

12 May 2014

Manager
Small Business Ombudsman and Procurement Unit
Small Business, Competition and Consumer Policy Division
The Treasury
Langton Crescent
Parkes ACT 2600

The Manager

Re: The Small Business and Family Enterprise Ombudsman Discussion Paper

Introduction

The Tolling Customer Ombudsman (TCO) is an independent body charged with the responsibility of resolving disputes between toll road operators and their customers throughout Australia. The customers can consist of individuals or small enterprises and the disputes are resolved free of charge to the customers.

It has a single entry point for disputes by way of the lodgement of a written complaint form that can be lodged online or by mail and there is an 1800 number explaining the process. Any dispute lodged with the TCO is first referred to the toll road operator for resolution.

The TCO scheme is funded by the toll road operators and the terms and conditions of its operation and its independence are enshrined in contract. The TCO has been in operation since 2004 and handles in excess of 800 disputes a year. It is authorised by the Privacy Commissioner to consider breach of privacy complaints. It produces a six-monthly report on its operations. Further information is available on the TCO website:

www.tollingombudsman.com.au

The vast majority of disputes are resolved directly between the parties after the TCO's intervention but the TCO makes written decisions when required. The TCO makes its decisions taking into account all the relevant information, the contractual relationship between the parties, the law, good industry practice and what is fair in the circumstances. TCO decisions are binding on the toll road operators but not the customers, who retain all legal rights.

Brief Comments

The TCO welcomes the commitment in the discussion paper that the role of the ombudsman should be complimentary and avoid overlap with the roles and responsibilities of other ombudsman or small business commissioners. Experience has shown, in some instances, that dissatisfied customers can forum shop as well as litigate, which can impose an unnecessary burden on the customer service arms of the toll road operators. Care should be taken to avoid complaints being handled by multiple dispute resolution bodies.

The TCO endorses the criteria of the Australian and New Zealand Ombudsman Association for the describing of a body as an ombudsman as essential. The TCO has an educational as well as dispute resolution function and is available to attend industry and consumer forum to explain its services. The TCO engages with the media in relation to issues that are raised and conducts seminars for interested parties.

The TCO recognises the services of the Commonwealth Government to small businesses and consumers and believes the focus on such services should be retained. It is however concerned, from the discussion paper, that the scope of the roles being proposed for the Small Business and Family Enterprise Ombudsman would blur the lines of what is traditionally expected of an industry ombudsman.

An ombudsman could engage with small business to identify unnecessary regulatory burdens and also could play a role in making Commonwealth laws more small business friendly but there must be a query about its independence in resolving disputes if it becomes an advocate for one industry sector against another.

The TCO is also an Ombudsman with the Financial Ombudsman Service and has seen some of the difficulties of requiring the financial sector to become a member of an ASIC approved external dispute resolution scheme following the passage of the Corporations Act 2001.

The discussion paper and its focus questions which do address fundamental issues, appears to be introducing a system that will affect a whole range of private industry as well as Government Agencies. Experience again has shown that there should be wide ranging discussion with industry before any additional regulatory burden is imposed.

The TCO will be pleased to provide any further input as part of the consultation process. It will certainly be available to liaise with any ombudsman service that is established in respect of complaints about toll road operators that may be made to it.

Yours sincerely,



Michael Arnold
Tolling Customer Ombudsman