of the Office of the Small Business Commissioner.

Cooperation with States and Territories where disputes have national implications

APESMA holds the view that where disputes extend across jurisdictions or have implications at the national level, the Office of the Small Business Commissioner should be in a position to facilitate advice and assistance. The Bill should, in recognition of these circumstances, provide the relevant powers and functions for cooperation with the states and territories.

Section 8(1)(e) provides for a level of cooperation with States and Territories where a small business dispute has implications at the national level.

Small and micro-business research

APESMA is committed to supporting and being able to access accurate and relevant small and micro-business research and transparency in the Commonwealth's commercial dealings with small and micro-business.

The Explanatory Memorandum suggests the small and micro-business research conducted by the Office of the Small Business Commissioner may take the form of the size of the small business sector, survey work and topical issues. In the Bill, the research function is set out in Section 9 ranging from the power to monitor and investigate market practices that may adversely impact small businesses to the much broader brief of "any matter about small businesses for which the Minister has asked the Commissioner to prepare a report" (Division 2, Section 9(c)(i)). Section 10(b) sets out the Office of the Small Business Commissioner's power "to undertake research about small business".

Section 10(a) sets out the Commissioner's function and power to "prepare and publish information for small business about entering into commercial arrangements with Departments, Statutory Agencies or Executive Agencies of the Commonwealth" which, in our view, supports transparent and well-informed dealings between the Commonwealth and small and micro-business.

APESMA supports the assignment of these powers and functions to the Office of the Small Business Commissioner to facilitate relevant research and information about small and micro-business's dealings with the Commonwealth.

Conclusion

APESMA has a long-term commitment to strengthening the voice of small and micro-business at the federal level, to supporting cross-jurisdiction cooperation when small and micro-business disputes impact across jurisdictions or at the national level, to a regulatory framework which affords access to fair treatment, to Government procurement processes which provide access to effective dispute resolution, and to enhancing our understanding of small and micro-business in general and the nature of their engagement with the Commonwealth by supporting and/or undertaking relevant research.

The Small Business Commissioner Bill 2013 supports these objectives and, on this basis, APESMA supports the Bill.

Submission preparation

Submission prepared by Dr. Kim Rickard, Executive Officer, Connect - APESMA's special interest group for independent contractors and consultants, www.apesma.com.au/groups/contractors-and-consultants

Connect - APESMA's special interest group for independent contractors and consultants
GPO Box 1272, Melbourne, Vic. 3001
e: connect@apesma.com.au
w: www.apesma.com.au/groups/contractors-and-consultants
t: 1300 APESMA | 1300 273 762

Endnote

¹ The Australian Bureau of Statistics 2009 *Forms of Employment Survey* found that over one million Australian workers were engaged as independent contractors.¹ Of these, 15 per cent worked in the Professional, Scientific and Technical services industry, second only to the Construction industry. These figures confirm 2001 Productivity Commission data which estimated that around 10 per cent of self-employed contractors were professionals, a high proportion relative to other occupational groups.