



The Institute of Public Accountants

**The Small Business and Family Enterprise Ombudsman**

**23 May 2014**



**IPA** INSTITUTE OF PUBLIC  
ACCOUNTANTS

*Partnership beyond numbers*

23 May 2014

The Manager  
Small Business Ombudsman and  
Procurement Unit  
Small Business, Competition and  
Consumer Policy Division  
The Treasury

Dear Sir

## **Re: The Small Business and Family Enterprise Ombudsman**

### **Introduction**

The Institute of Public Accountants (IPA) welcomes the opportunity to provide input on the nature and scope of the four key responsibilities of the Small Business and Family Enterprise Ombudsman. Our input is based on a review of similar roles played by small business ombudsmen in New Zealand, Canada, the United Kingdom and the USA. As suggested by the Small Business and Family Enterprise Ombudsman Discussion Paper (April 2014), we provide focused responses to each of the questions under the five broad focus areas suggested at the end of the discussion paper publication.

The IPA is a professional organisation for accountants recognised for their practical, hands-on skills and a broad understanding of the total business environment. Representing more than 26,000 members nationally and in 57 countries, the IPA represents members and students working in industry, commerce, government, academia and private practice. Over two-thirds of our members work in or with small business and SMEs and are recognised as the trusted advisers to these sectors. Through representation on special interest groups, the IPA ensures views of its members are voiced with government and key industry sectors and makes representations to Government including the Australian Taxation Office (ATO), Australian Securities and Investments Commission (ASIC), Australian Competition and Consumer Commission (ACCC) and the Australian Prudential Regulation Authority (APRA) on issues affecting the profession and industry.

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## Concierge for dispute resolution

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*What should the scope of the Ombudsman's own mediation service include? For example, small business disputes with Australian Government agencies or disputes under industry codes of conduct?*

The scope of the Ombudsman's mediation service should include a wide range of disputes, that is, disputes with Australian Government agencies, interstate business issues, and disputes under industry codes of conduct. Disputes with an international element (eg online businesses) need further consideration and may need interaction between agencies, depending on the nature of the dispute. This may include elements of tax, trade, contracts, competition, consumer law, intellectual property and so on.

*What powers should be conferred to the Ombudsman to resolve small business disputes?*

The Ombudsman should be conferred with wide powers to include the ability to compel parties to attend mediation before approaching a tribunal or court. The powers of the NSW Small Business Commissioner would be reasonable starting point.

*Which types of dispute resolution services should the Ombudsman provide and what should be the model for providing these services? For example, should these services be outsourced or provided in-house?*

The types of dispute resolution services provided by the Ombudsman should be provided in-house and not outsourced. The Commonwealth Government should consider the New Zealand-type mediation service provided by the Ministry of Business, Innovation and Employment. The New Zealand model appears to be most suitable for the Australian environment as it provides both free mediation services to employers and employees and caps the value of the dispute up to between NZ\$15, 000 to NZ\$20,000. More importantly, the New Zealand mediation model fits in with the proposed scope of the Ombudsman suggested in this document.

## Commonwealth-wide advocate

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*How can the Ombudsman be a strong advocate to the Government? Are there particular practices that the Ombudsman should focus on?*

The Ombudsman should be seen as a strong advocate for small businesses and family enterprises in Australia. By appointing a strong and independent advocate who is provided with legislated powers to obtain information and investigate complaints for small business, the Ombudsman will not only assist in creating a strong link between the small business environment and Government, but the Ombudsman's office will also foster a suitable environment for small business enterprise to flourish and encourage small business start-ups. In particular, the Ombudsman should advise Government on market practices affecting small business and be able to take action that facilitates and encourages fair treatment of small business in their dealings with various state or local government bodies.

*How can the Ombudsman be a strong advocate to larger businesses on the needs of small businesses?*

The Ombudsman should primarily protect the interests of small businesses and ensure that all businesses, regardless of size, operate in an environment which is fair, competition is conducted on an even level playing field, and best business practices are followed by all organisations and enterprises. Accordingly, the Ombudsman should liaise closely with the Australian Competition and Consumer Commission (ACCC) and other state or local government agencies to ensure that these objectives are fulfilled.

*Should the Ombudsman be conferred powers to investigate allegations of practices in the public and private sectors that are negatively affecting small businesses?*

No. The Commonwealth already has agencies in place such as the ACCC, ASIC, and other regulatory and monitoring agencies to deal with unlawful practices that might negatively affect small businesses. The above-mentioned proposition would merely create unnecessary duplication for investigating such practices. However, the Ombudsman should nonetheless work closely with various government agencies by acting as a conduit and representing the interests of small business by bringing such negative practices to the attention of the ACCC, ASIC, and other state or local government agencies, who have the resources and experience to deal with such allegations.

#### Contributor to Commonwealth laws and regulations

*How should the Ombudsman engage with small businesses and family enterprises to identify the regulatory burdens most affecting them?*

The Ombudsman should operate as a direct channel between small business and Government. Accordingly, as listed in the Discussion Paper (April 2014), the Ombudsman should take part in making recommendations on practical solutions to reduce burdensome legislation and administrative requirements by directly reporting to the Minister for Small Business, making submissions to Government consultations, reviews and inquiries, and participating on advisory or consultative bodies, examining and nominating burdensome regulations for repeal, advocating for a risk based approach to compliance activities, such as inspections and reporting, to be commensurate with the level of risk posed by business activities, and advocating best practice small business engagement principles for agencies and regulators to minimise the burden of, and effectively communicate compliance requirements.

The Ombudsman should not conduct investigations into unlawful practices that concern and/or affect small businesses and family enterprises as the Commonwealth already has agencies in place that are more suitable to investigate such allegations. However, the Ombudsman should bring such negative practices to the attention of the ACCC, ASIC, and other state or local government agencies, who have the resources and experience to deal with such allegations.

*What activities should the Ombudsman be tasked with in order to make Commonwealth laws and regulations more small business and family enterprise friendly?*

There are a number of activities the Ombudsman can be tasked with in order to make Commonwealth laws and regulations more small business and family enterprise friendly. As suggested in the Discussion Paper, Government agencies should consult closely with the Ombudsman to seek advice on the likely positive or negative impacts of new laws and regulations being prepared, and the Ombudsman could be appointed to relevant government boards and committees to ensure that the small business community is well represented at the national level.

Additionally, the Ombudsman should keep a record of all services provided to small business and family enterprises in order to identify which are the issues that most trouble such entities. Once key issues are identified, the Ombudsman could report to specific Government agencies listing the most common issues small business and family enterprises are experiencing and request or suggest options for reducing such issues. By doing so the Ombudsman will become an active voice for the small businesses community.

#### A single entry-point agency

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*What delivery channels should be used to provide the single entry-point? For example, a website, hotline or social media.*

Entry-points to the Ombudsman agency should be via website, hotline, and any other medium (technology) that will enable and abide by strict privacy considerations.

*What key information should the single entry-point provide?*

The entry-point should provide information which facilitates robust exchange of information between the agency and the small business customer. For example, the website should provide information for small business enterprise to flourish and which also encourages small business start-ups. Current small business owners should be able to find instructions about which Government agency they should address their concerns regarding specific problems.

The Ombudsman's website should provide links to existing websites and avoid duplication of information; as such duplication may cause confusion. For example, the not-for-profit section on the ASIC website which provides an overall framework for incorporated associations and offers links to each state or territory authority website (see page [here](#)), is a good illustrative example of how the Ombudsman's website could offer information and links to other government agencies.

The Ombudsman should provide updated checklists, frequently asked questions (FAQs) and guidelines for small businesses as well as access to the most recent resources prepared by other agencies such as: "[Your obligations as a small business operator](#)" prepared by ASIC; and "[Goods and services tax \(GST\) video tip](#)" prepared by ATO.

*In relation to the Ombudsman website, what is the best way to link with existing authoritative sources of information for small business? For example, would links to existing websites be sufficient?*

As addressed in the previous answer above, the Ombudsman's website should provide links to existing websites to avoid duplication of information, as such duplication may cause confusion.

*In addition to providing information and initial support to small businesses, what other forms of small business engagement could the single entry-point offer?*

As addressed previously, the Ombudsman should provide updated checklists and guidelines for small businesses as well as access to the most recent resources prepared by other agencies.

#### Method of appointment

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*How should the Ombudsman be appointed?*

The Ombudsman should be appointed under statutory appointment.

*What is the appropriate length of appointment of the Ombudsman, and should there be an option for re-appointment?*

The Ombudsman should have up to five years' appointment term and eligible for re-appointment.

*How should dismissal of the Ombudsman be managed?*

The Ombudsman should be dismissed for misconduct or incapacity according to the essential criteria provided by the Australian and New Zealand Ombudsman Association.