

# Review of the Australian Small Business and Family Enterprise Ombudsman: discussion paper

March 2021

This discussion paper provides information about the review of the Australian Small Business and Family Enterprise Ombudsman (ASBFEO).

The law<sup>1</sup> requires that the operation of the Australian Small Business and Family Enterprise Ombudsman's (ASBFEO) office is reviewed every four years. The next review is due for completion by June 2021 and will take place between March 2021 and June 2021. Once completed, the findings of the review will be presented to the Australian Government.

The review will be conducted by Ms Carmel McGregor PSM, supported by Deloitte. This discussion paper aims to provide information about the review process and the functions of the ASBFEO. It also poses a range of questions for consideration for small businesses, government agencies and other relevant stakeholders to assist with written submissions and consultation discussions.

ASBFEO was also reviewed previously, one year after it commenced in 2016. The [report and other information from the first review in 2017](#) can be found on the treasury website.

## Background

The ASBFEO commenced operation in March 2016 and is now part of the Industry, Science, Energy and Resources portfolio in the Australian Government.

The ASBFEO was set up to provide small businesses and family enterprises with a way to provide their views on policy and programs to government, and to make it easier for them to access assistance. The law states that ASBFEO's functions are to:

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

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<sup>1</sup> The *Australian Small Business and Family Enterprise Act 2015*

## Assistance function

The ASBFEO responds to requests for assistance from small businesses and family enterprises that have a dispute with other businesses or Commonwealth Government agencies.

Assistance with disputes can take the form of providing information on how to fix the issue, facilitating discussions between the parties and if required, providing access to another dispute resolution service or agency that can assist. The ASBFEO provides tips, guides and case studies to assist small businesses and family enterprises looking for help with a dispute.

The ASBFEO also assists small business with information, resolution options and access to mediation and/or arbitration services in relation to disputes that are covered by a mandatory code, for example:

- The [Dairy Code of Conduct](#) which covers trading arrangements between parties to a milk supply agreement within the dairy industry.
- The [Horticulture Code of Conduct](#) which aims to improve trading arrangements between growers and traders in the horticulture sector.
- The [Oil Code of Conduct](#) which regulates the conduct of wholesalers and fuel resellers.
- The [Franchising Code of Conduct](#) which regulates the conduct of participants in franchising.

The ASBFEO offers a Small Business Concierge Service that helps small businesses apply to the Administrative Appeals Tribunal (AAT) for a review of an Australian Taxation Office decision. The Concierge Service guides and supports the small business through the process. This includes information on the AAT procedures for reviewing a decision; access to legal advice and fee reductions; and ongoing support. Additionally, the ASBFEO provides a small business compensation assistance service to help small businesses navigate the compensation for detriment caused by defective administration (CDDA) scheme as it relates the Australian Tax Office.

There are a number of other assistance services provided by the ASBFEO, including web-based advice and information about running a small business and a business hub. There has also been a recent strong focus on assisting businesses to manage the impact of COVID-19 and natural disasters such as the 2019-20 summer bushfires.

## Advocacy function

Another function of the ASBFEO is to advocate on behalf of small businesses and family enterprises. This can take the form of providing advice to government on policy proposals, conducting inquiries or providing advice to other inquiries.

Recently the ASBFEO completed an inquiry examining [Access to Justice](#) for small business and family enterprises. The inquiry examined disputes that arise, what small businesses do when faced with a dispute and the factors that influenced their decisions about what action to take in a dispute. The final report made recommendations to improve access to justice for small business owners.

The ASBFEO has also completed a number of other [inquiries](#) on diverse topics:

- Insurance Inquiry

- Insolvency Practices – the [final report](#) was released on 21 July 2020
- Affordable Capital for Small to Medium Enterprise Growth
- Payment Times and Practices
- Small Business Loans
- Impact of the Road Safety Remuneration Tribunal Payments Order

## Terms of reference

The *Australian Small Business and Family Enterprise Ombudsman Act 2015* (the Act) requires a review of the operation of the Australian Small Business and Family Enterprise Ombudsman (ASBFEO) every four years.

Since its establishment in 2016, ASBFEO has developed and enhanced its assistance and advocacy functions and acquired several new services. The first review of ASBFEO was completed in June 2017.

This review will examine:

1. the kinds of assistance requested during the review period and whether the assistance provided was convenient and effective for the operators of small businesses and family enterprises;
2. how ASBFEO has responded to the recommendations of the 2017 review;
3. the interaction and effectiveness of ASBFEO's functions, including any new roles acquired since the previous review; and
4. whether there are any legislative and administrative improvements that could better support ASBFEO in the delivery of its functions.

The review will include a public consultation period of a minimum of four weeks. The review and written report must be provided to the Minister for Employment, Skills, Small and Family Business no later than 19 June 2021.

## Consultation questions

The following questions are provided as a guide for submissions or discussion with the Reviewer. However, they are not intended to be exclusive and stakeholders are welcome to raise any relevant issues that relate to the operation of the ASBFEO.

Proposed questions:

1. What kind of assistance has the ASBFEO provided your business during the review period (2017-2021)?
2. Did the assistance provided resolve the issue or dispute? What more could be done to help businesses resolve disputes?
3. How has the advocacy work performed by the ASBFEO benefited small and family businesses? Are there any improvements that could be made to the advocacy work?

4. How does the ASBFEO work with other key stakeholders such as government agencies, small business commissioners and services such as legal or community services?
5. Are the current legislative and administrative arrangements that support the ASBFEO fit for purpose or can they be improved?
6. Other issues and suggested improvements?

## Consultation process

Written submissions are invited by the head reviewer, with a closing date of 30 April 2021.

Key stakeholders will be invited to participate in consultation discussions with the head reviewer. Other parties can indicate interest in participating in discussions by emailing [SmallBusinessOmbudsmanReview@industry.gov.au](mailto:SmallBusinessOmbudsmanReview@industry.gov.au). Due to the current travel restrictions in some parts of Australia, it is likely that consultation discussions will be held via video or teleconference.