

Quarterly report

Q1 [January–March] 2019

**Australian Small Business
and Family Enterprise Ombudsman**



Australian Government



Australian
Small Business and
Family Enterprise
Ombudsman

ASBFEO had a busy 2019 first quarter.

In early January, the seven largest fintech online small business lenders reached the milestone of full compliance with the Australian Finance Industry Association's [Online Small Business Lenders Code of Lending Practice](#). This has resulted in greater transparency of pricing to small business borrowers, enabling easier comparison of products. It also ensures access to both internal and external complaints resolution.



The final report of the Banking Royal Commission was publically released on 4 February. The lack of attention to small business banking disputes was disappointing. Two points were welcome:

- the definition of small business in the Australian Banking Association's (ABAs) Banking Code of Practice be increased from \$3 million to a loan facility of up to \$5 million and to include businesses with less than 100 full time employees
- that certain parts of the ABA code become 'enforceable code provisions.'

Although Commissioner Hayne acknowledged the Banking Code of Practice as 'the chief protection for small business borrowers', meaningful changes to the Code were not included in his 76 recommendations. We have since identified a number of unfair clauses within the Code which remain inadequate to afford protection. We have urged the ABA and ASIC to [adopt our suggested changes](#).

I was pleased to attend the Australia New Zealand Leaders' Business Roundtable in February, where both Prime Ministers and other key business leaders discussed the importance of SMEs to their economies, including improving payment practices and the benefits of digitalisation/e-invoicing.

In early March, my office began [reviewing historical cases](#) where a small business is disputing an assessment by the Australian Taxation Office (ATO) and the ATO had commenced early action to recover the debt while the case was still before the Administrative Appeals Tribunal (AAT). We found that ATO debt recovery action happens in a sizeable number of cases which are before the AAT (at least 12%) and that such action can severely impact a business's ability to prosecute its case and carry on its business. In particular, the use of garnishee notices can have a crippling impact on businesses.

Kate Carnell AO

Australian Small Business and Family Enterprise Ombudsman

Key activities

OUTREACH

- Major media appearances: 7 News, SKY TV-Your Money, SBS World News, The Drum, 2GB, ABC Weekend Breakfast, SBS Small Business Secrets.
- Key media topics: Banking Royal Commission, late payments, free trade agreements, Rebl Corp collapse, SME credit squeeze, franchising inquiry report, minimum wage.
- Events: the Ombudsman and staff participated in 22 events as keynote, panellist or special guest, including presenting at the Australian Small Business Champion Awards.

ADVOCACY

- Completed the [Review of payment terms, times and practices](#) report (released in April 2019).
- Strengthened protections in the new ABA Banking Code of Practice 2019; reviewed access to redress for past banking disputes; and addressed the 'credit crunch' impacting small businesses.
- Examined early debt recovery action by the Australian Taxation Office against small businesses with a dispute before the Administrative Appeals Tribunal.

ASSISTANCE

- Received 1,984 contacts – 84% about resolving disputes.
- Main issues – contract disputes (70%) and payment issues (14%). Also online digital platforms, unfair international competition, business equipment, product returns and unfair contract terms.
- Delivered mediation services under the Franchising Code of Conduct.
- Commenced the [Small Business Concierge Service](#) (1 March 2019), assisting small businesses in dispute with the Australian Taxation Office through the Administrative Appeals Tribunal process.

Outreach: communications and stakeholder engagement

- Representing small business issues, the Ombudsman attended 41 meetings with government and met with 46 key external stakeholders.
- The Ombudsman participated in 46 media interviews which resulted in 338 media mentions across TV, radio, print and online.
- [Seven videos](#) were developed and published on the ASBFEO YouTube Channel and broadcast via the ASBFEO website, including a two-part overview of the Banking Royal Commission final report and interviews with small business owners at the Unsung Business Heroes book launch.
- [Three small business success stories](#) were developed and published on the ASBFEO website.
- ASBFEO promoted its services at four Small Business Fairs (coordinated by the Department of Jobs and Small Business) in Queanbeyan, Canberra, Gosford and Penrith.



Kate Carnell with small business owners Jasmin Herro and Michael Micallef at the 50 Unsung Business Heroes book launch in Sydney, 13 March 2019.

Traditional and social media



2,667
subscribers



338
mentions



28 media
releases



27,768 hits to
website



Followers: 1,980
Posts: 122



7 videos
published
74 subscribers



Ombudsman
983 followers | 45 tweets
ASBFEO
1,302 followers | 135 tweets



Ombudsman
Connections 9,285 | Articles 8
ASBFEO
Followers 537 | Posts 106



Australia New Zealand Leaders' Business Roundtable: delegates with the Prime Minister of Australia, The Hon Scott Morrison and the Prime Minister of New Zealand, Rt Hon Jacinda Ardern, February 2019.

Advocacy: a voice on policy and legislation

Payment Times Review

- The [Review of payment terms, times and practices report](#) was released on 8 April 2019. ASBFEO requested payment terms and conditions from over 250 large businesses and received 2,400 survey responses of actual payment practices from small businesses.
- Late payment was identified as a problem in 1,300 responses. Late payment remains the key detriment to cash flow for small businesses.
- Some large businesses were reluctant to reveal their payment time performance, highlighting the need for increased transparency around payment practices.
- An annual reporting framework requiring larger businesses to publish their payment practices, and the modernisation of business registers to more easily identify small business suppliers are key to reducing late payments and improving cash flow for small businesses. This allows them access to finance to generate more revenue, invest in growth and increase employment.



250+ large businesses
asked to provide
payment terms and
conditions



2,400 surveys completed
by small business
operators

Banking Royal Commission overview

- ASBFEO welcomed the recommended simplified definition of small business (business or group employing less than 100 full-time employees where the loan applied for is less than \$5m), but believes the Royal Commission did not go far enough in addressing the concerns of small businesses.
- Amendments are required to improve the ABA's (new) Banking Code of Practice 2019, specifically removing unfair clauses that diminish protections for small businesses.
- ASBFEO has been involved in advocacy around the small business 'credit crunch', resulting from the tightening of responsible lending requirements since the Royal Commission. We have requested banks take projected business cash flow into account when lending to small businesses.
- The office has worked with the AFCA on how best to consider past cases, ASIC to ensure compliance with the banking code and removal of unfair clauses, and APRA to consider nuanced risk-weighting requirements.

Advocacy: a voice on policy and legislation

Affordable Capital Inquiry

The Australian Business Securitisation Fund (ABSF) Bill 2018 that was passed by Parliament on 3 April 2019 directed the establishment of a \$2 billion fund to provide a source of wholesale funds for small lenders at interest rates comparable to rates available to the major banks.

A recommendation of the ASBFEO's [Affordable Capital for SME Growth](#), the Fund will make it easier for small businesses to access finance as it will increase competition in the market.



Franchising Code of Conduct Inquiry



- The report by the Parliamentary Joint Committee on Corporations and Financial Services into the operation and effectiveness of the Franchising Code of Conduct (the Code) was released on 14 March 2019.
- ASBFEO advocated for a further definition of 'good faith' and allowance for regulators to investigate breaches of 'good faith', improvement to the content of disclosure statements to include information like employee awards and past financial performance, and the prohibition of unfair contract terms.
- We also said the Code needs to include mandated arbitration to ensure small businesses can get timely and affordable dispute resolution without having to resort to court proceedings.

Advocacy: a voice on policy and legislation

Major input into policy, inquiries and legislation

Contributed to the Payment Times Reporting Framework discussion paper on the development of a large national business reporting framework to encourage fairer and faster payment times and terms for small businesses. The paper was published by the Department of Jobs and Small Business in February 2019.

Consulted with other major small business groups in Australia during the third ASBFEO Policy Forum webinar held on 28 February 2019. Discussion centred on pre-Budget and election issues for small businesses.

Contributed to a review of the vocational and educational training (VET) system, highlighting the need for a more flexible delivery structure.

Supported the development of a mandatory automotive code to produce greater transparency and negotiation in the relationships of automotive franchisors and franchisees.

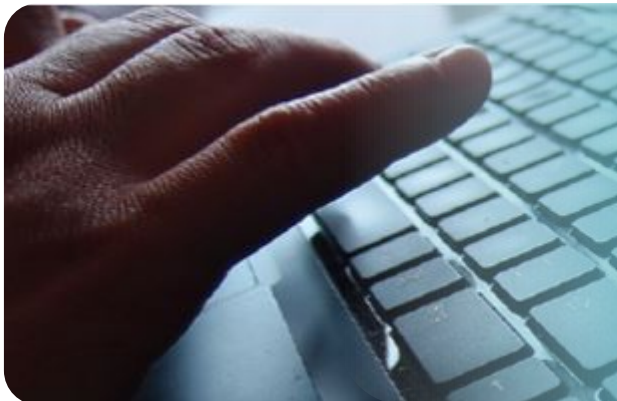
Raised concerns on current dispute resolution procedures with financial service providers. We recommended changes to Australian Financial Complaints Authority (AFCA) policies to place time limits on dispute resolution processes, increase compensation limits and require membership of AFCA for all financial service providers.

Supported changes to the definition of 'financial service' to include insurance claims handling for regulatory oversight and increased training of case managers to ensure insurance assessments are fair for small businesses and payment of claims are not delayed.

Supported amendments to the Treasury Laws Amendment (Combating Illegal Phoenixing) Bill 2019. This includes making sure regulators provide clear avenues for reporting phoenixing and take timely action in investigating suspected phoenixing activity. Also supported stronger director accountability and the introduction of a Director Identification Number.

Submissions

Australian Bureau of Statistics	1	Department of Jobs and Small Business	1
Australian Competition and Consumer Commission	3	Department of Industry, Innovation and Science	1
Australian Restructuring Insolvency and Turnaround Association	1	Department of Education and Training	1
Australian Taxation Office	1	Human Rights Commission	1
Civil Aviation Safety Authority	1	Legislative Assembly ACT	1
Customer Owned Banking Association	1	NSW Department of Fair Trading	1
Department of Communications and the Arts	1	Parliament of Australia	7
Department of the Prime Minister and Cabinet	1	Productivity Commission	1
		Treasury	7
		Total	31



Assistance: supporting SMEs

1,984 contacts received via phone, email, web inquiry.

Of these, **629** were made direct to ASBFEO while **1,355** were via the Infoline.

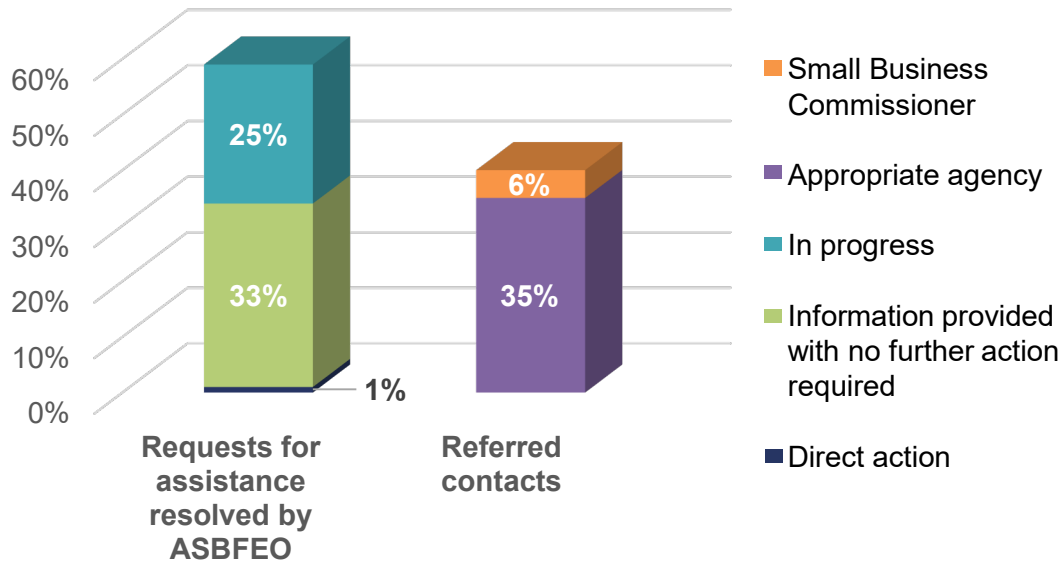
The majority of the direct contacts were business to business disputes

98%
of disputes
were
business
to business

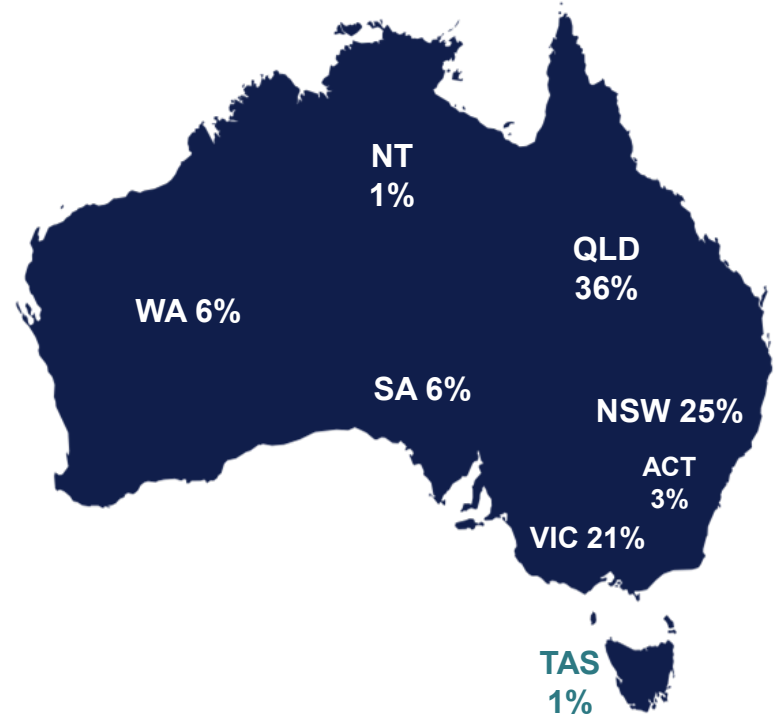
2%
of disputes
were business
to government

89%
of contacts came
from small and
family business
owners

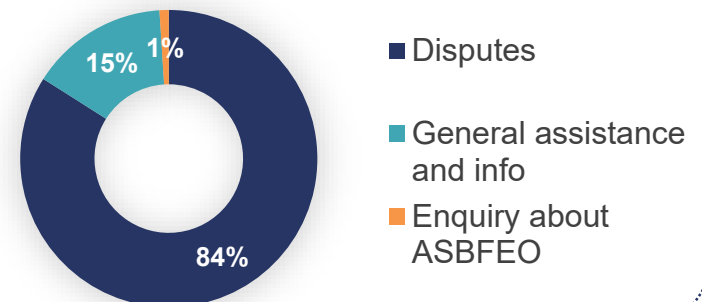
Resolution Pathways



Contacts by state/territory



Contacts for Assistance



Assistance: supporting SMEs

Tax Concierge Service

- Our [Small Business Concierge Service](#) opened on 1 March, providing a simpler, faster and cheaper option for small business owners to address their tax disputes with the Australian Taxation Office (ATO) through the Administrative Appeals Tribunal (AAT).
- An ASBFEO case manager helps the small business owner understand the new AAT process, and provides information on costs and timelines.
- Small business owners without legal representation are offered one hour with an experienced small business tax lawyer at a cost of \$100, to assess the viability of the appeal.
- Once the small business owner lodges their appeal with the AAT, they are offered another hour with the lawyer for free.

Viewble – Rebl TV scam

- By the end of March 2019, we had over 1,250 small business owners across the country approach us regarding contracts with [Viewble Media](#) and The Shoppers Network, for in-store TV advertising.
- Both entities are now in liquidation, leaving the small businesses stuck in contracts with finance providers.
- As part of our inquiry into Viewble, we were made aware of [Rebl Corp](#) operating a similar 'cost-neutral' advertising package along the Sunshine Coast in Queensland.
- In both situations, ASBFEO is working with finance providers, the ACCC, ASIC and AFCA, towards a resolution.
- ASBFEO has published advice on Viewble Media/The Shoppers Network and Rebl Corp on our website and promoted this information through a number of media and social media channels.

Industry Codes - Franchising–Horticulture–Oil

In our new role of assisting with disputes that fall under the [Franchising, Horticulture and Oil Codes of Conduct](#), ASBFEO case managers have:

- answered 187 enquiries regarding the Franchising Code
one enquiry about the Oil Code
- acted on 100 cases relating to the Franchising Code, of which 85 were franchisee initiated and 15 were franchisor initiated.
Of those 100 cases, 37 were referred to mediation.

ASBFEO will raise the profile of our role in assisting disputing parties under the Franchising Code using Google advertising and social media.

Next steps

OUTREACH

- Work with the Australian Cyber Security Centre to improve and promote the *Stay Smart Online Small Business Guide*.
- Participate in the national ASIC Roadshow for members of the Institute of Public Accountants.
- Raise awareness of the commencement of reporting under the Single Touch Payroll.
- Work with the Department of Jobs and Small Business to develop and promote a small business mental health portal.
- Promote small businesses via campaigns: Privacy Awareness Week, Queensland Small Business Week and Micro, Small and Medium-sized Enterprise Day (UN).

ADVOCACY

- Complete Phase II of the *Access to Justice Inquiry*; release report of findings and recommendations.
- Release a guide for accountants and bookkeepers to assist small businesses to get finance ready and identify the best financial product to meet a specific business need.
- Update the *Small Business Counts* report.
- Investigate the impact of ATO audits on small businesses that have claimed the Research & Development tax incentive.
- Work with ASIC to identify enforceable code provisions in the new Banking Code of Practice 2019.
- Work with the government to implement public reporting of the payment terms offered to small businesses by the largest 3,000 corporations.

ASSISTANCE

- Provide the Small Business Concierge Service to assist small businesses in dispute with the ATO through the Administrative Appeals Tribunal process. This includes access for unrepresented small business to legal advice from a panel of tax lawyers.
- Work with the Department of Jobs and Small Business to update the CRM software, which will include enhancements to better assist with disputes.
- Continue to deliver mediation services for disputes under the Franchising Code of Conduct, Horticulture Code of Conduct and Oil Code of Conduct.
- Identify and address emerging issues affecting small businesses and family enterprises.
- Work closely with other agencies, such as the ACCC, ASIC, ATO and AFCA and the State Small Business Commissioners, to provide support for small businesses in dispute.

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