

Australian Small Business and Family Enterprise Ombudsman Bill 2015

Queensland Department of Tourism, Major Events, Small Business and the Commonwealth Games comments

The Queensland Government is committed to working with our industry and government stakeholders in a coordinated and strategic approach to supporting small businesses, and appreciates the opportunity to comment on the draft legislation to establish the Australian Small Business and Family Enterprise Ombudsman.

The Department of Tourism, Major Events, Small Business and the Commonwealth Games (DTESB) has consulted with relevant Queensland Government agencies, and provides the following comments on behalf of the Queensland Government.

General comments

- DTESB broadly supports establishment of the Ombudsman as an independent advocate and advisory body. The Department is also supportive of the inclusion of family enterprises in the scope of responsibility, given 73% of family owned and run businesses are small businesses – many of which reside in Queensland.
- DTESB recognises that the intent of the Ombudsman is to complement, and not duplicate, existing advocacy and dispute resolution mechanisms at the state level.
- We acknowledge that the Bill is not intended to exclude or limit the operation of any state or territory law, to the extent that the state or territory law is capable of operating concurrently with the legislation; or allow power to be exercised to the extent that it would impair the capacity of a state to exercise its constitutional powers.
- In regard to the Alternative Dispute Resolution (ADR) services, we raise no objection to the wording of the Bill on the basis of the following advice received from the Treasury:
 - Part 4 Div 3 (assistance in a dispute) and the secrecy provisions in Part 5 Div 2 of the draft Bill will only apply with respect to the limited ADR service provided by the Ombudsman
 - Where a request for assistance is transferred to a State agency under s.69, the legislation which will apply is the state legislation for that agency
 - There will be ongoing consultation by the Australian Government with relevant state agencies in relation to operational issues associated with the concierge role – and that ongoing consultation/co-operation between the Ombudsman is reflected in ss.69 and 70 of the draft Bill.
- Page 7 of the explanatory materials notes under ‘Referrals’ examples of where the Ombudsman must refer requests to an appropriate agency or organisation for further action, where that agency is able to deal with the request more conveniently or effectively, or has relevant legal jurisdiction. We ask that this section be amended to also include ‘ombudsman’ schemes as an example of relevant organisations where referral is appropriate. Specifically, the existing reference could be expanded to read “Examples of these agencies could include.....State or Territory small business commissioners or existing ombudsman schemes”.

Constitutional corporation

- We consider that the definition of ‘constitutional corporation’ in the Bill could capture some state statutory bodies/authorities (i.e. where they may be considered as ‘trading’ entities). This raises some concerns in regard to Part 3 Div 1 ss35(c) and 36. While s39

is clear that it is not the intent of the Bill to impair the capacity of state agencies to exercise its constitutional powers, ss35 and 36 may enable the Ombudsman to make enquiries into the policies, legislation and practices of state statutory bodies and authorities where they affect small businesses or family enterprises. We note the advice from the Treasury (received 1/4/2015) that this is not the intention of the Bill, but further investigation is required to fully consider the impact on/risk to state agencies. Pending clarification on this matter from the Treasury, DTESB seeks amendment of the wording of the relevant sections to ensure state agencies and authorities are not captured.

Definition of small business

- The definition of a small business within the legislation is fewer than 100 employees or revenue of up to \$5 million per annum. This definition is inconsistent with the Australian Bureau of Statistics definition (of up to 19 employees) which has been adopted by the Queensland Government. While it is acknowledged that this broader definition captures the largest employee based definition of a small business currently on the Commonwealth statute book, DTESB does have concerns its adoption may contribute to the confusion in the business community around the multiple definitions of small business at the federal level. It may also limit referral of some larger firms (by employee threshold) to state and territory small business services/agencies which may have definitions consisting of lower thresholds.
- Conversely, large businesses with multiple individual sites that collectively employ more than 100 staff or turnover more than \$5 million per year could potentially request the Ombudsman's assistance where their individual sites are classified as small businesses. The definition of a small business should be reviewed to clarify its intent in this regard.

Operational detail

- Further detail on the concierge role in regard to operational processes is required. Specifically, clear processes and mechanisms for transfer of businesses to relevant services, and consultation with state agencies, underpinned by appropriate governance arrangements, are needed to ensure a smooth process for small businesses. For example, under s.69 (2), an approved process should be in place for consultation with 'other agencies'. Clarification on information and data sharing arrangements is also needed. The Department supports a memorandum of understanding between the Queensland and Australian governments in this regard.

Consultation with jurisdictions without Commissioners

- It is noted that the original discussion paper outlines the need for the Ombudsman to work collaboratively with state small business commissioners to ensure matters affecting small businesses across all states and territories are represented. As you will be aware, Queensland does not have a small business commissioner. However, DTESB has a Small Business Division with a dedicated small business policy, advocacy and program delivery function to support Queensland's 403,000 small businesses. As approximately 20% of Australian small businesses are located in Queensland, it is important that the Queensland Government is included in all relevant jurisdictional consultation and discussions on small business matters with the future Ombudsman.

Red tape reduction

- In regard to the Australian Government's deregulation agenda, the Queensland Government itself has made the reduction of regulatory burden on business a key priority. To support this work, the government is establishing a Red Tape Reduction Advisory Council to advise the government on red, green and blue tape areas of most concern to small business, and assist the state to provide a business environment conducive to strong, profitable, and globally competitive businesses. The Department supports the Ombudsman's role in identifying and reporting on administrative and compliance burdens on small business, and would be happy to liaise with the Office of the Ombudsman to outline Queensland's efforts in reducing unnecessary regulation in further detail.