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**AMIF Submission on provisions of the Australian Small Business and Family Enterprise Ombudsman Bill (the Bill).**

Dear Ms De Hoog,

Thank you for the opportunity to provide a submission in relation to the recently released papers on provisions of the Australian Small Business and Family Enterprise Ombudsman Bill (the Bill).

The Australian Motor Industry Federation (AMIF) is the pre-eminent body representing the interests of over 100,000 retail motor trades businesses; employing over 310,000 people with an aggregated annual turnover in excess of \$208 billion. The retail motor trades are the largest stand-alone small business sector. The Federation's membership of Automobile Chambers of Commerce and the majority of State and Territory Motor Trades Associations; have a keen interest in the activities of a properly constructed, adequately resourced, and empowered Small Business and Family Enterprise Ombudsman.

**AMIF Position on (the Bill):**

**General**

- AMIF continues to strongly support the creation of the Small Business and Family Enterprise Ombudsman, its enabling legislation, and looks forward to working with the role and office, when established, to ensure its success.
- AMIF continues to query the use of the term 'Family Enterprise' in enabling legislation due to the introduction of yet another descriptor of small business, in an environment where there are already numerous and inconsistent definitions.
- AMIF maintains the creation of the Ombudsman, and supporting infrastructure, must be built on:
  - strong foundations of role clarity;
  - provision of expressed powers;
  - adequate and ongoing resources;
  - recognition and support of the Parliament and government bureaucracy; and
  - clearly defined networks and linkages.
- While some of this is outside the remit of enabling legislation, AMIF believes there is still scope to further improve these areas in the provisions.

## AMIF Position on (the Bill) (cont):

- AMIF remains deeply concerned that the provisions seemingly fail to seize an opportunity to address multiple meanings of the terms 'Small Business', SME's, Family Enterprises, micro businesses, across government legislation, regulation and jurisdictions.
- The term "small business" and its myriad of meanings must be attended to. If not in the enabling legislation, then as a high priority the new Ombudsman. The inconsistent meaning and application will remain a potential impediment to the efficiency and effectiveness of the new office and service deliverables.
- AMIF suggests the Ombudsman needs to not only be appointed, but have transparent, reportable and measurable performance (incentive-based) criteria.
- AMIF continues to support strong linkages between the Small Business and Family Enterprise Ombudsman and Treasury and Australian Competition and Consumer Commission (ACCC).
- With the recent reviews into some industry codes, there is an opportunity to harmonise and coordinate the dispute resolution mechanisms and for the Ombudsman to be a 'clearing house' where important issues, investigations and resolutions can be gathered and shared. This could include:
  - The coordination and facilitation role of the Commonwealth Ombudsman in regard to other jurisdiction Small Business Commissioners, including the identification and if necessary, promulgation of enhanced powers and resources through COAG.
  - A codified system of sharing practices developed and coordinated via the Australian Small Business and Family Enterprise Ombudsman.
  - The power to publish unfair practices, common complaints, undesirable practices etc.
  - The power to recommend to the Minister changes in legislation and regulations and suggest codes of practice.
  - Prohibition of certain repetitive practices by regulation.
- While recognising it is not necessarily the purview of enabling legislation, AMIF remains strongly of the opinion that governance structures and formal relationships with State and Territory Small Business Commissioners and/or related roles/functions, the ACCC, Treasury, Finance and peak industry organisations, be better described in the enabling legislation.

### **Dispute Resolution**

- AMIF strongly supports a dispute resolution function.
- Mediation must be time and cost efficient and recognise increasing potential disparity between parties. For example: one small business recently had to endure 1.5 years and \$80,000 in legal costs before arriving at an outcome. AMIF has many examples where the costs involved or the time constraints have led to the small business closing.
- AMIF still does not support dispute resolution **as the most important** function of the Ombudsman Office, but a very important function.
- AMIF supports the concepts behind the term 'concierge', provided this does not translate into the office being merely a reference tool of government.
- AMIF believes the Ombudsman should not duplicate dispute resolution functions of other jurisdictions or through other mechanisms such as Industry Codes (mandated or voluntary).
- AMIF remains concerned that protections offered by the ADR system may still be insufficient to instil confidence, leading to potential non-reporting or under reporting by complainants, ultimately skewing the data available to the office of the Ombudsman and Government in general. Consequently ADR mechanisms without further protections may lead to increasingly poor management practices.

## **Conclusion**

The Bill is one step closer to the realisation of an effective Commonwealth advocate for Small Business. AMIF believes there is still scope for further clarification and determination in some areas, to ensure the Ombudsman and his or her office, have the best possible foundations for future success.

If there are any questions or you would like further clarification or additional information on the points raised within this submission, please contact Mr Richard Dudley, CEO of AMIF on (02) 6233 0811 or [richardd@amif.com.au](mailto:richardd@amif.com.au).

Yours sincerely

A handwritten signature in black ink that reads "Richard Dudley". The signature is written in a cursive style with a large, stylized 'R' and 'D'.

Richard Dudley  
CEO  
Australian Motor Industry Federation

10 April 2015