



Review of the Australian Small Business and Family Enterprise Ombudsman

19 June 2017

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ISBN: 978-1-925504-60-6

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LETTER OF TRANSMISSION

19 June 2017

The Hon Michael McCormack
Minister for Small Business
Parliament House
Canberra ACT 2600

Dear Minister McCormack,

Independent review of the Australian Small Business and Family Enterprise Ombudsman

In accordance with the Terms of Reference, I am pleased to provide the report of the independent review of the Australian Small Business and Family Enterprise Ombudsman (the ASBFEO).

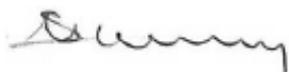
In recent months, myself and a secretariat provided by Nous Group (Nous) have consulted stakeholders and reviewed a wide range of information to understand how effectively and efficiently the ASBFEO has undertaken its legislated functions and how it could be improved.

While the ASBFEO has only been in place for a little more than a year, my impression is that it has already delivered significant value-for-money from the perspectives both of government and of small businesses and family enterprises. In particular, its advocacy function has filled a gap at the Commonwealth level, while its assistance function has helped small businesses and family enterprises to navigate a complex dispute resolution system. The value-for-money it delivers is likely to increase as it continues to establish itself and raise awareness of its role among small businesses, family enterprises and other stakeholders.

The recommendations of this review seek to enable the ASBFEO to build on its progress to date. My assessment is that significant changes to the ASBFEO and its functions and powers are not required at this stage. However, the ASBFEO could enhance its performance through changes to its engagement with small businesses and family enterprises and its collaboration and information sharing with other agencies. Further detail of the findings and recommendations of the review are included in the executive summary and body of the report.

I would like to thank you for the opportunity to participate in this review. I would also like to thank the ASBFEO and Treasury for their helpful cooperation throughout the review, and consultants from Nous for the secretariat support they provided.

Yours sincerely,



Su McCluskey
Lead Reviewer

EXECUTIVE SUMMARY

The ASBFEO was established in 2016 to provide small businesses and family enterprises with a conduit to government and to make it easier for them to access assistance. Specifically, its intended functions are to:

- advocate for small businesses and family enterprises in relation to relevant legislation, policies and practices; and
- assist small businesses and family enterprises in relation to disputes and other relevant actions if requested to do so.

These are in addition to any other functions conferred on it by any Act or legislative instrument.

Under the *Australian Small Business and Family Enterprise Ombudsman Act 2015* (the Act), the Minister for Small Business is required to initiate independent reviews of the ASBFEO's assistance function. This is the first independent review of the ASBFEO's functions under the Act and was required to be completed by 30 June 2017. The ASBFEO is required to be independently reviewed no later than every four years thereafter.

The independent review was led by Ms Su McCluskey with support from a secretariat provided by Nous. The key questions for the review were how effectively and efficiently the ASBFEO has undertaken its functions since its establishment in March 2016 and how these functions can be improved. Appendix A includes the full terms of reference for the review.

Stakeholder consultations were held with Commonwealth and state/territory agencies whose functions impact small businesses and family enterprises, as well as with state small business commissioners and industry bodies. To maintain privacy, stakeholder contributions are referenced in general terms throughout the report. Appendix B includes a full list of these stakeholders. The review also considered data and documentation that Treasury and the ASBFEO provided.

Findings and recommendations

It is clear that the ASBFEO has undertaken its advocacy function highly effectively and, in doing so, has filled a gap at the Commonwealth level. The ASBFEO has effectively conducted a range of advocacy activities, including inquiries into important national issues. It has progressed its advocacy agenda through its strong relationships with other government agencies at both the Commonwealth and state/territory levels. The ASBFEO's advocacy function has also had flow-on benefits to other agencies and jurisdictions, with the ASBFEO providing focus and momentum for advocacy around issues of national significance that other agencies might previously have pursued in isolation or not at all. In this way, the ASBFEO's advocacy function has created significant value-for-money.

The ASBFEO has undertaken its assistance function in a similarly effective way. Its role as a contact point within the dispute resolution system has proven to be useful. While it may not have resulted in as much activity as its advocacy function in the views of some stakeholders, it has helped small businesses and family enterprises to navigate a complex dispute resolution system. It has done this without duplicating the work of other agencies or exacerbating issues of jurisdictional shopping. In this regard it represents value-for-money.

The current formulation of the ASBFEO's advocacy and assistance functions are appropriate to ensure its independence and impartiality. There is no evidence to suggest that the assistance function should be broadened at this point in time. While this should continue to be monitored, any expansion in the assistance function should be carefully considered in light of potential conflicts of interest with its advocacy function and occur only in response to a clearly identified gap.

RECOMMENDATION

Any expansion in the ASBFEO's assistance function should be carefully considered in light of its important advocacy role and occur only in response to a clearly identified gap.

Going forward, the ASBFEO should build on the elements identified through some improvements to its ways of working. The review has identified two key areas where the ASBFEO could consider potential changes:

1. Ongoing engagement with small businesses and family enterprises, and
2. Collaboration and information sharing with other agencies.

The potential changes identified within each area are discussed in more detail below.

Engagement with small businesses and family enterprises

While there will always be small businesses that are unaware of the assistance available to them until they need it, the ASBFEO should continue its efforts to raise awareness of its role and the support it can provide, which stakeholders broadly agree have been effective. In doing so it should particularly emphasise its role in relation to family enterprises, as there is a lack of awareness among stakeholders about the types of family enterprises it can provide assistance to.

RECOMMENDATION

The ASBFEO should continue its efforts to raise its profile among small businesses and family enterprises, with a focus on clarifying its role in relation to family enterprises.

To increase its consultation with small businesses and family enterprises, the ASBFEO could establish one or more forums through which to engage with them and their representatives on an ongoing basis. These could take various forms, either physical or virtual. Potential approaches could include an advisory body or a regular survey distributed through the ASBFEO's website and newsletters.

RECOMMENDATION

The ASBFEO should establish one or more forums through which to directly engage with small businesses, family enterprises and their representatives on an ongoing basis.

Collaboration and information sharing with other agencies

The ASBFEO's ability to influence legislation and policies affecting small businesses and family enterprises could be enhanced through more formal mechanisms. Potential mechanisms could include offering training and secondments to government agencies, consulting with government agencies about regulatory impacts, and assisting in the evaluation of policies that impact small businesses. These mechanisms would bolster the ASBFEO's input into legislation and policies and would likely be feasible within the ASBFEO's current resource constraints. In implementing these mechanisms, the ASBFEO would need to balance its resources to maximise its influence on legislation, policies and practices that affect small businesses and family enterprises.

RECOMMENDATION

The ASBFEO should bolster its input into policy and legislation that affects small businesses and family enterprises, including through training, secondments, consultation and evaluation.

The ASBFEO could work with other agencies to determine how they can share data and research about small businesses and family enterprises. Facilitating sharing of data would enhance advocacy and policy development and avoid duplication of effort. It would also be a continuation of the ASBFEO's work to produce statistical information about small businesses.

RECOMMENDATION

The ASBFEO should work with other agencies to share data and research about small businesses and family enterprises.

It would be useful for the ASBFEO to access data on whether an agency to which it transfers a request for assistance resolves it or refers it on to a third agency. This would help the ASBFEO and other stakeholders better understand how effectively it is fulfilling its concierge role and identify areas for improvement. Given concerns about privacy, the ASBFEO could work with agencies to determine what aggregate data may be available within the privacy constraints of their legislations and jurisdictions.

RECOMMENDATION

The ASBFEO should work with other agencies to access data that would enable it to assess how effectively it transfers requests for assistance to them, most likely focusing on the proportion of requests they resolve themselves and the proportion they refer on to a third agency.

For many of the requests for assistance the ASBFEO receives from small businesses in NSW, VIC, SA and WA, the state small business commissioners provide a clear referral point. For requests for assistance the ASBFEO receives from small businesses in states that do not have small business commissioners – namely, QLD and TAS – there is less clarity. It is often more difficult for the ASBFEO to determine the appropriate agency to refer them to. To address this, the ASBFEO could work with relevant agencies in these states to establish a clear protocol for each type of request it receives.

RECOMMENDATION

The ASBFEO should work with states that do not have small business commissioners to establish clear protocols for its referrals.

The ASBFEO could expand some of its meetings with small business commissioners to include other agencies that provide dispute resolution services. This would provide opportunities for the ASBFEO, the small business commissioners and these other agencies to discuss areas of common interest or potential duplication.

RECOMMENDATION

The attendees of some meetings of the ASBFEO and the state small business commissioners should be expanded to facilitate a broader discussion of common issues and areas of potential duplication.

GLOSSARY

Table 1: Glossary

TERM	DEFINITION
ACCC	Australian Competition and Consumer Commission
The Act	Australian Small Business and Family Enterprise Ombudsman Act 2015
ADR	Alternative dispute resolution
AICM	Australian Institute of Credit Management
APRA	Australian Prudential Regulation Authority
ASBFEO	Australian Small Business and Family Enterprise Ombudsman
ASIC	Australian Securities and Investments Commission
ASL	Average staffing level
ATO	Australian Taxation Office
COSBOA	Council of Small Business Australia
FRAG	Federal Regulatory Agencies' Group
GDP	Gross domestic product
OBPR	Office of Best Practice Regulation
RIS	Regulation impact statement

1. INTRODUCTION

Small businesses and family enterprises are a crucial part of the Australian economy, but working effectively with these businesses presents distinct challenges for government. Specifically, they can be difficult to consult with, and they often find it difficult to maintain regulatory compliance and navigate the support available to them, particularly when they encounter challenges such as disputes. Small businesses that are also family enterprises present additional challenges – in relation to succession planning, for example.

The ASBFEO was established in 2016 to help address these challenges through the provision of advocacy and assistance. Specifically, its intended functions are to:

- advocate for small businesses and family enterprises in relation to relevant legislation, policies and practices; and
- assist small businesses and family enterprises in relation to disputes and other relevant actions if requested to do so.

These are in addition to any other functions conferred on it by any Act or legislative instrument.

The ASBFEO is required to be independently reviewed under the Act. Although the legislation specifically requires a review of the assistance function, the advocacy function of the ASBFEO was also included in the review to allow for the early assessment of, and identification of improvements for, both functions of the ASBFEO. This is the first independent review of the ASBFEO's functions under the Act and was required to be completed by 30 June 2017. The ASBFEO is required to be independently reviewed no later than every four years thereafter.

This section focuses on the context for the ASBFEO and its intended functions as defined in the Act. Section 2 then explores how the ASBFEO has undertaken these functions in practice and their effectiveness.

1.1. SMALL BUSINESSES ARE AN IMPORTANT PART OF THE AUSTRALIAN ECONOMY BUT PRESENT DISTINCT CHALLENGES FOR GOVERNMENT

Small businesses make a substantial contribution to the Australian economy. At present, there are over two million small businesses in Australia. Together they account for around 97 per cent of all Australian businesses, 45 per cent of Australia's workforce and 33 per cent of Australia's Gross Domestic Product (GDP).¹ The vast majority of these small businesses are family enterprises.²

Working effectively with small businesses presents distinct challenges for government:

- **Collectively, small businesses are a heterogeneous group.** They span numerous industries and possess varied perspectives and opinions. This makes it difficult for government to consult them, understand their concerns, and predict what policies will affect them and in what ways.
- **Individually, small businesses are often time-poor and resource-constrained.** Even during 'business as usual' many find it difficult to comply with relevant regulation and access the support available to them from government and other sources. This becomes even more difficult when they encounter disputes or other issues and need to navigate a complex network of government agencies, ombudsmen, commissioners and industry organisations.

Small businesses that are also family enterprises present additional challenges in relation to issues such as taxation, governance and succession planning.

These challenges mean that, while government recognises the importance of small businesses and family enterprises, there may be impediments to providing them with timely and appropriate support.

1 Australian Small Business and Family Enterprise Ombudsman, *Small business counts: small business in the Australian economy*, 2016; Australian Bureau of Statistics, *Australian Industry, 2014-15*, 2015.

2 Australian Bureau of Statistics, *Counts of Australian Small Business Operators, 2011 to 2012, 2013*.

1.2. THE ASBFEO WAS ESTABLISHED TO MAKE IT EASIER FOR SMALL BUSINESSES TO INFLUENCE POLICY AND ACCESS ASSISTANCE

The ASBFEO was established in March 2016 under the Act to help to address the challenges described in Section 1.1. It replaced the Australian Small Business Commissioner, a non-statutory role with a narrower remit.

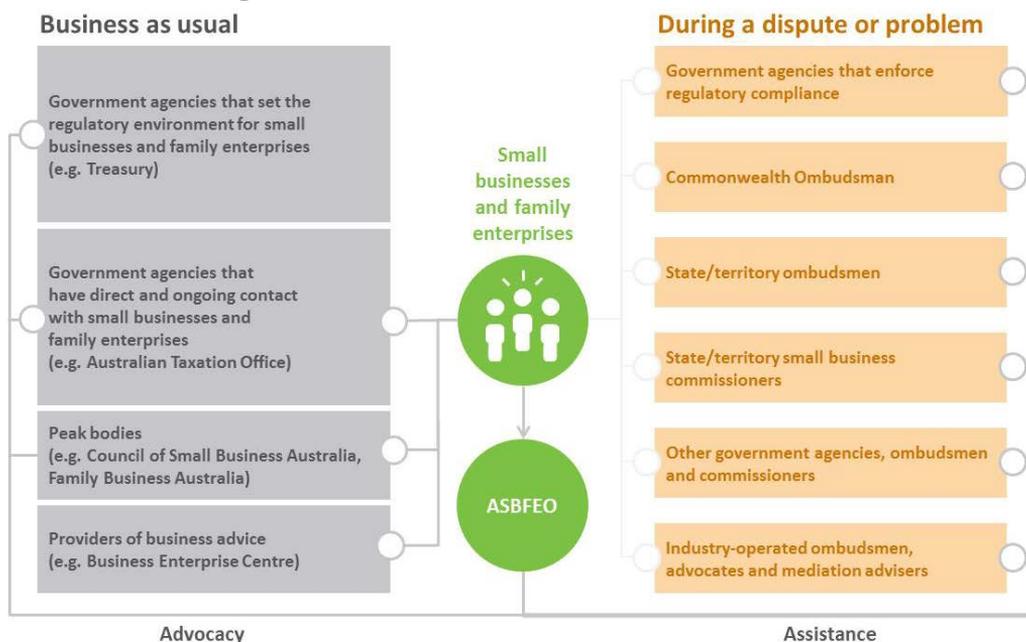
The ASBFEO provides small businesses and family enterprises with a conduit to government as well as a 'conciierge' service for those that submit requests for assistance (as shown in Figure 1). The ASBFEO may also provide direct assistance in some cases.

The ASBFEO's specific functions under the Act are to:

- advocate for small businesses and family enterprises in relation to relevant legislation, policy and practices (the advocacy function);
- give assistance in relation to relevant actions if requested to do so (the assistance function); and
- perform any other function conferred on the ASBFEO by any Act or legislative instrument.

To perform these functions, the ASBFEO interacts with a broad range of government agencies, ombudsmen, commissioners and industry bodies, as well as small businesses and family enterprises. The ASBFEO's advocacy and assistance functions are described in further detail below.

Figure 1: Overview of the ASBFEO’s functions



The ASBFEO advocates for small businesses and family enterprises through inquiries, research and other input into legislation, policies and practices

The ASBFEO’s advocacy function as defined in the Act involves:

- conducting inquiries and research into relevant legislation, policies and practices, both at its own initiative and as referred by the Minister for Small Business, and contributing to inquiries other organisations are conducting;
- reviewing proposals in relation to relevant legislation, policies and practices and identifying matters of concern for small businesses and family enterprises;
- promoting best practice in interactions with small businesses and family enterprises; and
- working cooperatively with other Commonwealth and state/territory agencies to develop national strategies in relation to relevant legislation, policies and practices affecting small businesses or family enterprises.

The ASBFEO also provides advice to the Minister for Small Business as required.

To undertake this function, the ASBFEO interacts with a range of stakeholders, including (but not limited to) the Government and, in particular, the Minister for Small Business, small businesses and family enterprises and their peak bodies, Commonwealth and state/territory government agencies, state small business commissioners and other industry bodies.

How the ASBFEO interacts with each of these stakeholders to undertake its advocacy function is described in more detail in Figure 2 below.

Figure 2: Overview of the ASBFEO's advocacy function

ASBFEO's advocacy functions	Government agencies*	Small businesses and family enterprises or their peak bodies	Minister for Small Business	State small business commissioners	Other businesses or their industry bodies
Conduct or contribute to inquiries, and conduct research into matters affecting small businesses and family enterprises	ASBFEO may request information and make recommendations affecting agencies. It may also make submissions to other government agencies' inquiries.	ASBFEO consults small businesses to learn how the subject of the inquiry affects them, through surveys, submissions and public forums.	ASBFEO conducts inquiries it has initiated or the Minister has referred and reports to the Minister. Reports for referred inquiries are tabled in Parliament.	ASBFEO may work with small business commissioners to conduct joint inquiries.	ASBFEO may request information as part of an inquiry and make recommendations affecting these groups.
Review proposals affecting small businesses and family enterprises	ASBFEO may review proposals to develop or change relevant legislation, policies and practices which affect small businesses.	ASBFEO consults small businesses to identify concerns arising from legislation, policies and practices.	ASBFEO provides advice on matters referred by the Minister, or which the ASBFEO identifies as concerning small businesses.	ASBFEO works with small business commissioners to identify pertinent issues affecting small businesses.	ASBFEO identifies business or industry practices that may affect small businesses.
Promote best practice in interactions with small businesses and family enterprises	ASBFEO may take steps to promote best practice interactions between agencies and small businesses.	ASBFEO consults small businesses to identify how interactions with other entities could be improved.	ASBFEO reports to the Minister about the kinds of action taken to promote best practice during a specific period.	ASBFEO works with small business commissioners to promote best practice.	ASBFEO may take appropriate steps to promote best practice in interactions between small businesses and family enterprises and other entities.
Work with Commonwealth, state and territory agencies to develop national strategies for relevant legislation, policies and practices	ASBFEO co-operates as appropriate. It may also offer research/secretariat services to government bodies working to develop national strategies.	ASBFEO consults small businesses to identify any other concerns.	ASBFEO reports to the Minister about national strategies developed during a specific period.	ASBFEO works with small business commissioners to develop national strategies to address these matters.	ASBFEO identifies business or industry practices that may require attention in the form of a national strategy.

*The ASBFEO's advocacy function is limited to legislation, policies and practices of Commonwealth and Territory agencies.

The ASBFEO primarily assists small businesses and family enterprises by acting as a concierge for their requests

The ASBFEO's assistance function involves responding to requests for assistance from small businesses and family enterprises. In responding to a request the ASBFEO first assesses:

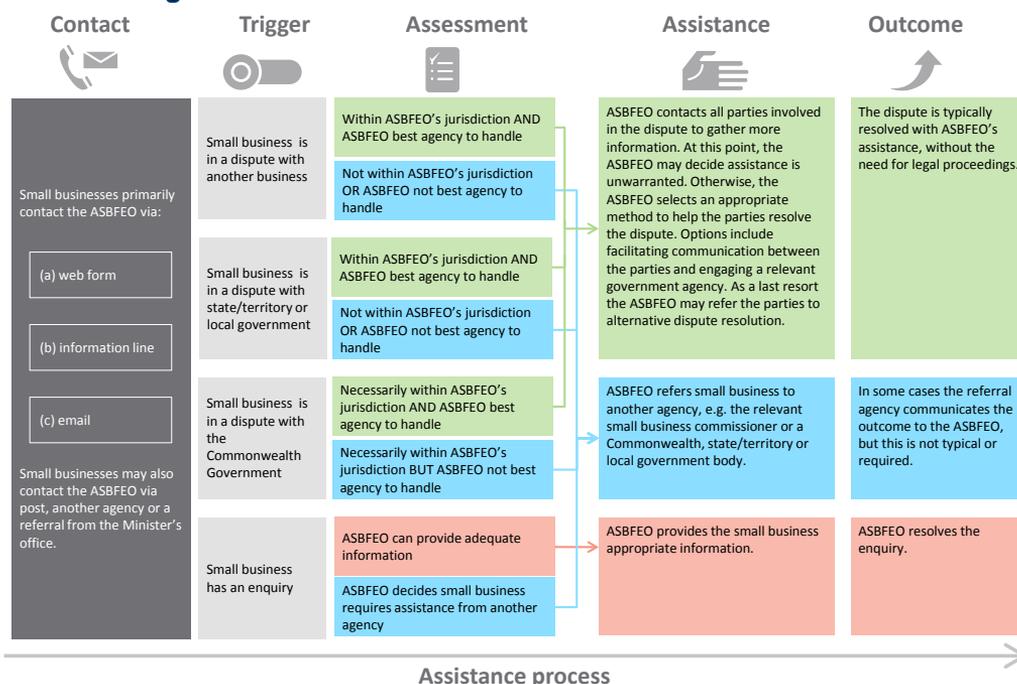
- (a) whether it falls within its jurisdiction; and
- (b) whether it is the most appropriate agency to handle it.

In most cases, the ASBFEO transfers the request to another agency. This is the ASBFEO's concierge role.

Where both of these conditions apply, the ASBFEO provides assistance itself. For a request for assistance with a dispute, this would involve contacting all parties involved to gather more information, determining whether further assistance is required and, if so, helping to resolve the dispute. This may involve facilitating communication between the parties or, as a last resort, referring them to alternative dispute resolution (ADR).

The ASBFEO’s assistance function is described in more detail in Figure 3 below.

Figure 3: Overview of the ASBFEO’s assistance function



2. EFFECTIVENESS OF THE ASBFEO

The ASBFEO has effectively undertaken inquiries and a range of other advocacy activities that have increased awareness of important issues affecting small businesses and family enterprises and raised its profile. It has also provided a useful point of contact for small businesses and family enterprises seeking assistance. In undertaking these advocacy and assistance functions the ASBFEO has exercised all of its powers under the Act, which have generally been sufficient. Furthermore, its structure and the separation of its advocacy and assistance functions have allowed for sufficient independence and impartiality, in large part because its assistance function is primarily a concierge service.

2.1. THE ASBFEO HAS EFFECTIVELY UNDERTAKEN ITS ADVOCACY FUNCTION

There was general consensus among stakeholders that the ASBFEO has undertaken its advocacy function highly effectively. The ASBFEO has effectively conducted a range of advocacy activities, including inquiries into important national issues. It has also progressed its advocacy agenda through its strong relationships with other government agencies at both the Commonwealth and state/territory levels. Ongoing stakeholder consultation has informed this work. The main impediments to the ASBFEO's advocacy function going forward include a lack of more formal mechanisms to provide input into policy and legislation, a lack of understanding among stakeholders about its role in relation to family enterprises, and a risk to continuity arising from the importance of the selection of the office-holder.

2.1.1. The ASBFEO has effectively undertaken a large volume of advocacy work

The ASBFEO has undertaken a large volume of advocacy work, including:

- inquiries and research into issues affecting small businesses and family enterprises;
- submissions on legislation, policies and practices affecting small businesses and family enterprises;
- cooperation with other Commonwealth and state/territory agencies; and
- media and outreach.

This advocacy work has identified and raised awareness of issues affecting small businesses and family enterprises, while raising the profile of the ASBFEO as a body to which business owners can provide their views and from which they can seek assistance.

The ASBFEO's advocacy work has included inquiries, research, submissions and a range of other activities

Over the past year the ASBFEO has conducted three inquiries into issues affecting small businesses and family enterprises, including:

- the effect on Australian small businesses of the Road Safety Remuneration Tribunal's *Contractor Driver Minimum Payments Road Safety Remuneration Order 2016*;
- small business lending practices; and
- payment times and practices.

The Minister for Small Business initiated the former two of these inquiries. The ASBFEO initiated the third in response to concerns its stakeholders had raised. It was conducted in collaboration with the state small business commissioners in NSW, VIC, SA and WA and in association with the Council of Small Business Australia (COSBOA) and the Australian Institute of Credit Management (AICM).

The ASBFEO's other advocacy activities have included:

- **Research into a broad range of issues affecting small businesses and family enterprises** – The main output of this research has been a research paper providing statistical information about the role of small businesses in the Australian economy. The ASBFEO has also conducted research into issues including (but not limited to) competition and consumer issues, intellectual property, industrial relations, procurement, banking, franchising and various industries. This research has informed the other advocacy activities listed below.
- **Submissions on legislation, policies and practices affecting small businesses and family enterprises** – These included over 30 submissions to Commonwealth and state/territory government agencies as well as to public inquiries and consultation processes. The ASBFEO made many of these submissions in response to issues and concerns that peak bodies, business owners and state/territory agencies referred to it.

- **Cooperation with other Commonwealth and state/territory government agencies** – This has primarily occurred through the ASBFEO's participation in regular meetings and consultative forums, particularly with Commonwealth regulatory agencies and state small business commissioners.
- **Media and outreach** – This has included regular media releases, opinion pieces, social media activity, radio and telephone interviews and over 50 speaking engagements at events such as industry engagements and conferences.

The focus of this advocacy work has been guided by a consultation process the ASBFEO conducted soon after its establishment (from April to June 2016) to identify the concerns of small businesses and family enterprises. This consultation informed the ASBFEO's 2017 Advocacy Agenda, which it released in early 2017.

The ASBFEO's advocacy work has identified and raised awareness about issues affecting small businesses and family enterprises

There was broad agreement among stakeholders that the ASBFEO's advocacy function has been highly valuable. Stakeholders believed the advocacy activities described above have played an important role in identifying, and raising awareness about, issues affecting small businesses and family enterprises. Stakeholders suggested that this in turn had helped to focus government attention on these issues.

The ASBFEO's advocacy work has raised its profile among small businesses and family enterprises

The ASBFEO's advocacy activities have helped to raise its profile among small businesses, family enterprises and other stakeholders. Combined with the profile of the current ASBFEO, Kate Carnell, the inquiries and media activities in particular have helped to raise awareness of the ASBFEO and its role. This has the potential to enable the ASBFEO to undertake its functions more effectively, as it suggests small businesses and family enterprises increasingly recognise it as a body to which they can provide their views and from which they can seek assistance.

2.1.2. The ASBFEO has effectively conducted inquiries

The ASBFEO has effectively conducted inquiries into nationally important issues, some longstanding and some emerging. In doing so it has drawn on appropriate evidence and delivered them speedily. Stakeholders generally agreed the ASBFEO should continue to conduct a small number of inquiries to a high standard, at least some of which should be self-initiated.

The ASBFEO's inquiries have surfaced longstanding issues and responded to emerging issues of national importance

Most stakeholders believed the ASBFEO's inquiries have focused on important issues affecting small businesses and family enterprises across Australia. They agreed the ASBFEO's inquiries have both surfaced longstanding issues, such as payment times and practices, and responded to emerging issues, such as the impact of the Road Safety Remuneration Tribunal's remuneration order. Some stakeholders attributed the ASBFEO's ability to conduct inquiries into important national issues to its position being held at the Commonwealth rather than the state/territory level.

The ASBFEO has generally drawn on appropriate evidence for its inquiries and conducted them speedily

The ASBFEO's inquiries have generally drawn on appropriate evidence. The main sources of this evidence have included direct stakeholder consultation, surveys, submissions, expert testimony (for example, during hearings) and secondary research. Where appropriate, the ASBFEO has consulted subject matter experts.

Some stakeholders suggested that future inquiries would benefit from greater use of quantitative data, which the ASBFEO could generate itself or collect from other organisations. This would help to ensure a more robust evidence base and guard against any suggestion the ASBFEO drew upon biased or selective evidence. One stakeholder suggested the ASBFEO did this during the inquiry into small business lending practices, but other stakeholders involved with this inquiry did not share this view.

Several stakeholders were impressed with the speed with which the ASBFEO conducted inquiries. They noted this enabled the ASBFEO to respond to emerging issues and deliver recommendations while inquiry topics were still relevant.

The ASBFEO has conducted an adequate number of inquiries and should continue to conduct self-initiated inquiries that respond to the concerns of small businesses and family enterprises

Stakeholders were generally satisfied with the volume of inquiries the ASBFEO has conducted to date. While several stakeholders would like the ASBFEO to conduct more inquiries, others suggested the ASBFEO should continue to conduct a small number of inquiries to a high standard of quality. This will ensure each inquiry receives appropriate attention from government and produces recommendations that government has the appetite and capacity to act on. It will also ensure that small business stakeholders and family enterprises are not overly burdened in providing input to these inquiries.

In continuing to conduct this volume of inquiries, the ASBFEO should make sure to balance government-initiated inquiries with self-initiated inquiries. This will help to ensure its responsiveness to the concerns of small businesses and family enterprises as well as other key stakeholders such as the Minister for Small Business.

2.1.3. The ASBFEO has effectively worked with other government agencies to progress its advocacy agenda

Evidence suggests the ASBFEO has worked effectively with other government agencies in relation to its advocacy function. It has particularly strong relationships with state small business commissioners and Commonwealth agencies that have a direct role in small business assistance or policy. However, there is some evidence that the ASBFEO's ability to influence policy and legislation affecting small businesses and family enterprises could be enhanced.

The ASBFEO has developed strong working relationships with state small business commissioners

The ASBFEO's collaboration with the state small business commissioners primarily occurs through its recent participation in bi-monthly meetings with them. These meetings have resulted in the development of a national advocacy agenda and enabled the ASBFEO to take carriage of important national issues which may not otherwise have been investigated. The small business commissioners noted the ASBFEO has played an important role in driving the development of a national advocacy agenda that has helped to unify their advocacy work.

The ASBFEO's participation in these bi-monthly meetings has enabled it to identify issues that the small business commissioners could not have prosecuted independently and to take carriage of them at a national level. In one instance, the commissioners had separately identified an issue affecting small businesses in their respective jurisdictions. However, it was not until the issue was raised at the small business commissioners' meetings that they realised it was a national issue and therefore had enough evidence to prosecute the case. The ASBFEO, along with the appropriate regulatory agency, was able to take carriage of the issue and follow it through to a successful outcome.

Given the value of these meetings to date, there may be merit in expanding some of them to include other Commonwealth and state/territory agencies that advocate for, or provide assistance to, small businesses. This is discussed further in Section 4.

The ASBFEO also collaborated effectively with the state small business commissioners on the inquiry into payment times and practices. This inquiry demonstrates how the ASBFEO has been able to use its national advocacy role to drive intergovernmental collaboration to investigate an important issue affecting small businesses and family enterprises. One stakeholder noted that the ASBFEO provided an obvious national lead for the inquiry. Another stakeholder who participated in a reference group for the inquiry noted that the ASBFEO performed a valuable role in coordinating the inquiry and putting together the states' contributions.

The ASBFEO has developed collaborative relationships with Commonwealth agencies that have a direct role in small business assistance and policy

The ASBFEO has established positive, collaborative relationships with a range of Commonwealth agencies. These relationships are particularly strong with agencies that directly provide assistance to small businesses, such as the Australian Taxation Office (ATO), the Australian Consumer and Competition Commission (ACCC) and the Australian Securities and Investments Commission (ASIC), as well as agencies that are directly involved in small business policy, such as Treasury and the Department of Industry, Innovation and Science.

This collaboration has occurred partly through formal forums. The ASBFEO participates in the Federal Regulatory Agencies' Group (FRAG) meetings, which include the ATO, the ACCC, ASIC and the Australian Prudential Regulatory Authority (APRA). The ASBFEO also participates in the ATO's Small Business Stewardship Group. These forums enable the ASBFEO to both provide a small business perspective to these government agencies on relevant issues, and to remain informed about emerging issues within government which may affect small businesses.

Collaboration has also occurred through less formal channels, with several Commonwealth Government stakeholders noting that information about relevant advocacy issues flows freely between them and the ASBFEO.

2.1.4. Ongoing stakeholder consultation informs the ASBFEO's advocacy work

Many stakeholders indicated that the ASBFEO has made it a priority during its first 12 months to establish relationships and communication channels with government agencies and peak bodies.

The ASBFEO consults relevant government agencies both formally and informally. Formal consultation mechanisms include the bi-monthly small business commissioners' meeting, the FRAG meeting and the ATO's Small Business Stewardship Group, as outlined in Section 2.1.3. Informally, the ASBFEO regularly consults a broad range of peak bodies. There was general consensus across the peak bodies consulted that the ASBFEO is highly accessible and receptive to hearing about their advocacy agendas.

Peak bodies' level of interaction with the ASBFEO varies. While some have frequent, ongoing communication with the ASBFEO, other peak bodies have spoken only briefly to the ASBFEO and have a lower level of awareness of its functions. Those organisations with limited contact with the ASBFEO acknowledged that they could do more to establish an ongoing relationship with the ASBFEO.

The main gap in the ASBFEO's ongoing stakeholder consultation is in relation to small businesses and family enterprises themselves. In 2016, the ASBFEO held a consultation period to seek submissions from small businesses and family enterprises (and their representative bodies) to inform its 2017 Advocacy Agenda. However, it does not have any ongoing forum through which to consult them about its advocacy work. Given that small businesses and family enterprises are disparate and often time-poor, it may be more effective to establish an ongoing forum that consists primarily of representative bodies with scope for individual small businesses and family enterprises to also participate. Potential approaches to address this are discussed further in Section 4.

2.1.5. There are some impediments to the ASBFEO undertaking its advocacy function

The review identified some impediments to the ASBFEO undertaking its advocacy function. These included:

- a lack of more formal mechanisms to provide input into policies and legislation;
- confusion among stakeholders about whether the ASBFEO advocates on behalf of all family enterprises or only those that are also small businesses; and
- risk to continuity in the longer term arising from the importance of the selection of the office-holder and her relationships with individuals in other organisations.

These issues are discussed in turn below.

The ASBFEO's input to policy and legislation could be enhanced

While the ASBFEO has developed collaborative relationships with Commonwealth agencies, its ability to provide input into policy and legislation to determine their potential effects on small businesses and family enterprises, and identify improvements, could be enhanced by having more formal mechanisms.

Several stakeholders suggested that developing such mechanisms would be beneficial. Given the challenges for government in eliciting input from small businesses, harnessing the knowledge that the ASBFEO can provide from engaging with them at the 'frontline' could enhance policy development from a small business perspective. This is particularly important for agencies that do not have a direct role in small business assistance or policy but may affect small businesses indirectly, because these agencies are likely to consult the ASBFEO less frequently and have a more limited understanding of issues affecting small businesses.

Potential mechanisms for the ASBFEO to provide input into policy and legislation are discussed in Section 4.

There is confusion among a range of stakeholders about whether the ASBFEO advocates on behalf of all family enterprises or only those that are also small businesses

While it is clearly defined under the Act that the ASBFEO only advocates for family enterprises which are also small businesses, there was confusion among stakeholders about this. This included stakeholders that have frequent and direct contact with family enterprises, who believed that the ASBFEO had a role to advocate on behalf of all family enterprises irrespective of their size or scale.

Several stakeholders noted that the ASBFEO must be careful to manage stakeholders' expectations about the advocacy work it undertakes. That is, the ASBFEO must not generate false expectations that it can advocate for every business issue. Clarifying the ASBFEO's role for advocating for family enterprises which are small businesses will help to manage these expectations.

Two stakeholders suggested the inclusion of family enterprises in the ASBFEO's title was tokenistic and unnecessary. A further stakeholder considered it important to retain the reference to family enterprises as it sends an important signal about their importance.

The profile of the office-holder and the relationships developed with individuals in other organisations suggests there is some risk to continuity

Numerous stakeholders who work closely with the ASBFEO acknowledged it was the strength of their relationship with the office-holder herself and individuals in her office that drove their successful collaboration, as opposed to any formal mechanisms. This means that the effectiveness of the ASBFEO in undertaking its advocacy function may be impacted when the office-holder and individuals in the ASBFEO and other organisations move on.

Similarly, several stakeholders indicated the personality and background of the office-holder will inevitably influence the advocacy issues the ASBFEO pursues. While this is not necessarily negative, it suggests the focus of the ASBFEO's advocacy work may change with the office-holder.

This highlights the importance of the selection of the office-holder to the ongoing effectiveness of the ASBFEO in undertaking its advocacy function, recognising that the key attributes that are sought in the office-holder may change depending on the current environment and needs.

2.2. THE ASBFEO HAS EFFECTIVELY UNDERTAKEN ITS ASSISTANCE FUNCTION

The ASBFEO's role as a contact point within the dispute resolution system has proven to be useful. The ASBFEO refers the majority of requests for assistance that it receives to other agencies, however it has responded effectively to those requests for assistance falling within its jurisdiction. The ASBFEO works effectively with government agencies, in particular the state small business commissioners, to undertake its assistance function. While there is no formal tracking mechanism, it would appear that small businesses that are referred elsewhere are able to access the assistance they need.

2.2.1. The ASBFEO provides small businesses and family enterprises with a useful source of, and point of contact for, assistance

There was general consensus among stakeholders that the ASBFEO has provided a useful point of contact for small businesses and family enterprises seeking assistance. By effectively referring small businesses and family enterprises to other agencies, the ASBFEO helps them to navigate an already complex system, without creating additional churn. This is due in large part to the quality of its first line of response, which includes specialist call centre staff and an online dispute resolution tool.

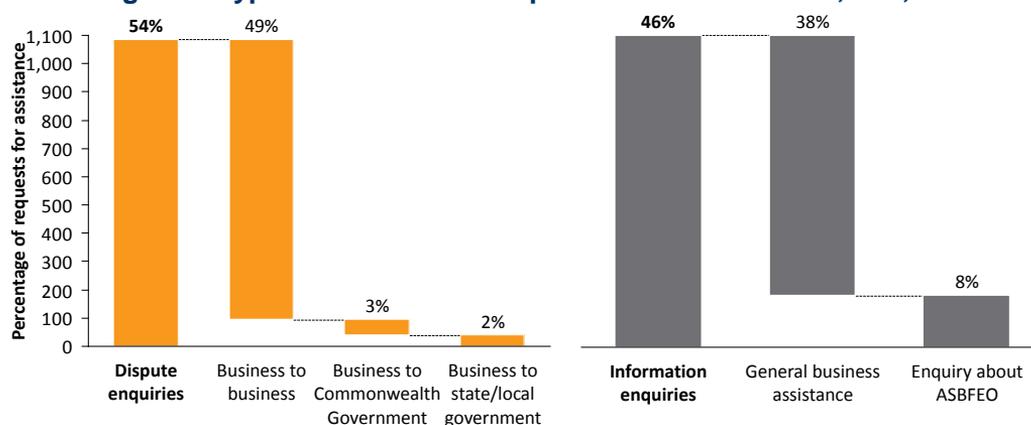
However, greater clarity around where the ASBFEO should refer requests for assistance in states that do not have a small business commissioner would be beneficial.

In 2016 the ASBFEO received over 2,000 requests for assistance, primarily from small business owners

As shown in Figure 4 below, slightly more than half of the requests for assistance the ASBFEO received were in relation to disputes. Most of these related to business to business disputes. Common dispute topics included payment, contractual, franchise, retail lease and fair trading issues.

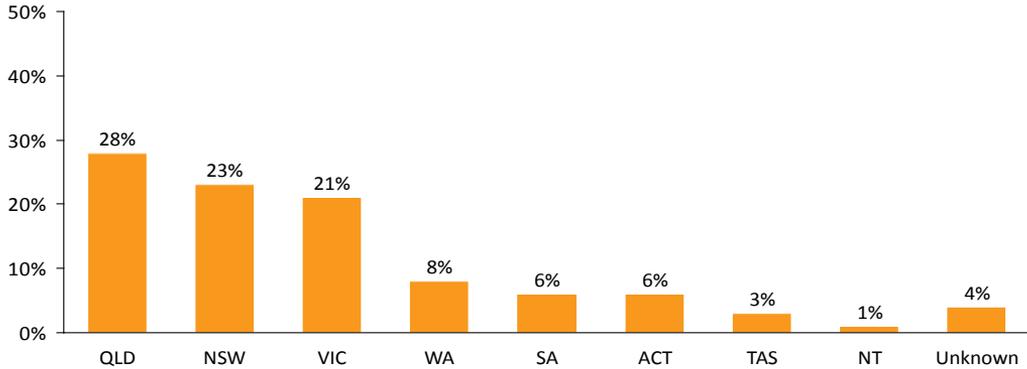
The remaining assistance requests were information enquiries. Most of these were from small businesses and family enterprises seeking general business assistance in relation to topics such as business registration, grant assistance, contracts, taxation or business planning. The remainder were about the role of the ASBFEO itself.

Figure 4: types of assistance requests received in 2016, n=2,021



ASBFEO, Quarterly Report, Quarter 4 - 2016

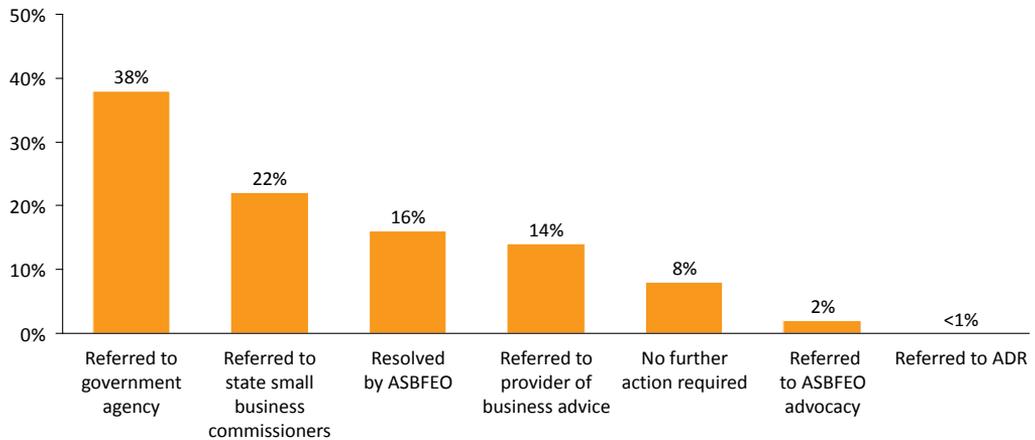
The largest proportion (28 per cent) of requests for assistance came from QLD (as shown in Figure 5). The next largest proportion of contacts originated in NSW (23 per cent) followed by VIC (21 per cent). TAS and the NT contributed the fewest requests for assistance.

Figure 5: ASBFEO assistance requests by state/territory, 2016, n=2,021

ASBFEO, Quarterly Report, Quarter 4 - 2016

The majority of requests for assistance were referred to other agencies

As highlighted in Figure 6, 60 per cent of all dispute and enquiry contacts were referred to Commonwealth or state government agencies, including state small business commissioners and relevant state based dispute resolution mechanisms. Where appropriate, requests were also referred to providers of business advice or the ASBFEO's advocacy branch. Additionally, the ASBFEO referred a very small proportion (less than one per cent) of requests for assistance to ADR.

Figure 6: ASBFEO assistance requests by resolution method, 2016, n=2,021³

ASBFEO, Quarterly Report, Quarter 4 - 2016

³ Six assistance requests were referred to ADR. The proportion of assistance requests referred to ADR is shown as “less than one per cent” in Figure 6 because it rounded to zero.

Typically, the nature of the cases referred to other agencies was as follows:

- Cases referred to small business commissioners and appropriate state government agencies were predominantly business to business disputes, although several business to local/state government disputes were referred too.
- Cases referred to local governments were all business to business disputes.
- All except one of the cases referred to ADR were business to business disputes. The remaining referral was a business to Commonwealth Government dispute.
- Cases referred to the Commonwealth Government included a mixture of enquiries, business to business disputes and business to Commonwealth Government disputes. However, apart from the one referral to ADR, all business to Commonwealth Government disputes the ASBFEO referred to another agency, were referred to the Commonwealth Government to resolve.

Most stakeholders agreed these referrals are made in a timely and appropriate manner, with the majority of small businesses referred to the correct agency in the first instance.

Nevertheless, clarity around the ASBFEO's referrals to state agencies would be beneficial, particularly for states that do not have a small business commissioner. For NSW, WA, VIC and SA, the small business commissioners provide an obvious point of referral. However, it was identified that there was a lack of clarity about where small businesses in states without small business commissioners are referred. In some instances, it is clear where a referral can be made, whereas in others, requests for a referral can be redirected to several different sources and even referred back to the ASBFEO.

Considering that the largest proportion of requests for assistance originates in QLD, a state without a small business commissioner, greater clarity around the ASBFEO's referrals to state agencies should be provided to ensure that small businesses receive appropriate assistance in a timely manner. This will also ensure that the ASBFEO is applying its resources in the most effective and efficient way.

A smaller proportion of requests for assistance are resolved by the ASBFEO itself

As shown in Figure 6, in 2016 the ASBFEO resolved 16 per cent of assistance requests itself and determined that a further eight per cent did not require further action. The majority of these requests were for general business information, on topics such as business registration and start-up. However, the ASBFEO provided assistance in some cases, most of which were business to business disputes.

The ASBFEO does not have the power to directly provide, or compel parties to attend, ADR. However, there are a range of other measures the ASBFEO can take to assist small businesses and family enterprises involved in a dispute. Commonly, the ASBFEO will provide assistance by first investigating the dispute and facilitating communication between the parties. In many instances, this involves the ASBFEO acting on behalf of the small business and contacting the other party in the dispute to try and resolve it. For example, if a small business requests assistance with a dispute over late payments, the ASBFEO could assist the small business by contacting the managing director of the larger business about the claim. Generally, this level of involvement appears to be enough to resolve the dispute. Failing this however, the ASBFEO may recommend the parties attend ADR. To date, six requests for assistance have progressed to ADR in this way.

The effectiveness of the ASBFEO's assistance function is supported by the quality of its first line of response to small business and family enterprise enquiries

The ASBFEO's contact centre is the first point of resolution for small business and family enterprise enquiries. At this stage small businesses and family enterprises are either:

- provided the information they require;
- transferred to the ASBFEO office for assistance; or
- referred to another agency for assistance.

Due to the complex nature of small business disputes and enquiries, determining the appropriate response can be a difficult task. Accordingly, the ASBFEO's contact centre employs specialised staff with extensive small business experience. This ensures that small businesses and family enterprises are provided appropriate assistance in the first instance.

The ASBFEO's website and online dispute resolution tool also provide useful information directing small businesses and family enterprises to appropriate sources of assistance. Between 11 March 2016 and 11 March 2017, the ASBFEO's website received approximately 174,000 views by over 34,000 users.⁴ After the homepage, the 'dispute support' and 'resolving disputes' pages received the most views, indicating that small businesses are actively using the ASBFEO for assistance with disputes. The majority of stakeholders believe the ASBFEO's website and dispute resolution tools are useful resources for directing small businesses to appropriate assistance in a quick and simple manner.

⁴ ASBFEO, website analytics.

2.2.2. The ASBFEO has generally worked effectively with other government agencies in relation to its assistance function

The ASBFEO primarily works with its state counterparts to handle requests for assistance. Each small business commissioner noted that the referral process between them and the ASBFEO works well and that open communication limits duplication between their roles. It appears that the effectiveness of their relationship is facilitated both by informal governance arrangements and by the personalities of the individuals involved.

Many of the matters the ASBFEO and small business commissioners are asked to resolve are complex or fall across multiple jurisdictions. It is not always clear which agency is the best placed to assist the small business or family enterprise in question. The small business commissioners indicated that a willingness to ensure the small business receives the best assistance, as well as informal governance arrangements between them and the ASBFEO, ensure that such cases are handled by the most appropriate agency. Such arrangements include transferring all relevant information to the other agency and seeking the consent of the parties involved before doing so.

2.2.3. There are some impediments to the ASBFEO effectively undertaking its assistance function

Impediments to the ASBFEO effectively undertaking its assistance function include:

- its limited visibility of requests for assistance it transfers to other agencies; and
- low levels of awareness among small businesses and family enterprises about it and its role.

These impediments are discussed in turn below.

The ASBFEO has limited visibility of the requests for assistance it transfers to other agencies

The ASBFEO's call centre maintains a detailed record of the agencies to which it refers small businesses. However, there is no feedback mechanism for the ASBFEO to know whether a business contacts the agency to which it is referred, receives assistance from this agency, or is referred on to a third agency.

Stakeholders highlighted two reasons that a feedback mechanism has not been implemented. First, there is a belief that once an assistance request has been passed on to another agency, it becomes that agency's responsibility, and it is not necessary for any previous agency to learn the outcome. Secondly, there is a need for agencies to maintain the privacy of the parties involved in the dispute, by not sharing information about the outcome of a dispute with another agency.

Nevertheless, it would be useful for the ASBFEO to access data that would enable it to better understand how it is fulfilling its concierge role and to identify areas for improvement. Agencies may vary in the data they are able to provide – some may not be able to provide it at all – but the ASBFEO could work with the agencies to which it refers large numbers of requests for assistance to determine what is available.

There are still low levels of awareness of the ASBFEO among small businesses and family enterprises in particular, despite the ASBFEO's success in raising its profile

Several stakeholders have indicated that it is simply the nature of small businesses not to be aware of available assistance mechanisms until they are required. Accordingly, there will always be some small businesses that are unsure where to seek assistance from, regardless of the ASBFEO's efforts to raise its profile. However, establishing a forum to better engage with small businesses and family enterprises and their representatives, as discussed in Section 2.1.3, will assist with the dissemination of information and the raising of awareness of the ASBFEO.

2.3. THE ASBFEO HAS SUFFICIENT POWERS UNDER THE ACT

The ASBFEO has effectively exercised all of its powers under the Act. At this stage, it appears the ASBFEO has sufficient powers to conduct hearings and obtain documents. However, there is some evidence to suggest that the ASBFEO could improve its communication around the use of these powers. Additionally, it appears that the ASBFEO can appropriately share information with other government agencies.

2.3.1. The ASBFEO has exercised all of its powers under the Act

There is evidence to suggest the ASBFEO has exercised all of its powers under the Act. In undertaking its advocacy function, the ASBFEO has:

- conducted research and inquiries at its own initiative and as referred by the Minister;
- contributed to other organisations' inquiries into legislation, policies and practices;
- reviewed proposals in relation to legislation, policies and practices;

- identified concerns of small businesses and family enterprises arising out of legislation, policies and practices;
- provided advice to the Minister;
- promoted best practice in interactions with small businesses and family enterprises; and
- worked cooperatively with other Commonwealth and state/territory agencies to develop national strategies.

Additionally, when conducting inquiries, the ASBFEO has conducted hearings and obtained documents as per the Act.

In undertaking its assistance function, the ASBFEO has referred requests for assistance to other agencies, worked cooperatively with other agencies to provide assistance, and made recommendations about how disputes should be managed (including through ADR).

2.3.2. The ASBFEO has sufficient powers to conduct hearings and obtain documents

At this stage, it appears the ASBFEO has sufficient powers to conduct hearings and obtain documents. This is demonstrated by the ASBFEO's ability to do so when undertaking its inquiries to date. There is no evidence to suggest that the current powers have limited the ASBFEO's ability to conduct hearings. Accordingly, at this stage it is not considered necessary to expand these powers.

One stakeholder suggested that expanding these powers could actually detract from the effectiveness of the ASBFEO, by forcing it to operate in a legal and more adversarial framework. Indeed, given the strength of the ASBFEO's powers, one stakeholder suggested there should be an entity or process to receive complaints about the ASBFEO, in the event its powers are misused.

There is some evidence to suggest the ASBFEO could improve its communication about its use of its powers. One stakeholder suggested the ASBFEO could provide more information about why it requires particular documents or requires particular individuals to appear before hearings. Another stakeholder with experience attending hearings and providing documents on notice suggested that the ASBFEO could make these processes more consistent with those of other agencies. Both stakeholders made these comments based on their involvement with the ASBFEO's inquiry into small business lending practices. However, other stakeholders involved in this inquiry did not raise this issue. There was no suggestion the ASBFEO had operated outside of its powers under the Act.

2.3.3. The ASBFEO can appropriately share information with other government agencies

Most government stakeholders interviewed suggested that information flows freely between the ASBFEO and their agency as a result of a shared intent to help small businesses in whatever way possible. The strong relationships the ASBFEO has developed with other agencies (as discussed in Section 2.1 and 2.2) underpin this flow of information. One agency reported it is required to charge the ASBFEO for certain types of data under its legislation, but the ASBFEO did not identify this as an issue and there is no evidence it prevented them from accessing the data they required.

There was some evidence of potential for greater sharing of data and research about small businesses and family enterprises between the ASBFEO and other agencies. Most agencies reported they had shared data or research with the ASBFEO or were in discussions to do so, but this has generally happened on an ad hoc basis as the ASBFEO has requested it. Some agencies reported they had additional data or research they would be willing to share with the ASBFEO that would likely be useful. This suggests it may be beneficial for the ASBFEO to work more systematically with other agencies to determine how they can share data and research about small businesses and family enterprises. This is discussed in further detail in Section 4.

2.3.4. The ASBFEO's reporting requirements to the Minister have been effective

The ASBFEO's reporting requirements to the Minister have been effective. The ASBFEO is able to report relevant information about its advocacy and assistance functions in a manner that is timely and which does not place an unreasonable burden on the ASBFEO.

In addition to its inquiry reports and advice it provides to the Minister for Small Business (as described in Figure 2), the ASBFEO is legislatively required to provide a report to the Minister each quarter that (a) outlines any inquiries or research it has conducted that quarter and (b) identifies any legislation, policies or practices that have had, or are likely to have, an adverse effect on small businesses or family enterprises.

Thus far the ASBFEO has provided four quarterly reports to the Minister for Small Business. These reports have included detailed information about:

- the ASBFEO's advocacy activities, including inquiries and research it has conducted and submissions it has made in relation to legislation, policies and practices that affect small businesses; and

- the ASBFEO's assistance activities, including data on the types of enquiries it has received and the business owners who submitted them, as well as examples of the assistance it has provided.

The ASBFEO's quarterly reports have also included data about its outreach via its website, social media and traditional media (for example, media releases and opinion pieces). This information has constituted a comprehensive overview.

Some stakeholders suggested that it may be useful for the ASBFEO to make public more of the information it provides to the Minister. These stakeholders argued this would provide greater transparency and enable the ASBFEO to better communicate its role and benefits to the public.

2.4. THE ASBFEO IS SUFFICIENTLY INDEPENDENT AND IMPARTIAL IN UNDERTAKING ITS CURRENT FUNCTIONS

At present, the ASBFEO's structure and the separation of its functions allow for sufficient independence and impartiality, in large part because its assistance function is primarily a concierge service. There is no evidence of damage to the ASBFEO's image of independence and impartiality as a result of its use of the title of ombudsman. However, its title has caused some confusion for small businesses, family enterprises and other stakeholders.

2.4.1. The ASBFEO's structure and the separation of its current advocacy and assistance functions allow for sufficient independence and impartiality

At the time the ASBFEO was established, several stakeholders raised concerns about its ability to combine an advocacy function with an assistance function. Given that part of the ASBFEO's role is to advocate for small businesses and family enterprises, there were doubts that it could independently and impartially assist small businesses and family enterprises that were in disputes with other entities.

Despite these initial concerns, most stakeholders agree that the ASBFEO has maintained sufficient independence and impartiality in undertaking its assistance function. This is because it refers all requests for assistance relating to disputes to appropriate Commonwealth or state/territory agencies or to ADR providers – there are no circumstances in which it has to act as a mediator or adjudicator between the small businesses and family enterprises for which it advocates, and other parties. There is no risk to the ASBFEO's independence or impartiality in other requests for assistance it resolves, as these are all requests for information or relate to matters that the ASBFEO deems not to require further action.

There is no evidence of a gap in the ASBFEO's assistance function at present. One stakeholder suggested the ASBFEO's assistance function should expand to include dispute resolution services under the Franchising Code of Conduct, the Horticulture Code of Conduct and the Oil Code of Conduct, which are mandatory industry codes of conduct prescribed under the *Competition and Consumer Act 2010*. A mediation adviser provides dispute resolution services under the codes, informing parties of the dispute resolution procedures available to them and, where the parties request mediation, nominating a specific mediator. However, expanding the assistance function of the ASBFEO is considered infeasible due to differences in:

- **the roles of the ASBFEO and the mediation adviser in mediation** – The Act provides for the ASBFEO to recommend a group of dispute resolution providers and the parties to the dispute must choose the provider. In contrast, the mediation adviser must nominate a specific provider which the parties to a dispute must use.
- **the types of parties to which the ASBFEO and the mediation adviser provide dispute resolution services** – The Act limits the ASBFEO to assisting small businesses, whereas the mediation adviser can assist all businesses, small or large, as well as consumers.

This highlights that combining the disputes resolution services of the ASBFEO and the mediation adviser would require both legislative change and a fundamental change in the ASBFEO's role.

If the ASBFEO's assistance function was strengthened in future to include in-house mediation or adjudication for example, many stakeholders would no longer consider the current arrangements to separate it from the advocacy function to be adequate. Given this risk, the ASBFEO's assistance function should only expand in response to a clearly identified gap.

2.4.2. The use of the title of ombudsman has caused some confusion for small businesses, family enterprises and other stakeholders

There is no evidence of damage to the ASBFEO's image of independence and impartiality as a result of its use of the title of ombudsman. However, its title has caused some confusion for small businesses, family enterprises and other stakeholders. This is due to:

- **Inconsistency between the ASBFEO's title and those of the state small business commissioners** – Small businesses generally have a clear understanding of the role of state small business commissioners in providing assistance. This is due to both the length of time their roles have existed and their active efforts to promote awareness of their services within the small business community. Small businesses therefore associate the title of commissioner more strongly with assistance than the title of ombudsman.
- **Inconsistency between the ASBFEO's functions and those of a traditional ombudsman** – The Australian and New Zealand Ombudsman Association defines the primary role of an ombudsman as 'independent resolution, redress and prevention of disputes.'⁵ Given the ASBFEO's assistance role is restricted to a concierge service, and that it also performs an advocacy role, numerous stakeholders have expressed a concern that the position, by definition, is not an ombudsman. Some stakeholders were concerned that applying the title of ombudsman to a role that does not fit the traditional definition may cause confusion about the roles of other ombudsmen.

These issues have led to a lack of clarity about the role of the ASBFEO and the types of assistance it can provide. Several stakeholders indicated that this lack of clarity may create false expectations among small businesses and family enterprises.

Familiarity with the ASBFEO will naturally increase as more small businesses interact with it and the role gains more prominence over time. The ASBFEO should continue to actively raise awareness of its functions and provide greater clarity around its role.

5 ANZOA, www.anzoa.com.au/about-ombudsmen, accessed 24 April 2017.

3. EFFICIENCY OF THE ASBFEO

The ASBFEO has undertaken its functions efficiently from both a government perspective and a small business and family enterprise perspective. From a government perspective, the ASBFEO has delivered value-for-money, particularly through its advocacy function, without duplicating the work of other agencies or exacerbating the issue of jurisdictional shopping. From a small business and family enterprise perspective, the ASBFEO has provided assistance in a manner that is timely and administratively straightforward. Funding for the ASBFEO to undertake these functions has been sufficient. However, there is some evidence that additional flexibility of resourcing for the ASBFEO could be beneficial.

3.1. THE ASBFEO HAS UNDERTAKEN ITS FUNCTIONS EFFICIENTLY FROM A GOVERNMENT PERSPECTIVE

The ASBFEO's advocacy function has provided considerable value-for-money, both by filling a gap in advocacy for small businesses and family enterprises at the Commonwealth level, and by taking carriage of national issues that would otherwise have been pursued independently or not at all.

Its advocacy function appears to have provided more value-for-money than its assistance function, as the assistance function operates in a more crowded space. Nonetheless, it has supported small businesses and family enterprises without creating additional duplication or jurisdictional shopping.

Stakeholders also agreed that the ASBFEO has delivered a large volume of work in a short time and with a modest budget.

3.1.1. The ASBFEO's advocacy function has filled a gap at the Commonwealth level and allowed carriage of national issues

The ASBFEO's advocacy function has delivered value-for-money in two ways:

- The ASBFEO has filled a gap in advocacy for small businesses and family enterprises at the Commonwealth level.
- The ASBFEO has taken carriage of national issues that state small business commissioners would otherwise have pursued independently or not at all.

These points are discussed in turn below.

The ASBFEO's advocacy function fills a gap at the Commonwealth level

The ASBFEO delivers substantial value by representing the views of small businesses to government in a way that is cognizant of the practicalities of policy and program development and implementation. The ASBFEO's position as an intermediary and conduit of appropriate concerns to policymakers is particularly valuable as policymakers traditionally struggle to consult small businesses and family enterprises. Harnessing the knowledge that the ASBFEO can provide from engaging directly with small businesses and family enterprises and their representatives provides the opportunity to enhance policy and program development. Stakeholders were also pleased with the volume of advocacy work the ASBFEO has undertaken in a relatively short period of time and with a relatively modest budget.

The ASBFEO has been able to take carriage of national issues

The ASBFEO's collaboration with the state small business commissioners, both formally through the small business commissioners' meetings and joint inquiries, and informally through regular communication, has enabled important national issues to be identified and resolved in a collective way. Taking carriage of nationally important advocacy issues that the states otherwise may have investigated independently reduces duplication and results in more definitive outcomes.

3.1.2. The ASBFEO has assisted small businesses and family enterprises without increasing duplication or jurisdictional shopping

The plethora of agencies responsible for assisting small businesses with dispute resolution creates risks of duplication and jurisdictional shopping. The ASBFEO's assistance function does not appear to have exacerbated these issues. However, stakeholders generally agreed the ASBFEO has provided more value-for-money through its advocacy function than its assistance function.

The ASBFEO's assistance function has not duplicated the work of other agencies

Many agencies are responsible for assisting small businesses with dispute resolution, and the jurisdictions within which each of them operates is complex. This creates a risk of duplication between their work. For example, the ASBFEO could provide assistance to a small business in a circumstance where an existing agency would have been well-placed to do so.

Despite stakeholders' initial concerns there is little evidence to suggest the ASBFEO's assistance function has duplicated the work of other agencies. This is because the ASBFEO's assistance function has primarily remained a concierge role. The ASBFEO therefore delivers value by being a centralised point of contact for small businesses and family enterprises.

The ASBFEO's assistance function has not discernibly increased jurisdictional shopping

In addition to the risk of duplication, increasing the number of agencies responsible for assisting small businesses creates an opportunity for jurisdictional shopping. This occurs when business owners pursue another dispute resolution avenue, despite their case having received an outcome in one jurisdiction. It results in duplication of effort and resources by another agency and creates unrealistic expectations for businesses hoping to achieve a different outcome.

There is minimal evidence to suggest the ASBFEO has contributed to jurisdictional shopping. One stakeholder provided an example of a situation in which the ASBFEO investigated a case even though it had already arrived at an outcome in a different dispute resolution process. However, in general, the ASBFEO appears to have provided assistance to small businesses and family enterprises with disputes that could not be better handled by other agencies.

The ASBFEO's advocacy function provides more value-for-money than its assistance function

Stakeholders generally agreed the ASBFEO has provided more value-for-money through its advocacy function than its assistance function. This view was particularly prevalent among government agencies that provide dispute resolution services and peak bodies. Most agreed that the ASBFEO's advocacy function provides considerable value-for-money because it fills a gap, whereas its assistance function, while useful, exists within a crowded space.

3.2. THE ASBFEO HAS UNDERTAKEN ITS FUNCTIONS EFFICIENTLY FROM A SMALL BUSINESS AND FAMILY ENTERPRISE PERSPECTIVE

The ASBFEO has performed its functions in a manner that is timely and administratively straightforward for small businesses and family enterprises. Two factors have strongly contributed to this:

- **The ASBFEO's approach to its information line** – The ASBFEO aims to resolve as many matters as possible at the time business owners first contact the information line. The use of specialised staff members for the information line helps to ensure that business owners receive appropriate information, or are directed to the right agency, in the first instance. To facilitate this, the ASBFEO's staff members review the weekly call logs that the Department of Industry, Innovation and Science provides and give feedback.
- **The ASBFEO's communication and information sharing with state small business commissioners** – Arrangements for communication and information sharing between the ASBFEO and the state small business commissioners have helped to minimise duplication of effort for business owners. For example, when the ASBFEO transfers a case to a state small business commissioner, it will pass on as much relevant information as possible to minimise the need for the business owners to provide it twice.

This has been vital to ensure that small businesses and family enterprises have received the assistance they have required. Typically, the more times a business owner is referred to another agency for advice, the less likely they are to continue to seek assistance.

3.3. THE ASBFEO'S FUNDING HAS BEEN SUFFICIENT BUT THE FLEXIBILITY OF ITS RESOURCING COULD BE ENHANCED

The ASBFEO's funding has been sufficient for it to undertake its current function effectively. There is no clear gap that additional funding would enable it to fill. However, there is some evidence the flexibility of the ASBFEO's hiring process could be enhanced.

The ASBFEO's funding is sufficient for it to undertake its current functions

Although relatively modest, the ASBFEO's funding has been sufficient for it to undertake its functions. It has enabled the ASBFEO to assemble a small team of knowledgeable staff members, with whom many stakeholders were impressed, and to respond quickly and effectively to emerging advocacy issues and requests for assistance. The ASBFEO also has the capacity to draw on additional staff and capacity within its current funding envelope (for example, for inquiries).

While some stakeholders suggested the ASBFEO would benefit from additional resources, most agreed its current resources were sufficient. None were able to identify a clear gap that additional resources would help the ASBFEO to fill.

If the ASBFEO's functions were expanded, its funding would need to be re-evaluated.

There is some evidence the flexibility of the ASBFEO's hiring process could be enhanced

The ASBFEO complies with Treasury's administrative procedures for hiring. A senior Treasury staff member signs off on each hire. Given that all ASBFEO staff members under the Ombudsman herself are technically Treasury staff members and fall under Treasury's Average Staffing Level (ASL) cap, this is understandable.

The ASBFEO suggested that a faster and more flexible hiring process would enable it to better respond to rapid surge capacity needs, especially for short or time-constrained inquiries. Treasury reported that changes have been made to facilitate this, and it would be useful to monitor these arrangements to ensure that they are effective, particularly for contractor hiring.

4. RECOMMENDATIONS

It is evident from this review that the ASBFEO has undertaken its functions effectively and efficiently and achieved positive results for small businesses and family enterprises. As the ASBFEO continues its work there are adjustments that could be made to further enhance its effectiveness and efficiency. These relate to its ways of working, particularly in relation to engagement with small businesses and family enterprises and collaboration with other agencies, rather than its legislated functions or powers. This section draws together the findings in this report while also providing recommendations for improvements.

4.1. THE ASBFEO'S CURRENT FUNCTIONS ARE BROADLY APPROPRIATE

While the ASBFEO has only been in place for just over a year, a number of insights relating to its effectiveness and efficiency are evident.

It is clear that the ASBFEO has undertaken its advocacy function highly effectively and, in doing so, has filled a gap at the Commonwealth level. This has also had flow-on benefits to other agencies and jurisdictions, with the ASBFEO providing focus and momentum for advocacy around issues of national significance that other agencies might previously have pursued in isolation or not at all. In this way the ASBFEO's advocacy function has created significant value-for-money.

The ASBFEO has undertaken its assistance function in a similarly effective way. While it may not have resulted in as much activity as its advocacy function in the views of some stakeholders, it has helped small businesses and family enterprises to navigate a complex dispute resolution system. It has done this without duplicating the work of other agencies or exacerbating issues of jurisdictional shopping. In this regard it represents value-for-money.

The current formulation of the ASBFEO's advocacy and assistance functions is appropriate to ensure its independence and impartiality. There is no evidence to suggest that the assistance function should be broadened at this point in time. While this should continue to be monitored, any expansion in the assistance function should be carefully considered in light of potential conflicts of interest with its advocacy function and occur only in response to a clearly identified gap.

Going forward, the ASBFEO should build on these elements through improvements in its ways of working. Specifically, the ASBFEO could increase its engagement with small businesses and family enterprises and its collaboration and information sharing with other agencies. Section 4.2 further explores these adjustments.

RECOMMENDATION

Any expansion in the ASBFEO's assistance function should be carefully considered in light of its important advocacy role and occur only in response to a clearly identified gap.

4.2. THE ASBFEO COULD IMPROVE ITS EFFECTIVENESS AND EFFICIENCY THROUGH CHANGES TO ITS WAYS OF WORKING

The review has identified two key areas where the ASBFEO could consider potential changes:

1. Ongoing engagement with small businesses and family enterprises; and
2. Collaboration and information sharing with other agencies.

The potential changes identified within each area are discussed in Sections 4.2.1 through 4.2.2 below.

4.2.1. Ongoing engagement with small businesses and family enterprises

There are opportunities for the ASBFEO to better engage with small businesses and family enterprises and elicit their views on their priorities and concerns. Specifically, it is recommended that the ASBFEO:

- continues its efforts to raise its profile among small businesses and family enterprises; and
- increases its engagement with small businesses and family enterprises by establishing forums through which to engage them.

These recommendations are discussed in turn below.

The ASBFEO should continue its efforts to raise its profile among small businesses and family enterprises

The ASBFEO should continue its efforts to raise its profile among small businesses and family enterprises. While there will always be small businesses that are unaware of the assistance available to them until they need it, the ASBFEO should continue its efforts to raise awareness of its role and the support it can provide, which stakeholders broadly agreed have been effective (as discussed in Section 2.1). In doing so it should particularly emphasise its role in relation to family enterprises and, specifically, the types of family enterprises for which it can advocate and to which it can provide assistance.

RECOMMENDATION

The ASBFEO should continue its efforts to raise its profile among small businesses and family enterprises, with a focus on clarifying its role in relation to family enterprises.

The ASBFEO should increase its engagement with small businesses, family enterprises and their representatives by establishing forums through which to engage them

To increase its direct consultation with small businesses, family enterprises and their representatives, the ASBFEO could establish one or more forums through which to engage with them on an ongoing basis. These could take various forms, either physical or virtual. Potential approaches could include an advisory body or a regular survey distributed through the ASBFEO's website and newsletters. Given that small businesses are often time-poor and resource-constrained (as discussed in Section 2), it is likely that an advisory body consisting primarily of peak bodies and other representative organisations would be most feasible.

RECOMMENDATION

The ASBFEO should establish one or more forums through which to directly engage with small businesses, family enterprises and their representatives on an ongoing basis.

4.2.2. Collaboration and information sharing with other agencies

The ASBFEO could enhance its impact through improved collaboration and information sharing with other agencies. Specifically, it is recommended that the ASBFEO:

- bolsters its input into policy and legislation that affects small businesses and family enterprises;
- works with other agencies to share data and research about small businesses and family enterprises;
- works with other agencies to access data that would enable it to assess how effectively it transfers requests for assistance to them;
- works with states that do not have small business commissioners to establish clarity around its referrals; and
- expands the attendance of its meetings with the state small business commissioners.

These recommendations are discussed in turn below.

The ASBFEO should bolster its input into policy and legislation that affects small businesses and family enterprises

The ASBFEO's ability to influence legislation and policies affecting small businesses and family enterprises could be enhanced through more formal mechanisms. Potential mechanisms could include:

- **Offering training and secondments to government agencies** – The ASBFEO could offer training and secondments to government agencies to build their understanding of the perspectives of small businesses. It would also be beneficial for the ASBFEO to offer such training and secondments to the Office of Best Practice Regulation (OBPR). Given the OBPR offers training in best practice regulation to other agencies, and assesses whether their regulation impact statements (RISs) are compliant with the Australian Government Guide to Regulation and related guides, this could help to build capability across the Australian Public Service. However, training and secondments could be beneficial for any agency, or part of an agency, that interacts with or impacts on small businesses.

- **Consulting with government agencies about regulatory impacts** – The existing RIS process already involves consideration of regulatory impacts on small businesses. *The Australian Government Guide to Regulation* and related guides requires agencies to consider regulatory impacts on small businesses. The RIS Preliminary Assessment Forms that agencies submit to the OBPR include two questions relating to small businesses:
 - “Have you considered whether small businesses should have different obligations from larger businesses in relation to the operation of the possible regulation?”
 - “How has this been incorporated?”

As part of the assessment process of the Preliminary Assessment forms, where an agency identifies that their proposal may impact on small business, the agency should be encouraged to contact the ASBFEO. Guidance material should also refer to this. While the ASBFEO has no direct responsibility for preparing RISs within the current regulatory framework, working with other agencies in the preparation of RISs will help them consider small business impacts and perspectives. As part of the OBPR review process, there will be an opportunity to check that the ASBFEO has been contacted and separately the ASBFEO will be able to provide feedback to the OBPR on their involvement.

- **Evaluating policies that impact small businesses** – The ASBFEO could work with agencies to undertake evaluations of policies that have a significant impact on small businesses and make recommendations for their improvement. This would add value in the policy-making process as the Commonwealth Government’s regulatory analysis framework primarily focuses on estimating the impacts of policies before they are implemented. It focuses less on evaluating policies during and following implementation to assess their effectiveness and efficiency. Agencies could also consult with the ASBFEO in evaluating programs designed to assist small businesses.

These mechanisms would bolster the ASBFEO’s input into legislation and policies and would likely be feasible within the ASBFEO’s current resource constraints. In implementing these mechanisms, the ASBFEO would need to balance its resources to maximise its influence on legislation, policies and practices that affect small businesses and family enterprises. The ASBFEO’s success in balancing its resources to maximise its influence to date, particularly within its advocacy function, suggests it is well-placed to do this.

RECOMMENDATION

The ASBFEO should bolster its input into policy and legislation that affects small businesses and family enterprises, including through training, secondments, consultation and evaluation.

The ASBFEO should collaborate with other agencies to share data and research about small businesses and family enterprises

The ASBFEO could work with other agencies to determine how they can share data and research about small businesses and family enterprises. Facilitating sharing of data in this way would enhance advocacy and policy development and avoid duplication of effort, and is consistent with the Productivity Commission's recent report into data availability and use. It would also be a continuation of the ASBFEO's work to produce a research paper providing statistical information about small businesses.

RECOMMENDATION

The ASBFEO should work with other agencies to determine how they can share data and research about small businesses and family enterprises.

The ASBFEO should work with other agencies to access data that would enable it to assess how effectively it transfers requests for assistance to them

It would be useful for the ASBFEO to access data on whether an agency to which it transfers a request for assistance resolves it or refers it on to a third agency. This would help the ASBFEO and other stakeholders to better understand how effectively it is fulfilling its concierge role and identify areas for improvement. Given concerns about privacy, the ASBFEO could work with agencies to determine what aggregate data may be available within the privacy constraints of their legislations and jurisdictions, noting the movements government is making to consider making data more freely available.

RECOMMENDATION

The ASBFEO should work with other agencies to access data that would enable it to assess how effectively it transfers requests for assistance to them, most likely focusing on the proportion of requests they resolve themselves and the proportion they refer on to a third agency.

The ASBFEO should work with states that do not have small business commissioners to establish clarity around its referrals

For many of the requests for assistance the ASBFEO receives from small businesses in NSW, VIC, SA and WA, the small business commissioners in those states provide a clear referral point. For requests for assistance the ASBFEO receives from small businesses in states that do not have small business commissioners – namely QLD and TAS – there is less clarity. It is often more difficult for the ASBFEO to determine the appropriate agency to refer them to. This is less of an issue for TAS because the ASBFEO receives few requests from small businesses in that jurisdiction.

To address this, the ASBFEO could work with relevant agencies in these states to establish a clear protocol for each type of request it receives. In QLD the relevant agencies would likely include the Office of Fair Trading and the Department of Tourism, Major Events, Small Business and the Commonwealth Games. In TAS this would likely include Consumer Affairs and Fair Trading and Business Tasmania.

This approach could improve the ease and timeliness with which the ASBFEO responds to request for assistance from states without small business commissioners.

RECOMMENDATION

The ASBFEO should work with states that do not have small business commissioners to establish clear protocols for its referrals.

The attendees of some meetings of the ASBFEO and the small business commissioners should be expanded

The ASBFEO could expand some of its meetings with small business commissioners to include other agencies that advocate for, or provide dispute resolution services to, small businesses. This would provide opportunities for the ASBFEO, the small business commissioners and these other agencies to discuss areas of common interest or potential duplication.

RECOMMENDATION

The attendees of some meetings of the ASBFEO and the state small business commissioners should be expanded to facilitate a broader discussion of common issues and areas of potential duplication.

APPENDIX A: TERMS OF REFERENCE

A.1 OBJECTIVE OF THE REVIEW

The review is to examine how efficiently and effectively the Australian Small Business and Family Enterprise Ombudsman (the Ombudsman) has undertaken the assistance and advocacy functions set out under the *Australian Small Business and Family Enterprise Ombudsman Act 2015* (the Act). The review is to assess delivery and to make recommendations to improve the efficiency and effectiveness of the Ombudsman's functions. The review should consider the following.

A.1.1 Advocacy function

- the type of advocacy work the Ombudsman has undertaken in carrying out the advocacy function and how effective the Ombudsman has been as an advocate for small businesses and family enterprises.

A.1.2 Assistance function

- the type of work the Ombudsman has undertaken in carrying out the assistance function and how effective the Ombudsman has been in providing assistance to small businesses and family enterprises including the following matters required under section 95 of the ACT:
 - the kinds of assistance requested from small businesses and family enterprises
 - whether the assistance given was convenient and effective for the operators of small businesses and family enterprises who requested assistance
 - whether amendment of the Ombudsman Act is needed to more conveniently and effectively assist the operators of small businesses and family enterprises
- how the Ombudsman cooperates and refers matters to government agencies and whether the cooperation has been effective.
- how the Ombudsman manages requests for assistance in relation to disputes, including recommendations on alternative dispute resolution processes.

A.1.3 Other matters

- identify any challenges with identifying the position as an ‘Ombudsman’
- the funding and flexibility of resourcing for the Ombudsman and whether it is sufficient to undertake the advocacy and assistance functions
- identify any challenges or barriers impacting the Ombudsman’s effectiveness in undertaking the advocacy and assistance functions

A.2 TIMING

This review will commence no later than March 2017. The Act requires that the review must be completed and a written report given to the Minister for Small Business no later than 30 June 2017.

APPENDIX B: EXTERNAL STAKEHOLDERS CONSULTED

A formal consultation period for this review was held from 15 March – 12 April 2017. During this time, Treasury invited relevant stakeholders to participate in interviews with Ms Su McCluskey. A full list of interview participants can be found in Table 2 below.

Table 2: interview participants

TYPE OF STAKEHOLDER	INTERVIEW PARTICIPANTS
Commonwealth agency	<ul style="list-style-type: none"> • Australian Small Business and Family Enterprise Ombudsman • Australian Competition and Consumer Commission • Australian Prudential Regulation Authority • Australian Securities and Investment Commission • Australian Taxation Office • Commonwealth Ombudsman • Department of Agriculture & Water Resources • Department of Industry, Innovation and Science
State/territory agency	<ul style="list-style-type: none"> • Queensland Department of Tourism, Major Events, Small Business and the Commonwealth Games • Small Business Commissioner - NSW • Small Business Commissioner - VIC • Small Business Commissioner - WA
Other organisation	<ul style="list-style-type: none"> • Australian Bankers' Association • Council of Small Business Australia • Family Business Australia • Franchise Council of Australia • Independent Contractors Australia • National Farmers' Federation • The Australian Industry Group

A further 16 stakeholders made written submissions. These stakeholders are listed in Table 3 below. This excludes two stakeholders that provided submissions considered confidential.

Table 3: List of stakeholders that made written submissions

TYPE OF STAKEHOLDER	SUBMISSION PROVIDER
Commonwealth agency	<ul style="list-style-type: none"> • Commonwealth Ombudsman
State/territory agency	<ul style="list-style-type: none"> • Small Business Commissioner - NSW • Small Business Commissioner - VIC • Small Business Commissioner - WA
Other organisation	<ul style="list-style-type: none"> • ACT Civil and Administrative Tribunal • Australian and New Zealand Ombudsman Association • Australian Finance Corporation • Chartered Accountants Australia and New Zealand • Commercial Asset Finance Brokers Association Australia • Credit and Investments Ombudsman • Institute of Public Accountants • Institute of Certified Bookkeepers • Law Council of Australia • Restaurant and Catering Australia