



**Minister for Finance; Commerce; Small Business**  
**Hon Simon O'Brien MLC**

Our ref: 29-17255

Mr Oliver Moon  
Chief Executive Officer  
Combined Small Business Alliance  
of Western Australia Inc  
PO Box 253  
JOONDALUP WA 6919

22 FEB 2011

Dear Mr Moon

**POWERS, ROLE AND FUNCTION OF THE SMALL BUSINESS COMMISSIONER**

Thank you for your letter dated 27 January 2011. I very much appreciate the support of your organisation for my appointment as Minister for Small Business. I am excited by the opportunity to advocate on behalf of our vital small business sector and look forward to working with organisations such as yours to support the viability and growth of small businesses in this State.

One of my main first priorities in this new role is to ensure the successful introduction of a Small Business Commissioner ('Commissioner') in Western Australia. As you are aware, the Government has agreed to introduce a Commissioner to assist small businesses to resolve all types of business disputes, with a particular focus on retail tenancy disputes. The Commissioner will support small retailers through the transition to a more deregulated trading environment.

I note CoSBA's support and endorsement of the views of the Swan Chamber of Commerce (SCC) in their attached email and, in line with your comments, I have given detailed consideration to the questions raised.

May I give you my assurances that I intend to introduce legislation into Parliament early in the Autumn 2011 session that will establish a Commissioner with independent statutory powers to receive and investigate complaints in relation to business disputes and offer alternative dispute resolution services.

As you would be aware, the approach being proposed by the Government is modelled to a large extent on the highly successful Victorian Office of the Small Business Commissioner (VOSBC). The VOSBC is empowered to investigate business to business disputes involving unfair market practices and provide a means to resolve disputes through mediation.

Alternative dispute resolution mechanisms such as mediation are increasingly being recognised by governments and industry bodies around Australia as best practice in relation to assisting small businesses to resolve business disputes quickly and at low cost. In Victoria, the VOSBC has achieved mediation success rates of 80 percent, with some 30 percent of complaints resolved at the preliminary assistance stage, prior to mediation. These are enviable statistics and the VOSBC enjoys high levels of support from small and large business organisations across Victoria. Only where the VOSBC is unable to resolve a complaint is recourse to tribunals and courts necessary.

Staff at the VOSBC provide information, education, guidance and initial assistance to small business operators and perform all of the preliminary work prior to a matter proceeding to mediation. Further, the VOSBC maintains a panel of private sector mediators, with a large part of the cost of mediation subsidised by the Victorian Government. Our intention is that a similar model will be followed in Western Australia and resourced adequately to meet the level of demand that is encountered.

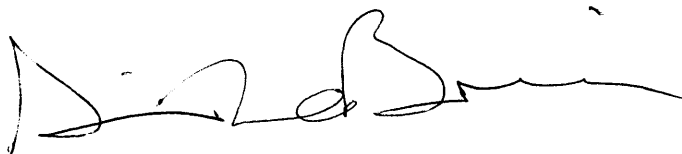
The Government's intention is to create a low cost, non-litigious means of resolving disputes between landlords and tenants in retail shopping centres. It was never intended that a Small Business Commissioner in Western Australia would have judicial powers. Such powers would require introducing processes and practices afforded to the traditional court and tribunal system (such as the interpretation of the law and complex case procedures) which would work against the aim of delivering a non-legalistic service that is intended to be low cost, swift and not overly complex. In the retail tenancy area, such powers would also duplicate the role of our State Administrative Tribunal.

In terms of the public lease register, work on this issue is ongoing and further consultation with industry likely. The imperative to establish the role of the Commissioner, however, is so great that I cannot allow this measure to be delayed while further deliberation on the lease register takes place.

May I also assure you that I understand the pressures that small businesses are under to remain competitive despite rising costs. One of the key roles of the Commissioner will be to report to me on where Government can best provide support to ensure that the costs of business disputes are minimised.

I look forward to working collaboratively with you and your organisation to further the interests of small businesses in this State.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Simon O'Brien', written in a cursive style.

**SIMON O'BRIEN MLC  
MINISTER FOR FINANCE; COMMERCE; SMALL BUSINESS**