



Submission to the Treasury's Inquiry
into the role of the Small Business and)
Family Enterprise Ombudsman)

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Context

The Australian Sporting Goods Association Incorporated (ASGA) welcomes the opportunity to make a submission to the Treasury's inquiry into the role of the Small Business and Family Enterprise Ombudsman.

ASGA was formed in 1981 as the national industry association representing a broad spectrum of sporting goods and active lifestyle industry participants, including manufacturers, importers, agents, wholesalers and retailers.

ASGA is a leading industry voice on issues impacting the health, trade, regulation and taxation of the sporting and active lifestyle goods industries. ASGA aims to foster market growth, provide services and advocate for increased participation in sport and physical activity.

Members of ASGA include some of the world's largest leading sports brands and major Australian retailers and some of Australia's smallest specialised sporting goods companies. We represent over 1000 sporting and active lifestyle goods retail stores around Australia.

Sports retailers range from the very large (1,000+m²) like Rebel Sport and Sportsmart, through to franchisees like The Athletes Foot, family-owned businesses in the High Streets of regional towns and tiny golf club pro-shops. Ownership and business models include franchises, listed corporations, family-owned companies and vertically-integrated international brands.

While the sector is dominated by very large international players (Nike, adidas, etc) and large local retailers (Rebel Sport), in fact the majority of companies in the sector are small and medium enterprises, often family-run businesses.

ASGA is greatly supportive of the small business and family enterprise area of the sporting and active lifestyle goods sector. We want to see innovative, productive and growing businesses, supported by Government while avoiding excessive regulation and interference.

ASGA takes this opportunity to comment on selected issues raised in the Discussion Paper and to clarify areas of interest we believe the Ombudsman could focus on in their role as an advocate for the small and family enterprise sector.

Dispute Resolution

ASGA is very supportive of the Ombudsman's role in dispute resolution, although there is some concern the service would essentially be 'doubling up' on what already exists at a state level or in other Commonwealth agencies.

In terms of resolving complaints, the Ombudsman has a clear role in assisting small and family enterprises to access existing complaint-handling mechanisms, such as the Commonwealth Ombudsman, federal agencies like the ACCC and state-based agencies of various stripes.

It is useful in this case for the Ombudsman, similar to the current role of the Small Business Commissioner, to provide a 'triage' service. Speaking to ASGA members, it is clear one of the biggest issues they face when trying to access government services is they don't know where to go for advice or who to make the complaint to. The office of the Ombudsman is well placed to discuss the issue with a small business owner, determine the nature of the complaint and direct the complaint to the appropriate agency.

Note however this advice should not be simply:

"You need to make your complaint to Agency X".

Rather, advice should be more detailed:

"You need to make your complaint to Agency X. I'll email you the link to their complaint form. As you will see, they usually take a week to respond. If you don't hear back from them in a week, call them on (phone number) and ask to speak to Mary Smith."

The Ombudsman could clearly have a role in mediating disputes between a small business and various government and other players. ASGA supports establishing a mediation service within the office of the Ombudsman.

In particular, ASGA agrees there is a role for international dispute resolution for small Australian businesses, which do not currently have many options when managing disputes and complaints with overseas-based suppliers and stakeholders.

ASGA is concerned about a 'doubling-up' effect with the Ombudsman acting as a mediator in disputes under the industry codes. We are also concerned with potential conflicts of interest. For example, under the franchising code it can be expected a good number of complaints will be between a franchisee (often a small or family enterprise) and the franchisor – often a large national or international company. As a mediator, how could the Ombudsman claim to be without bias in a dispute between a small and large company, when its role is to advocate for small businesses and family enterprises? That being said, if there is a way to guarantee neutrality ASGA would support a move to see the Ombudsman appointed as the mediator under the industry codes – it makes more sense to have one than to have four (or more, if other codes are created).

If the Ombudsman is to become a mediator of disputes for the small business sector it should do so with the full powers available to it, including the ability to make administrative decisions, investigate and compel parties to attend mediation.

ASGA recommends delivering dispute resolution services through a combination of in-house and outsourced capabilities, to maximise flexibility. Furthermore, mediators should be based in each state capital city, with thought also given to basing staff in regional and rural areas.

Advocacy and Contribution

ASGA sees advocacy by the Ombudsman as an effort to improve legislation and regulation at the national level (ie: advocacy to politicians and policy advisors); improve relationships between the small business sector and government departments and agencies (advocacy to the bureaucracy); and to educate larger businesses about working with small businesses and family enterprises.

In regards to advocacy to the federal government on behalf of the sector, ASGA envisions a role for the Ombudsman in working with and advising policy makers about potential new legislation; revising current legislation to make it more 'small business-friendly'; vetting proposed legislation to ensure it is 'small business-friendly' and recommending which legislation should be scrapped to get rid of red-tape that affects small businesses unfairly.

Having some familiarity with the legislative process, it is important that any such scrutiny of legislation does not unnecessarily slow the process down.

Apart from legislation, working with departments and agencies to ensure best practice around engagement with small business should also be a major role of the Ombudsman. This could include looking at and recommending changes to regulations, forms, access points and policies to ensure they are small business friendly. Simplifying compliance burdens on businesses that contract to government or are otherwise regulated should be a major goal of the Ombudsman. ASGA supports any efforts of the Ombudsman to play a coordinating role to reduce red-tape burdens at the state level as well.

It could also include looking at how those departments and agencies seek advice and manage relationships with the sector. Encouraging small business advisory groups and ensuring small business voices are heard during consultations are all important ways of advocating on behalf of the sector.

ASGA is concerned the Ombudsman doesn't replace the voices of small business in advocating for themselves. The Ombudsman's role should be an adjunct to the advocacy efforts of small businesses, through their own efforts and that of the industry associations they choose to represent them. While having a powerful 'friend at court' is always to be welcomed, it must not come at the expense of the voices of the sector itself.

Continuing the role of the Australian Small Business Commissioner in advocating to the broader business community is vital. The largest complaint by small business is not about their relationship with government, it is about their relationship with large suppliers or large companies they supply with goods and services.

ASGA supports the role of the Ombudsman in improving power imbalances between larger and smaller businesses and in encouraging positive business-to-business relationships between businesses of different sizes. While it is generally a state issue, ASGA would particularly encourage the Ombudsman to investigate ways of improving the power imbalance between small retailers and large landlords.

In order to be as effective as possible the Ombudsman should have powers to investigate allegations of unfair treatment and practices that hurt small businesses. The role should also have the power to investigate and recommend changes to how government departments interact with small businesses.

Delivery channels

ASGA generally supports a multi-layered approach to the Ombudsman's delivery channels. While the vast majority of ASGA members are online, there are a number of small retailers, particularly in rural and regional areas, who are not connected to the Internet or who would be uncomfortable or incapable of accessing services and advice online.

We support a strong web presence and telephone hotline. It would also be useful to provide a basic overview of the services available in a written format – even a simple brochure with directions of how to access more information would be appropriate for smaller businesses unable or unwilling to look up a website.

The difficulties of accessing government advice are well captured in the discussion paper. Governments provide lots of information, often organised in ways that make sense to those people providing the advice but totally incomprehensible to anyone else.

This is particularly true in moving from one agency to another. Too often, after hunting through the website of one agency for the right information, you are eventually directed to the website of another agency. But rather than be directed to the specific webpage you are interested in, the first agency will simply link to the homepage of the second agency – forcing you into yet another hunt through an unfamiliar website. Simplifying links to actual useful webpages is a good and simple way to ease the difficulties in accessing government advice.

Method of appointment

ASGA believes the Ombudsman should be a statutory appointment for up to five years and the incumbent should be eligible for re-appointment.

Similarly, support staff should be engaged as employees of the statutory authority headed by the Ombudsman.

Conclusion

ASGA strongly supports the establishment of the Small Business and Family Enterprise Ombudsman.

Our members thank Treasury and the Minister for the opportunity to be involved in this consultation and I would be pleased to discuss this submission further, at your convenience.

ENDS