

# Proposal to Amend the *Small Business Commissioner Act 2011*

Giving Small Businesses a Bigger Voice.

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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](http://www.masterelectricians.com.au)

MEA welcomes the Statutes Amendment (Small Business Commission) Bill 2023 (the Bill) and its introduction of the South Australian Small Business Commission (SASBC). Its presence along signals the Government’s recognition of the significant contribution small businesses contribute to the State’s economy through partnering with the sector to enhance their operational powers. It therefore follows that MEA supports all recommendations of changing “Commissioner” to “Commission” in related Statutes.

Throughout this submission, we address the Bill’s proposed amendments and assess their effectiveness against the four objectives listed in s 4A. MEA supports the functions introduced under s 5 of the Bill but make suggestions that we believe will further enhance the SASBC’s role and effectiveness is assisting small businesses.

The dispute resolution process is a positive move for small businesses as the SASBC provides a powerful entity to give access to fair alternative dispute resolution services when issues arise, allowing for outcomes to be judicially enforceable providing better protection for small businesses.

## SECTION 5 - FUNCTIONS

### S 5(1)(b) – Support Small Business Owners in Dealings with Other Businesses and Government Agencies

We note s 5(1)(c) in the Small Business Commissioner Act 2011 (the Act) specifying the Commissioner is “to **disseminate information** to small businesses...” has been removed in the Bill under the revised s 5(1)(b) and is limited to “support[ing] small business owners in their dealings with other businesses or government agencies through the provision of **general advice and assistance**”<sup>1</sup>. The changed wording implies less information will be available to small businesses and only upon request. Under the NSW Small Business Draft Charter, “the Bureau will be the first point of contact for NSW small businesses to access **resources**, advice and programs across all stages of their business cycle”<sup>2</sup>. We recommend the Bill extends its role to reflect NSW’s proposed Bureau’s (equivalent to the proposed SASBC) functions and ensure the wording reflects the SASBC’s role as an interactive centralised hub for all matters.

We also suggest removing “owners” from s 5(1)(b) as this inappropriately limits assistance to owners as opposed to all staff conducting business on behalf of the owner. Our interpretation of this intentional limitation is supported by s 5(1)(c) which does not include “owners” but appears to serve the same purpose. MEA does not see a justifiable purpose for this.

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<sup>1</sup> Statutes Amendment (Small Business Commission) Bill 2023 (SA) s 591(c)

<sup>2</sup> ‘Charter for Small Business – Draft Action Plan – Summary’ *NSW Government* [2023](1)

### S 5(1)(c) – Assist Small Businesses with Interactions with Government Agencies

In our opinion s 5(1)(c) should either be reworded to better convey its intent or removed. It creates confusion by essentially flipping s 5(1)(b). It appears to have the same purpose of assisting small businesses but unlike (b), it has a wider interpretation to include the entirety of the business (as opposed to just the owners) while narrowing the target to just government agencies (as opposed to government agencies **and** other businesses). We recommend either defining the difference between “dealings” and “interactions” if there is to be a distinction or removing the section all together.

### S 5(1)(d) – Identifying Issues

The SASBC’s advocacy role gives small businesses a stronger voice in Parliament. We do however recommend extending the wording under s5(1)(d) to make clear that this is an interactive opportunity for small businesses, and that the SASBC is open to receiving complaints on regulatory and operational issues. The current interpretation of this section appears restrictive to being an internal process without small business interaction. MEA has recently submitted a response to NSW’s *Charter for Small Business Draft Charter and Draft Action Plan* which very specifically states the Bureau will be “the one stop shop for small businesses ... develop[ing] an oversight of red-tape and other pain points”. We recommend the wording of the s 5(1)(d) extends the SASBC’s functions to solidify the interactive nature of this role. Potentially, the functions could establish an engagement channel for small businesses to contact the SASBC regarding concerns. We recognise that s 5(1)(b) arguably addresses our above concern, however, we interpret “**support**” as a different function to one that receives complaints.

While s (5)(1)(d) is certainly a positive step forward for small businesses, the section requires monitoring and accountability mechanisms. Section 5(1)(da) should be introduced whereby the SASBC is required to provide annual publicly available reports informing small businesses of issues raised throughout the year and actions taken in response. Without such accountability mechanisms, this section risks giving small businesses an empty promise of advocacy support.

### S 5(1)(e) – Making Representations

Similar to s 5(1)(d), this section gives small businesses a stronger voice and reduces power imbalances. If there is an intended minimum threshold that must be met before the Commission will engage in taking action, MEA recommends this is stated (i.e., must be above the minor civil actions threshold of \$12,000<sup>3</sup>).

### S 5(1)(f)(iii) – Market Practices

MEA argues this provision is now redundant with the introduction of s 5(1)(d).

### Removal of References to Fair Trading Act (FTA) in the Act

MEA supports the removal of the currently legislated s 5(1)(d)&(da) from the Act. The Commission is being established to focus on assisting small businesses; not administering the FTA. The relevant FTA sections referred to in s 5(1)(d)&(da) notes the SBSCA is the

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<sup>3</sup> ‘Minor Civil Actions’ *Legal Services Commission South Australia* (Web Page, 14 May 2020) < [Minor Civil Actions \(lawhandbook.sa.gov.au\)](http://lawhandbook.sa.gov.au) >

**Minister's** responsibilities, not the SASBC's. Furthermore, s 5(f)(ii) still obliges the Commission to perform monitoring functions of s 28I of the FTA.

## POWER TO REQUIRE INFORMATION

MEA supports the inclusion of "email" into s 12(1). We recommend part of the Commission's functions under s 59(1)(d) includes advocating for modifying legislation and regulation which maintain archaic forms of communication. Businesses operate in a technologically globalised environment and should be able to perform meetings and notification deliveries via internet.

## DISPUTE RESOLUTION

Section 5(1)(a) broadens the scope of the SASBC's dispute resolution abilities to any matters involving small businesses. Under *Part 3 – Dispute Resolution* the SASBC's is given legislative power to mandate participation in a method of alternative dispute resolution of the Commission's choosing allowing dispute resolutions to be customised to the specific issue. Section 12C ensures the Commission is not obligated to address every issue, reserving this function for suitable and significant matters.

## COMPLIANCE & ENFORCEMENT RESPONSIBILITIES

Under s 12G, the Bill provides the Commission with compliance and enforcement responsibilities giving legal support to dispute resolution outcomes. The signed written document is enforceable by the judiciary if breached. MEA supports this section as it gives weight to the dispute resolution process.

## OBJECTS

The overall goal to "provide clear objective provisions connecting Parliament's commitment to support the success of small businesses" has been largely achieved through the Bill. There are some areas of improvement we have identified. Below, MEA assesses the four objectives listed in s 4A individually.

### [Deal with issues concerning the small business sector in an independent manner.](#)

All functions listed under s 5 contribute towards achieving this objective. Small businesses are receiving their own Government entity designed to look after the best interests of this industry. Advisory functions, assistance and dispute resolution support are more thoroughly and readily available to small businesses.

### [Promote a fair operating environment in which small businesses can thrive.](#)

MEA believes this has been achieved under the s 5 functions. In particular, s 5(1)(d) imposes advocacy functions upon the SASBC, designed to ensure there is a fair and equitable

environment for small businesses to operate within. Proactive assistance will be provided towards reducing power imbalances and giving small businesses a voice thereby strengthening the support system available. We do, however, recommend several alterations, in particular within s 5(1)(b)&(d) which we believe will strengthen the success of this objective.

[Provide a central point of contact for small businesses to make complaints about their dealings with other businesses and about their dealings with Government agencies.](#)

Overall, MEA believes s 5 functions achieve this objective, however, we suggest strengthening the wording of s5(1)(b)&(d) to make it clear that small businesses are welcome to contact the Commission with complaints about general legislative and operating matters.

Section 5(1)(a),(b),(c) and (e) clearly establish this objective.

[Facilitate timely & cost-effective resolution of disputes involving small businesses through appropriate forms of alternative dispute resolution.](#)

Section 5(1)(a) is supported by Part 3 – Dispute Resolutions. Section 12B(1) achieves this objective by allowing the SASBC to select the form of alternative dispute resolution to be performed. Furthermore, Part 3 provides time-efficient deadlines to ensure the resolution of the issue is not delayed. MEA believes this objective has been achieved through a more thorough legislative approach towards the SASBC's dispute resolution capabilities.

## Conclusion

MEA supports the Statutes amendment (Small Business Commission) Bill 2023 and applauds the establishment of the South Australian Small Business Commission (SASBC). It sends a message to the industry that the South Australian Government appreciates its contribution towards the economy and recognises the inequality faced by small businesses.

Overall, the functions imposed upon the SASBC under s 5 strengthens the position of small businesses when dealing with other entities and government agencies. With the SASBC, small businesses will have a champion campaigning for a more equitable operating environment, highlighting trending issues and voicing these too Ministers on the behalf of small businesses. Power imbalances are reduced through the weight of the SASBC (a government agency) and the judiciary backing interactions and dispute resolutions.

MEA does, however, note that further amendments to s 5 functions are required to make the SASBC truly effective in actioning support for small businesses. Most of the alterations focus on s 5(1)(b)&(d).

Firstly, under s(5)(1)(b), we recommend extending the proposed wording to maintain “disseminating of information” as currently legislated in the Act, making it clear and easily understandable to small businesses that the SASBC is the central ‘hub’ for all matters relating to small businesses whether it be readily available resources, advice, support handling of complaints. We further highlight the confusing interpretation between ss 5(1)(b)&(c). In MEA’s opinion, (b) needs to remove “owners”. By doing so, a necessary wider interpretation is given to the subsection, enabling (c) to be removed from the Bill. If s 5(1)(c) is designed to serve a different purpose from (b), we recommend rewording it or defining “dealings” and “interactions”.

We support the introduction of s 5(1)(d) providing advocacy support for small businesses. We do, however, bring attention to alterations that would strengthen the subsection. The current wording suggests identification of issues is an internal function of the SASBC. We recommend rewording (d) to be interpreted as an interactive function whereby small businesses are invited to direct complaints regarding the operating environment to the SASBC. Furthermore, we encourage the introduction of s 5(1)(da) whereby the SASBC is obligated to provide annual public reports regarding issues throughout the year and the SASBC’s response and progress towards it. This ensures weight is given to the advocacy function of the SASBC and transparency is being achieved.

Overall, the four objectives outlined in s 4A have been achieved through introducing the SASBC and its functions under s 5A. We recommend our above alterations to further strengthen support available to small businesses and ensure the SASBC remains a centralised point of contact for all small business related matters with continuous momentum towards actioning change within the sector.