



**Small Business
Development Corporation**

Our ref: D17/1888

Ms Su McClusky
Ombudsman Review
Small Business Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Ms McClusky

**REVIEW OF THE AUSTRALIAN SMALL BUSINESS AND FAMILY ENTERPRISE
OMBUDSMAN**

Thank you for the opportunity to provide feedback to the Review of the Australian Small Business and Family Enterprise Ombudsman (ASBFEO). This feedback will focus on the interaction between the Small Business Commissioners and the ASBFEO, rather than addressing the specific review questions.

About the Small Business Development Corporation

The Small Business Development Corporation (SBDC) is an independent statutory authority of the Western Australian (WA) Government established under the *Small Business Development Corporation Act 1983 (WA)* (SBDC Act). In 2011, the SBDC Act was amended to introduce the role of the Small Business Commissioner (SBC) as the Chief Executive Officer (CEO) of the SBDC and to establish an alternative dispute resolution (ADR) service to assist small businesses resolve their business-to-business and business-to-government disputes.

Under the WA model, the advisory, ADR service and policy units work closely together to ensure that policy advice, advocacy activities and education services are based on evidence gathered directly from the WA small business sector. It also assists the SBDC to fulfill its statutory role when representing the interests of the small business sector during regulatory reform by WA government agencies.¹ The cohesion between the different functional units of the Corporation gives the SBDC and the WA Small Business Commissioner credibility amongst its key stakeholders as being a well informed advocate for small business.

¹ Section 11(fc) of the *Small Business Development Corporation Act 1983 (Cth)*

Background to the establishment of the ASBFEO

In 2014, the SBDC provided written submissions to the Federal Treasury when it reviewed the role of the then Australian Small Business Commissioner.² In those submissions the SBDC made the following points:

- The use of the term Ombudsman may cause confusion amongst the target market as the functions of the ASBFEO are different to those traditionally undertaken by an Ombudsman;
- There was a risk of confusion in the market place if the Commonwealth advertised itself as the single portal for advice and dispute resolution for small business;
- There was potential for duplication of services between the State based Small Business Commissioners and the ASBFEO;
- Small businesses may be shuffled between the State based Small Business Commissioners and ASBFEO if good referral mechanisms were not established and adhered to; and
- Some small businesses may engage in jurisdiction shopping between the State based Small Business Commissioners and the ASBFEO.

As far as my office is aware, WA small businesses have not reported any confusion about which service provider to approach, nor have we received any indication of jurisdiction shopping in the 12 months since the ASBFEO was established. In regards to the ASBFEO's title however, the SBDC maintains its original position that the use of the word 'Ombudsman' is inappropriate given the discrepancy in the functions carried out by the ASBFEO and a traditional Ombudsman.

The ASBFEO and the Small Business Commissioners

An ASBFEO based in Canberra has been valuable in linking the Commonwealth with State based Small Business Commissioners. Since the ASBFEO position was established, the current incumbent, Ms Kate Carnell, has proved to be a strong advocate for small business and has successfully raised awareness of significant issues impacting small businesses across the nation. In particular, having a national position has proved to be very effective in highlighting issues small businesses have with late payment terms and banking practices across national media outlets.

The current relationship between the State Small Business Commissioners and the ASBFEO has been collaborative. For example, the collaboration between the jurisdictions and combined input with regards to the 'Payment Times and Practices Inquiry' has been positive in terms of gathering evidence from small businesses to help inform the ASBFEO's advocacy. However, collaboration between Commissioners and the ASBFEO can be dependent on the personalities of the office-holder and there is a risk that changes in office-holders could lead to the deterioration of a collaborative relationship and good communication. Without a collaborative relationship and proper information sharing and referral procedures, Small Business Commissioners and the ASBFEO could work in silos, thus limiting their ability to affect real change on significant small business issues.

² Feedback was provided to the 'Discussion paper on the enhancement of the role of the Australian Small Business Commissioner' in March 2014 and to the 'Discussion paper – The Small Business and Family Enterprise Ombudsman' in June 2014.

Strengthening the role of the ASBFEO

An office-holder may not be willing to voice strong opinions in the face of opposition from big business and government. Some of the factors that determine whether an office-holder can successfully advocate are able to be managed. For example, if the office-holder is secure in their position (due to the terms of their appointment), then they may feel more secure in their role to undertake advocacy that is unpopular or controversial. In WA, the Small Business Commissioner is appointed as a CEO under the *Public Sector Management Act 1994* and can only be removed from office by the Governor on the recommendation of the Public Sector Commissioner³. This reduces the risk of removal by an unfavourable Minister. On the other hand, the ASBFEO may be removed by the Minister for 'misbehaviour'⁴ and the vagueness of this term leads to uncertainty as to what this actually constitutes. This may dampen the advocacy activities of the ASBFEO if the office-holder is risk averse.

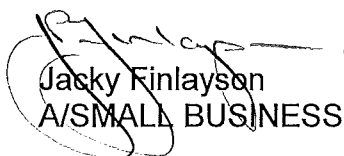
Similarly, advocacy functions set out in legislation are more robust. For example, the SBDC Act enshrines the SBDC's function in regulatory review. By doing so, it ensures that the SBDC has an oversight role in regards to regulatory reform in WA and this is not dependent on the personality of the Small Business Commissioner. This function has a positive impact on the small business sector, as the majority of legislative reform occurring in WA must involve the consideration of how it will impact on small businesses.

It is our understanding that the ASBFEO does not have a similar role in the review of Commonwealth legislation. The introduction of such a function into the ASBFEO Act would ensure that legislative reform at the Commonwealth level explicitly considers the small business sector from a regulatory burden perspective. If this function was mandated for the ASBFEO, it would increase the work load and therefore would require an increase in resources allocated to the office.

Conclusion

In summary, the SBDC believes that the ASBFEO has been functioning effectively as an advocate for the national small business sector. The role could be strengthened by the inclusion of regulatory oversight functions in the legislation, as well as explicit reference to increased advocacy functions within the legislation. The SBDC maintains its position that the use of the term 'Ombudsman' in the title should be reconsidered.

Yours sincerely


Jacky Finlayson
A/SMALL BUSINESS COMMISSIONER

Date

12 April 2017

³ Section 49 of the *Public Sector Management Act 1994 (WA)*

⁴ Section 30(2)(a) of the *Australian Small Business and Family Enterprise Ombudsman Act 2015 (Cth)*