



SMALL BUSINESS COMMISSIONER BILL 2021

J ODwyer / October 2021

Introduction

Master Electricians Australia (MEA) is the trade association representing electrical contractors recognised by industry, government and the community as the electrical industry's leading business partner, knowledge source and advocate. Our website is www.masterelectricians.com.au

Small Business Commissioner Bill 2021

Queensland's small businesses face challenges in the face of the COVID-19 pandemic as well as ongoing regulatory pressures and red tape.

MEA broadly supports the establishment of a permanent Small Business Commissioner in Queensland but is concerned by the limitations on the commissioner's powers under the proposed legislation. Queensland is the only mainland Australian state that does not have a permanent Small Business Commissioner.

The Bill's explanatory notes state that: *"The provision of permanent commissioner services aims to reduce costs and red tape to small businesses overall and support the Government in achieving its objective to drive Queensland's private sector employment."*

MEA believes the Commissioner's powers, as proposed in the Bill, are neither broad enough, nor strong enough to achieve the stated goal of reducing red tape for small business.

Queensland needs an independent advocate that will speak freely and fairly to government about what small businesses need to thrive, and act to minimise red tape. MEA believes the restrictions on the commissioner's powers under the legislations as currently written will prevent that goal being met.

The proposed powers in the Bill only allow the commissioner to mediate in lease disputes and franchisee disputes. This will limit how effective the Small Business Commissioner will be in the stated goals of reducing costs and red tape for Queensland small businesses. It must also be pointed out that there is a federal ombudsman that deals with franchise disputes currently so it is doubtful that the Queensland Small Business commissioner will hear any disputes concerning franchises.

Commissioners in other jurisdictions

In comparison Small Business Commissioners in other Australian jurisdictions have far broader powers, including the ability to investigate unfair treatment or unfair contracts, investigate market practices that may adversely affect small business, and investigate non-payment and poor practice in the construction industry.

The New South Wales Small Business Commissioner has powers including:

- Investigate allegations of unfair treatment or unfair contracts.
- Compel local governments, NSW government bodies, and other businesses to provide information or answer questions when a complaint is made.
- Investigate unfair treatment of a small business by another business, a local government, or NSW government agency.

The South Australia Small Business Commissioner's powers include:

- Monitoring, investigating, and enforcing compliance with Industry Codes that may adversely affect small businesses.
- Investigating market practices that may adversely affect a small business.

The Western Australia Small Business Commissioner

- Under the *Small Business Development Corporation Amendment Bill 2019* the Commissioner was given additional authority to investigate complaints of non-payment and poor practice, particularly in the construction industry. He can also examine matters identified through data analysis or insights gained from other government agencies.

MEA believes that the Small Business Commissioner must also be able to commence inquiries and call on State Departments particular to produce data and information relating to interactions performance and delivery of services to small businesses and their consumers.

We believe that the Family and Small Business Ombudsman powers are a template of what should be added to the bill to form an effective and rigorous accountability function to the Queensland Government. The Federal Ombudsman has the following powers from its relevant act

Australian Small Business and Family Enterprise Ombudsman Act 2015

The advocacy function

*The following functions are included in the **advocacy function**:*

- to identify the concerns of those operating small businesses and family enterprises arising out of relevant legislation, policies and practices;*
- to conduct research and make inquiries on the Ombudsman's own initiative in relation to relevant legislation, policies and practices under Division 2 of Part 3;*
- to inquire into matters referred to the Ombudsman by the Minister under Division 3 of Part 3;*
- to provide advice to the Minister on matters referred to the Ombudsman under Division 4 of Part 3;*
- to work co-operatively, as far as is possible, with the appropriate agencies of the Commonwealth, States and Territories to develop national strategies in relation to legislation, policies and practices*

that affect, or may affect, small businesses or family enterprises under Division 5 of Part 3;

- (f) to provide information to, make submissions or recommendations to, and otherwise contribute to the conduct of inquiries into relevant legislation, policies and practices under Division 6 of Part 3;*
- (g) to review proposals in relation to relevant legislation, policies and practices, and give the Minister advice in relation to proposals of that kind, under Division 6 of Part 3;*
- (h) to promote best practice in interactions with small businesses and family enterprises under Division 6 of Part 3.*

15 The assistance function

*The following functions are included in the **assistance function**:*

- (a) to respond under Division 2 of Part 4 to requests for assistance in relation to relevant actions, including by referring requests to another agency of the Commonwealth, a State or a Territory or by working co-operatively with another agency of the Commonwealth, a State or a Territory to give assistance;*
- (b) where a request for assistance relates to a dispute in relation to a relevant action, to make recommendations under Division 3 of Part 4 about how the dispute may be managed, including recommendations that an alternative dispute resolution process be used to manage the dispute.*

16 General policy guidelines

In performing the Ombudsman's functions, the Ombudsman must:

- (a) perform the Ombudsman's functions in the most convenient and effective way possible; and*
- (b) avoid duplicating the operations of any other agency of the Commonwealth, a State or a Territory that performs a function that wholly or partly overlaps with a function of the Ombudsman; and*
- (c) work co-operatively, as far as is possible, with other agencies of the Commonwealth, the States and the Territories to perform the Ombudsman's functions; and*
- (d) comply with all other laws of the Commonwealth.*

17 Flexibility and range of working methods in performance of the Ombudsman's functions

- (1) The Ombudsman is not required to act in a formal manner in the performance of the Ombudsman's functions, unless otherwise required to do so under this Act, or any other Act or legislative instrument.*
- (2) In the performance of the Ombudsman's functions, the Ombudsman may:*
 - (a) inform himself or herself on any matter in any way the Ombudsman thinks fit; and*
 - (b) consult with anyone the Ombudsman thinks fit; and*
 - (c) receive written or oral information or submissions.*

18 Ombudsman's powers

The Ombudsman has power to do all things necessary or convenient to be done for or in connection with the performance of the Ombudsman's functions.

Note: The Secretary may enter into contracts and other arrangements on behalf of the Commonwealth to assist the Ombudsman in performing the Ombudsman's functions. See section 23 of the Public Governance, Performance and Accountability Act 2013.

19 Delegation by the Ombudsman

- (1) The Ombudsman may, by written instrument, delegate the functions and powers of the Ombudsman to:
 - (a) an SES employee, or acting SES employee, in the Department; or*
 - (b) an APS employee who holds or performs the duties of an Executive Level 1 or 2 position, or an equivalent position, in the Department.**
- (2) In exercising powers or performing functions under a delegation, the delegate must comply with any written directions by the Ombudsman.*

Due to the limited scope of the Queensland Small Business Commissioner, as proposed, Queensland small business, including the thousands of electrical contractors MEA represents, will be without the powerful advocate that businesses in other states benefit.

As the Bill will be reviewed after five years, MEA recommends an expanded scope of powers be examined at this stage. MEA would support the addition of powers available to commissioners in other states as a means to further support the stated objective of supporting Queensland small business and reducing red tape.

MEA appreciates the opportunity to assist the committee improve the bill under consideration and we look forward to assisting the Committee during hearings on the Bill.



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