



Quarterly report

Q2 [April–June] 2019

Australian Small Business
and Family Enterprise Ombudsman

Message from the Ombudsman



The second quarter began with the Federal Budget. The most significant benefits for small business were tax cuts, an increase to the instant asset write-off, increased infrastructure spending and investment in apprenticeships and training.

We released two reports this quarter; the first on payment times and the second on early debt recovery by the ATO.

After analysing over 2,600 surveys and engagement with more than 250 large businesses, our [Review of payment terms, times and practices](#) report found some large corporations were reluctant to reveal the timeframes in which they pay their small business suppliers. This significant finding underlines the critical need for an independent annual reporting framework that tracks payment times and terms of large Australian and multinational corporations and government entities.

Our [report on early debt recovery by the ATO](#) found garnishee notices and other debt recovery methods were continued or commenced in 12% of cases where tax disputes were before the Administrative Appeals Tribunal (AAT). We have called for the ATO to immediately cease debt recovery action against any small business with a tax debt dispute before the AAT and signalled our intent to conduct further investigation into this issue.

In April I was appointed Co-chair of the Advisory Board for the Centre for Defence Industry Capability with Mr Tony Fraser, a Deputy Secretary at the Department of Defence. My aim is to help make sure small to medium enterprises working with Defence are able to participate in strategic partnerships that allow them to innovate and grow their businesses.

We were particularly pleased with the government's announcement to invest \$100 million into the Australian Business Growth Fund, a recommendation in our Affordable Capital for Growth report, but questioned the absence of commitment by Westpac, ANZ and Australia's superannuation funds. Congratulations to NAB for taking a leadership position and to CBA and HSBC for their involvement.

One particular issue highlighted by us this quarter involved a call for more transparency in the collection and distribution of royalties to musicians by the Australasian Performing Right Association (APRA) before the re-authorisation by ACCC of its 5-year licence to operate. Australian small business artists deserve fair payments when their music is played and APRA's operations need to be more transparent.

May saw the return of the Coalition government and importantly, the return of Senator Michaelia Cash to Cabinet as Minister for Employment, Skills, Small and Family Business. This provides continuity for small businesses and continuing the role in Cabinet evidences a genuine commitment to SMEs.

Towards the end of the quarter, we welcomed the Australian Competition and Consumer Commission's proposed simplification of the right to collectively bargain for small businesses. This would make it easier for groups of small businesses to collectively bargain with big business, producing a more level playing field.

We also welcomed the new rules requiring companies to prove they have a clean tax record when tendering for major government contracts. We urged tenderers to use contracts with subcontractors that comply with the unfair contract term legislation and to ensure they pay their subcontractors on time.

Kate Carnell AO

Australian Small Business and Family Enterprise Ombudsman

Key activities

OUTREACH

- Major media appearances: The Drum, ABC Weekend Breakfast, Prime 7 TV, Radio National Breakfast, Let's Talk Business (2GB-3AW-4BC-2CC), SBS Small Business Secrets, Sky News.
- Key media topics: Budget, Business Growth Fund, Fair Dismissal Code, ATO disputes, late payments, Business Growth Fund.
- Events: the Ombudsman and staff participated in 26 events as keynote, panelist or special guest, including the GS1 Nexus Summit and the Association of Independent Insolvency Practitioners Conference.
- Campaign: we carried out an online advertising campaign on Google and Facebook from 7 May to 20 June 2019. Our entry level online advertising produced increased visibility to our dispute assistance and tax concierge service.

ADVOCACY

- Completed the [Australian Taxation Office and Small Business \(enforcement of debt recovery\)](#) report (released April 2019).
- Worked with stakeholders to strengthen the ABA Banking Code of Practice 2019.
- Developed recommendations around the Small Business Fair Dismissal Code.
- Provided written feedback to the Franchising Taskforce on the importance of engaging with the sector across the recommendations and through implementation.
- Examined formal and informal pathways to access justice; our court system and how to streamline processes to improve access to justice for small business owners.

ASSISTANCE

- Received 1,609 contacts – 80% about resolving disputes.
- Received 191 contacts under the Franchising Code of Conduct
- Main issues – contract disputes (36%) and payment issues (22%), including issues such as online digital platforms, expensive office technology solutions, banking matters, finance contracts relating to unfit for purpose products and unfair contract terms.
- The office continued to deal with a significant volume of cases relating to Viewble Media and Rebl Corp – we worked with finance providers, the ACCC, ASIC and AFCA towards a resolution.
- The office received over 70 requests for assistance regarding the Jump! Swim School franchise. The office worked with the ACCC to support the franchisees affected.

Outreach: communications and stakeholder engagement

Representing Australia's small and family businesses, the Ombudsman attended 34 meetings with government and engaged with 52 key external stakeholders.

The Ombudsman participated in 51 media interviews, which resulted in 376 media mentions across TV, radio, print and online.

Six videos were developed and published on the ABSFEO YouTube Channel. This included a video on Single Touch Payroll with (former) ATO Assistant Commissioner, John Shepherd and a pre-election video with COSBOA Chair, Mark McKenzie.

Three small business success stories were developed and published on the ASBFEO website and a Fast Fact was produced for Single Touch Payroll.

We are collaborating with the Department of Employment, Skills, Small and Family Business and other key stakeholders on the development of a small business mental health portal.



Ombudsman Kate Carnell with Annelise Nielsen (Sky News) at the Association of Independent Insolvency Practitioners Conference in Canberra on 27 June 2019.

Traditional and Social Media



20 media releases



2,705 newsletter subscribers



2,294 followers
113 posts



Ombudsman
1,230 followers | 39 tweets
ASBFEO
1,469 followers | 148 tweets



376 mentions



30,455 hits to website



6 videos published
85 subscribers



Ombudsman
9,293 connections | 10 articles
ASBFEO
609 followers | 101 posts

Advocacy: a voice on policy and legislation

Australian Taxation Office – Enforcement of disputed debt

- The ASBFEO report into the enforcement of disputed debt by the Australian Taxation Office (ATO), released on 29 April, found ATO debt recovery action (such as garnishment and winding up) occurred in 12% of cases where tax disputes were still being considered by the Administrative Appeals Tribunal (AAT).
- This action can severely impact a small business' ability to continue trading, and to prosecute its case. Garnishment that strips funds from a small business' bank account without notice or external oversight causes serious problems.
- Our recommendations include:
 - the AAT be given the power to stay ATO debt recovery action while a matter is before the AAT
 - external oversight or approval of garnishee notices (there is no current oversight outside of the ATO)
 - the ATO use the range of internal dispute resolution options (including independent review) before legal recovery action is started on disputed tax debt.
- We have also signaled our intention to conduct further investigation into the ATO's treatment of disputed debt beyond the AAT.

Australian Banking Association Code of Practice 2019

- The Australian Banking Association (ABA) launched its 2019 Banking Code of Practice on 28 June 2019.
- While the new Code is an improvement on previous versions, the ASBFEO is monitoring the effectiveness of the code in addressing the imbalance of power held by the banks.
- The ASBFEO advocated strongly to the ABA that the new code be amended to remove unfair clauses that diminish protections for small businesses.
- Clause 213 of the Code states that banks need only comply with 'reasonable requests' from the Banking Code Compliance Committee (BCCC), which calls into question the ability of the Committee to be effective.
- ASBFEO is encouraging small businesses who have dealings with the BCCC to tell us about their experiences so we can monitor the Committee's effectiveness.

Advocacy: a voice on policy and legislation

Workplace relations complexities

- ASBFEO continued its work reviewing the Small Business Fair Dismissal Code and welcomed the Prime Minister's announcement that the Australian Government will take a fresh look at changes to our workplace relations system.
- The overwhelming view among small businesses is that the legislation is far too complicated, particularly for those with less than 20 employees and with no expert HR or legal departments.
- ASBFEO has identified a number of simple steps to tackle the overly complex industrial relations system for small businesses that would make a real difference to the sector.
- ASBFEO looks forward to working closely with the Attorney-General and Minister for Industrial Relations, Christian Porter to ensure the workplace relations system is simplified for small businesses who just want to do the right thing.

Franchising Code of Conduct Inquiry

- The Department of Employment, Skills, Small and Family Business, The Treasury and the Australian Competition and Consumer Commission, have formed an inter-agency Franchising Taskforce.
- This was a recommendation by the Parliamentary Joint Committee on Corporations and Financial Services into the operation and effectiveness of the Franchising Code of Conduct in its report, released on 14 March 2019.
- ASBFEO has provided written feedback to the Taskforce on the importance of engaging with the small business sector across the broad range of recommendations and in the implementation of those recommendations.
- ASBFEO will work closely with state Small Business Commissioners and the Taskforce to deliver on the recommendations of the review.



Advocacy: a voice on policy and legislation

Major input into policy, inquiries and legislation

- Contributed to the inquiry examining the effect of mental health on people's ability to participate and prosper in the community. Our submission addressed the issue of ensuring mentally healthy workplaces and the importance of practical ideas that small businesses can implement.
- Provided feedback on the Australian Prudential and Regulatory Authority's ability to respond to an environment of growing complexity and emerging risks for its regulated sectors.
- Supported changes to allow small businesses to better offer employee share schemes to help them attract, retain and motivate employees and grow their business.
- Provided feedback on changes to domain name registration in Australia, noting the importance that there be no additional cost for existing domain holders and ensuring existing holders are able to access domains under the new scheme.
- Supported the amendments to the Food and Grocery Code of Conduct, noting that industry codes are critical to safeguard the interests of all participants in an industry, and in particular small businesses. We recommended further changes be adopted to address some legacy power imbalances.
- Provided support to retain the current care labelling guidelines for clothing and textile products which provide security for industry professionals such as retailers and drycleaners, and certainty to consumers purchasing products.
- Raised concerns about the failure to fully address small business challenges with the intellectual property rights regime when attempting to commercialise business ideas. We noted that small businesses often become aware of the commercialisation value of their IP too late, and when they do become aware, the cost and time required to secure and defend their IP rights can be prohibitive.



Submissions			
.au Domain Administration	1	Department of Industry, Innovation and Science	1
Australian Competition and Consumer Commission	2	National Transport Commission	1
Australian Financial Complaints Authority	1	Department of the Prime Minister and Cabinet	1
Australasian Performing Rights Association	1	Productivity Commission	1
Australian Energy Regulator	1	Queensland Building and Construction Commission	1
Department of Environment and Energy	1	The Treasury	4
		Total	16

Assistance: supporting SMEs

1,609 contacts received via phone, email, web inquiry.

Of these, **438** were made direct to ASBFEO while **1,171** were via the Infoline.

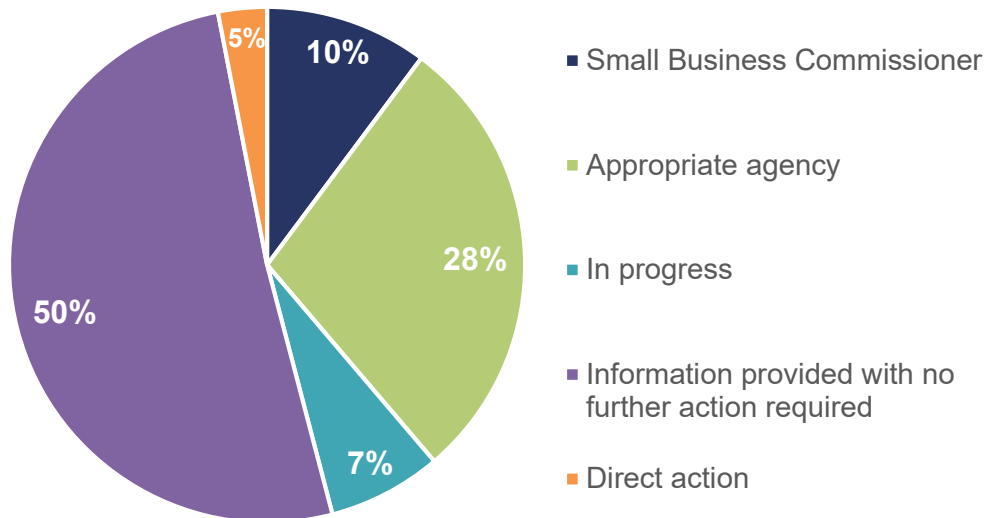
The majority of the direct contacts were business to business disputes.

97%
of disputes
were
business
to business

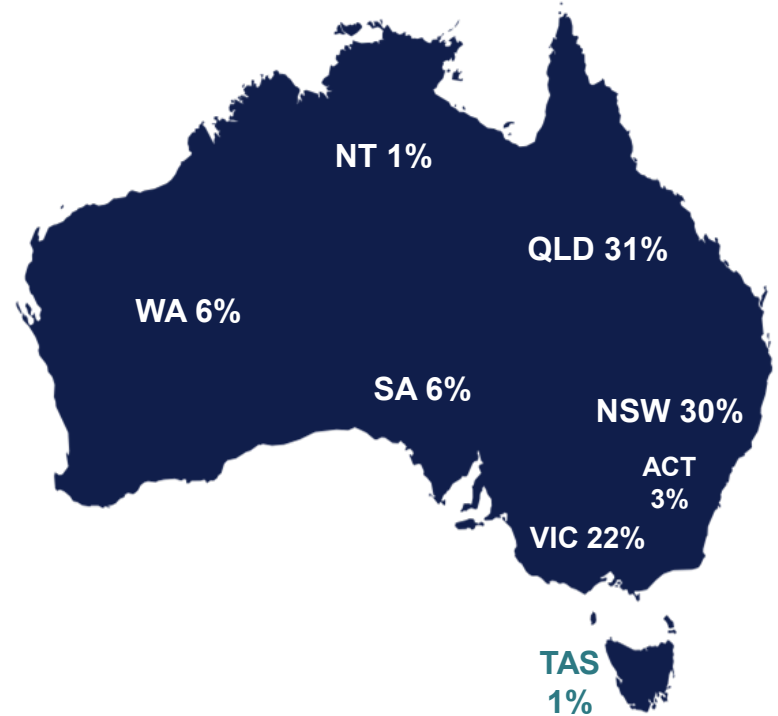
3%
of disputes
were business
to government

76%
of contacts came
from small and
family business
owners

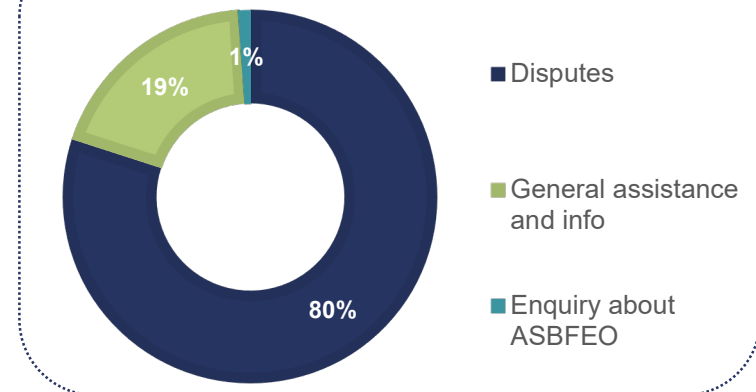
Resolution Pathways



Contacts by state/territory



Contacts for Assistance



Next steps

OUTREACH

- Development and implementation of a three-month online media campaign, building on initial campaign results to raise the profile of the office.
- Launch the Business Funding Guide in partnership with Scottish Pacific Business Finance.
- Develop an internal one-page social media guide.
- Analyse and distribute an internal report incorporating social media, website and e-newsletter statistics.
- Launch Small Business Counts report.

ADVOCACY

- Commence the second round of investigation into the ATO's treatment of disputed debt beyond the AAT.
- Finalise our second report into Access to Justice, providing practical solutions to small businesses in dispute.
- Continue our work with the Attorney General and Minister for Industrial Relations to simplify the workplace relation system for small businesses.
- Collaborate with the Department of Employment, Skills, Small and Family Business to work through the recommendations from the Franchising Review.
- Launch the Small Business Funding Guide.

ASSISTANCE

- Work with the Department of Employment, Skills, Small and Family Business to upgrade the CRM, to allow for a more effective case management system and efficient use by all staff.
- Work on emerging matters affecting small businesses, in particular:
 - misleading behaviour in the finance industry where small businesses inadvertently sign up to long term finance contracts
 - issues within the franchising industry
 - identify unfair contract terms and work with the ACCC and ASIC to remove from standard form contracts
 - long standing banking matters that have arisen from the Banking Royal Commission and our own banking inquiry
 - unfair contract terms in standard form contracts.
- Continue to work closely with our Advocacy team on current case management and identify emerging trends for further research.
- Work with other agencies such as the ACCC, the state Small Business Commissioners, the ATO and AFCA to provide the broad support for small businesses in dispute.

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