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Councillor Conduct Accountability Review Secretariat
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COUNCILLOR CONDUCT ACCOUNTABILITY REVIEW

Review Secretariat,

Thank you for the opportunity to provide feedback on the independent review of the effectiveness of the framework for dealing with councillor misconduct in NSW.

The NSW Small Business Commissioner (the Commission) is an independent statutory office of the NSW Government. It provides strategic advice, advocacy and affordable dispute resolution services across NSW.

The Commission's role includes:

- Encouraging government agencies and larger businesses to enter productive working relationships with small businesses.
- Facilitating and encouraging the fair treatment of small businesses.
- Promoting a fair operating environment in which small businesses can flourish.

Local government plays an important role in supporting small businesses and local economies. For many small businesses, local government is primary level of government interaction. Professional and effective councils can support and help create conditions for small businesses to flourish, however, unprofessional councils can have a devastating impact on small business.

In March 2021, the former NSW Minister for Finance and Small Business, the Hon. Damien Tudehope MLC, requested the NSW Small Business Commissioner to consult with small businesses on their experiences following the suspension of Wingecarribee Shire Council. Following consultation with small businesses within the local government area, the Commission published a report recommending a number of changes that, if adopted by Council, would improve interactions between Council and small businesses. While some of the recommendations are outside the scope of this review, the report proposes a set of best practice elements for NSW councils to consider. Please find the report enclosed for your reference.

The Commission observes that many small businesses face challenges and delays in having complaints made to councils handled in a manner that meets their expectations. The comments in this submission are intended to improve complaints processes and reduce the overall number of complaints lodged by small businesses, based on feedback the Commission regularly receives from stakeholders.

Complaints processes and timeframes

When encountering difficulties, small businesses expect government to have clear processes to address their concerns in a timely manner. While there is an established process for individuals to escalate code of conduct complaints, timeframes to complete investigations can be prohibitive and do not always meet expectations.

The Commission has heard from businesses who have abandoned expansion plans or moved their business to another Local Government Area (LGA) because they did not have confidence in pursuing a complaint through established frameworks and/or could not wait for an outcome.

The consultation paper notes that on average it takes more than a year for OLG to complete misconduct investigations where disciplinary action is taken. The Commission strongly recommends urgent action to reduce this timeframe. The Commission also supports guidance to improve transparency and ensure complainant expectations align with actual experience (including in regard to how to lodge complaints and the timeframe for receiving an outcome).

Training for councillors

The Commission notes councils are currently required to deliver induction training and refresher training for mayors and councillors. The induction program should include dedicated training helping mayors and councillors to clearly understand the limits of their roles and responsibilities under the *Local Government Act 1993* and how those roles differ from council staff. Clearer understanding of the role and responsibility of mayors, councillors and council staff will support effective and efficient functioning of council operations.

Councillors should also receive training on the fundamentals of economic development to ensure they have a basic understanding of how to develop and support the local economy and small business. Such training may assist in reducing the number and severity of complaints from small businesses.

Service delivery and governance

Small businesses have raised a number of issues related to service delivery and governance. In particular, the Commission has heard complaints about councils and councillors when small businesses feel unfairly targeted or believe there is an actual or perceived conflict of interest preventing an application or other decision from progressing within council.

The Commission has previously observed that complaints can arise where the accountabilities and responsibilities of councillors and council staff is blurred. In these situations small businesses often express concerns in regard to procedural fairness. Ensuring there are effective systems and processes in place to prevent these issues would also reduce the likelihood and frequency of complaints.

Concerns of this nature were identified in the Commission's Wingecarribee Shire Council report, particularly around approval processes (including Development Applications) and procurement processes.



Small Business engagement

To help mitigate complains from small businesses, the Commission recommends councils have formal proactive processes for engaging with their local small business community. Such consultations will allow the business community to provide meaningful input into decisions, encourage acceptance of change and allow councils to identify unintended consequences. Councils may also wish to include this type of consultation and other small business strategy elements in their published documents and planning processes to maintain visibility for stakeholders.

Thank you for the opportunity to make a submission. If you require further information, please contact Megan Bennett at either megan.bennett@smallbusiness.nsw.gov.au or (02) 9372 8767.

Yours sincerely

Chris Lamont
Commissioner
NSW Small Business Commission