



Australian Government



Australian
**Small Business and
Family Enterprise**
Ombudsman

Quarterly report

Q3 [July-September] 2019

Australian Small Business
and Family Enterprise Ombudsman

Message from the Ombudsman



It has been another busy quarter at the office of the Australian Small Business and Family Enterprise Ombudsman. In July the [Business Funding Guide](#), developed with Scottish Pacific Business Finance, was launched.

An industry-first publication, the guide is an important tool for trusted advisers – accountants, bookkeepers, brokers and other financial advisers – to help small

business clients find the right funding and become ‘finance fit’. We also developed a companion guide, [FitsME – Essential Guide to Business Funding](#) that gives small business owners the most important information they need to know about becoming ‘finance fit’. We called for feedback on the content and usefulness of the resources from interested parties and will produce final versions of both later this year.

To better engage with Australia’s small businesses, family enterprises and other key stakeholders, we have developed a ‘brains trust’ through an online platform called Mindhive. We do this by creating a challenge and inviting our community of small business thought leaders to respond to a particular question. We then synthesise the responses to inform and develop crucial pieces of advocacy work.

My office continues to work with the inter-agency Franchising Taskforce to deliver the recommendations of the review. We’ve provided feedback to the Taskforce on a range of issues including developing a register of franchise agreements, where agreements can be checked for unfair contract terms and input on whether a penalty regime should be imposed for breaches of the Franchising Code of Conduct.

In August we delivered our comprehensive [Review of the Small Business Fair Dismissal Code](#). The Small Business Fair Dismissal Code in its current form is not working in the way it was originally intended. It is ambiguous and open to interpretation, particularly by lawyers, with many small businesses pulled into costly unfair dismissal hearings.

Our review recommends a suite of changes to help small business employers meet their obligations and additional checklists designed to guide a small business employer through a fair dismissal process.

We launched our [Small Business Counts](#) report at the COSBOA National Summit in August. The statistics in the report, collected from the Australian Taxation Office, the Australian Bureau of Statistics and Austrade, help us gain a greater understanding of the small business sector.

We are currently investigating a number of complaints by small businesses that have been unfairly treated in relation to their R&D Tax Incentive claims by the ATO and AusIndustry. Of particular concern are audits going back several years, which have resulted in the ATO demanding businesses repay the R&D Tax Incentive, often with a severe penalty applied. We’ll deliver the findings of this investigation in the fourth quarter of this year.

In September we celebrated National Family Business Day, with a targeted social media campaign, and supported Family Business Australia’s celebrations by hosting and promoting a morning tea.

We also provided a foreword for Graeme Lofts for Family Business Success Stories which was launched on National Family Business Day.

Kate Carnell AO

Australian Small Business and Family Enterprise Ombudsman

Key activities

OUTREACH

- Major media appearances: 3AW, 2GB, The Drum, ABC Current Affairs, SBS Small Business Secrets, Small Biz Matters, Qantas magazine, Bookkeeper Radio, Switzer Daily, Business Essentials.
- Key media topics: Small Business Fair Dismissal Code, phoenixing, national cash flow crisis, Business Funding Guide, small business energy prices, family businesses, mental health and wellbeing.
- Events: The Ombudsman and senior staff participated in 31 events as keynote, panellist or special guest, including the Workforce Success Conference, Independent Tertiary Education Conference and the Australasian Convenience & Petroleum Marketers Conference. The Ombudsman was also the guest speaker at the inaugural Charles Xuereb Oration, hosted by the Law Society of NSW.

ADVOCACY

- Launched the *Business Funding Guide*, with Scottish Pacific, for trusted advisers to help their small business clients find the right funding and to increase their likelihood of having funding applications approved. We also launched a companion guide, *FitsME - Essential Guide to Business Funding*, which gives small business owners the most important information they need to know about becoming 'finance fit'.
- Released the *Review of the Small Business Fair Dismissal Code*, recommending a suite of changes to help small business employers meet their obligations.
- Launched the *Small Business Counts* report, providing data and analysis from the Australian Taxation Office, the Australian Bureau of Statistics and Austrade, to provide a snapshot of the sector and how it is progressing in Australia.

ASSISTANCE

- Received 1,636 contacts – 83% about resolving disputes.
- 201 contacts were received under the Franchising Code of Conduct.
- Main issues –contract disputes (28%) and payment issues (26%), including issues such as online digital platforms, expensive office technology solutions, legacy banking matters that do not fall under the AFCA jurisdiction, finance contracts relating to unfit for purpose products and unfair contract terms.
- We continued to develop efficient processes for the Small Business Concierge Service and more effective communication with the ATO to resolve disputes that have been raised with our office.

Outreach: communications and stakeholder engagement

Representing Australia's small and family businesses, the Ombudsman attended 37 meetings with government and engaged with 30 key external stakeholders.

The Ombudsman participated in 62 media interviews, which resulted in 490 media mentions across TV, radio, print and online.

Three videos were developed and published on the ABSFEO YouTube Channel and promoted. This included a video on the Business Funding Guide with Scottish Pacific Business Finance CEO, Peter Langham.

Two small business success stories were developed and published on the ASBFEO website and a Fast Fact was produced on Efficient invoicing for micro-businesses and sole traders.

We have implemented a six month Google and social media advertising campaign to promote the ASBFEO brand, the Small Business Concierge Service and our dispute resolution services for the Franchising, Horticulture and Oil Codes of Conduct.



Ombudsman Kate Carnell with Glenn Keys AO and Matthew Shadbolt at the Australian Property Institute Leadership Series Breakfast in Canberra on 10 September 2019.

Traditional and Social Media



24 media releases



2,691 newsletter subscribers



**2,601 followers
146 posts**



**Ombudsman
1,361 followers | 61 tweets**
**ASBFEO
1,556 followers | 219 tweets**



490 mentions



26,223 hits to website



**5 videos published
126 subscribers**



**Ombudsman
9,593 connections | 10 articles**
**ASBFEO
882 followers | 130 posts**

Advocacy: a voice on policy and legislation

Research & Development Tax Incentive

- We are reviewing the experiences of small businesses that have claimed the Research and Development Tax Incentive (R&DTI), as many of these taxpayers were later subject to review by AusIndustry and/or review, audit and consequent denial of their R&DTI claims by the Australian Taxation Office (ATO).
- We have previously highlighted the negative effects on small businesses going through an ATO investigation, especially where the ATO uses disproportionately strong actions against these businesses.
- In this instance, the negative effects of having to undergo an ATO investigation, often a number of years after the relevant income tax return was lodged, are significant.
- There are questions of whether there has been a broad-brush approach to program integrity and recouping government expenditure on the R&DTI, sweeping up valid claimants along with those who have been advised by unqualified consultants.
- We will continue to review the program and advocate for individual small businesses to be treated fairly.

Review of the Small Business Fair Dismissal Code

- We launched our *Review of the Small Business Fair Dismissal Code* in August, recommending a suite of changes to streamline the system and make it easier to navigate for both small business employers and employees.
- The overwhelming view among small businesses is the legislation is far too complicated, particularly for those with less than 20 employees and no expert HR or legal departments.
- We will work closely with the Attorney-General and Minister for Industrial Relations, Christian Porter throughout his review of the workplace relations system to ensure changes are fit for purpose and provide greater certainty to small business owners and their employees.

Advocacy: a voice on policy and legislation

Franchising Code of Conduct Inquiry

- Our work with the inter-agency Franchising Taskforce continues, with a number of in-person consultations conducted.
- We have provided written feedback to the Taskforce on a range of issues including:
 - developing a register of franchise agreements, where agreements can be checked for unfair contract terms
 - whether a penalty regime should be imposed for breaches of the Franchising Code of Conduct.
- We will continue working closely with state Small Business Commissioners and the Taskforce to deliver on the recommendations of the review.

Payment times

- We continue to monitor payment times issues within the small business sector and engage with the Department of Employment, Skills, Small and Family Business on the government's response to our Payment Times Review.
- We are also working on the government's proposed payment times register and are closely monitoring instances of invoice financing being used by large companies to extend payment times for small business suppliers; critical to business growth and expansion.

Effective monopolies or near monopolies

An area we are particularly interested is where companies hold effective monopolies or near monopolies: what does that mean for small businesses and how can small businesses navigate relationships with these monopoly players?

- We have made a number of submissions to the APRA/AMCOS reauthorisation review by the ACCC and remain concerned about the lack of transparency of APRA/AMCOS's operations, and the lack of coverage for certain small business interests.
- We continue to review concerns about auDA's proposed changes to domain licencing in Australia.
- AuDA has agreed to extend its consultation period to allow for further engagement with the sector.

Advocacy: a voice on policy and legislation

Major input into policy, inquiries and legislation

- Contributed to a range of discussion papers and reviews of national transport regulatory reform and heavy vehicle laws.
- Provided feedback to the ACCC on collective bargaining class exemptions.
- Made a submission on the financial impact of statutory trusts in the building and construction industry.
- Provided feedback on the review of model Work Health and Safety laws.
- Made a submission on internal dispute resolution for finance providers.
- Provided feedback on the implementation of a cash payment limit.
- Contributed to the independent review of the Customer Owned Banking Association Code of Practice.
- Made submissions to the Senate Economics Legislation Committee on powers of the ATO, the performance of the Inspector-General of Taxation, as well as amendments to the intellectual property framework.
- Provided feedback to Treasury on the potential disclosure of business tax debts, extending unfair contract terms to insurance contracts, a review of the Tax Practitioner's Board and consumer data right.
- Provided feedback on the Australia and New Zealand PEPOL consultation documents.
- Contributed to the Review of the Australian Apprenticeships National Skills Needs List.
- Made a submission to an issues paper on medium and long term options to improve the national professional indemnity market for building surveyors.



Submissions

Department of Social Services	1	Customer Owned Banking Association	1
Productivity Commission	1	Parliament of Australia	1
ACCC	1	Australian Taxation Office	1
Treasury	6	Department of Employment	2
NT Economic Committee	1	Joint Standing Committee on Migration	1
NSW Fair Trading	1	Australian Communications & Media Authority	1
Safe Work Australia	1	Senate Select Committee into Jobs for the future in regional areas	1
ASIC	1	Department of Industry, Innovation & Science	1
Senate Economics Legislation Committee	3	COAG Energy Council	1
National Transport Commission	2	Building Minister's Forum	1
		Total	29

Assistance: supporting SMEs

1,636 contacts received via phone, email, web inquiry.

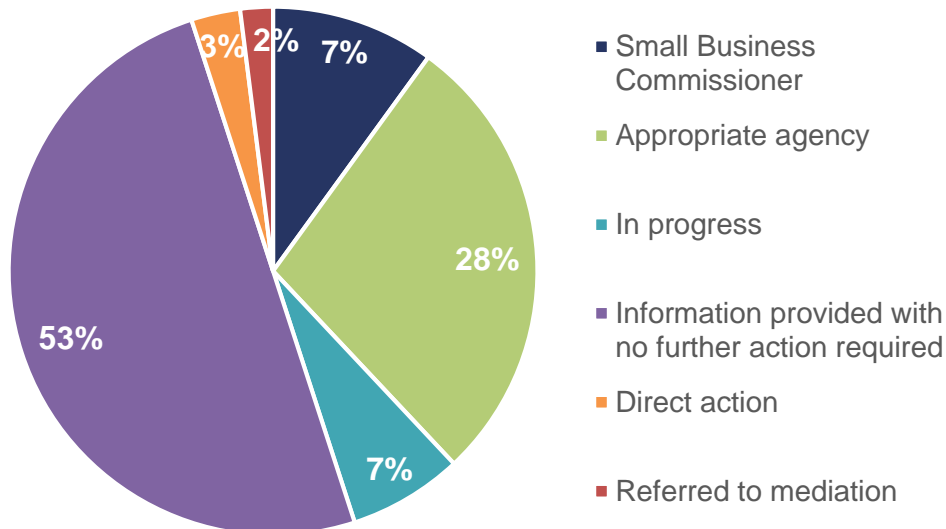
The majority of the direct contacts were business to business disputes.

85%
of disputes were business to business

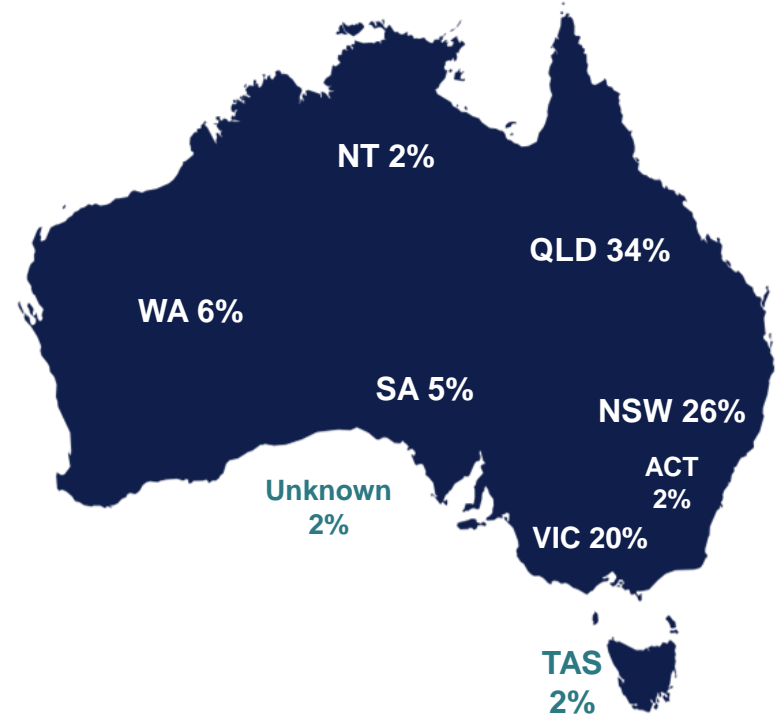
6%
of disputes were business to government

87%
of contacts came from small and family business owners

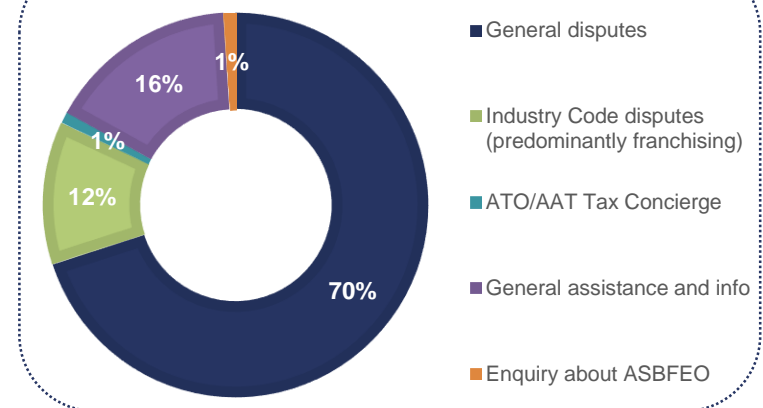
Resolution Pathways



Contacts by state/territory



Contacts for Assistance



Assistance: supporting SMEs

Industry Codes - Franchising–Horticulture–Oil

- In our role assisting with disputes that fall under the Franchising, Horticultural and Oil Codes of Conduct, ASBFEO case managers have:
 - answered 202 enquiries under the Franchising Code and one enquiry about the Horticultural Code
 - acted on 78 cases related to the Franchising Code, of which 68 were franchisee initiated and 10 were franchisor initiated.
- ASBFEO implemented a six month Google and social media advertising campaign continue to raise the profile of our role in assisting disputing parties under the Franchising Code of Conduct.
- We use qualitative and quantitative mechanisms to assess the mediation process. To date, key findings include:



69%
resolved at
mediation



94%
of parties
acted in
good faith



\$2,518
average cost
of mediation

Small Business Tax Concierge Service

- Our Small Business Tax Concierge Service opened on 1 March 2019 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).
- Since 1 March 2019, we have assisted 20 small businesses owners to understand the new AAT process and provided information on costs and timelines.
- The Small Business Tax Concierge Service includes one hour with an experienced small business tax lawyer at a cost of \$100 to the small business owner. Once an appeal is lodged with the AAT, the small business owner is offered another hour with the lawyer free of charge.

Next steps

OUTREACH

- Continue to implement, monitor, evaluate and adjust our online/social media campaign, to raise the profile of the office, and our services under the industry codes of conduct and the Small Business Concierge Service.
- Promote the Insolvency Practices Inquiry survey and submission process via traditional and social media.
- Finalise, publish and distribute the Business Funding Guide and FitsME Essential Guide.
- In conjunction with the Department of Employment, Skills, Small and Family Business, launch the *My Business Health* portal.

ADVOCACY

- Continue work on the Insolvency Practices Inquiry, to investigate if current insolvency practices achieve the best possible outcome for small and family businesses in financial trouble.
- Finalise and release the Phase II report of the Access to Justice Inquiry.
- Continue engagement with the Department of Employment, Skills, Small and Family Business and Franchising Taskforce on franchising reform.
- We will release the review of the R&D Tax Incentive and continue working on Phase II of our report into ATO debt recovery actions.
- Rollout our new stakeholder engagement tool – Mindhive, to engage a diverse range of people, skills and perspectives on key small business issues.

ASSISTANCE

- Continue to work with the Department of Employment, Skills, Small and Family Business to upgrade the CRM, to create a more effective case management system.
- Undertake a review of ASBFEO's new Alternative Dispute Resolution feedback system to better understand the issues, costs and effectiveness of ADR.
- Continue the Small Business Concierge Service for small businesses with an ATO dispute, providing support and assistance with the Administrative Appeals Tribunal (AAT) process.
- Continue working on emerging issues affecting small businesses, including:
 - finance industry misbehavior where small businesses sign up to misleading long term finance contracts
 - digital platforms with no visible access to people for dispute resolution
- Improve processes for the case management of complex banking matters.

Canberra
Level 2
15 Moore Street
Canberra ACT

Sydney
Level 9
255 Elizabeth Street
Sydney NSW 2000

GPO Box 1791
Canberra City ACT 2601

T 1300 650 460
E info@asbfeo.gov.au

Twitter : @ASBFEO
Facebook: @ASBFEO
LinkedIn: Australian Small Business and Family Enterprise Ombudsman
YouTube : Australian Small Business and Family Enterprise Ombudsman

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Written enquiries may be sent to:

Manager
Media and Communications
Australian Small Business and Family Enterprise Ombudsman
02 6121 5218
media@asbfeo.gov.au