



Australian Government



Australian
**Small Business and
Family Enterprise**
Ombudsman

1 November 2022

Mr Nicolas Anjinho

Director, Ernst and Young

200 George Street

SYDNEY NSW 2000

via email: nicolas.anjinho@au.ey.com

Dear Mr Anjinho,

Ernst and Young (EY) Independent Fuel Legislation Review

We welcome the opportunity to comment on the Independent Fuel Legislation Review (the Review). It is important that time poor small businesses who lack the resources of their larger counterparts are aware of the Oil Code of Conduct's¹ (the Code) availability, and for it to be drafted in a way that they can find, understand, and apply the information that is relevant to their situation. The framework provided by the Franchise Code of Conduct² (Franchise Code) with clear next steps, timelines and obligations for the parties is a useful model for consideration in the context of the Review.

Substantially similar retail businesses under both the Code and Franchise Code could be nested via a core of similar minimum standards, processes, and dispute resolution options. Whilst utilising satellite provisions, to address market centric nuances, to ensure that the Code is fit for purpose, aligned, functional and user friendly.

However, stakeholders have conveyed that their preference is for the Code to remain as a standalone code to adequately represent commission agents (Agents). Agents fuel retail businesses operate in a price competitive, low profit margin business relationship with fuel suppliers, who have disproportionately more power, control, and financial resources than Agents. Profitability of the Agent's fuel retailing businesses is also dependent on convenience store sales, which has strong similarities to a franchise system operating in the fuel retailing market and is a common cause for the disputes seen by our office. As such, we provide the following comments.

- 1. Cooling off periods in the Code should be aligned with the Franchise Code.** Alignment of cooling off periods provides small businesses with a longer cooling period and improves code alignment.
- 2. The Code's disclosure requirements should be aligned with the Franchise Code to ensure that small businesses and their professional advisers have access to complete, relevant, and useable information available via a public register.** Small businesses and relevant stakeholders should have access to all information required to make informed business

¹ *Competition and Consumer (Industry Codes- Oil) Regulations 2017.*

² *Competition and Consumer (Industry Codes – Franchising) Regulations 2014.*



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decisions. This will align with the existing terminal gate pricing (TGP) disclosure requirements and assist to promote transparency, reduce power imbalances, and mitigate disputes.

- 3. Exit and termination clauses should adequately address power imbalances and be harmonised with unfair contract terms ethos to support the Code's functionality, effectiveness, and stakeholder protections.** The Code's exit and termination clauses should adequately protect small businesses from exploitation.
- 4. The Code's alternative dispute resolution (ADR) process should be aligned to the Franchise Code to provide small businesses with access to timely, cost efficient, and equitable dispute resolution options.** To further address power imbalances, we also suggest that the Franchise Code's arbitration process is strengthened via industry consensus to commit to voluntary mandatory arbitration should other dispute resolution fail. It is imperative that disputes do not unnecessarily restrict the supply of petroleum products to Agents.
- 5. The role of dispute resolution adviser under the Code should be conferred on the Australian Small Business and Family Enterprise Ombudsman (the Ombudsman).** This would be consistent with the role the Ombudsman has under the Franchise Code and what is proposed under the Dairy Code. The Ombudsman already plays an important role in assisting with disputes under the Code and conferring the role to the Ombudsman would provide increased efficiency, timeliness and thoughtful understanding and handling of matters for parties.
- 6. Penalties for breaching the Code should be proportionate, effective, and targeted deterrents to parties seeking to utilise their position to cause economic harm. Enforcement of penalties should adequately accommodate both systemic market breaches and appropriate enforcement of individual matters.** Small business owners should be confident that they can operate in a vibrant market and be rewarded for their efforts, investment of capital and goodwill.
- 7. Definitions should be regularly reviewed and aligned to ensure the Code remains robust, relevant, and refreshed.** Regularly reviewing the Code's definitions will assist with the interpretation and functionality of the code.

Thank you for the opportunity to comment. If you would like to discuss this matter further, please contact Mr David Meakin on 02 5114 6106 or at david.meakin@asbfeo.gov.au

Yours sincerely

The Hon. Bruce Billson

Australian Small Business and Family Enterprise Ombudsman