



Limited ACN 145 829 812

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

Sent via email: Small.Business@treasury.gov.au

7 April 2015

Dear Sir or Madam

RE: Establishment of an Australian Small Business and Enterprise Ombudsman

The Mediator Standards Board (MSB) is grateful for the opportunity to provide a submission regarding the establishment of an Australian Small Business and Family Enterprise Ombudsman. We understand that as part of this development, there will be a mediation process made available to small business owners across Australia.

The MSB is responsible for the development and oversight of the National Mediator Accreditation System (NMAS). This system was established in January 2008 with the introduction of the National Mediator Approval and Practice Standards (the Standards). The Standards provide a benchmark for the training and accreditation of mediators in Australia and set out what to expect from a mediation process and from a mediator. A revised set of Standards were ratified in February 2015 and will come into effect on 1 July this year. Further information can be found on the MSB website www.msb.org.au.

The NMAS is enhanced by the fact that parties to a mediation process have access to a complaints handling mechanism that is overseen by the Accreditation Body responsible for a particular mediator's accreditation.

The NMAS is a voluntary system. Mediators opt into this system by choosing to become accredited and by committing to mediate in accordance with the Standards. NMAS accredited mediators must also comply with certain requirements in order to be re-accredited every two years.

One of the responsibilities of the MSB is to manage the National Register of Mediators. This Register is the authoritative source to identify whether a mediator has current

accreditation under the NMAS. There are currently 2800 mediators with NMAS accreditation.

Since inception in 2008, the Standards have become an increasingly recognised basis for the establishment of mediator panels across Australia. There are a number of State and Federal agencies, for example, which require their mediators to be nationally accredited. Two useful and relevant examples are the Franchising Code of Conduct and the Horticulture Code of Conductⁱ. Both are prescribed Codes of Conduct under the Australian Competition and Consumer Act. Each Code of Conduct requires the appointment of a Mediation Adviser to oversee panels and to manage mediation appointments for disputes across Australia. It is now a requirement for any mediator who is seeking to be included on these panels to have current NMAS accreditation.

Parties to mediation under these Codes of Conduct are likely to be the same parties eligible to receive assistance from the Australian Small Business and Family Enterprise Ombudsman. The Mediator Standards Board would therefore encourage the Treasury to create a uniform approach by requiring the use of NMAS accredited mediators for small business disputes.

The MSB notes that section 72(1)(a) of the exposure draft legislation provides that the Ombudsman may publish a list of persons who *'have the qualifications or experience to conduct alternative dispute resolution processes to resolve disputes in relation to relevant actions'*. Further, section 72(2)(a) of the exposure draft legislation states that the Minister may prescribe *'the qualifications or experience required for persons to be included on the list'*. The Treasury might consider taking this a step further, to include a requirement that the mediators be accredited under the NMAS and that the qualifications and experience required reflects those set out in the Standards. This would provide consumers with greater consistency in the marketplace.

The Board welcomes an opportunity to discuss the role of the Standards and the potential benefit of using NMAS accredited mediators for small business and family enterprise disputes. It is our hope that this submission creates the basis for further discussion.

Yours sincerely,



Anna Lee Cribb
Chairperson
Mediator Standards Board

ⁱ Competition and Consumer (Industry Codes – Franchising) Regulation 2014 and the Trade Practices (Horticulture Code of Conduct) Regulations 2006