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Dear Ms Scott,

**RE: The Small Business & Family Enterprise Ombudsman Discussion Paper**

Thank you for giving the Office of the NSW Small Business Commissioner (OSBC) the opportunity to comment on the Small Business and Family Enterprise Ombudsman Discussion Paper.

Enhancement of the Australian Small Business Commissioner (ASBC) role represents a positive opportunity to develop the framework for a highly regarded advocate who can act as a conduit to, and representative for, small business issues at the Federal level.

By way of background, the OSBC was established in 2011 to advocate on behalf of small businesses in NSW and support small businesses by:

- providing dispute resolution services,
- delivering quality business advice through Small Biz Connect, and
- speaking up for small business within government.

The *Small Business Commissioner Act 2013 (NSW)* commenced by proclamation on 18 September 2013. The Act evens out the playing field for small business in NSW and brings business practices in NSW into a new era. The NSW Small Business Commissioner is an independent statutory officer and a strong voice for small business in NSW.

The legislation allows the Commissioner to:

- require parties in dispute to attend mediation prior to participation in a legal process and impose penalties for any non-adherence to the requirements;
- investigate allegations of unfair treatment and unfair contract terms in a neutral and independent manner;
- require local councils, State Government bodies and other businesses to provide information or answer questions if a complaint is made; and
- report directly to parliament where there is an issue of real importance to small businesses.

**Terminology**

The Discussion Paper refers to the current title of the Australian Small Business Commissioner being changed to the title 'Small Business and Family Enterprise Ombudsman'. It is recommended that the term 'family enterprise' be removed from the title given that the challenges facing family enterprises are not dissimilar to those facing small businesses. For example issues such as succession planning, financial management and human resources decisions are common across both ownership models as is the business' compliance and regulatory obligations. Including the term 'family enterprise' in the title may confuse businesses

about the intended function and objectives of the role.

The Discussion Paper also states that the Ombudsman will be expected to investigate and make recommendations to Government on issues affecting small and family businesses. If the traditional powers and functions of an Ombudsman including the power to make binding decisions are not intended to apply to the Australian Small Business Commissioner, it is recommended that the term 'Ombudsman' not be used. This terminology could give small businesses a false perception of what the role's powers are and how the role can assist them. The title proposed by the Commonwealth is not aligned with the various Commissioners in other States, and it is not complimentary and requires a level of unnecessary explanation.

### **Dispute Resolution**

It needs to be carefully considered if the enhanced ASBC's services are to be provided in Queensland, Tasmania, the Northern Territory and the ACT where Small Business Commissioners do not currently exist. Provision of such services would create inequity for those jurisdictions that have allocated funding towards Small Business Commissioners, and is not supported.

It is more appropriate that the enhanced ASBC role assist in relation to:

- disputes relating to issues regulated at the Federal level that do not currently have dispute resolution provisions in place and are not currently being addressed at the State level;
- small business disputes involving Commonwealth government entities;
- those disputes that have an international context and are not appropriate for the intervention of State-based Commissioners; and
- disputes that involve a national entity with operations in multiple jurisdictions where similar disputes with another business arise in multiple States, and a consistent national approach to dispute resolution is appropriate.

### **Advocate on Federal Issues**

In the OSBC's experience it is critical for the provision of evidence-based policy advice to be an integral component of the enhanced ASBC's role. Small businesses have indicated to the OSBC that they need an advocate that they can turn to regarding small business issues that are administered and regulated at the Federal level. For example, a concern that is regularly raised with the OSBC by small businesses is public holiday penalty rates and the financial burden that this places on businesses. This is an example of a policy matter that the enhanced ASBC role could examine in greater detail and act as an advocate on behalf of the small business concerns raised.

The discussion paper proposes that the enhanced ASBC role could in the future contribute to the development of small business friendly Commonwealth laws and regulations, and more specifically identify, research and advise on practical solutions to reduce burdensome legislation. This is an area that the OSBC has achieved significant success to-date in NSW and it presents a valuable opportunity for greater collaboration at the State and Federal level if the ASBC was to expand its remit into this space. Through working directly with businesses referred to the OSBC and the relevant local councils and government agencies, the OSBC has been able to identify unnecessary regulatory burdens and administrative practices that can be streamlined in order to minimise the impact on the small business sector in NSW. These results could be heightened if the enhanced ASBC role was to focus on related regulatory issues at the Federal level.

The OSBC is supportive of the Discussion Paper's proposal for the enhanced ASBC role to be a statutory officer. This would align the federal role with the legislative provisions of the existing State-based Small Business Commissioners. A statutory appointment would also ensure that the role can deal with issues concerning the small business sector in a neutral and independent manner.

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### **Collaboration**

Given that Small Business Commissioners already exist in NSW, Victoria, South Australia and Western Australia, it is important that there is collaboration between State-based Commissioners and the enhanced ASBC role to leverage the collective experience and knowledge of the group. A strong working relationship between Commissioners allows for easy sharing of information and insights into issues which may have an impact across jurisdictions.

The State-based Small Business Commissioners and the ASBC meet regularly as part of the Small Business Commissioners Forum which was established in February 2012. The Forum provides an opportunity for each of the Commissioners to share information across jurisdictions, identify best practice and as appropriate, influence policy and legislation by using a united voice. This Forum is an important mechanism to ensure that the Commissioners work collaboratively on improving the operating environment for small businesses in Australia.

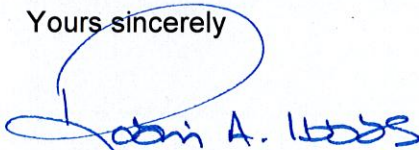
### **Avoidance of Duplication**

As previously noted, there is a strong need to ensure that there is no duplication between the role and responsibilities of the enhanced ASBC and the State-based Small Business Commissioners. Not only does duplication lead to the inefficient use of Government resources, it also leads to confusion within industry regarding the delivery of Government services.

An additional concern is the need to minimise the ability for constituents to complaint-shop around jurisdictions. Any role of the ASBC at a State or Territory level has the capacity to set a precedent to contribute to complaint shopping which could create uncertainty with the respective roles of Commissioners in other States. This can be addressed if the roles and responsibilities of Commissioners are agreed.

Thank you the opportunity to comment on the Discussion Paper. Should you wish to discuss any of the issues raised in this submission further please contact Jane Want, Principal Advocacy Advisor on (02) 8222 4818.

Yours sincerely



Robyn Hobbs OAM  
**NSW Small Business Commissioner**  
23 May 2014