

7 April 2015

Manager
Small Business Ombudsman and Programmes Unit
Small Business, Competition and Consumer Policy Division
The Treasury
Langston Crescent
Parks ACT 2600

ABN: 25 107 507 559
ACN: 107 507 559
PO Box 138
Camberwell West VIC 3124
Level 2, 273 Camberwell Road
Camberwell VIC 3124

T (03) 9882 0277
F (03) 9882 6722
E info@ausveg.com.au
www.ausveg.com.au

AUSVEG submission regarding exposure draft legislation for the Australian Small Business and Family Enterprise Ombudsman

1. About AUSVEG

AUSVEG is the National Peak Industry Body representing the interests of Australian vegetable and potato growers. We represent growers around Australia and assist them by ensuring the National Vegetable Levy and the National Potato Levy are invested in research and development (R&D) that best meets the needs of the industry.

AUSVEG also makes representations on behalf of vegetable and potato growers to ensure their interests and concerns are effectively communicated to all levels of government, in the public sphere, and throughout relevant areas of the private sector.

2. Queries

For more information regarding this submission please contact AUSVEG Deputy CEO, Mr Andrew White, on (03) 9882 0277 or at andrew.white@ausveg.com.au.

Yours sincerely

A handwritten signature in black ink, appearing to read "Richard J Mulcahy".

Richard J Mulcahy
Chief Executive Officer

3. The needs of small businesses in the vegetable industry

The Australian vegetable industry is worth \$3.7 billion. As the national peak representative body for the Australian vegetable and potato industries, AUSVEG represents around 9000 Australian vegetable and potato growers, many of whom run their farming operations as small businesses and family enterprises.

These growers face a range of business concerns, including the need for impartial, independent dispute resolution. AUSVEG welcomes the appointment of the Small Business and Family Enterprise Ombudsman, as outlined in the draft exposure legislation, which will provide significant ongoing benefits for the business operations of the growers which AUSVEG represents – as well as for many other stakeholders in the vegetable industry.

It is important, however, that the role is not performed with a one-size-fits-all approach, and instead acknowledges the diversity of business requirements and operations which fit under the umbrella of “small business” as defined in the legislation. The actions of the Ombudsman must take into account the unique aspects and needs of all of Australia’s industries, including the difference in business operations and requirements between urban industries and regional industries.

This includes the Ombudsman’s “advocacy” role, in which they will (in the words of the simplified outline of the Act) “undertake research and inquiries into legislation, policies and practices affecting small businesses” and “contribute to developing national strategies on those matters”. If they are to provide a credible, independent voice for Australia’s small businesses, the Ombudsman needs to strive to represent *all* small businesses.

However, to properly perform its “assistance” function, the Ombudsman must be given expanded powers to arbitrate disputes, as well as to make binding decisions to help resolve those disputes.

3.1 Arbitration in dispute resolution

In the simplified outline of the draft Act, it states:

Under the assistance function, the Ombudsman responds to requests for assistance by an operator of a small business or family enterprise. [...] The assistance requested may relate to a dispute with another entity. In that case, the Ombudsman may recommend that an alternative dispute resolution process be undertaken.

The explanatory notes for the draft Act also state:

To maintain impartiality, the Ombudsman cannot undertake ADR personally, and ADR mediators must be chosen by parties to the dispute.

Given that the Ombudsman is being established to support small businesses and family enterprises within Australia, AUSVEG believes that limiting the Ombudsman’s powers to “suggesting informal actions [the parties] could take to progress to the dispute” and recommending an alternative dispute resolution process would also limit their ability to provide this support.

In particular, we recommend that in the finalised Act, the Ombudsman is granted the powers to arbitrate on disputes with Federal, State and local Governments and any agencies therein, and to make binding decisions on these disputes.

While the explanatory notes do state that the Ombudsman's powers "do not extend to assistance where a Minister (Commonwealth, State or Territory) has taken the action in question", this does not preclude enabling the Ombudsman to act in disputes with Governments or agencies themselves. This power would provide small businesses with the reassurance of independent support if they are disadvantaged or unfairly affected by actions taken by these bodies.

Similarly, we strongly support the Ombudsman having an additional role in dealing with disputes between small businesses and their major suppliers – for example, in the vegetable industry, disputes between growers and utility companies or transport companies. These disputes can have serious impacts on small business operations, including prolonged disruption of vital resources if they are not resolved. To support small businesses and family enterprises, the Ombudsman should be given the powers to arbitrate in these disputes, including the power to make decisions by which all parties involved must abide.

Finally, as part of the need to acknowledge the complex relationships between businesses of different sizes (including in the vegetable industry), the Ombudsman should have the capacity to arbitrate disputes between small businesses and customers where the dollar value of the transaction is above a significant threshold. This threshold would help avoid the Ombudsman duplicating the role of a consumer affairs body which covers small customer disputes, but would also ensure that small businesses have an extra avenue of support in any disputes with businesses with large amounts of market power.

3.2 Disputes specific to competition policy

Following the recent release of the Harper review of competition policy in Australia, it is clear that there are many opportunities to reform and improve national competition law for the benefit of both consumers and business. Small businesses, including those in the vegetable industry, play a vital role in the Australian economy, and reform to Australia's competition policy which recognises this role will return long-term financial benefits to industry and consumers alike.

Australian growers require a strong, supportive dispute resolution framework to maintain their productivity and profitability in the face of external pressures. In their dealings with retailers and wholesalers, Australian growers are predominantly in the position of price takers, rather than price makers – their lack of market power means that in many negotiations, buyers hold the upper hand.

The Ombudsman's work in dispute resolution could assist businesses in any disputes related to competition policy, including misuse of market power. Given the alternative dispute resolution models laid out under the recently-implemented Food and Grocery Code of Conduct, having an Ombudsman who is able to assist growers progress through those (and other) dispute resolution scenarios will allow those growers to keep their focus on their business operations.

This also provides justification for expanding the Ombudsman's powers to arbitration and the ability to make binding decisions regarding disputes between entities. Having an Ombudsman who is able

to arbitrate in disputes between buyers and sellers, which can include dealings between small businesses and retailers which fall outside the jurisdiction of the prescribed Code, will ensure that small businesses have access to an impartial, independent avenue of dispute resolution.

3.3 Small business regulations

Growing operations in the Australian vegetable industry can range from small, family-run enterprises to businesses with annual revenues of millions of dollars. Each of these businesses plays a vital role in the industry. However, with production costs rising and vegetable growers facing drops in the profitability of their operations, the impact of economics of scale means that smaller vegetable growing operations are hit particularly hard by these economic difficulties.

It is important for any business-related legislation to recognise that with the diversity of business sizes and capabilities within the vegetable industry, the resources available to deal with compliance and red tape can differ greatly between individual operations, and small businesses which are already struggling would greatly benefit from targeted allowances in compliance and regulatory burden. AUSVEG supports any deregulation which lessens this burden on small businesses and family enterprises, and free up resources to be used in actually running their businesses and contributing to the Australian economy.

With this in mind, AUSVEG welcomes the provisions in the draft exposure legislation that require the Ombudsman to research and inquire into legislation, policies and practices affecting small businesses and family enterprises. We strongly encourage that when acting on these provisions, the Ombudsman remember the unique circumstances of the vegetable industry, and the need to ensure that regulations and red tape do not constitute an undue burden on the time and resources of vegetable industry operations.

3.4 Recommendations

That the finalised Act grant the Ombudsman expanded powers to arbitrate on and make binding decisions regarding disputes between small businesses and:

- major suppliers,
- governments and their agencies, and
- customers, where the value of the transaction is above a significant dollar threshold.