

The Franchise Council of Australia (FCA) in theory supports the implementation of a Small Business and Family Enterprise Ombudsman (SBFEO) to be a Commonwealth-wide advocate for smaller enterprises and the four key responsibilities being a:

- concierge for dispute resolution;
- Commonwealth-wide advocate for small businesses and family enterprises;
- contributor to the development of small business-friendly Commonwealth laws and regulations; and
- single entry-point agency through which Commonwealth assistance and information regarding small business can be accessed.

The FCA however does have concerns regarding the scope of the role, duplication creating confusion within the small business community and the creation of a new level of proceedings by giving the SBFEO the power to make administrative decisions which are later challenged in tribunal or court hearings.

The FCA is concerned that the role will become a Department of Investigators if all recommendations are adopted, and lose focus on the initial goal which is listed as being a concierge for dispute resolution and an advocate for small business to government.

When considering the powers the SBFEO may need, a thorough review should be done to determine what powers already exist in other Government Agencies or Authorities. There should be no duplication of powers. Should it be determined the existing powers are not working then the reason needs to be established and addressed.

The FCA believes there should be a thorough and detailed investigation into the stated issues to identify if they are actually problematic, or simply perceived based on anecdotal hearsay. The scope of the position should then be detailed to address the real issues.

#### **Concierge for dispute resolution**

The FCA supports all initiatives to improve dispute resolution. 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.
- Provides 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.
- Provide mediation and other dispute resolution **services without the need for legislative powers.**
- Scope of options include small business and family enterprise disputes involving:
  - Australian Government agencies;
  - a business/es in another country;
  - more than one jurisdiction 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;
- - compelling parties to attend mediation before approaching a tribunal or court;
- - imposing financial costs associated with non-attendance at scheduled mediation;

The FCA does not support:

- investigating small business complaints, including obtaining information from parties;

The FCA believes that the SBFEO would be sufficiently equipped to determine whether a matter should be dealt with by mediation or require further investigation. If it is determined that a matter requires further investigation then the matter should be forwarded to the appropriate government department that already has the power to investigate and prosecute alleged offences, or advise that the complainant needs to seek independent legal advice.

The SBFEO should not be set up to replace or duplicate organisations that already have the powers to investigate and prosecute.

- making administrative decisions (non-binding).

Providing the SBFEO with the power to make administrative decisions whether binding or not has many implications.

- What are the qualifications of the person making the decision?
- To make a decision would require a full investigation and hearing to obtain all the facts of the matter and thus duplicates existing systems.
- May create an unreasonable expectation for one party which is then overturned in a tribunal or court hearing.

The FCA feels the following needs amending:

- Provide mediation and other dispute resolution services underpinned by legislative powers. Scope of options include small business and family enterprise disputes involving:  
...  
- National industry Codes

If truly a concierge, the SBFEO should be equipped only to direct parties to the correct Agency or Authority to deal with their complaint. The SBFEO should encourage the mediation process and direct parties to the appropriate appointed specialist mediation service.

### **Commonwealth-wide advocate for small businesses and family enterprises**

The FCA supports the following:

- Advocacy and representation of small business interests and concerns to the Australian Government.
- providing information and assistance to small and family businesses;
- providing information to the Australian Government;
- working with industry and Commonwealth, state and territory governments to promote a consistent and coordinated approach to small business matters;
- advising the Government on best practice small business engagement practices and regulatory reduction opportunities; and
- promoting best practice principles to all businesses.

The FCA does not support:

The FCA believes that there is sufficient legislative investigative powers which currently exist within the relevant Agency or Authority to investigate private sector practices.

If there is no such current body to investigate complaints about government behaviour, the FCA would support such a body being implemented, however the scope of the investigations would need to be limited to investigating Government bodies and ensure that there is no overlap and duplication with existing systems.

### **Contributor to the development of small business friendly Commonwealth laws**

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

Scope of options 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; and
- examining and nominating burdensome regulations for repeal.

### **The FCA would support the introduction of legislative powers in the following situations:**

- 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.

### **Single entry-point agency through which Commonwealth assistance and information regarding small business can be accessed**

The FCA supports the implementation of a single entry point agency taking into consideration the following points:

- There is no duplication with existing Government services.
- It does not create confusion with the public as to who they call.
- The SBFEO office "owns" the call / contact and should then be responsible for finding a "home" for enquiries, regardless of whether that home was in the Commonwealth or the states/territories.

the SBFEO should have an educative role regarding contacts to ensure that small business people have a "reasonable understanding" of them.