

28 October 2021

Committee Secretary
Education, Employment and Training Committee
Parliament House
George Street
Brisbane QLD 4000

via email: EETC@parliament.qld.gov.au

Dear Sir/Madam

Inquiry into the Small Business Commissioner Bill 2021

We strongly support the proposal to ensure that the Office of the Queensland Small Business Commissioner (OQSBC) remains a permanent position and is supported by specific enabling legislation. The Queensland Small Business Commissioner (Commissioner) role, as with the similar roles across other States and Territories, is vital for small business advocacy and assistance.

We submitted to the Queensland Department of Employment, Small Business and Training on the proposed Small Business Commissioner Bill 2021 (the Bill) on 23 September 2021 (see appendix A). In that submission we commented on the need to have a Commissioner that is independent; the need for an appropriate assistance function to effectively handle dispute resolution processes; and the benefit of a strong advocacy function. Noting that much of the Bill remains unchanged, please take into consideration the previous submission alongside the below comments.

We strongly recommend that the OQSBC be afforded the power to assist with a broader range of disputes. The OQSBC should be enabled to handle business-to-business disputes and business-to-government disputes. This will allow Queensland small business owners to be effectively supported by the most appropriate entity through the whole dispute resolution process.

Further, affording business-to-business dispute resolution functions to the OQSBC will also allow the OQSBC to assist with franchising disputes through the business-to-business dispute resolution process. As such, the Bill should not include franchising dispute resolution functions in favour of business-to-business dispute resolution functions. Such an amendment would also be beneficial as it removes ambiguity about who handles franchising disputes under the national Franchising Code of Conduct, allowing for effective and streamlined dispute resolution for small businesses.

Thank you for the opportunity to comment. If you would like to discuss this matter further, please contact Mr Luke Collins on 02 5114 6117 or at Luke.Collins@asbfeo.gov.au.

Yours sincerely



The Hon. Bruce Billson
Australian Small Business and Family Enterprise Ombudsman

23 September 2021

██████████
Department of Employment, Small Business and Training
PO Box 15483
City East
Brisbane QLD 4002

via email: ██████████

██████████ **Queensland Small Business Commissioner Bill 2021 feedback**

We welcome the proposal to ensure that the Office of the Queensland Small Business Commissioner (OQSBC) remains a permanent position and is supported by specific enabling legislation. The Queensland Small Business Commissioner (Commissioner) role, as with the similar roles across other States and Territories, is vital for small business advocacy and assistance.

We make the following recommendations based on our experience of the *Australian Small Business and Family Enterprise Act 2015* (Cth) and our regular engagement with the State Commissioners and peer dispute agencies.

Independence

In order for Queensland's small business community to have the full confidence in the Commissioner to fearlessly and consistently represent their small business community, it is important that the role has an appropriate degree of independence from government. As such, we suggest omitting the clause regarding Ministerial direction (clause 17), which conveys that potential for the role to be highly dependent on Government and subject to operational instruction. Instead, the Bill should retain only the Statement of expectations (clause 18), which provides a mechanism for establishing clear objectives, conveying strategic priorities and ensuring a broad contribution to and alignment with the whole-of-government goals and ambitions. This would provide adequate scope for guidance without it being perceived that the Commissioner is controlled by Government.

This will help to build trust in the role and its advocacy capabilities by recognising that the Commissioner is independent and free from influence. Further, this will allow the Commissioner to raise all matters that are important to small businesses, with confidence that they are mandated to always seek the best results for small business.

Assisting Small Business

The Commissioner's role needs to be permanent and the powers strengthened in order to ensure businesses receive effective dispute resolution assistance. Under the current approach it is difficult for the OQSBC to effectively assist small businesses in disputes. As a result, small businesses in disputes not covered by the current OQSBC are regularly handled by our Office.

Therefore, this Office receives a disproportionate amount of cases from Queensland compared to other states. For example, in the June Quarter 2021, disputes from Queensland represented 27% of

Appendix A

total contacts to our Office despite only having 19% of the Australian business population for the same Quarter.¹ The limitations of the OQSBC also means that some of the disputes that come to our Office, such as Queensland sole trader to sole trader disputes, cannot be effectively handled under our Act.

As such, it is important that the Commissioner has effective tools to assist small businesses in order to help resolve disputes without progressing to costly legal channels. Turning to mechanisms of the Bill, we suggest the following:

1. Entering dispute resolution: With the current wording of sub-clause 21(2), a party has the ability to avoid the dispute process by not agreeing to mediate, effectively side stepping appropriate processes and intent of the legislation. This is because this sub-clause triggers dispute resolution provisions only when “the requirements prescribed by regulation have been complied with; and all parties to the dispute agree to mediate under the part”. As such, we suggest to instead have the process recommended by the Commissioner (rather than the parties needing to agree to mediate up front). This would still leave it open to the parties to choose whether to undertake mediation and the provisions would then apply, including potentially publication of a refusal to follow a recommendation of mediation (as below).
2. Publication: Building on from above, the Commissioners should have the power to publicise when a party does not follow their recommendation to enter dispute resolution processes. This will add an incentive to participate, with knowledge that their non-participation will be tracked.
3. Disputes with Government agencies: It is necessary for small businesses who are in disputes with Government agencies to have an appropriate means to handle these disputes. As such, we encourage allowing the OQSBC to handle disputes between small businesses and State Government agencies.
4. Nominating a mediator, conciliator or arbitrator: Sub-clause 23(5) should extend to conciliators and, with prior agreement and within the Queensland judicial system rules, arbitrators. Further, the Commissioner would be able to keep costs down and find suitable mediators if they had the power to construct a list of alternative dispute resolution practitioners. Our Office has this power under clause 72 of our Act and have found it helps to ensure that practitioners have reasonable fees and meet certain standard requirements before then allowing parties to choose from this list.
5. Information gathering powers: The current section regarding exchange of information should be amended to allow the OQSBC to request information. Further this power should extend to disputants and other relevant parties (including non-government parties). This will make information gathering powers more compelling and also allow for better advocacy outcomes.
6. Register of disputes: The register of disputes could be made more effective. This should include the register as an online publication and include the publication powers discussed above. This will make publication powers more effective and increase transparency in the OQSBC.
7. Definition of small business: Sub-clause 23(3) states that “For deciding whether or not a dispute is a small business dispute under subsection (2)(a), the commissioner may, for example, have regard to the following— (a) the number of employees each party employs; (b) the annual turnover of each party to the dispute.” It is worth noting that a lack of clarity

¹ <https://www.abs.gov.au/statistics/economy/business-indicators/counts-australian-businesses-including-entries-and-exits/latest-release#states-and-territories>

here, while providing flexibility, may be an area of potential disputation and rationale for parties not agreeing to enter into dispute resolution processes.

Advocacy

The advocacy functions of the OQSBC will be an important tool to help small businesses. This should go above and beyond representation and enable the Commissioner to identify gaps and areas where improvements can be made to assist small businesses.

We suggest explicitly including a section on advocacy and the functions this entails, this could be modelled on Part 3 of the *Australian Small Business and Family Enterprise Act 2015* (Cth). Specifically, this should include a mandate to identify the concerns of small businesses and conduct self-initiated research and inquiries in addition to matters referred by the Minister.

Retail Shop Leases Act (RSLA)

The intention to amend the RSLA to make the OQSBC responsible for mediation under the Act is a positive step. However, a more effective and consistent result would be achieved, if this power were instead included in the proposed OQSBC Bill.

Thank you for the opportunity to comment. If you would like to discuss this matter further, please contact Mr Luke Collins on 02 6213 7540 or at Luke.Collins@asbfeo.gov.au.

Yours sincerely



The Hon. Bruce Billson

Australian Small Business and Family Enterprise Ombudsman