



## **Australian Small Business and Family Enterprise Ombudsman Delegations 2023**

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I, Bruce Billson, Australian Small Business and Family Enterprise Ombudsman, make the following delegations.

Dated 13 June 2023

Bruce Billson  
Australian Small Business and Family Enterprise Ombudsman

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## Part 1—Preliminary

### 1 Name

This instrument is the *Australian Small Business and Family Enterprise Ombudsman Delegations 2023*.

### 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information        |  |              |
|---------------------------------|--|--------------|
| Column 1                        | Column 2                                     | Column 3     |
| Provisions                      | Commencement                                 | Date/Details |
| 1. The whole of this instrument | The day after this instrument is registered. |              |

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

### 3 Authority

This instrument is made under the *Australian Small Business and Family Enterprise Ombudsman Act 2015*.

### 4 Definitions

Note: Expressions have the same meaning in this instrument as in the *Australian Small Business and Family Enterprise Ombudsman Act 2015* as in force from time to time—see paragraph 13(1)(b) of the *Legislation Act 2003*.

- (1) In this instrument:

**EL1 employee** means an APS employee who has been allocated an Executive Level 1 classification.

**EL2 employee** means an APS employee who has been allocated an Executive Level 2 classification.

**Franchising Code of Conduct** means the code set out in Schedule 1 to the *Competition and Consumer (Industry Codes—Franchising) Regulation 2014*.

**the Act** means the *Australian Small Business and Family Enterprise Ombudsman Act 2015*.

**the Treasury** means the Department of the Treasury.

## Part 2—Delegations

### 5 Delegations relating to functions and powers under the Act

- (1) Under section 19 of the Act, each item of the table in Schedule 1:
  - (a) specifies a function or power of the Ombudsman under a provision of the Act that is delegated to the person or persons referred to in that item in the table (being the persons for the time being holding, acting or performing the duties of the respective offices or positions in the Treasury, whose services are being made available to assist the Ombudsman under section 33 of the Act, that are specified); and
  - (b) sets out any limitation on the delegation covered in that item in the table; and
  - (c) sets out any direction the delegate must comply with in exercising powers, or performing functions delegated in that item in the table.

### 6 Delegations relating to functions under the Franchising Code of Conduct

#### *Delegation*

- (1) Under subsection 19(1) of the Act, a person holding, occupying or performing the duties of each SES employee in the Treasury, whose services are being made available to assist the Ombudsman under section 33 of the Act, is delegated the Ombudsman's functions and powers under the Franchising Code of Conduct.

Note: Section 4 of the *Competition and Consumer (Industry Codes—Franchising) Regulation 2014* sets out the Ombudsman's functions relating to the Franchising Code of Conduct, which includes the appointing of persons who can provide services of arbitration, conciliation or mediation of disputes under subclauses 29(4) and 40A(5) and 43B(4) of the Franchising Code of Conduct.

#### *Directions*

- (2) Under subsection 19(2) of the Act, a delegate under subsection (1) is directed to exercise the function or power in a manner consistent with all of the following:
  - (a) the delegate may only exercise the function or power if the delegate is satisfied that the delegate is the appropriate decision-maker having regard to the details of the matter, including both the urgency of the matter and the sensitivities relating to the matter.

## Schedule 1—Delegations under the Act

Note: see section 5.

| Item | Function or power     | Description of the function or power                  | Delegates   | Limitations   | Directions   |
|------|-----------------------|---|---|---|--|
| 1    | section 37 of the Act | notice to provide information and documents           | (a) SES employees   | the delegate may only exercise the function or power if the delegate is satisfied that the delegate is the appropriate decision-maker having regard to the details of the matter, including both the urgency of the matter and the sensitivities relating to the matter | none   |
| 2    | section 38 of the Act | documents produced in relation to research or inquiry | (a) SES employees<br>(b) EL2 employees<br>(c) EL1 employees | the delegate may only exercise the function or power if the delegate is satisfied that the delegate is the appropriate decision-maker having regard to the details of the matter, including both the urgency of the matter and the sensitivities relating to the matter | the delegate must exercise the function or power in a manner consistent with the information management and record-keeping policies of the Ombudsman |
| 3    | section 43 of the Act | notice of inquiry                                     | (a) SES employees   | the delegate may only exercise the function or power if the delegate is satisfied that the delegate is the appropriate decision-maker having regard to the details of the matter, including both the urgency of the matter and the sensitivities relating to the matter | none   |
| 4    | section 45 of the Act | notice of hearings                                    | (a) SES employees   | the delegate may only exercise the function or power if the delegate is satisfied that the delegate is the appropriate decision-maker having  | none   |

**Schedule 1** Delegations under the Act

| Item | Function or power     | Description of the function or power  | Delegates   | Limitations   | Directions   |
|------|-----------------------|---|---|---|--|
|      |                       |   |   | regard to the details of the matter, including both the urgency of the matter and the sensitivities relating to the matter  |  |
| 5    | section 47 of the Act | notice to provide information and documents                                 | (a) SES employees   | the delegate may only exercise the function or power if the delegate is satisfied that the delegate is the appropriate decision-maker having regard to the details of the matter, including both the urgency of the matter and the sensitivities relating to the matter | none   |
| 6    | section 50 of the Act | documents produced in relation to research or inquiry                       | (a) SES employees<br>(b) EL2 employees<br>(c) EL1 employees | the delegate may only exercise the function or power if the delegate is satisfied that the delegate is the appropriate decision-maker having regard to the details of the matter, including both the urgency of the matter and the sensitivities relating to the matter | the delegate must exercise the function or power in a manner consistent with the information management and record-keeping policies of the Ombudsman |
| 7    | section 53 of the Act | written statements to be made public  | (a) SES employees<br>(b) EL2 employees                      | the delegate may only exercise the function or power if the delegate is satisfied that the delegate is the appropriate decision-maker having regard to the details of the matter, including both the urgency of the matter and the sensitivities relating to the matter | none   |
| 8    | section 61 of the Act | contributing to inquiries into relevant legislation, policies and practices | (a) SES employees   | the delegate may only exercise the function or power in the following circumstances:<br>(a) in relation to contributions that are not intended to be made public; and<br>(b) the delegate is satisfied that the   | none   |



| <b>Item</b> | <b>Function or power</b>              | <b>Description of the function or power</b>                                 | <b>Delegates</b>  | <b>Limitations</b>  | <b>Directions</b>   |
|-------------|---------------------------------------|---|---|---|---|
|             |                                       |   |   | delegate is the appropriate decision-maker having regard to the details of the matter, including both the urgency of the matter and the sensitivities relating to the matter  |   |
| 9           | subsections 66 (3) and (4) of the Act | oral requests for assistance  | (a) SES employees<br>(b) EL2 employees<br>(c) EL1 employees | the delegate may only exercise the function or power if the delegate is satisfied that the delegate is the appropriate decision-maker having regard to the details of the matter, including both the urgency of the matter and the sensitivities relating to the matter | none  |
| 10          | subsection 67(3) of the Act           | notice where Ombudsman not authorised to deal with a request for assistance | (a) SES employees   | the delegate may only exercise the function or power if the delegate is satisfied that the delegate is the appropriate decision-maker having regard to the details of the matter, including both the urgency of the matter and the sensitivities relating to the matter | the delegate must provide a copy of any correspondence relating to the exercise of the power or function to the Ombudsman |
| 11          | section 68 of the Act                 | circumstances in which Ombudsman may decide not to provide assistance       | (a) SES employees   | the delegate may only exercise the function or power if the delegate is satisfied that the delegate is the appropriate decision-maker having regard to the details of the matter, including both the urgency of the matter and the sensitivities relating to the matter | the delegate must provide a copy of any correspondence relating to the exercise of the power or function to the Ombudsman |
| 12          | section 69 of the Act                 | circumstances in which Ombudsman must transfer request for assistance to    | (a) SES employees<br>(b) EL2 employees                      | the delegate may only exercise the function or power if the delegate is satisfied that the delegate is the appropriate decision-maker having  | the delegate must provide a copy of any correspondence relating to the exercise of the power or function to the Ombudsman |

**Schedule 1** Delegations under the Act

| Item | Function or power           | Description of the function or power                     | Delegates                    | Limitations   | Directions  |
|------|-----------------------------|--|------------------------------|---|---|
|      |                             | another agency   | (c) EL1 employees            | regard to the details of the matter, including both the urgency of the matter and the sensitivities relating to the matter  |   |
| 13   | section 71 of the Act       | Ombudsman may recommend alternate dispute resolution     | (a) SES employees            | the delegate may only exercise the function or power if the delegate is satisfied that the delegate is the appropriate decision-maker having regard to the details of the matter, including both the urgency of the matter and the sensitivities relating to the matter | the delegate must:<br>(a) consult with the Ombudsman about whether the Ombudsman would prefer to be the decision-maker before exercise the function or power in relation to a particular matter; and<br>(b) provide a copy of any correspondence relating to the exercise of the power or function to the Ombudsman |
| 14   | subsection 72(1) of the Act | list of alternate dispute resolution providers           | (a) SES employees            | the delegate may only exercise the function or power if the delegate is satisfied that the delegate is the appropriate decision-maker having regard to the details of the matter, including both the urgency of the matter and the sensitivities relating to the matter | none  |
| 15   | section 74B of the Act      | Ombudsman may give assistance in relation to costs order | (a) SES employees            | the delegate may only exercise the function or power if the delegate is satisfied that the delegate is the appropriate decision-maker having regard to the details of the matter, including both the urgency of the matter and the sensitivities relating to the matter | the delegate must provide a copy of any correspondence relating to the exercise of the power or function to the Ombudsman   |
| 16   | section 75 of the Act       | inquiries in relation to a request for assistance        | (a) SES employees<br>(b) EL2 | the delegate may only exercise the function or power if the delegate is satisfied that the delegate is the  | none  |

| <b>Item</b> | <b>Function or power</b> | <b>Description of the function or power</b>                    | <b>Delegates</b>  | <b>Limitations</b>  | <b>Directions</b>  |
|-------------|--------------------------|--|---|---|--|
|             |                          |  | employees<br>(c) EL1 employees                              | appropriate decision-maker having regard to the details of the matter, including both the urgency of the matter and the sensitivities relating to the matter  |  |
| 17          | section 76 of the Act    | notice to provide information or documents                     | (a) SES employees   | the delegate may only exercise the function or power if the delegate is satisfied that the delegate is the appropriate decision-maker having regard to the details of the matter, including both the urgency of the matter and the sensitivities relating to the matter | none   |
| 18          | section 77 of the Act    | documents produced in relation to inquiry                      | (a) SES employees<br>(b) EL2 employees<br>(c) EL1 employees | the delegate may only exercise the function or power if the delegate is satisfied that the delegate is the appropriate decision-maker having regard to the details of the matter, including both the urgency of the matter and the sensitivities relating to the matter | the delegate must exercise the function or power in a manner consistent with the information management and record-keeping policies of the Ombudsman |
| 19          | subsection 86(3)         | disclosure to certain agencies, bodies and persons             | (a) SES employees<br>(b) EL2 employees<br>(c) EL1 employees | the delegate may only exercise the function or power if the delegate is satisfied that the delegate is the appropriate decision-maker having regard to the details of the matter, including both the urgency of the matter and the sensitivities relating to the matter | the delegate must provide a copy of any correspondence relating to the exercise of the power or function to the Ombudsman                            |
| 20          | section 91 of the Act    | disclosure for law enforcements and national security purposes | (a) SES employees   | the delegate may only exercise the function or power if the delegate is satisfied that the delegate is the appropriate decision-maker having regard to the details of the matter,   | none   |

**Schedule 1** Delegations under the Act

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| Item | Function or power | Description of the function or power | Delegates | Limitations   | Directions |
|------|-------------------|--------------------------------------|-----------|---|------------|
|      |                   |                                      |           | including both the urgency of the matter and the sensitivities relating to the matter |            |

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Note: The description of the function or power in the table are to assist readers only. They are not intended to affect the interpretation nor limit the function or power referred to in the table.