



Restaurant  
& Catering

SAVOUR  
AUSTRALIA



30 July 2015

Ms Sophie Dunstone  
Committee Secretary  
Legal and Constitutional Affairs Legislation Committee  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600  
C\ - [legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)

Dear Ms Dunstone

**RE: Inquiry into the Australian Small Business and Family Enterprise Ombudsman Bill 2015 and the Australian Small Business and Family Enterprise Ombudsman (Consequential and Transitional Provisions) Bill 2015**

I write to highlight ongoing concerns Restaurant & Catering Australia (R&CA) has with the proposed structure and focus of the Australian Small Business & Family Enterprise Ombudsman (ASBFEO). R&CA was heavily involved in consultations regarding the establishment of this organisation, and believes the scope of responsibility of the ASBFEO has changed so substantially that R&CA has no confidence the ASBFEO would be able to deliver meaningful assistance to R&CA members.

R&CA provided feedback to Treasury on 7 April 2015 to this effect, however R&CA has highlighted key areas of concern below:

**Purpose and objectives of the ASBFEO**

From a review of the Exposure Draft of the *Australian Small Business and Family Enterprise Ombudsman Bill 2015*, R&CA notes the focus and purpose of the ASBFEO has substantially changed since its conception prior to the election. It appears the ASBFEO will predominantly focus on advocacy advice to government on small business issues, with minimal and limited instances in which small businesses can access dispute resolution services through the ASBFEO.

R&CA understands the desire not to duplicate services already provided by the states and the Constitutional limitations of the role, however R&CA believes the ASBFEO's diminished dispute resolution capacity reduces the avenues with which small businesses can access advice should state-based commissioners be unable to provide tailored and technical support on business-to-business disputes.

Treasury has advised that under the advocacy function, the ASBFEO has the power to investigate where service provision can be improved. However, R&CA is concerned that this will not provide real-time solutions for businesses that are currently experiencing difficulties with suppliers,

DIAMOND PARTNER



**RESTAURANT & CATERING INDUSTRY ASSOCIATION**

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landlords or third parties, and also calls into question the referral system that will exist between state-based commissioners and the ASBFEO.

#### **Ability to provide services to unincorporated businesses**

R&CA are concerned that the legislated powers of the ASBFEO will severely restrict the ability of this organisation to assist a majority of small business operators in the hospitality industry, given that the ASBFEO cannot intervene in cases where no one party is an incorporated body.

#### **Ability for industry associations to refer members to the ASBFEO**

The change in the focus of the ASBFEO creates very limited circumstances in which R&CA can refer member businesses to this organisation, and at present state-based Small Business Commissioners appear to be a more viable option for dispute assistance. However, the lack of consistency in advice at a state level gives rise to the need for an alternative 'national' organisation. R&CA does not believe the ASBFEO provides a viable alternative to assist small businesses.

#### **Referral of advisory services between ASBFEO and industry associations**

R&CA has again sought clarity around the referral process that will occur within the ASBFEO where they are unable to provide small business advice to ensure these services do not duplicate activities currently undertaken by the association. By way of example, R&CA has a dedicated team of workplace relations advisers as well as a migration agent who provide tailored, sector-specific advice to members. The areas of workplace relations and immigration are highly complex; requiring technical knowledge and understanding of the hospitality sector. R&CA does not wish to see advisory services of the ASBFEO duplicate the effort of industry associations, nor result in inappropriate advice due to a lack of understanding of sector-specific Awards or schedules.

R&CA have indicated the association would like the ASBFEO to include industry associations in its referral process through some sort of arrangement, possibly a Memorandum of Understanding (MOU). By way of example, R&CA currently has a MOU with the Fair Work Ombudsman. This MOU describes where both organisations will cooperate on prescribed matters, and outlines referral and advisory processes. While R&CA are not prescriptive about this function being written into the ASBFEO legislation, R&CA wishes to ensure that the legislation does not restrict such an arrangement from occurring.

#### **Title of the organisation**

R&CA has continuously reiterated its concerns regarding the title of the ASBFEO, yet no attempts have been made to investigate an alternative. The title of 'Ombudsman' does not evoke positive connotations within the hospitality community; hospitality organisations are more likely to avoid this organisation altogether with 'Ombudsman' in the title. Further, the way in which the role has now changed with respect to small business dispute resolution makes the term 'Ombudsman' even less relevant. R&CA does not support the title of this organisation in its current form, and would prefer the retention of the existing 'Australian Small Business Commissioner' title given the role and functions performed.

As you can appreciate, R&CA fully supports the establishment of a national resource that would assist small businesses in the operation and management of their business, particularly in relation to dispute resolution advice and support. However, the scope and focus of the ASBFEO has changed so dramatically, R&CA has lost confidence that this organisation would be of any use to small business. If you require further information, please contact me on \_\_\_\_\_ or \_\_\_\_\_

Yours faithfully

**John Hart**  
**Chief Executive Officer**