



MTAA RESPONSE TO

# The Independent Review of the Australian Small Business and Family Enterprise Ombudsman

January 2025

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## Introduction

The Motor Trades Association of Australia Limited (MTAA) represents retail motor trades businesses throughout Australia including retail, service, repair, recycling and associated industries, employing over 350,000 Australians. Our membership, gathered together under the MTAA banner through our state-based associations, is diverse in respect of the size of the enterprises and the number of employees, ranging from small business members who are sole traders responsible for managing all aspects of their business through to sophisticated enterprises with many employees including specialist internal and external advisors.

A range of our members have from time-to-time sought assistance from Small Business Commissioners around Australia and the links between these state-based services and the federal system underpinning the ASBFEO office are essential to the maintenance of services for Australian business. MTAA agrees with the focus of this review in ensuring that there is an effective and efficient resource available to resolve business disputes in a timely and affordable manner.

Until recently, MTAA met with the ASBFEO Ombudsman, Bruce Billson, on a quarterly basis to discuss the relationships within the new motor vehicle retailing industry. MTAA has been very pleased with our engagement with Mr Billson, and we are highly supportive of his continuation as Ombudsman.

In our quarterly meetings, we have been joined by two other industry associations, one also representing new vehicle dealers and the other new vehicle distributors. Of late the other two industry associations have decided to continue dialogue outside the ASBFEO office.

We believe these quarterly meetings are highly valuable and demonstrated the benefit that can be provided by the Ombudsman (providing a good source of information for the relevant Minister as much as an opportunity for industry to flesh out solutions to emerging issues) and we see there is an opportunity to expand this approach to other sectors and importantly, re-establish the dialogue in a semi-formal sense for new vehicle retailing and servicing.

A related issue is the effectiveness of the Motor Vehicle Insurance and Repair Code of Conduct (the Code). The Code was developed by industry to improve transparency and cooperation between crash repairers and the motor insurance industry. At present it is managed by a Code Administration Committee (CAC) with members from both the insurance industry and MTAA vehicle smash repairer representatives.

This CAC conducts reviews of complaints within the industry. The Code is not underpinned by regulatory support in any state or territory other than South Australia.

MTAA believes the Code could achieve better industry outcomes if administered under the ASBFEO office. Given many smash repairers are small businesses (and insurance companies are large enterprises), we think it would fit well with the aims and objectives of the office. We therefore recommend that the ASBFEO consider administering the Code. We would also support the ASBFEO receiving additional government funding to support this new function.

MTAA will provide further comments on the potential role of the ASBFEO office in the franchising sector later in this submission. The following comments are provided in relation to specific questions posed in the consultation paper.

### **What improvements, if any, could be made to the ASBFEO's advocacy function?**

The challenge that all decision makers and advisors face in seeking to improve economic outcomes for Australia is to ensure that the information provided by interested parties is in fact credible and verifiable. It is undeniable that often information presented may be in direct conflict with information provided by others.

In terms of the advocacy open to the ASBFEO there are in some cases too many steps in the information chain before that information is provided to the office, most likely through the State Small Business Commissioners offices in the first instance. While this in itself is not an issue, the ability to effectively and efficiently advocate demands the highest degree of clarity with respect to emerging or ongoing issues. This is challenging to achieve without first-hand experience and even harder when interested parties are distant to the particular issue.

MTAA proposes that the ASBFEO office develop a high degree of sector specialisation within the office in order to create a library of understanding of challenges and opportunities. In turn, this expertise can be applied to advocate to all stakeholders more effectively.

This approach would also aid state-based Small Business Commissioners and improve the desired outcome of national consistency in approach to matters brought to the attention of the ASBFEO.

From the MTAA perspective we would welcome the opportunity to represent the diverse interests of our members by joining the Small Business Policy Forum, shortening the information supply chain between the retail motor industry and the policy development team, and providing an improved pathway to verify the credibility of the information necessary for good policy development.

While many of the issues raised with Government are in response to actual or perceived adverse business practices, MTAA firmly believes that while addressing these matters is important, of greater importance is the development of an environment that fosters cooperation and growth for all businesses based on the contemporary investigation of particular issues. This is a core function of the advocacy that is, and should continue to be, a focus for the ASBFEO.

### **What improvements, if any, could be made to the assistance function provided by the ASBFEO, including how it fits in the broader dispute resolution system?**

In instances where there are business interests in multiple Australian states or territories there is the opportunity for the office to provide a single point of contact for advice and if necessary, alternate dispute resolution (ADR) services. As the regulatory environment is increasingly complex and time consuming for a small business operator to comply with it is possible that assistance in the form of advice lines focusing on emerging challenges could be of use. This may reduce the need for dispute resolution services at a later stage, which would be a significant benefit to small business and family enterprises if for no other reason than to reduce the levels of anxiety that comes with disputes.

Areas such as artificial intelligence, on-line services and insurance risks in an era of rapid climate change, for example, might be of significant interest to small business. If the ASBFEO could educate business on the key risks and opportunities in emerging trends before they become mainstream all parties would benefit.

There are restraints on how far Government can intervene in terms of dispute resolution outside of the independent judiciary. In some respects, this restricts the opportunity for a national office such as ASBFEO to effectively assist on the actual dispute, rather than the dispute resolution process. It may be that early intervention and advice on outcomes of previous disputes, independently presented by the ASBFEO, to both parties to a current or emerging dispute, could be a real time and money saver. This also fits within the ASBFEO independent advisor or neutral evaluation role, and in our view is akin to the suggested expansion of the current ASBFEO Tax Concierge role to other areas of interest such as franchising.

**How effective is the ASBFEO's power to name parties who have not participated meaningfully in alternative dispute resolution, in leveraging a good faith approach to mediation?**

MTAA understands that anecdotally the success of ADR within the business community is quite high, although global data gathered from across the economy might hide sectors with particular challenges. While many disputes are resolved without formal declaration of an ADR process, there is no doubt that, for example in the new motor vehicle sector, the stakes are high and the impact of naming an entity as a disingenuous participant in ADR might have little or no impact, compared to the financial outcomes at stake.

MTAA also considers that this power might identify small business as the party that is a less than enthusiastic participant simply because they do not have the background or expertise in ADR, when compared to parties that have significant resources and capability at their disposal.

While MTAA does not necessarily advocate for the removal of the ability to name respondents in this manner, we are not convinced that it is a powerful tool.

**How effective is the ASBFEO in their role of supporting the franchising sector?**

As mentioned in the introduction to this short submission, ASBFEO had until recently played an important role in bringing together the parties involved in the motor vehicle industry. While a range of issues from training, industrial relations and emerging technology were always considered in joint discussions the main focus was the contractual arrangements and the interaction with the Franchising Code.

ASBFEO took the initiative to instigate these meetings and this, in our view, enabled development of a contemporary brief to the relevant Minister and other Government officials on industry matters. This in turn enabled small business some assurance that their sectoral needs and concerns had been accurately presented to Government. Given the seemingly constant review of the Franchise Code, these meetings were an opportunity to openly, yet within the confines of the ASBFEO office, seek to find solutions and improvements for the sector.

In short, the ASBFEO has been very effective in supporting the franchising sector from our perspective, however some reinvigoration of engagement may be necessary.

**Considering the expansion to the ASBFEO's role as a result of the 2023 Independent Review of the Franchising Code of Conduct, is the ASBFEO well positioned to deliver these expanded services effectively?**

MTAA is of the view that ASBEFO is well positioned to assist educating the franchising sector in the manner envisaged through the recommendations of the review. MTAA would be available to assist in development

of guidance on matters such as good faith and goodwill to ensure those entering, or already involved in, the industry are better informed.

MTAA is particularly supportive of the potential expansion of the current ASBFEO Tax Concierge model to a wider service including advice on franchise matters.

**Are there any gaps or duplication or overlap between the ASBFEO and that of other agencies? If so, what changes should be made to reduce the duplication or gaps?**

The support for the recommendations of the Schaper review could lead to some confusion as to where to access support and information on franchising matters (as noted in the review). In developing education materials, it may be of value to include a simple flow chart to guide industry on where to head with particular types of complaints, or who to contact dependent upon the stage of a particular dispute.

MTAA is available to expand on the above if necessary. Please contact MTAA Chief Executive, Matt Hobbs on 0419 608 845.

# Contact

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