



Australian Finance Conference ABN 13 000 493 907 Level 8, 39 Martin Place, Sydney, 2000
Telephone: (02) 9231-5877 Facsimile: (02) 9232-5647 e-mail: afc@afc.asn.au www.afc.asn.au

Ombudsman Review
Small Business Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

12 April 2017

Email: sbombudsmanreview@treasury.gov.au

Review of the Australian Small Business and Family Enterprise Ombudsman

The Australian Finance Conference ('AFC'), as a national finance industry association, represents its Members in relation to regulatory, public and industry policy, including small business. Many AFC Members provide finance to small business. The AFC also has a range of Affiliated Associations that it supports which provide product specific finance to the commercial market, in particular small business. These are the Australian Equipment Lessors Association (AELA), the Australian Fleet Lessors Association (AFLA) and the Debt and Invoice Finance Association (DIFA). Our feedback is provided on behalf of AFC and its Affiliated Associations.

The Australian Small Business and Family Enterprise Ombudsman (the ASBFEO) consultation questions focus on seeking feedback from its key stakeholders, being small business and family enterprises, about the Ombudsman's advocacy and assistance functions. However, the AFC is pleased to provide its perspective to the review, drawing upon its experience with the ASBFEO's office.

Our dealings the ASBFEO's Office have been positive. The Ombudsman and her Deputy have been accessible and helpful to AFC, its Affiliated Associations and their Members in performing their statutory role and in being open to endeavouring to understand and take into account the position of finance providers to small business. We believe the mutual exchange has been beneficial to both organisations.

However, there is one consultation question on which the AFC provides a response and has a clear position:

Are there any challenges to identifying the position as an Ombudsman?

The title "Ombudsman" brings with it the clear implication in line with common understanding that the ASBFEO has as its key role to act as an official statutorily appointed to investigate and resolve individuals' complaints and disputes. However, the AFC understands that the ASBFEO's role is primarily advocacy on behalf of its key stakeholders. This appears confirmed by the fact that the focus of the consultation's questions is on advocacy and assistance to small business; dispute resolution is not mentioned. We understand that the reason for that in relation to dispute resolution, the ASBFEO functions as a concierge service, directing small businesses with grievances to an appropriate ombudsman (eg FOS or CIO for our members) or other dispute resolution services (eg State Small Business Commissioners), or refers complainants to a panel of mediators approved by her Office. The ASBFEO does not consider complaints from small business and has no statutory or other ability to determine and make any decision as to remedy that would be binding on the respondent. As a consequence, we submit that there is a fundamental challenge in identifying the ASBFEO's role as a small business advocate and adviser given the fact the position title appears to be a misnomer.

The AFC submits that the use of the word 'ombudsman' confuses the primary role of the position and undermines expectations of small business and other stakeholders that engage with the ASBFEO. We submit that given the primary function of the ASBFEO is that of an advocate on behalf of small business and national policy researcher, the Government should amend the name to reflect that.

Or, should the Government see the Office as having as a key function of B2B dispute resolution, this should be statutorily recognised and the ASBFEO properly resourced to be able to fulfil the function and make decisions (with appropriate remedies) binding on the business the subject of the complaint if warranted.

Statutory Scope - Small Business Definition

Another area that the AFC seeks to raise in the context of this consultation relates to the concept of "small business." While not specifically raised in the consultation, we nevertheless see value in noting that a key concern of the AFC and its Affiliated Associations that it raises in various Government consultations where relevant to policy-scope setting relates to the many and varied definitions of "small business" used in different contexts (eg taxation laws, privacy laws, prudential regulation, dispute resolution) and the compliance challenge and consequently cost this variation brings. Other than acknowledging the breadth of statutory coverage that the definition brings for the ASBFEO function, we have no specific comment to make as we recognise that there is value given the ASBFEO's primary functions of advocacy and adviser to business that the role reflect the breadth of remit. And again while understanding the messaging that the Government when enacting the role was seeking to achieve, namely to recognise that there are a number of Family Enterprises that do not fall within traditional annual-turnover definitions of "small business" nevertheless may warrant equivalent protections of business that do meet these. However, given the breadth of scope of statutory coverage of the ASBFEO and the fact that a definition based only on employee numbers would capture most if not all Family Enterprises we submit that there is no value in disaggregating these enterprises from the concept of Small Business. Their inclusion potentially detracts rather than adds clarity to the role of the Office. We suggest omission with the result that the Office appropriately focusses on its constituency Australian small business.

In summary, the AFC recommends that, in the absence of giving the ASBFEO clear mandate to resolve B2B disputes, the word ombudsman should be replaced with a term that better describes the position consistent with its key statutory functions of advocate and adviser to small business which includes its national public policy researcher function. We also question whether the inclusion of "Family Enterprise" requires separation from "Small Business" given the breadth of definition encompassed by that term in the statute underpinning the role and could be omitted with the benefit in clear branding. For example, rather than the Office of the ASBFEO, it could be the 'Australian Small Business Policy Centre' with the key spokesperson being the Australian Small Business Advocate.

If you wish to discuss, please contact me either via helen@afc.asn.au or 02 9231 5877.

Kind regards

A handwritten signature in black ink, appearing to read 'Helen M. Gordon', with a horizontal line underneath.

Helen Gordon
Executive Director



AFC MEMBER COMPANIES

| | |
|----------------------------------|--|
| Allied Credit | Nissan Financial Services |
| American Express | nlc Pty Ltd |
| ANZ | Once Australia t/as My Buy |
| Automotive Financial Services | On Deck Capital |
| Bank of China | PACCAR Financial |
| Bank of Melbourne | Pepper Australia Pty Ltd |
| Bank of Queensland | Qudos Bank |
| BMW Australia Finance | RABO Equipment Finance |
| Branded Financial Services | RAC Finance |
| Capital Finance Australia | RACV Finance |
| Caterpillar Financial Australia | Ricoh Finance |
| Classic Funding Group | Selfco Leasing |
| CNH Industrial | Service Finance Corporation |
| Commonwealth Bank of Australia | Sharp Finance |
| Credit Corp Group | St. George Bank |
| Custom Fleet | Suncorp |
| De Lage Landen | Suttons Motors |
| Dun & Bradstreet | Thorn Group/Radio Rentals |
| Eclix Group | TL Rentals |
| Experian Asia Pacific | Toyota Financial Services |
| Finance One | Veda |
| FlexFleet | Volkswagen Financial Services |
| FlexiGroup | Volvo Finance |
| Genworth | Walker Stores |
| Group and General Finance | Wells Fargo International |
| HP Financial Services | Westlawn Finance |
| Indigenous Business Australia | Westpac |
| John Deere Financial | WEX Australia |
| Komatsu Corporate Finance | Wingate Consumer Finance |
| Kubota Australia Finance | Yamaha Finance |
| Latitude Financial Services | |
| Leasewise Australia | <u>Professional Associate Members:</u> |
| Liberty Financial | CHP Consulting |
| Lombard Finance | Clayton Utz |
| Macquarie Equipment Rentals | Credit Sense Australia |
| Macquarie Leasing | Dibbs Barker |
| Max Recovery Australia | Henry Davis York |
| McMillian Shakespeare Group | Sofico Services |
| ME Bank | White Clarke |
| Mercedes-Benz Financial Services | December 2016 |
| MetroFinance | |



AUSTRALIAN EQUIPMENT
LESSORS ASSOCIATION
Incorporated ABN 19 054 908 520

Level 8, 39 Martin Place
Sydney 2000

Telephone – (02) 9231 5479
Facsimile – (02) 9232 5647
Website – www.aela.asn.au/

AELA MEMBER COMPANIES

| | |
|---|----------------------------------|
| 255 Finance | International Decision Systems |
| Alleasing Group | John Deere Financial |
| ANZ Asset Finance | Kemp Strang |
| Ashurst Australia | King & Wood Mallesons |
| Australian Structured Finance | Komatsu Corporate Finance |
| Bendigo Bank Leasing Division | KPMG |
| BMW Australia | Macpherson + Kelley Lawyers |
| BOQ Finance (Australia) | Macquarie Leasing |
| Bynx Australia | Marubeni Finance (Oceania) |
| Caterpillar Financial Australia | Mercedes-Benz Financial Services |
| CHP Consulting | National Australia Bank |
| Cisco Systems Capital (Australia) | Norton Rose Fulbright Australia |
| Classic Funding Group | PACCAR Financial |
| Clayton Utz | Pepper Australia |
| CNH Industrial Capital Australia | Realtime Computing |
| Colin Biggers & Paisley | Ricoh Finance |
| Commercial Asset Finance Brokers Assoc. | Service Finance |
| Commonwealth Bank of Australia | Sharp Finance |
| De Lage Landen | Selfco Leasing |
| DibbsBarker | Sofico Services Australia |
| FlexiGroup | St. George Bank |
| Fuji Xerox (Finance) Australia | Suncorp |
| Genpact | SunGard Asia Pacific |
| Henry Davis York | Thorn/RR Australia |
| Herbert Smith Freehills | Toyota Finance Australia |
| Holman Webb Lawyers | Traction Group |
| HP Financial Services | Volvo Finance |
| IBM Global Financing | Westpac |
| Insyston | White Clarke Asia Pacific |
| | Xeberg |

March 2017

AFLA MEMBER COMPANIES

Alphabet Australia

Avis Budget Group

Custom Fleet

East Coast Car Rentals

Europcar Australia & NZ

Fleetcare

FleetPartners

Hertz Australia

LeasePlan Australia

McMillan Shakespeare Group

ORIX Australia

Qfleet

sgfleet / nlc

Smartgroup

Summit Fleet Leasing & Management

Thrifty Australia & NZ

Toyota Fleet Management

December 2016

DIFA MEMBERS

**Bank of China
Bank of Queensland
Bendigo Debtor Finance
Classic Funding Group
HSBC Bank Australia
Moneytech
Scottish Pacific Debtor Finance
St. George Bank
Thorn Trade & Debtor Finance
Westpac Banking Corporation**

Associate Members

**Cashflow Funding Limited
Lock Finance NZ
Pacific Invoice Finance NZ
Scottish Pacific Debtor Finance NZ**

Affiliate Members

**ClarkeKann Lawyers
DLA Piper Australia
Euler Hermes
FTI Consulting
Hall Chadwick
Hermes Data Systems
HPD Software Asia Pacific
Lowe Lippmann
Polczynski Lawyers
Trace Personnel
Gregory Clayton, Barrister & Solicitor**

March 2017