

Franchise Council of Australia

Australian Small Business and Family Enterprise Ombudsman Exposure Draft Submission

Further to the Franchise Council of Australia's ("FCA") submission to the initial discussion paper in May 2014, the FCA welcomes the Exposure Draft (the "Draft") on the Australian Small Business and Family Enterprise Ombudsman (the "Ombudsman").

The initiative to transform the Australian Small Business Commissioner to the Ombudsman, a Commonwealth advocate for Small Business is strongly supported by the FCA.

The key functions as outlined in the Draft reflect the concerns raised in the FCA's 2014 discussion paper submission and address gaps in the current Australian Small Business environment.

Small Business and Family Enterprise Ombudsman's key functions as outlined in the draft:

1. To advocate for small businesses and family enterprises in relation to relevant legislation, policies and practices (*the advocacy function*);and
2. To give assistance in relation to relevant actions if requested to do so (*the assistance function*);and
3. To perform any other function conferred on the Ombudsman by an Act or legislative instrument.

The FCA supports the following key responsibilities of the Ombudsman:

1. The advocacy function

The FCA supports the proposal for the Ombudsman to represent small business interests and concerns to the Australian Government with respect to regulatory burdens and concerns.

This includes:

- participating on government advisory bodies;
- working with industry and Commonwealth, state and territory governments to advise on how government policies and practices impact small business;
- providing practical solutions to government addressing small businesses' regulatory and administrative burdens;
- facilitating links between regulators across Commonwealth and state and territory governments;
- participating in the regulation impact statement process as appropriate;
- providing independent advice on draft legislation, regulations and practices which will improve engagement between Government and the small business sector;
- ensuring small business interests are at the centre of policy and program design; and
- where possible, ensuring that red tape burdens on small business are minimised or removed.

The FCA supports the introduction of legislative powers in the following circumstances as laid out in the Explanatory Materials:

- That no such powers are already available within existing Government Agencies or Authorities
- to conduct reviews of Australian Government agencies' interactions with small business
- reporting to Parliament with a legislated tabling deadline for reports
- the introduction of legislative powers does not exclude or limit the operation of any state or territory law. The Ombudsman will be complementary to, and avoid duplication of, the roles of other ombudsmen, state small business commissioners and other services provided by state and territory governments
- Where the introduction of powers minimises confusion and provides an efficient and appropriate service to the small business sector.

2. The assistance function

The FCA supports all initiatives to improve dispute resolution through improved communication and tools such as mediation have been shown to be a very effective method of dispute resolution within the Franchising sector.

The FCA supports the SBFEO providing the following services:

- Information and referral service to existing dispute resolution providers.
- Providing a 'triage' service by undertaking preliminary discussions and enquiries to determine the most appropriate course of action. This can involve: referring the business to existing alternative dispute resolution mechanisms; referring the business to other government agencies or services; or conducting preliminary enquiries that focus parties on the real issues.
- Research and inquiries into issues as referred by the Minister for Small Business, or of the Ombudsman's own initiative.
- The power to require a person to produce information or documents relating to an inquiry with 10 business days' notice.
- The power to impose a financial penalty of a maximum of 30 penalty units if a person fails to produce information or documents as requested.
- The provision of mediation and other dispute resolution services **without the need for legislative powers.**
- Disputes with a small business or family enterprise under the jurisdiction of the Ombudsman could also include:
 - Australian Government agencies;
 - a business/es in another country;
 - more than one territory or that have a national impact; and
 - national industry codes **that currently do not have a mediation process within the code.**
- **Forwarding complaints** to other Commonwealth agencies and regulators (including but not limited to the ACCC and ASIC) where those agencies are better placed to address a complaint.
- The ability to decline to provide assistance under a specific set of circumstances as laid out in s68 of the Draft.

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- compelling parties to attend mediation before approaching a tribunal or court;
- Publicising non-attendance or refusal of a company to participate in the mediation process.

The FCA supports the right of the Ombudsman to publicise a company that declines or drops out of mediation activities as part of the dispute resolution process. Mediation is an important part of ADR and saves time, money and emotional distress that small business owners can experience when escalating an issue to tribunal or court proceedings.

The FCA also supports the decision not to allow the Ombudsman to undertake any alternative dispute resolution personally. As a 'concierge' for dispute, the FCA agrees this would hinder the Ombudsman's impartiality.

The FCA strongly supports the plan to have the Ombudsman's office sit within the Department of Treasury. This will allow the Ombudsman access to key Government agencies and bodies, which will assist the Ombudsman in carrying out the above stated advocacy duties. Placing the Ombudsman within the most powerful Federal Government department also shows the level of support the Government has for the new Ombudsman's office and role.

Further: The need for checks and balances

The FCA would encourage the appointment of a nominated person or body to monitor the Ombudsman's office. If an individual or company feels victimised by the Ombudsman, it should be made clear who they can contact to make a complaint. Like any Government department or office, there needs to be checks and balances in place for the powers given to the Ombudsman.