



Law Council  
OF AUSTRALIA

*Business Law Section*

Australian Small Business and Family Enterprise Ombudsman  
GPO Box 1791  
Canberra City  
ACT 2601  
Via email: [advocacy@asbfeo.gov.au](mailto:advocacy@asbfeo.gov.au)

30 June 2016

Dear Sir or Madam,

## **Advocating for Small Businesses and Family Enterprises – Discussion Paper: April 2016**

### **Introduction**

The Law Council of Australia is the peak national body representing the legal profession in Australia.

The Small and Medium Business Law Enterprise Committee of the Business Law Section of the Law Council of Australia (***SME Business Law Committee***) makes this submission in response to a Discussion Paper titled 'Advocating for small businesses and family enterprises' issued in April 2016 from the Australian Small Business and Family Enterprise Ombudsman.

The SME Business Law Committee has as its primary focus the consideration of legal and commercial issues affecting small businesses and medium enterprises in the development of national legal policy in that domain. Its membership is comprised of legal practitioners who are extensively involved in legal issues affecting SME's.

### **Submissions**

The SME Business Law Committee congratulates the Ombudsman for recognizing the value of seeking input on the use of her advocacy function through responses to the Discussion Paper as well as through conversations and input to her webpage by interested persons and organisations.

Thank you for the opportunity to comment on the Discussion Paper. We have sought to respond to each of the questions listed in the Issues Paper and references to small business can be taken to also include family enterprises.

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**BLS**

## Inquiries and research

Q1 What issues do you think the Ombudsman should decide to research or inquire into and why?

*The Ombudsman could inquire into and research affordable financing for small businesses and work with Regulators to reduce red tape to make regulatory obligations for small business less imposing on resource time.*

*The Ombudsman could also inquire into and research the peripheral needs of the people involved in small business and family enterprises, such as broader training and community programs, which provide support to enable small business to undertake their activities to their best ability and achieve better business outcomes.*

Q2 What issues are the most critical for small business and family enterprise?

*The most critical issues for small business are:*

- *resource availability to undertake non-core business functions such as BAS tax returns, employee superannuation contributions, invoicing and debt collection*
- *understanding the regulatory business environment*
- *reduction of red tape*
- *affordable financing*
- *accessible and affordable legal support*
- *understanding legal business structures*
- *understanding of and compliance with taxation obligations and available concessions*
- *a fair and level playing field with competitors*
- *access to justice forums that are not costly and provide quick, practical solutions to disputes.*

Q3 What small business and family enterprise issues aren't getting enough attention from Government?

*Government through ASIC, Small Business Commissioners and the ATO have been working to reduce red tape and make small business set-up and maintenance more efficient and less costly. This work should be supported and continued. In addition, the Ombudsman could:*

- *work with the banks and other financiers to promote the affordability of financing for small business*
- *support access to justice forums that are not costly and provide quick, practical solutions to disputes*
- *increase the focus on education and upskilling of small business owners on business practice, finance, regulation and compliance.*

## Working cooperatively with other arms of government

Q4 Are there any issues that you think would be well suited to a joint project between the states and the Commonwealth that could be coordinated by the Ombudsman?

*Please see response to Q3. In addition a program to support peripheral needs, such as general, multi-faceted personal and commercial wellness programs to support small business owners.  
A standard definition of 'small business' would remove the confusion that arises with multiple definitions across various legislation.*

Q5 What small business and family enterprise issues would you like to see all the Governments working together on?

*Please see response to Q3 and Q4.*

#### Contributing to other inquiries and reviewing proposals

Q6 what types on inquiries do you think we should focus on?

*The Ombudsman should focus on inquiries that are looking to provide benefits and cost savings to small business. This could include inquiries into the availability of, and need for, support of the peripheral needs of the people involved in small business and family enterprises, such as wellness programs and development of core commercial and business skills. Providing the skills and support for small business people will better enable them to undertake their small business activities to their best ability*

Q7 Are there any proposals that you are concerned about impacting small business or family enterprise?

*The changes to limit contribution levels and assets values for retirement in superannuation will impact small business and family enterprises that rely on savings and the tax concessions under superannuation to provide for the retirement phase of the lives of their participants.*

Q8 What do you think are the core principles that are relevant to various issues, which the Ombudsman should adopt when advocating on behalf of small business?

*The core principles that are relevant for the Ombudsman to adopt are that:*

- *small business people require clarity across legislation (including in definitions)*
- *small business people require support at commercial and personal levels to improve their skills to enable them to undertake their small business activities to their best ability,*

#### Taking steps to promote best practice

Q9 Are there any particular issues relating to best practice for your industry or the small business sector generally?

*Support for the peripheral needs of the people involved in small business and family enterprises. Large enterprises and professional organisations offer those that work in them opportunities to train and to be supported on a range of personal and business skill areas, such as wellness, interpersonal skills development and*

*negotiation and influencing skill programs. Small business would also benefit from these type of programs to seek better business outcomes in dealing with themselves and their employees, dealing with colleagues and competitors and dealing with larger enterprises and government and advisers.*

- Q10 What is best practice for Government when engaging and communicating with small business?

*Collaborative and inclusive engagement and communication, with attention to input and feedback, and solutions that have taken these into account is best practice.*

- Q11 What steps could be taken to promote best practice among family enterprises when it comes to issues like succession and management of family owned business?

*The Ombudsman could provide information on its website on issues that may arise for family enterprises to access, and perhaps a service for mediated solutions.*

#### Other things you may want to raise with us

- Q12 What are your expectations of an Ombudsman?

*Traditionally an Ombudsman investigates complaints against public organisations, and sometimes also facilitates solution of disputes. However, the role of the Australian Small Business and Family Enterprise Ombudsman is quite different in that it looks to support small business and provide an advocacy function into government for small business as well.*

- Q13 How can the Ombudsman be an effective channel for you to the whole of Government?

*The Ombudsman can be an effective channel for small business to the whole of Government by maintaining engagement with government and being a respected stakeholder in government conversations that impact small business.*

- Q14 What mechanisms do you think we should be using to reach small business?

*The Ombudsman should use website access by small businesses, engaging webinars, personal engagement where possible through industry bodies, regular articles on what the Ombudsman is doing in the national and local press and on radio with references to accessibility, as well as seeking to engage through advisers who service small business.*

#### **Further discussion**

The SME Business Law Committee would be happy to discuss any aspect of this submission.

Please contact Coralie Kenny, the Chair of the SME Committee, on 0409 919 082 if you would like to do so.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Teresa Dyson', written in a cursive style.

**Teresa Dyson**  
Chairman, Business Law Section