



Yasmin King
Small Business Commissioner

Ref: OUT12/11103

Business Regulation Benchmarking –
Role of Local Government
Productivity Commission
Canberra City ACT 2601

Attn: Dr Warren Mundy

Dear Dr Mundy

Thank you for the opportunity to respond to the Productivity Commissioner's Draft Report "Performance Benchmarking of Australian Business Regulation: The Role of Local Government as a regulator".

As the NSW Small Business Commissioner, I have been appointed to advocate on behalf of small businesses in NSW, provide low cost dispute resolution services, advise on reducing regulatory burden and to identify ways in which Government can create a climate in which the small business sector can flourish.

One of my first actions as the NSW Small Business Commissioner was to embark on a month long 'Listening Tour' throughout NSW. With the support of the NSW Business Chamber, I visited 28 locations across regional and metropolitan NSW throughout October and November 2011 to hear directly about the concerns, challenges, and rewards of being a small business operator.

I met with a total of 533 small business operators in numerous locations across the State including metropolitan Sydney, the Northern Rivers, Mid North Coast, Murray Riverina, Central West, Central Coast, and the Hunter. While each area faces its own unique challenges, many of the issues voiced by small business operators are shared across NSW.

One of the most common issues raised by small businesses across the State was concern over delays and perceived obstructionism by local councils in relation to planning and other business-related applications made by small businesses.

Previous submission

My earlier submission to the Productivity Commission highlighted a number of key issues in relation to local government regulatory burden including the need for economic data, local council planning decisions, and car parking contribution levies.

Since making this submission, it has come to my attention that a Sydney metropolitan council has recently announced its 2012/13 Community Strategic Plan which will impose new car parking fees on car spaces that are currently zoned for two hours free parking. This change has been indicated as part of the Council's proposed fee increases for 2012/13 and will have a detrimental impact on the majority of the small businesses in the local area if implemented.

The local Business Chamber has made a submission to the Council on behalf of the small business community as its collective voice, however due to the lengthy and complex nature of the exhibition document released by the Council for public comment, it is highly unlikely that small businesses will have the resources available to make individual submissions to the Council on this important issue.

It is the responsibility of local councils to ensure that their strategic development is undertaken in collaboration with the small business community, and that small businesses are provided with the appropriate opportunities to have their voices heard.

Limited low cost graduate dispute handling

I refer to the Productivity Commission's Draft Report "Performance Benchmarking of Australian Business Regulation: The Role of Local Government as a regulator" and the request for information regarding the extent to which Ombudsmen, Small Business Commissioners and similar agencies can assist in handling business complaints of local government regulatory activities.

I have received feedback from many small businesses that they need assistance in their dealings with State and local government bodies when they feel that they have been dealt with unfairly. In many of these situations, there is often a disconnect between the needs of a small business and the complex, bureaucratic processes of government which can create unfair or unreasonable burdens on businesses, and which are usually not intended by the government body in question.

In many cases, the support of an independent party, such as a Small Business Commissioner, can assist a small business to resolve any outstanding issues with State and local government bodies, including local councils, through informal and formal methods.

Small Business Commissioners: The roles of advocacy, complaint handling and mediation

The majority of Small Business Commissioners around Australia have roles as advocates for the small business sector and offer complaint handling and mediation services for disputes involving small businesses and larger businesses or government bodies.

It is important to note that the assistance of Small Business Commissioners in handling business complaints about local government regulatory activities should only be available in situations where a business feels that they have been dealt with unfairly in the context of government process, or where there appear to be systemic issues that are impacting on small businesses.

It is not the role of Small Business Commissioners to become involved in complaints which relate to council decision making functions such as the issuing of parking tickets. Commissioners should not be a new avenue of appeal, rather, the appropriate role is to provide advice to government about how to make processes fair and just, and improving relationships between small businesses and councils.

Complaint handling

The complaint handling role of Small Business Commissioners is essentially that of a broker - an independent body which has the ability to hear both sides of an argument. The Commissioners, with complete impartiality, can seek to take the emotion out of decision-making, and help parties to see beyond barriers, which may be based on personality conflicts, retribution, or merely lack of understanding of the facts of a matter, to help them reach a resolution.

My office utilises both informal and formal methods to resolve disputes between small businesses and government bodies, including local councils. In many cases, this involves working closely with government bodies to gain an understanding of the formal appeal processes already in place for disputes, and assisting small businesses to understand their appeal options.

When informal methods are unsuccessful, it is sometimes necessary to progress the issue to formal dispute resolution, such as low cost mediation, a service also provided by my office and available to manage disputes with government bodies, including local councils.

Mediation

Although Small Business Commissioners play a key role as advocates for small businesses, it is important to recognise that the Commissioners are neutral and independent bodies that help parties in a dispute to reach their own solution.

Small Business Commissioners provide a starting point for small businesses to access low cost mediation services which allow parties to a dispute to resolve a situation without the need for time consuming and costly legal action. In NSW, formal mediation services are provided by highly skilled mediators derived from a qualified panel of mediators. The costs for these mediators is subsidised by my office.

In many cases, simply the provision of a starting point is a service valued by many small businesses in circumstances where they are experiencing difficulties with a government body, such as a local council, but do not know where else to seek assistance.

When mediation is undertaken through a Small Business Commissioner, neither party will be forced into making a decision or a commitment they do not agree with. In some cases, if mediation is unsuccessful despite the best efforts of both parties, it may be necessary for the matter to progress to another level, such as a tribunal or court.

Case Studies

I am pleased to report that my office has already been successful in resolving a number of complaints and disputes involving small businesses and local councils. This has been possible because of the goodwill and cooperation of the parties involved. Case studies outlining a range of different methods are included for your reference.

Case Study 1: Informal resolution of a complaint about a local council

A small business owner recently contacted me about the additional burden placed on his business by a local council. The small business owner wanted to place a small A-frame advertising sign on the footpath outside his shopfront, however the Council approval process for signage was unnecessarily complex and required the small business owner to submit a complete Development Application.

My office contacted the Council on behalf of the small business owner to discuss the matter and the implications on small businesses in the local area. The General Manager was very concerned to hear that council processes were placing additional burdens on small businesses, and immediately agreed to review the process.

Within weeks, the Council re-evaluated the application process for A-frame signage and designed a new application process that is now much more efficient for small business owners.

Without the assistance of an independent body, it is highly unlikely that the simplification of this process would have been undertaken so quickly, if at all.

Case Study 2: Informal resolution of collective complaints about a local council

My office was contacted by a number of small businesses from a shopping village whose businesses were being impacted by a large construction project that was being undertaken by the local council. It appeared that the construction project and schedule had been developed with limited consultation with local business owners, and as such, the businesses, the contractor and the local council had conflicting issues and priorities that were impacting negatively on the community.

As an independent party, my office was able to understand the perspectives of all stakeholders, the small businesses, contractor and the local council, to ascertain the key issues that were

causing concern for the community. For example, the Council limited car parking in front of a number of shops which restricted potential customers from parking and entering the shops.

In some circumstances, customers felt they had no other option but to double-park in front of the shops for limited periods of time, which created safety concerns from the Council's perspective.

Following the assistance of my office in establishing the concerns of the parties, the Council improved its communication strategy with local business owners, directed the contractor's work practices and implemented a number of other measures to ensure that the key concerns of business owners and customers were being addressed. This included plans to progress the construction work more quickly and increase the availability of parking spaces for customers closer to the shops.

Without the assistance of an independent body, it is likely that there would have been a continued pattern of miscommunication between the Council, the contractor and business owners to the detriment of all parties.

Case Study 3: Formal mediation of a dispute between a small business and a local council

My office was contacted by a small business owner who was experiencing ongoing difficulties with a local council due to systemic, unresolved issues which were being exacerbated by both parties.

My office contacted the local council to investigate the complaint and to obtain further information about the dispute. It was evident that while both parties wanted to reach an outcome that would finally resolve the ongoing issues, it was impossible for them to come to such an arrangement without the assistance of an independent body to facilitate their discussions.

Both parties agreed to participate in formal mediation undertaken by an experienced mediator from my office. This process resulted in a formal, written agreement being reached by both parties which resolved the dispute.

Without the assistance of an independent body, it is highly likely that this ongoing dispute would have had negative impacts on the small business and the local community. Both the small business and the local council expressed their appreciation for the mediation service provided by my office.

Case Study 4: Advocacy support for complaints about state and local government regulation

A small business owner recently contacted me about regulations for mobile food vendors which are impinging on his business. Under the *Local Government Act 1993*, and the *NSW Food Act 2003*, each local council in whose area the vehicle (of a mobile food vendor) is operated may charge inspection fees, which may vary between councils, and which creates a significant financial impost on small business operators.

Given that mobile food vendors are designed to travel to different locations which will almost certainly cross a number of different council jurisdictions, this combination of State and local government regulation imposes burdens on mobile food vendors in terms of multiple registration fees, multiple inspection fees, and multiple safety inspections by different councils. This also inhibits the potential for growth, as extending the service into a new area means additional time and costs for registration.

My office is now working closely with the NSW Food Authority to try to minimise the burden on small business operators. I also provide formal feedback on behalf of small businesses through my role as a member of the Food Regulation Forum, convened by the NSW Food Authority.

Further, as part of my engagement with the NSW Food Authority on this issue, the small business operator that originally contacted me about this issue is now a member of the Retail and Food Advisory Group, also convened by the NSW Food Authority, which allows industry and councils to discuss issues in a consultative way.

Without the assistance of an independent body to investigate such issues and provide opportunities for the small business operator to engage with state and local government bodies on the issue, it is highly likely that this small business operator and other mobile food vendors would have continued to face barriers to the detriment of their businesses.

Conclusion

This submission highlights the important role that Small Business Commissioners can play in assisting small businesses to resolve complaints and disputes with government bodies, including local councils.

In addition to the appreciation expressed by many small business operators we have worked with, the NSW Business Chamber has also expressed its support for the low cost dispute resolution services offered by my office as leading practice.

It is recognised that despite the successes outlined in this submission, not all cases will be able to be solved through the goodwill of the parties involved and that in some circumstances, Small Business Commissioners will require the support of a legislative framework to assist in the resolution of disputes and issues facing the small business sector, including local government issues.

The legislative tools available to Commissioners are critical in allowing them to meet the objectives of their roles and deliver outcomes for small businesses.

I encourage the Commission to consider the examples provided in this submission and I would welcome any recommendations about how independent bodies such as Small Business Commissioners can work collaboratively with local government to assist in handling business complaints.

Should you wish to discuss any of the issues raised in this submission, please contact Ms Alyssa Stempniak, Senior Policy Advisor, Office of the Small Business Commissioner.

Yours sincerely



Yasmin King
Small Business Commissioner