



AUSTRALIAN CHAMBER OF  
COMMERCE AND INDUSTRY



# SMALL BUSINESS AND FAMILY ENTERPRISE OMBUDSMAN

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**The Australian Chamber of Commerce and Industry  
is the leading voice of business in Australia**

**Canberra Office**

COMMERCE HOUSE  
Level 3, 24 Brisbane Avenue  
Barton ACT 2600

PO BOX 6005  
Kingston ACT 2604  
AUSTRALIA

T: 02 6273 2311  
F: 02 6273 3286  
E: [info@acci.asn.au](mailto:info@acci.asn.au)  
W: [www.acci.asn.au](http://www.acci.asn.au)

**Melbourne Office**

Level 3, 486 Albert Street  
East Melbourne VIC 3002

PO BOX 18008  
Collins Street East  
Melbourne VIC 8003  
AUSTRALIA

T: 03 9668 9950  
F: 03 9668 9958  
E: [melb@acci.asn.au](mailto:melb@acci.asn.au)  
W: [www.acci.asn.au](http://www.acci.asn.au)

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# 1. EXECUTIVE SUMMARY

The Australian Chamber of Commerce and Industry (ACCI) is pleased to provide a submission to the Minister for Small Business relating to the creation of a Small Business and Family Enterprise Ombudsman (the Ombudsman). The establishment of such an Ombudsman signals the Federal Government's desire to take the concerns and needs of small businesses seriously, ensuring the voice of small business is heard at the highest levels of the Australian government.

According to the 2013 ACCI Red tape Survey, almost half of respondents, most of whom are small businesses, spend approximately one to five hours a week on regulatory compliance. Six per cent stated they spent over 40 hours per week on compliance – equivalent to one full time employee. As such, the announcement made by the Minister for Small Business, the Hon Bruce Billson MP to appoint an Ombudsman who will have “real power” and “contribute to the development of Commonwealth laws and regulations, helping to minimise compliance burdens and reduce red tape” is considered a positive move towards supporting and developing small businesses in Australia.

In the lead up to the 2013 Federal Election, ACCI conducted the “Small Business. Too Big to Ignore” campaign, which included “The Big 4 You Can't Ignore” policy platform for small business. The platform focussed on areas of priority for small business with a challenge to whomever formed Government to: 1. Cut down on red tape, 2. Reduce the overall tax burden and simplify the tax system, 3. Build better infrastructure, 4. Make it easier to employ people. In relation to reducing red tape, ACCI argued that the Australian Small Business Commissioner should become a “warrior to fight red tape”. We are therefore encouraged by the proposal that red tape reduction will be a priority for the newly formed Ombudsman.

Overall, our submission supports the principles that underpin this policy announcement; however, it is equally important that the Ombudsman's role is fit for purpose and minimises any duplication of other regulators, agencies and avenues for assistance.

## 2. CONCIERGE FOR DISPUTE RESOLUTION

- 2.1 What should the scope of the Ombudsman's own mediation service include? For example, small business disputes with Australian Government agencies or disputes under industry codes of conduct?

The Australian Chamber of Commerce and Industry (ACCI) posit that the primary function of the Small Business and Family Enterprise Ombudsman (the Ombudsman) should be to champion the issues of small business, including red tape, to Ministers and the Australian Parliament.

Should the Ombudsman role extend to providing mediation or dispute resolution services, it is recommended that the initial focus be on business disputes with Government Agencies and the like. Following a period of operation in this area, an assessment could be made on the merit of extending further.

With regard to the extent in which the Ombudsman should engage in dispute resolution and mediation process, ACCI suggests that the Ombudsman oversee a 'small business stream' that runs in line with the work of the Commonwealth Ombudsman. The Ombudsman could be the point of entry for small business disputes, assessing and directing the complaint to the relevant existing regulator or agency -ultimately performing a form of triage for small business disputes. This would also make it easier for businesses to engage in the processes. They would be dealing with a specialist body, familiar with their needs that could help direct their grievance or allegation to the right channels and limit the potential for duplication of government services on the whole.

## 2.2 What powers should be conferred to the Ombudsman to resolve small business disputes?

ACCI supports the following conferred powers outlined as outlined in the discussion paper:

- Make administrative decisions;
- Investigate small business disputes.

Whilst it is not recommended that the Ombudsman have (nor requires) multiple conferred powers, it is essential that the Ombudsman is empowered to refer cases to the relevant authority.

## 2.3 Which types of dispute resolution services should the Ombudsman provide and what should be the model for providing these services? For example, should these services be outsourced or provided in-house?

Depending on the extent to which dispute resolution services are included in the role of the Ombudsman, ACCI would recommend that the services either be outsourced or funnelled to the correct government regulator or agency to deal with the dispute. Australia has many dispute resolution professionals, it is therefore recommended that the Ombudsman should not create a new competitive service. A referral service would be adequate and would minimise duplication and costs associated with the administration of said disputes. Dispute management is a product of the contracts involved. Government should, as a matter of course, include appropriate dispute management clauses in any contract so that the Ombudsman has appropriate jurisdiction.

The dispute resolution and mediation services offered by the International Chamber of Commerce (ICC) of which ACCI operates the Australian arm, ICC Australia, should also be considered. ICC Australia and ICC more broadly have an established range of dispute resolution services and materials to assist business (large and small). This includes operating the International Court of Arbitration, as well as providing model commercial contracts and clauses that could be considered for such a purpose.

### 3. COMMONWEALTH-WIDE ADVOCATE

#### 3.1 How can the Ombudsman be a strong advocate to the Government?

It is vital the Ombudsman be a strong advocate of SMEs to the Government. ACCI recommends that the Ombudsman should report directly to Ministers and the Parliament to ensure the voice of small business is appropriately heard.

It is further suggested that an annual report be tabled to Ministers and the Parliament outlining the relevant, immediate issues of small business. The report should also comment on the experience SMEs have when dealing with government, examine various barriers to the doing of business, and burdens or frustrations encountered by small businesses that cost either time or money, or both.

The tabling of such an annual report would ensure transparency and accountability of the work of the Ombudsman.

The Ombudsman should also engage frequently and thoroughly with peak business organisations such as ACCI and our network of member organisations to gain timely and accurate information relating to the concerns of SMEs.

#### 3.2 Are there particular practices that the Ombudsman should focus on?

ACCI recommends that the Ombudsman first consult widely to identify the key issues and practices of importance to small business.

Regarding the function of the Ombudsman, ACCI recommends the following:

1. Communicating the concerns of small businesses to government departments, Ministers and the Parliament, particularly regarding issues related to red tape and government interaction.
2. Communicating information to SMEs from different government departments that relates to the doing of business.
3. Provide guidance on administrative and regulatory requirements for SMEs.

### 3.3 How can the Ombudsman be a strong advocate to larger businesses on the needs of small businesses?

The Ombudsman could assume a lead role by consulting, in the first instance with ACCI and our members of state and territory chambers of commerce and industry and national industry associations. Additional engagement with other business organisations such as the Business Council of Australia, whose membership centres on larger businesses, would be of value.

### 3.4 Should the Ombudsman have conferred powers to investigate allegations of practices in the public and private sectors that are negatively affecting small businesses?

ACCI supports the Ombudsman having conferred powers to investigate allegations of practices in the public and private sectors that negatively affect small business. It is also our position that the Ombudsman has similar powers to that of the Commonwealth Ombudsman, whereby the Ombudsman has the authority to make specific recommendations to the Minister and Parliament regarding SME matters.

It is recommended that the position of Ombudsman be a sub branch of the Commonwealth Ombudsman. Whilst the Commonwealth Ombudsman provides oversight for engagement with government agencies, its work is not specific to SMEs. It is important that SMEs have access to guidance and resolution processes specific to their needs, by an agency that understands their issues.

Time should be taken to understand where there is overlap between government agencies who deal with disputes and caution exercised before establishing new investigative processes.



## 4. CONTRIBUTOR TO COMMONWEALTH LAWS AND REGULATIONS

- 4.1 How should the Ombudsman engage with small businesses and family enterprises to identify the regulatory burdens most affecting them?

It is recommended that the Ombudsman engage directly with ACCI and our network with state and territory chambers of commerce and industry and national industry associations. This is considered to be an effective and efficient method of gaining on the ground information relating to issues effecting SMEs.

Furthermore, ACCI conducts a quarterly Small Business Survey, the only survey of its kind in Australia, it brings together timely data relating to issues central to small business. It is recommended that the Ombudsman subscribes to this survey and discusses its results closely with ACCI.

- 4.2 What activities should the Ombudsman be tasked with in order to make Commonwealth laws and regulations more small business and family enterprise friendly?

The Ombudsman's central role should be to investigate and report on SME issues. This means providing timely updates to small business of any changes to legislation or compliance measures and to assess Bills that may have an impact on small business.

The Ombudsman should consult with peak business bodies such as ACCI and our members regarding issues surrounding Commonwealth laws and regulation that affect smaller business. Business organisations have well-designed programs and regular engagement with their members, and are best placed to provide insights surrounding legal and regulatory issues.

## 5. A SINGLE ENTRY-POINT AGENCY

- 5.1 What delivery channels should be used to provide the single entry point? For example, a website, hotline or social media.

It is recommended a combination of a website and phone hotline be implemented but it is important that where there is a preference for phone contact, this preference is properly resourced. Other support aspects can be added such as a social media, however a well-functioning, up-to-date website and hotline are considered sensible channels of communication with small businesses.

- 5.2 What key information should the single entry point provide?

The information provided on the website should be succinct, and tailored to the needs of small business. For instance, the homepage should be easy to navigate and free from extraneous information that does not relate to the Ombudsman's powers.

Small business owners are time poor and therefore looking for the easiest, fastest way to solve their query. It is unlikely small business owners will be interested in viewing video blogs from the Ombudsman.

Furthermore, it does not need to go into too much information regarding the work of other departments. Simply stating links should be effective.

It is also essential that the Ombudsman's services be adequately advertised and promoted to the business community. In a number of instances, small businesses we have spoken to did not know that a Small Business Commissioner existed.

- 5.3 In relation to the Ombudsman website, what is the best way to link with existing authoritative sources of information for small business? For example, would links to existing websites be sufficient?

Links to existing website would be considered sufficient, along with correct phone numbers.

- 5.4 In addition to providing information and initial support to small businesses, what other forms of small business engagement could the single entry point offer?

It is the opinion of ACCI that the single entry point focus solely on the work of the Ombudsman. For instance, how do you lodge a complaint, lists of mediators, length of time, any costs involved and any announcements of changes to legislation or regulation small businesses should be made aware. Links to business support agencies would also be useful.

## 6. METHOD OF APPOINTMENT

- 6.1 How should the Ombudsman be appointed?

ACCI recommends that the appointment of the Ombudsman be statutory. This will ensure that the role of the Ombudsman carries the necessary power to carry out duties under the Terms of Reference, and has the power to properly represent the interests of small business.

- 6.2 What is the appropriate length of appointment of the Ombudsman, and should there be an option for re-appointment?

It is suggested that the length of the appointment be five years. This allows for the position to move over political cycles and is in line with the appointment of the Commonwealth Ombudsman.

- 6.3 How should dismissal of the Ombudsman be managed?

Dismissal should be in line with that of the Commonwealth Ombudsman.

## 7. ABOUT ACCI

### 7.1 Who We Are

The Australian Chamber of Commerce and Industry (ACCI) speaks on behalf of Australian business at a national and international level.

Australia's largest and most representative business advocate, ACCI develops and advocates policies that are in the best interests of Australian business, economy and community.

We achieve this through the collaborative action of our national member network which comprises:

- All eight state and territory chambers of commerce
- 29 national industry associations
- Bilateral and multilateral business organisations.

In this way, ACCI provides leadership for more than 300,000 businesses which:

- Operate in all industry sectors
- Includes small, medium and large businesses
- Are located throughout metropolitan and regional Australia.

### 7.2 What We Do

ACCI takes a leading role in advocating the views of Australian business to public policy decision makers and influencers including:

- Federal Government Ministers & Shadow Ministers
- Federal Parliamentarians
- Policy Advisors
- Commonwealth Public Servants
- Regulatory Authorities
- Federal Government Agencies.

Our objective is to ensure that the voice of Australian businesses is heard, whether they are one of the top 100 Australian companies or a small sole trader.

Our specific activities include:

- Representation and advocacy to Governments, parliaments, tribunals and policy makers both domestically and internationally;
- Business representation on a range of statutory and business boards and committees;
- Representing business in national forums including the Fair Work Commission, Safe Work Australia and many other bodies associated with economics, taxation, sustainability, small business, superannuation, employment, education and training, migration, trade, workplace relations and occupational health and safety;
- Representing business in international and global forums including the International Labour Organisation, International Organisation of Employers, International Chamber of Commerce, Business and Industry Advisory Committee to the Organisation for Economic Co-operation and Development, Confederation of Asia-Pacific Chambers of Commerce and Industry and Confederation of Asia-Pacific Employers;
- Research and policy development on issues concerning Australian business;
- The publication of leading business surveys and other information products; and
- Providing forums for collective discussion amongst businesses on matters of law and policy.

# ACCI MEMBERS

**ACCI CHAMBER MEMBERS:** ACT AND REGION CHAMBER OF COMMERCE & INDUSTRY  
**BUSINESS SA** CHAMBER OF COMMERCE NORTHERN TERRITORY **CHAMBER OF  
COMMERCE & INDUSTRY QUEENSLAND** CHAMBER OF COMMERCE & INDUSTRY  
WESTERN AUSTRALIA **NEW SOUTH WALES BUSINESS CHAMBER** TASMANIAN CHAMBER OF  
COMMERCE & INDUSTRY **VICTORIAN EMPLOYERS' CHAMBER OF COMMERCE &  
INDUSTRY ACCI MEMBER NATIONAL INDUSTRY ASSOCIATIONS:** ACCORD – HYGIENE,  
COSMETIC AND SPECIALTY PRODUCTS INDUSTRY **AIR CONDITIONING & MECHANICAL  
CONTRACTORS' ASSOCIATION** AUSTRALIAN BEVERAGES COUNCIL **AUSTRALIAN DENTAL  
INDUSTRY ASSOCIATION** AUSTRALIAN FEDERATION OF EMPLOYERS & INDUSTRIES  
**AUSTRALIAN FOOD & GROCERY COUNCIL ASSOCIATION** AUSTRALIAN HOTELS  
ASSOCIATION **AUSTRALIAN INTERNATIONAL AIRLINES OPERATIONS GROUP** AUSTRALIAN  
MADE CAMPAIGN LIMITED **AUSTRALIAN MINES & METALS ASSOCIATION** AUSTRALIAN  
PAINT MANUFACTURERS' FEDERATION **AUSTRALIAN RETAILERS' ASSOCIATION**  
AUSTRALIAN SELF MEDICATION INDUSTRY **BUS INDUSTRY CONFEDERATION** CONSULT  
AUSTRALIA **HOUSING INDUSTRY ASSOCIATION** LIVE PERFORMANCE AUSTRALIA **MASTER  
BUILDERS AUSTRALIA** MASTER PLUMBERS' & MECHANICAL SERVICES ASSOCIATION OF  
AUSTRALIA (THE) **NATIONAL BAKING INDUSTRY ASSOCIATION** NATIONAL ELECTRICAL &  
COMMUNICATIONS ASSOCIATION **NATIONAL FIRE INDUSTRY ASSOCIATION** NATIONAL  
RETAIL ASSOCIATION **OIL INDUSTRY INDUSTRIAL ASSOCIATION** PHARMACY GUILD OF  
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