

24 February 2025

Attorney-General's Department

Treasury

Via consultation hub: <https://consultations.ag.gov.au/legal-system/lpp-review/>

Dear Sir/Madam,

Review of the use of legal professional privilege in Commonwealth investigations

The Australian Small Business and Family Enterprise Ombudsman (ASBFEO) welcomes the opportunity to comment on this discussion paper. The ASBFEO responds to requests for assistance from small businesses and family enterprises that are in dispute with other businesses or Australian Government agencies.

In our own, newly expanded services, we pay for access to legal advice for small businesses. This advice is currently covered by legal professional privilege, including in respect of disputes with the Australian Taxation Office and other government agencies.

The ASBFEO acknowledges concerns raised in the discussion paper that some claims of privilege are being used to obstruct or frustrate investigations undertaken by Commonwealth agencies. At the same time, as legal professional privilege is (as the discussion paper emphasises) fundamental to our legal system and integral to the effective provision of legal representation and advice, any reform proposals must be carefully considered and appropriately targeted.

In exploring reform options, we urge the Attorney-General's Department and Treasury to keep small businesses front of mind. Unlike large organisations, small businesses do not have access to internal legal resources. Consequently, any restriction or removal of legal professional privilege in disputes with government could adversely affect small businesses disproportionately compared to large businesses, and potentially create a disincentive for small businesses to seek access to our own dispute resolution services and otherwise obtain good legal advice.

More broadly, it is important to bear in mind the importance of maintaining strong legal professional privilege settings to encourage small businesses to obtain legal advice when the small business owner is seeking:

- clarification and guidance on how to properly comply with legal or regulatory obligations
- counsel and representation when found to be non-compliant.

If you require any further information, please do not hesitate to contact the Advocacy team at advocacy@asbfeo.gov.au.

Yours sincerely



The Hon Bruce Billson

Australian Small Business and Family Enterprise Ombudsman