



Mr Adam Heydon
Better Business Reforms Implementation
Regulatory Policy, BRD
Department of Finance, Services and Innovation

By email: policy@finance.nsw.gov.au

Dear Mr Heydon

BETTER BUSINESS REFORMS – IMPLEMENTATION OPTIONS PAPER

The Office of the NSW Small Business Commissioner (OSBC) is focused on supporting and improving the operating environment for small businesses in NSW. The OSBC advocates on behalf of small businesses, provides mediation and dispute resolution services, speaks up for small business in government, and makes it easier to do business through policy harmonisation and reform.

The OSBC welcomes the legislative reforms, enacted as part of the NSW Government's *Better Business Reforms* to reduce unnecessary and disproportionate obligations on businesses. To ensure that businesses are aware of the reforms and can transition effectively to the new legislative framework, we emphasise the need for a dedicated information and education campaign and collaboration with industry bodies to facilitate compliance. The OSBC is keen to support NSW Fair Trading's ('NSWFT') planned information and education campaigns to bring awareness of the *Better Business Reforms* to affected businesses and welcome the opportunity to work with closely NSWFT to identify and explore practical measures to support education campaigns and broaden the reach of campaigns to affected small businesses.

In relation to the reforms that advance consumer interests, we emphasise the need to ensure these reforms are implemented in a manner considerate of the interests of affected small businesses to ensure that operators incur no more than a reasonable and proportionate burden.

The OSBC provides the following comments and recommendations in relation to the specific issues identified in the consultation paper, where we have identified issues with NSWFT's proposals requiring amendment or further consideration.

1. How feasible is the proposed start date for the disclosure of key terms? Are there reasons why these amendments should start sooner or later?

The OSBC supports the proposed start date of 1 September 2019. However, it is essential that a targeted educational campaign commences as soon as possible to ensure that small businesses are aware of the new requirements. The OSBC also suggests that the start date should be accompanied by a grace period to exempt any breaches of the legislation for an appropriate period of time to support businesses transition to the new regulatory framework.

Recommendation:

The OSBC supports the proposed start date of 1 September 2019. However, it is essential that a targeted educational campaign commences as soon as possible to ensure that small businesses are aware of the new requirements. The OSBC also suggests that the start date should be accompanied by a grace period to exempt any breaches of the legislation for an appropriate period of time to support businesses transition to the new regulatory framework.

Disclosure of key terms

The obligation to disclosure contractual terms that substantially prejudice the interests of consumers may represent both a confusing and an onerous requirement for small businesses. The OSBC supports the provision of a non-exhaustive list of terms that substantially prejudice consumers to address the compliance burden placed on affected businesses. We welcome the inclusion of several such terms in the amending legislation. However, NSWFT should give detailed consideration to additional terms that may be prescribed in the regulation.

Compliance with the obligation to disclose key terms may pose particular challenges for the plurality of small business owners from culturally and linguistically diverse backgrounds facing language barriers. The OSBC notes that one third of all NSW small business operators were born overseas (32 per cent).

Disclosure of commissions and referral fees

The OSBC supports regulations regarding the disclosure of commissions and referral fees to address regulatory gaps of the current legislative framework.

The OSBC suggests that the regulations includes other types of financial incentives and to extend the need to disclose financial incentives to businesses operating on social media platforms.

Recommendation: The OSBC suggests that the regulations includes other types of financial incentives and to extend the need to disclose financial incentives to businesses operating on social media platforms.

7. Is January 2020 an appropriate start date for the disclosure of commissions and referral fees? Do you believe there are reasons why this reform should start sooner or later?

The OSBC supports the proposed commencement date of 1 January 2020 for the requirement to disclose commissions and referral fees as it would provide affected businesses with sufficient time to understand the new regulatory framework.

Innkeepers Act 1968 repeal

13. How feasible is the proposed start date for the repeal of the Innkeepers Act? Are there reasons this reform should start sooner or later?

Repeal of the *Innkeepers Act 1968* (NSW) as soon as possible is supported as it will impart a significant benefit on affected small businesses. The reduced obligations

stemming from the repeal won't impose any penalties on businesses who may find out about the changes after the repeal as there be a contradiction to the law in the interim period.

The OSBC supports the need to undertake an information and education campaign and to raise awareness of the new provisions with industry associations to ensure that the benefits of the repeal of the legislation is realised.

Streamlining the uncollected goods regime

The OSBC supports measures to streamline the uncollected goods regime to remove unnecessary costs on service providers.

Reforms should be communicated effectively to businesses. While the reforms simplify the obligations on businesses, the requirements under the uncollected goods regime are still fairly complex and there is a need to ensure that the requirements in place are communicated clearly to businesses.

Recommendation: Reforms should be communicated clearly and effectively to businesses. While the reforms simplify the obligations on businesses, the requirements under the uncollected goods regime are still fairly complex and there is a need to ensure that the requirements in place are communicated clearly to businesses.

Next steps

As the voice for small business in NSW, the OSBC would welcome the opportunity to work with the NSWFT to identify and explore practical measures to support education campaigns and broaden the reach of campaigns to affected small businesses.

Kind regards

Robyn Hobbs OAM
NSW Small Business Commissioner

19 December 2018