

7 April 2015

Manager
Small Business Ombudsman and Programmes Unit
Small Business, Competition and Consumer Policy Division
The Treasury
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Via email: small.business@treasury.gov.au

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Dear Small Business Ombudsman and Programmes Unit Manager

Re: Australian Small Business and Family Enterprise Ombudsman Bill 2015

Thank you for the opportunity to make a submission to the Small Business and Family Enterprise Bill. Australian Dairy Farmers (ADF) is a not-for-profit organisation that represents the interests of dairy farmers nationally.

ADF welcomes the announcement of the Small Business and Family Enterprise Ombudsman to be established through this draft legislation. The Ombudsman provides a positive first step towards addressing the imbalance in market power between retailers and small businesses. ADF has long advocated for an Ombudsman to provide dedicated resources and processes for small business suppliers to retailers, including a means of compliance through significant financial penalties if necessary. We continue to hold the position that there is also the need for a dedicated supermarket Ombudsman.

An Ombudsman provides the benefit of absolute focus on issues that impact the farmer as a result of the retail space, including proactive monitoring of the Food and Grocery Code of Conduct. In order for the Ombudsman to enforce compliance with the Food and Grocery Code, the Ombudsman must have the power to instigate significant financial penalties against those who transgress. The legislation for the Small Business and Family Enterprise Ombudsman needs to specifically provide for its role in issues with small business suppliers and supermarkets.

ADF further advocates the need for the Ombudsman's office to have specialised resources for matters related to small agricultural businesses. This will enable the Ombudsman to effectively respond to matters relating to the specific needs and impacts for primary producers. ADF also recommends that the Small Business and Family Enterprise Ombudsman's office is directly involved in the three-year review of the Food and Grocery Code of Conduct.

The Ombudsman should be able to require a person to produce documents or appear before the Ombudsman, issue written public warnings regarding the conduct of a retailer, and apply substantial financial penalties. An Ombudsman with significant powers is the only effective way to ensure a Code of Conduct balances the market power of the major retailers.

The added benefits of an Ombudsman with a focus on farmer/retailer issues will permit an adjudicator to take necessary actions in a timely manner, as opposed to waiting for a unilateral complaint or the failure of other mediation processes. Appointment of an Ombudsman encourages speedy resolution of disputes rather than escalation. We note that mediation is the first step but there must always be the ability to follow through with arbitration when necessary. Mediation alone is not enough, as disputes that go unresolved tend to remain that way without any further action.

The appointment of an independent arbiter by one of the major retailers to oversee an internal supplier charter and help resolve disputes is tacit acknowledgement of the need for an independent Ombudsman.

The establishment of a Small Business and Family Enterprise Ombudsman with a notable focus on resolution of disputes indicates that existing government bodies have not been able to attend to the needs of small businesses in particular. ADF recommends that the Ombudsman has the capacity to mediate issues of small business or family enterprises, even when the dispute falls within the jurisdiction of another government body. This will work under the assumption that the Ombudsman works collaboratively to resource adequate knowledge in the appropriate space of law and practice.

The introduction of an Ombudsman should help to foster a fairer supply sector in the future. While the Ombudsman will address some key concerns with regard to small business and family enterprises, ADF continues to work with the Government to strengthen competition policy through submissions to the Harper Review of Competition Law and Policy, the Agricultural Competitiveness White Paper and the Food and Grocery Code of Conduct. Our aim is to achieve the policy and processes that will help balance market power, provide fairness in the market and end unjust practices.

ADF would welcome the opportunity to work with the Small Business Ombudsman and Programmes Unit to develop further details around the role and operation of the Ombudsman. If you wish to discuss this submission or require further information, please do not hesitate to contact ADF on (03) 8621 4200.

Yours sincerely,



Noel Campbell
President, ADF