




Speech By
Patrick Weir

MEMBER FOR CONDAMINE

Record of Proceedings, 16 March 2022

SMALL BUSINESS COMMISSIONER BILL

 **Mr WEIR** (Condamine—LNP) (6.53 pm): I rise to make a contribution to the debate on the Small Business Commissioner Bill 2021, which was introduced into the Legislative Assembly by the Hon. Di Farmer, Minister for Employment and Small Business and Minister for Training and Skills Development and referred to the committee on 12 October 2021. Thirteen submissions to the inquiry into the bill were received. When introducing the bill, the minister stated—

The main objectives of the proposed bill are: to enhance the operating environment for small business in Queensland and to reduce the time and costs associated with resolving disputes involving small businesses.

The explanatory notes state that the objectives of the bill are—

... to give effect to the Queensland Government's commitments to permanently establish a Queensland Small Business Commissioner and a supporting office ... provide a statutory basis for the commissioner's dispute resolution functions relating to retail tenancy disputes and enable mediation for commercial leasing and small business franchise disputes on an opt-in basis only ... cease the operation of the temporary commissioner on commencement of the permanent commissioner ... to transition the temporary commissioner role from its previous arrangements focused primarily on managing and responding to COVID-19 impacts to a role with wider application to support small businesses.

As further stated in the explanatory notes—

In April 2020, National Cabinet endorsed the Mandatory Code of Conduct SME Commercial Leasing Principles during COVID-19 (the National Code), which applied to all tenancies that were suffering financial stress or hardship as a result of the COVID-19 pandemic as defined by their eligibility for the Commonwealth Government's JobKeeper program.

As part of Queensland's approach to implementing the national code, provision was made for a temporary small business commissioner to be established under the COVID-19 Emergency Response Act 2020. The temporary commissioner was appointed to deliver advocacy and dispute resolution functions for Queensland small businesses, including: providing information and advisory services to the public about matters relevant to small businesses, particularly in relation to the COVID-19 response measures; assisting small businesses in reaching an informal resolution for disputes relating to small business leases; and administering a mediation process prescribed by regulation for responding to the COVID-19 emergency in relation to small business tenancy disputes.

The regulation was extended by the COVID-19 Emergency Response and Other Legislation Amendment Act 2020. While the appointment of the temporary commissioner was initially scheduled to expire 31 December 2021, the extension act removed the reference to this expiry date. While all submitters supported the bill's objective to permanently establish a Queensland Small Business Commissioner, there were a number of issues raised. These concerns included: the independence of the commissioner; the definition of small business; functions of the commissioner; the scope of disputes for which the commissioner should provide mediation; and mediation fees.

The lack of definition of what constitutes a small business is a valid concern. Some submitters recommended that specific definitions or criteria be included in the bill. In its response to submissions I note the department said there was no single definition of small business that is used consistently across government legislation or programs in Australia and that on balance it was considered that not

defining small business in the bill allows some flexibility and discretion for the commissioner to support businesses that are small in nature but may sit just outside a definition based on full-time-equivalent or maximum turnover.

As stated in the explanatory notes, the proposed functions of the commissioner are—

- To provide a central point of contact in relation to matters affecting small businesses; and
- To provide information and advisory services to the public about matters relating to small businesses; and
- To assist parties reaching an informal resolution for small business disputes, including by facilitating the exchange of information between parties; and
- To provide alternative dispute resolution services and administer a mediation process for small business disputes; and
- To advocate on behalf of small businesses to the State, the Commonwealth, another State or a local government, or any other entity involved in administering matters relevant to small businesses; and
- To work collaboratively with the equivalent of the small business commissioner in other States or the Commonwealth to enhance conditions for small businesses; and
- To perform the functions conferred on the commissioner under another Act; and
- To carry out other activities to further the objects of the Act, as directed by the Minister.

A number of submitters commented on the independence of the commissioner's role, noting that to truly advocate on behalf of business it is likely to be a challenge for the office given that it is a body that reports to the minister. Also, it is important that the commissioner has an appropriate degree of independence from government. The concern with ministerial direction is that it might be used to guide the commissioner away from subject matter that might be awkward or difficult for the government of the day. The member for Buderim, Brent Mickelberg, the shadow minister for small business, will be moving an amendment to address these concerns.

Part 3 of the bill prescribes the requirements and processes associated with the commission's mediation function. The commissioner is to provide informal dispute resolution assistance and administer a voluntary mediation process for small business disputes.