

## SUMMARY OF SUBMISSIONS

Over 40 submissions were received in response to the Australian Small Business and Family Enterprise Ombudsman (the Ombudsman) exposure draft legislation.

Stakeholders generally supported the establishment of the position, and many commented that they look forward to the positive impact that the Ombudsman will have for small businesses and family enterprises. Some submissions emphasised the importance of the Ombudsman's role in assisting to reduce or minimise red tape as well as in offering dispute resolution assistance for small businesses and family enterprises. Others noted their support of the explicit inclusion of family enterprises in the exposure draft legislation.

In addition to the overall comments summarised above, stakeholders provided comments on specific provisions in the exposure draft legislation, which are summarised below.

### Definition of small businesses and family enterprises

Stakeholders were generally accepting of the use of a broad definition for small businesses and family enterprises (section 4), but some raised concerns about its inconsistency with existing, widely-adopted definitions (particularly those used by the Australian Taxation Office and the Australian Bureau of Statistics, or from the *Corporations Act (2001)*).

*The definition in the exposure draft of the legislation was chosen to make access to the Ombudsman's services as inclusive as possible. This broad definition takes into account the fact that the Ombudsman will deal not just with small businesses, but also with family enterprises which, as a Senate Committee noted in a 2013 report on Family Businesses in Australia, do not always fit more constrained definitions of a small business. A broad definition provides the Ombudsman with the necessary scope to effectively carry out the Ombudsman's functions in relation to both small businesses and family enterprises.*

### Title

Stakeholders raised some concerns around the title 'Ombudsman'; the duality of the role (as an advocate and the dispute resolution function) could raise questions about the Ombudsman's impartiality. In addition, the existing state-based Small Business Commissioners have strong brand recognition, and so introducing an Ombudsman could cause confusion and raise expectations about the scope of the role.

*The title Ombudsman remains in place in the legislation, and the role still represents small businesses and family enterprises. The Ombudsman's role in dispute resolution has been designed at arm's length to avoid questions of impartiality from their advocacy work.*

### Commonwealth-wide advocate

Stakeholders were generally supportive of the advocacy powers granted to the Ombudsman under the exposure draft legislation. Some stakeholders expressed concern that the Ombudsman could not be an impartial mediator under the dispute resolution function while acting as an advocate for small business at the same time.

*The Ombudsman's role in dispute resolution has been designed at arm's length to avoid questions of impartiality from their advocacy work.*

## Concierge for dispute resolution

Stakeholders were supportive of the 'no duplication' policy intent of the exposure draft legislation, and there was interest in how referrals to other agencies would work in practice. Several stakeholders already offering alternative dispute resolution services to small businesses thought that the Ombudsman was given too much discretion when determining referrals. Numerous stakeholders were concerned that the Ombudsman may have the power to reopen decisions that had been taken by other bodies, which could allow dissatisfied parties to 'forum shop' when they did not like an outcome.

Another area of concern for many stakeholders was that the definition of an 'agency' (section 8) in the exposure draft legislation appears to exclude industry-created dispute resolution bodies and industry associations who provide advisory services as organisations that the Ombudsman can refer matters to.

Most stakeholders were supportive of the 'name and shame' powers provided for in the exposure draft legislation; a minority considered these too heavy-handed, whilst others thought that the mediation powers could be stronger in binding decisions.

*The legislation outlines the Ombudsman's jurisdiction, which does not include the ability to reopen decisions that have been taken by other bodies. The overall policy intent to avoid duplication includes the intent to prevent 'forum shopping'.*

*The legislation has been amended to extend the definition of 'agency' to a body prescribed by the Minister. This will allow relevant bodies, such as industry-created ombudsmen, to be included for the purposes of this definition.*

## Governance

A number of submissions expressed concern about the level of oversight and power granted to the Minister for Small Business, including the Minister's ability to prevent publication of information and to direct the Ombudsman to conduct an inquiry.

*The level of oversight remains unchanged in the legislation; these powers were modelled on those of the state-based small business commissioners.*