



Independent Review of the Australian Small Business and Family Enterprise Ombudsman (ASBFEO)

Consultation paper

November 2024

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How to have your say

This paper provides context about the Independent Review of the Australian Small Business and Family Enterprise Ombudsman (ASBFEO) and invites interested parties to provide feedback and comments.

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The focus of your submission should be on the critical matters you want us to address. While there are no strict requirements regarding lengths, more concise and succinct submissions are encouraged to facilitate a more efficient review process.

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Closing date for submissions: 10 January 2025

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Foreword from the Independent Reviewer

I have been asked to conduct the third independent review of the Australian Small Business and Family Enterprise Ombudsman (ASBFEO) in accordance with the Terms of Reference announced by the Minister for Small Business on 13 November 2024.

Small businesses play an important part in the Australian economy, contributing more than \$500 billion to the economy and employing around 5.2 million people. Government policy and regulatory settings can significantly impact small business productivity. Yet, it can be difficult for policymakers to tailor reforms, given that small businesses and family enterprises are extremely diverse in nature and have time and resource constraints. In addition, small businesses and family enterprises often need the right tools to avoid or resolve disputes quickly, which can significantly impact their ongoing viability and capacity to contribute to the economy.



The ASBFEO commenced operations in 2016 to make it easier for small businesses and family enterprises to access assistance and resolve disputes, and to provide a clearer channel for dialogue with government and policy makers on the needs and challenges for small business and the impacts of regulatory reforms.

With the ASBFEO approaching 10 years of operation, this review will consider whether ASBFEO's assistance and dispute resolution function is fit-for-purpose within the broader dispute resolution ecosystem, and whether it is using its resources efficiently and effectively to support and advocate for the small business sector in Australia. The review will also:

- assess the efficacy of the ASBFEO's role in the franchising sector,
- assess the implementation and performance of recommendations from previous reviews,
- identify areas for enhancement of the ASBFEO's functions and powers for the benefit of small businesses and family enterprises.

This consultation paper identifies key themes and issues for the Review. The questions are provided as a guide only; not all need to be answered in submissions. Your views are important, and I invite submissions on any issues which you consider relevant to the Review.

As the Independent Reviewer, I am keen to hear views and evidence from a wide range of interested stakeholders, and I welcome your engagement throughout the review process.

Ms Judy O'Connell

Independent Reviewer

Statutory Review of the ASBFEO



Why is the Australian Small Business and Family Enterprise Ombudsman being reviewed?

The *Australian Small Business and Family Enterprise Ombudsman Act 2015* requires that the ASBFEO assistance function be reviewed every four years. Since its establishment, the ASBFEO has been subject to two statutory reviews; the first occurring in 2017, and the second in 2021.

On 13 November 2024 the Hon Julie Collins, Minister for Small Business announced the third statutory review to consider whether the ASBFEO's functions and operations are effective, efficient, and align with the needs of the small business community.

This review will be conducted by Ms Judy O'Connell, supported by a Secretariat in Treasury. A Report will be provided to the Government by 18 June 2025.

This consultation paper provides information about the review process and the functions of the ASBFEO. It also provides a list of questions and invites stakeholders, including those in the franchising sector, to consider and respond to these questions. Responses should relate to the period since the last review in July 2021 until the announcement of this review in November 2024.

Terms of Reference

Under the *Australian Small Business and Family Enterprise Ombudsman Act 2015 (ASBFEO Act)* there must be a review of the assistance function of the ASBFEO every four years. There have been two prior reviews of the ASBFEO, in 2017 and 2021.

As the ASBFEO approaches 10 years of operation, it is timely to undertake a broader review of its functions and operation.

The review must consider the matters prescribed in section 95 of the ASBFEO Act. These are:

- the kinds of assistance requested during the period being reviewed.
- whether the assistance given was convenient and effective for the operators of small businesses and family enterprises who requested assistance, and
- whether amendment of the Act is needed to more conveniently and effectively assist the operators of small businesses and family enterprises.

Beyond the matters set out in section 95 of the ASBFEO Act, the review should:

- assess whether the ASBFEO's assistance and dispute resolution function is fit-for-purpose within the broader dispute resolution ecosystem in supporting small business and family enterprise access to justice.
- evaluate the ASBFEO's effectiveness and efficiency in undertaking its functions including whether the ASBFEO's service offerings align with the needs of the small business community.
- assess the efficacy of the ASBFEO's role in the franchising sector, taking into account the findings of the 2023 Independent Review of the Franchising Code of Conduct (Franchising Review), and
- assess the suitability of the nomenclature and branding attached the statutory office having regard to nature of the role, possible future functions and community awareness of the office and its services.

In considering these matters the review should have regard to the two previous reviews of the ASBFEO in 2017 and 2021.

Background

The Small Business and Family Enterprise Sector

Australia's 2.5 million small businesses are vital to the country's prosperity. They drive innovation and productivity. Small businesses contribute more than \$500 billion to the economy and employ around 5.2 million people. They are also integral to their local communities, providing jobs, revenue and services.¹

Most small business owners operate their own businesses managing a range of functions from marketing, sales, inventory management, pricing, IT, book-keeping, property management, human resources and regulatory compliance. They often face additional challenges such as governance, succession planning and taxation. For family businesses, business longevity is influenced not merely by productivity and economic factors, they must also manage family tension and conflict regarding the goals and direction of the business.

Competing demands for time and resources can make it difficult for small businesses and family enterprises to engage with government on policies that affect them. This is despite small businesses typically facing proportionally higher compliance costs compared to larger businesses. Small businesses are also a heterogeneous group covering numerous industries, all having different perspectives making it difficult for government to consult them. Without a clear understanding of how regulations and reform impacts small business, policy makers can find it difficult to design efficient and effective regulations and reform.²

Managing disputes, such as disagreements over payments for goods and services or other contractual obligations, can be a time consuming and stressful part of running a business. Where small businesses are not aware of, or cannot access, low-cost and alternative avenues for addressing disputes, they may ignore the dispute and avoid involving a third party to resolve disputes. This can significantly impact the small business, including facing an increased risk of business failure.³

The core purpose of the ASBFEO is to reduce these challenges for small businesses and family enterprises by making it easier for them to have their views heard by the Government and policy makers, and in facilitating quick and cost-effective access to dispute resolution services.

ASBFEO

The ASBFEO commenced operations in March 2016 with the mandate to provide advocacy and assistance functions for small businesses and family enterprises.

The ASBFEO Act defines a small business as having fewer than 100 employees or revenue of less than \$5 million per year. A small business operating as a family enterprise is defined as a family enterprise.

The Ombudsman is an independent statutory appointment. The Hon Bruce Billson is the current Ombudsman who was appointed for a 5 year term in March 2021. Ms Kate Carnell AO was the inaugural Ombudsman from 2016-2021.

Since June 2021, the ASBFEO has been part of the Treasury portfolio. As a result, the Ombudsman's office staff are engaged as staff within the Treasury under the *Public Service Act 1999*.

1 Budget 2024-25, [Delivering a better deal for small businesses – Australian Government Small Business Statement](#), Budget 2024-25, accessed 19 November 2024

2 Treasury, [Regulation Impact Statement - The Australian Small Business and Family Enterprise Ombudsman](#), OIA, 2015

3 DIISR (Department of Innovation, Industry, Science and Research), [Resolution of small business disputes – options paper \[PDF\]](#), DIISR, 2011

Previously the ASBFEO resided within the portfolio for Industry, Science, Energy and Resources from February 2020 to June 2021. Within the portfolio for Employment, Skills, Small and Family Business from August 2018 to January 2020 and the Treasury portfolio from March 2016 to August 2018.

Functions of ASBFEO

The ASBFEO Act sets out the functions and powers of the ASBFEO.⁴ These functions are to:

- advocate for small businesses and family enterprises concerning relevant legislation, policies and practices (the advocacy function),
- give assistance to small businesses and family enterprises in dispute with other businesses or Commonwealth Government agencies. (the assistance function),
- perform any other function conferred on the Ombudsman by any Act or legislative instrument.

The ASBFEO also provides alternative dispute resolution processes under the Franchising, Horticulture, Dairy and Oil Codes of Conduct and assists with disputes with the ATO. The role in supporting small businesses who are parties to the Franchising Code of Conduct expanded in 2021, and again in 2024, as a result of the Government response to the Franchising Review. This is discussed further in the section 'ASBFEOs role in the franchising sector'.

The ASBFEO is required to work closely with the state Small Business Commissioners, and other state and territory officials, and must avoid duplicating the services of other agencies.⁵

Advocacy function

The purpose of the advocacy function is to facilitate the ability for small businesses to have their views heard by the Government and policy makers on how regulations and policies may impact them.

The ASBFEO Act allows the ASBFEO to act as a conduit for issues that small businesses and family enterprises face, ensuring the perspectives of the small business and family enterprise operators are heard equally and fairly in consideration during the policy-making process, and to promote a nationally consistent and coordinated approach to these issues across both the public and private sector⁶.

Section 14 of the ASBFEO Act defines the advocacy function to include the following 8 functions:

- identifying the concerns arising out of relevant legislation, policies and practices relating to small business and family enterprise operations;
- conducting research and making inquiries on the Ombudsman's initiative in relation to relevant legislation, policies and practices;
- inquiring into matters referred to the Ombudsman by the Minister and providing advice to the Minister on matters referred to the Ombudsman;
- co-operating with the appropriate agencies of the Commonwealth, States and Territories to develop national strategies in relation to legislation, policies and practices that affect, or may affect, small businesses or family enterprises;

⁴ *Australian Small business and Family Enterprise Ombudsman Act 2015*, section 13

⁵ *Australian Small business and Family Enterprise Ombudsman Act 2015*, section 16 and section 69

⁶ *Australian Small Business and Family Enterprise Ombudsman (Consequential and Transitional Provisions) Bill 2015*, Explanatory Memoranda, para 1.11

- providing information to make submissions or recommendations to, and otherwise contribute to the conduct of inquiries into relevant legislation, policies and practices;
- reviewing proposals in relation to relevant legislation, policies and practices, and give the Minister advice in relation to proposals of that kind;
- promoting best practice in interactions with small businesses and family enterprises.

ASBFEO engages with stakeholders through a range of events and platforms. For example, the ASBFEO Forum brings together industry and professional associations for deeper engagement with government about a range of policy issues. The ASBFEO also meets regularly with the state based Small Business Commissioners to share information and chairs quarterly meetings with Federal Regulatory Agency Group.

The Ombudsman participates in podcasts, webinars, forums and round tables covering a range of policy areas related to small businesses. Recent topics include the closure of the 3G network, privacy reforms, National Competition Policy, payment times, reforms to the Franchising Code of Conduct, scams and cyber security.⁷

ASBFEO has contributed submissions to a range of reviews, inquiries and committees. Since March 2021, the ASBFEO has published 173 completed submissions on its website. Policy areas the ASBFEO has recently commented on range from the ACCC's Supermarkets Inquiry August 2024 interim report; the Senate Standing Committee on Economics – References Committee on Big Box Price Setting; exposure draft legislation for the Payment Times Reporting Rules 2024 and the 2024 Regional Telecommunications independent review.⁸

Questions relating to advocacy

1. As a small business or family enterprise, or a representative of either, please outline your interactions, outreach, engagements or similar experiences with ASBFEO in regard to advocating on legislation, reforms or policies for small business and family enterprises.
 - (a) How well did the ASBFEO engage and collaborate on advocacy issues?
 - (b) How does the ASBFEO's advocacy function compare to other parties?
2. Are small business and family enterprise stakeholders aware of the ASBFEO advocacy agenda?
3. Does the ASBFEO's advocacy function benefit the broader small business and family enterprise community?
4. To what extent has the ASBFEO strategic advocacy agenda focused on high priority issues in the small business and family enterprise sector?
5. Are the small business and family enterprise stakeholders engaged in the development of the strategic agenda?
6. What improvements, if any, could be made to the ASBFEO's advocacy function?
7. Are there important advocacy issues that have not been address by the ASBFEO?

⁷ ASBFEO (Australian Small Business and Family Ombudsman), Quarterly Report Q3, 2024 (1 July to 30 September 2024), p 8

⁸ ASBFEO, [Submissions | ASBFEO](#), ASBFEO website, accessed 11 November 2024

Assistance function

A core driver in the establishment of the ASBFEO was creating an assistance function to provide time poor small business owners with support in accessing a range of low-cost options to resolve disputes. Unresolved disputes can significantly impact the ongoing viability of small businesses and family enterprises and impair their capacity to contribute to the economy.⁹ Small businesses and family enterprises may be aware they have an unresolved dispute or issue but may not know how to address it.¹⁰

Section 15 of the ASBFEO Act sets out the functions that are included in the assistance function. The legislation allows the ASBFEO to assist with conflicts that may occur between a small business and government agency or another business. This is provided by advising on and preparing a person's case for a no adverse cost order under subsection 82(4) of the Competition and Consumer Act 2010; and, assisting small business owners in to access alternative dispute resolution processes and recommend an alternative dispute resolution (ADR) process be undertaken.

ADR typically involves a process in which an independent person (an ADR practitioner, such as a mediator) helps parties in dispute to sort out issues. ADR can help to resolve a dispute before it requires a court or tribunal to get involved.¹¹ The ASBFEO Act defines ADR processes to include conferencing; mediation; neutral evaluation; case appraisal; conciliation; prescribed procedures and services but does not include arbitration or court procedures or services.¹²

The ASBFEO does not conduct the mediation themselves, they provide information about the dispute resolution procedures available and appoint a mediator when one is required to help parties resolve a dispute.

The ASBFEO assists small businesses engaging with the Australian Taxation Office (ATO) Compensation for Detriment and Defective Administration Scheme and also provides a Small Business Tax Concierge Service for small businesses in dispute with the ATO. The Tax Concierge service assists small businesses in deciding whether to lodge an application to the Administrative Appeals Tribunal (AAT) and provides access to subsidised legal advice. The 2024-25 Federal Budget announced the expansion of this service to allow a greater number of unrepresented small businesses (including those involving franchising) to access subsidised legal advice and assistance to navigate business to business disputes through to non-court resolution outcomes.

The ASBFEO's role in assisting with dispute resolution is designed to complement the broader dispute resolution ecosystem in Australia. A number of other government agencies and bodies provide dispute resolution services, including the Commonwealth Ombudsman.

In addition, New South Wales, Tasmania, Western Australia, Queensland and Victoria operate a state-based Ombudsman office. State based Small Business Commissioners also operate in New South Wales, Western Australia, Queensland, Victoria and South Australia – providing small businesses with help to deal with business-to-business and business-to-government disputes.

Ombudsmen or specialist dispute resolution bodies also exist to deal with specific industries or legislation, including the Australian Financial Complaints Authority, the Fair Work Ombudsman, and the Telecommunications Industry Ombudsman.

To avoid duplicating assistance and dispute resolution services offered by other Commonwealth Government agencies and state small business commissioners, the ASBFEO Act requires the ASBFEO

⁹ Australian Small Business and Family Enterprise Ombudsman (Consequential and Transitional Provisions) Bill 2015, Explanatory Memoranda, paragraph 1.16

¹⁰ Treasury, [Regulation Impact Statement - The Australian Small Business and Family Enterprise Ombudsman](#)

¹¹ AGD (Attorney-General's Department), *Your Guide to Dispute Resolution*, AGD, 2014, p 5

¹² Australian Small Business and Family Enterprise Ombudsman Act 2015, section 4

to refer all requests for assistance which could otherwise be dealt with by another Commonwealth, State and Territory agency or Ombudsman, to that agency.¹³

The ASBFEO reported that within the 2023-24 financial year, they received 6,254 requests for assistance. This comprised of 4,858 calls to the ASBFEO's contact centre and 1,396 formal requests for assistance. Consistent with previous years, the most common types of disputes in 2023–24 were payment disputes (42 per cent); contract disputes (20 per cent); and the Franchising Code of Conduct (9 per cent).

The ASBFEO also has a specific role in supporting industry participants who are covered by the Dairy, Horticulture and Oil Codes of Conduct. The ASBFEO is named in the Dairy Code of Conduct as the dispute resolution adviser, and it has a supporting role in the Horticulture and Oil Codes of Conduct by providing assistance with sourcing appropriate mediators.¹⁴

Questions relating to assistance and dispute resolution

Please share your views as a small business or family enterprise, or a representative of small business or family enterprises.

8. Has your business had a dispute with another business or government agency between July 2021 and November 2024? If you didn't use the ASBFEO services, how did you resolve the dispute?
9. What type of assistance has the ASBFEO provided to your business from July 2021 to November 2024?
10. How did you find information regarding the ASBFEO services; e.g. online, call centre or via a third party, and was it easy to access?
11. Were you provided with clear guidance and instructions from the ASBFEO throughout the dispute resolution process?
12. How effective was the ASBFEO in resolving or assisting with this issue or dispute? What was the timeframe to resolve the issue, what was the outcome and were there other challenges?
13. Have you used any assistance service other than the ASBFEO (for example the Commonwealth Ombudsman, the tax ombudsman, state Ombudsman or state based Small Business Commissioner service)? If so, how did it compare with the ASBFEO?
14. What improvements, if any, could be made to the assistance function provided by the ASBFEO, including how it fits in the broader dispute resolution system?
15. If your dispute wasn't resolved successfully, would you take it further? For instance; through the court-system or low-cost arbitration? (n.b. arbitration allows an independent third-party to make a binding and enforceable decision, whereas mediation does not result make decisions or tell parties what to do). Or does ASBFEO need additional powers to encourage participation from all parties?
16. How effective is the ASBFEO's power to name parties who have not participated meaningfully in alternative dispute resolution, in leveraging a good faith approach to mediation?

¹³ Australian Small business and Family Enterprise Ombudsman Act 2015, section 69

¹⁴ The Treasury, [Treasury Annual Report 2023-2024](#), the Treasury, accessed 17 October 2024, pp 243-244.

The ASBFEO's role in the Franchising Sector

Dispute Resolution relating to Franchising

The franchising sector in Australia is regulated by the mandatory Franchising Code of Conduct (the **Franchising Code**). This code is made by regulation under the *Competition and Consumer Act 2011* (Cth). Around 90 percent of franchisors, and almost all franchisees, are small businesses.

The Australian Competition and Consumer Commission (**ACCC**) is the regulator responsible for making sure that individuals and businesses comply with Australian competition and consumer protection laws, including the Franchising Code. However, the ACCC is not a dispute resolution body and generally only pursues enforcement action for breaches of the Franchising Code where it is in the public interest.¹⁵

Part 4 of the Franchising Code contains provisions relating to how disputes between franchisors and franchisees are to be resolved. It sets out that franchisors or franchisees can select an ADR practitioner (a conciliator or mediator) for an ADR process. If they cannot agree on who that should be, the Franchising Code sets out that they can request that an ADR practitioner be appointed.

Prior to 2021, the dispute resolution process defined in the Franchising Code was limited to mediation. The Office of Franchising Mediation Adviser was named in the Franchising Code as the party that Franchisors or franchisees could contact to request a mediator be appointed.¹⁶

The 2021 changes introduced the concept of conciliation into the dispute resolution provisions defined in the Franchising Code and also replaced the concept of mediation adviser with ADR practitioner - a conciliator or a mediator. Conciliation is similar to mediation, but a conciliator takes a more active role in discussions. They may offer advice and make recommendations, but like a mediator they do not make decisions for the parties.¹⁷

The Franchising Code was also updated to name the ASBFEO as the party who could appoint an ADR practitioner, replacing the Office of Franchising Mediation Adviser.

Other changes at that time included amendments to require franchisors to participate in multiparty mediation (where more than one franchisee has a dispute with the same franchisor), and to allow the parties that agree, to arbitrate a matter supported by the ASBFEO.¹⁸

It is important to note that the state based small business commissioners can also support franchise sector participants in accessing ADR.

2023 Independent Review of the Franchising Code of Conduct

The review was conducted by Dr Michael Schaper. Its purpose was to evaluate previous reforms and consolidate several reviews under one umbrella, including statutory reviews of the Franchise Disclosure Register and new car dealership protections in the Franchising Code.

This review found that the Franchising Code is generally fit for purpose and should be remade, but with some changes. Overall, the final report made 23 recommendations for Government to consider, including several recommendations relevant to the ASBFEO.

¹⁵ The Treasury, [Review of the Franchising Code of Conduct - Consultation Paper](#), the Treasury, 2023, accessed 19 November 2023

¹⁶ A Wein, [Review of the Franchising Code of Conduct \[PDF\]](#), the Treasury, 2013, accessed 19 November 2024, p8; Parliamentary Joint Committee on Corporations and Financial Services [The operation and effectiveness of the Franchising Code of Conduct](#), 2019, accessed 19 November 2024 p 204.

¹⁷ ACCC (Australian Competition & Consumer Commission), [Resolving franchising disputes | ACCC](#) accessed 19 November 2024

¹⁸ The Treasury, [Review of the Franchising Code of Conduct - Consultation paper](#)

As part of the Government response to the Franchising Review, the Government agreed, or agreed in principle, to all recommendations, including the following recommendations relevant to the ASBFEO:

- expanded the ASBFEO’s Tax Concierge Service to support small businesses, including franchisees to access low-cost legal advice on alternative dispute resolution prospects. This was announced in the 2024-25 Budget.
- committed to amending the Franchising Code to provide the ASBFEO with the power, from 1 April 2025, to publicly name franchisors that fail to participate meaningfully in ADR.
- tasked the ASBFEO with leading the development of best practice guidance, in consultation with the sector and the ACCC; targeted at:
 - : improving standards of conduct in franchising
 - : franchisees and franchisors regarding franchisee-initiated exit, to enhance the effectiveness of clause 26B of the Franchising Code.
 - : educating Franchise systems regarding consulting with franchisees on any major change to the business model during the term of the franchise agreement.

The full findings and recommendations relation to the ASBFEO from the Franchising Review are listed under Appendix C.

Questions relating specifically to the Franchising sector

17. How effective is the ASBFEO in their role of supporting the franchising sector?
18. Considering the expansion to the ASBFEO’s role as a result of the 2023 Independent Review of the Franchising Code of Conduct, is the ASBFEO well positioned to deliver these expanded services effectively?

The overall role of the ASBFEO

The ASBFEOs core advocacy and assistance functions were designed to reduce roadblocks which can prevent small businesses and family enterprises from contributing productively to the economy. As noted previously, the activities of the ASBFEO have evolved over recent years as a result of findings from several different reviews. External factors and technology have also resulted in changes for many small business owners. For example, the increasing role of digital platforms; artificial intelligence, cyber security, and the flow on effects from Covid including working-from-home arrangements and online shopping.

As a result, it is appropriate that the 2024 Review of the ASBFEO assesses whether the ASBFEOs functions and activities continue to reflect the needs of the small business community.

Questions relating to the overall role of the ASBFEO

19. Is the role of the ASBFEO clear and does its offerings align with the needs of small businesses and family enterprises? If not, why, and how can it be improved?
20. Are there any gaps or duplication or overlap between the ASBFEO and that of other agencies? If so, what changes should be made to reduce the duplication or gaps?

The name and branding of ASBFEO

The independent statutory reviews of the ASBFEO completed in 2017 (**2017 Review**) and 2021 (**2021 Review**) each acknowledged that the term ‘ombudsman’ has caused some confusion for stakeholders in the small business sector.

Some stakeholders questioned using the term ‘Ombudsman’ in the title due to the traditional role of an ombudsman carrying an expectation of impartiality. These stakeholders noted the expectation of impartiality does not align with the ASBFEO’s defined purpose of being a strong advocate for, and representing the interests, of small business and family enterprises¹⁹.

Of note, ASBFEO is not alone in having both an advocacy and assistance function. For example, the Australian Human Rights Commission is an independent Statutory Authority with functions covering both advocacy and disputes resolution. The state based Small Business Commissioners also provide support to small businesses for certain disputes and advocate for their interests in policy and regulatory reform.

While both reports made clear there is no evidence to suggest that the ASBFEO has failed to be impartial in its alternative dispute resolution or mediation function, the 2021 report included a recommendation to rename the ASBFEO to the Australian Small Business Commissioner or the Australian Small Business Advocate, in order to reduce confusion about its assistance function.

The 2017 Review noted that the small business community was more familiar with the term ‘Commissioner’ due to that title being used by the state Small Business Commissioners, and associated this term with a body that could assist with disputes. The report noted that the role of the state-based commissioners had been around longer than the ASBFEO, and that the ASBFEO should continue to raise awareness of its functions and role to improve clarity.

Questions relating to name and branding

21. Does the name ASBFEO and branding appropriately reflect its role? If not, what changes should be made to the name or branding and why?
22. What websites do you normally access to find information regarding small business services and is there any duplication of information?

¹⁹ C McGregor PSM, *Australian Small Business and Family Enterprise Ombudsman – Independent Review*, the Treasury, June 2021, p 49

Appendices

Appendix A - 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. Please see below list of all questions as per each section above:

1. As a small business or family enterprise, or a representative of either, please outline your interactions, outreach, engagements or similar experiences with ASBFEO in regard to advocating on legislation, reforms or policies for small business and family enterprises.
 - (a) How well did the ASBFEO engage and collaborate on advocacy issues?
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13. Have you used any assistance service other than the ASBFEO (for example the Commonwealth Ombudsman, the tax ombudsman, state Ombudsman or state based Small Business Commissioner service)? If so, how did it compare with the ASBFEO?
14. What improvements, if any, could be made to the assistance function provided by the ASBFEO, including how it fits in the broader dispute resolution system?
15. If your dispute wasn't resolved successfully, would you take it further? For instance; through the court-system or low-cost arbitration? (n.b. arbitration allows an independent

third-party to make a binding and enforceable decision, whereas mediation does not result make decisions or tell parties what to do). Or does ASBFEO need additional powers to encourage participation from all parties

16. How effective is the ASBFEO's power to name parties who have not participated meaningfully in alternative dispute resolution, in leveraging a good faith approach to mediation?
17. How effective is the ASBFEO in their role of supporting the franchising sector?
18. Considering the expansion to the ASBFEO's role as a result of the 2023 Independent Review of the Franchising Code of Conduct, is the ASBFEO well positioned to deliver these expanded services effectively?
19. Is the role of the ASBFEO clear and does its offerings align with the needs of small businesses and family enterprises? If not, why, and how can it be improved?
20. Are there any gaps or duplication or overlap between the ASBFEO and that of other agencies? If so, what changes should be made to reduce the duplication or gaps?
21. Does the name ASBFEO and branding appropriately reflect its role? If not, what changes should be made to the name or branding and why?
22. What websites do you normally access to find information regarding small business services and is there any duplication of information?

Appendix B - Recommendations from 2017 and 2021 Reviews

<p style="text-align: center;">2017 Review</p> <p style="text-align: center;">Led by Ms Su McCluskey and supported by a secretariat from Nous Group</p>	<p style="text-align: center;">2021 Review</p> <p style="text-align: center;">Led by Mc Carmel McGregor PSM and supported by a secretariat from Deloitte</p>
<p>The review found that the ASBFEO was effectively undertaking its functions, filling a gap at a Commonwealth level and achieving value for money.</p> <p>The review made 8 recommendations:</p>	<p>The review found the ASBFEO had performed impressively in its first 5 years of operation and had largely acquitted the recommendations of the 2017 review, and suggested the ASBFEO's next phase should focus on maturation and consolidation.</p> <p>The review made 5 recommendations:</p>
<p>Recommendation 1: 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.</p>	<p>Recommendation 1: Treasury and the ASBFEO should review evidence of gaps in the assistance and dispute resolution ecosystem for Australian small businesses, then implement targeted approaches to resolve these gaps and improve assistance outcomes.</p>
<p>Recommendation 2: 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.</p>	<p>Recommendation 2: The ASBFEO should leverage its experience and relationships to prosecute a strategic agenda designed to focus resources for deep impact on high-priority small business sector issues.</p>
<p>Recommendation 3: 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.</p>	<p>Recommendation 3: The ASBFEO should build its capacity and capability for sustained advocacy impact by strengthening its collaboration with stakeholders and sharpening its ability to characterise the small business sector.</p>
<p>Recommendation 4: The ASBFEO should bolster its input into policy and legislation that affects small businesses and family enterprises, including through training, secondments, consultation and evaluation.</p>	<p>Recommendation 4: The ASBFEO should be renamed to promote role clarity.</p>
<p>Recommendation 5: The ASBFEO should work with other agencies to share data and research about small businesses and family enterprises.</p>	<p>Recommendation 5: Treasury and the ASBFEO should act to ensure administrative, funding and staffing arrangements remain supportive of the ASBFEO's mandate.</p>
<p>Recommendation 6: 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.</p>	
<p>Recommendation 7: The ASBFEO should work with states that do not have small business commissioners to establish clear protocols for its referrals.</p>	
<p>Recommendation 8: 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.</p>	
<p>No government response was issued for the reviews.</p>	

Appendix C - Recommendations relevant to ASBFEO from the Independent Review of the Franchising Code of Conduct

2023 Review

Led by Dr Michael Schaper

Findings	Recommendations
<p>I. The size of the franchise sector has not kept pace with the rate of growth in the broader business population.</p> <p>II. Current statistics about the demography of the franchise sector, and metrics by which success can be measured, need to be improved.</p>	<p>Recommendation 1. The Australian Government should ensure the provision of more comprehensive, robust statistics about the franchising sector.</p>
<p>Implementation suggestions:</p> <p>1A: The Commonwealth Treasury should drive a cohesive approach to data collection regarding the franchising sector. It should leverage the FDR and existing data collection and expertise within the ABS, ACCC, ASBFEO, state small business commissioners and other relevant government bodies.</p> <p>1B: Surveys conducted for this review should be repeated in the future to improve longitudinal data collection regarding the sector.</p>	
<p>XII. The FDR is a valuable addition to the regulatory landscape, but awareness and utilisation of the Register is low and greater enforcement of the listing requirements is likely to be needed.</p>	<p>Recommendation 10. Enhance the public visibility and usage of the Franchise Disclosure Register.</p>
<p>Implementation suggestions:</p> <p>10A. More actively promote the FDR's existence and usage through education material prepared by business.gov.au, the ACCC, ASBFEO and state SBCs.</p> <p>10B. Responsibility for the administration of the FDR and its website should sit with the ACCC.</p> <p>10C. If a FranchiseSmart website model is adopted, incorporate the FDR into FranchiseSmart.</p>	
<p>XIII. Over time, decisions made by the courts are providing guidance to franchisors and franchisees on what is required to act in good faith under the Code. Such decisions should be used by regulators to develop education, particularly for franchisees, as to the limitations of good faith in a grievance.</p> <p>XIV. Change management continues to be a problematic area for many franchise relationships.</p> <p>XV. Some franchisors are not employing best practice relating to the transparent and effective operation of marketing and cooperative funds.</p>	<p>Recommendation 12. Franchise systems should be encouraged, through education, to consult franchisees regarding any major change to the business model during the term of the franchise agreement.</p>
<p>Implementation suggestions:</p> <p>12A. Relevant Australian Government agencies should support franchisor-targeted education and provide best practice guidance on how to manage change and support productive working relationships with franchisees. Sector participants could work together with the ACCC and ASBFEO to develop appropriate guidance.</p>	
<p>XVI. Changes made in 2021 relating to delayed termination have made it unacceptably difficult for franchisors to act decisively in the context of serious breaches.</p> <p>XVII. There needs to be more awareness and clarity regarding the process and circumstances in which a franchisee can negotiate an early exit from a franchise agreement.</p> <p>XVIII. Misunderstanding of goodwill in franchising continues to be a source of complaints that arise at the end of an agreement. Goodwill issues are driven by concerns relating to adequate compensation, uncertainty, and the opportunity to make a return on investment.</p>	<p>Recommendation 14. Best practice guidance should be provided to franchisees and franchisors regarding franchisee-initiated exit, to enhance the effectiveness of clause 26B of the Code.</p>

<p>XIX. Unreasonable – and unenforceable – restraints of trade are unduly limiting franchisee opportunities at the end of a franchise relationship. While many existing restraints of trade terms may be difficult to enforce, they may unduly inhibit and dissuade competition in the sector.</p>	
<p>Implementation suggestions:</p> <p>14 A. Guidance could take the form of resources produced in consultation with ACCC and ASBFEO regarding minimum standards and best practices. These resources could be housed on the proposed FranchiseSmart website.</p>	
<p>XX. The existing approach to online education and advice resources for the franchising sector is not optimal. The spread of resources across the ACCC, ASBFEO, business.gov.au and Treasury websites increases search costs for participants in the sector and decreases the chance that the resources will be utilised.</p> <p>XXI. The needs of indigenous and CALD communities are not currently well considered in education and outreach.</p> <p>XXII. Franchisees would benefit from greater access to early advice on the merits of their claim against a franchisor. ASBFEO’s existing Small Business Tax Concierge Service provides a useful model as to how this might work.</p> <p>XXIII. Powers for ASBFEO to name franchisors who have not meaningfully participated in dispute resolution mechanisms can be a useful tool.</p>	<p>Recommendation 16. A comprehensive online government resource should be created, in the nature of ASIC’s MoneySmart website (‘FranchiseSmart website’).</p> <p>Recommendation 17. Australian Government agencies should work with relevant sector participants to improve standards of conduct in franchising by developing best practice guidance and education.</p> <p>Recommendation 18. ASBFEO should be given additional powers to name franchisors who have not participated meaningfully in alternative dispute resolution.</p> <p>Recommendation 19. The Australian Government should assist franchisees to access low-cost legal advice on prospects prior to formal ADR.</p> <p>Recommendation 20. The Australian Government should consider an appropriate role for franchise interests when implementing its commitment to a designated complaints function for the ACCC.</p>
<p>Implementation suggestions:</p> <p>16A. Primary responsibility for this site could rest with the principal regulator, the ACCC. The ACCC could work with content creators for business.gov.au, ASBFEO and other relevant government agencies to collate relevant information in a user-friendly manner.</p> <p>16B. Special regard should be made to the needs of CALD and First Nations audiences.</p> <p>17A. Best practice guides could be developed by ASBFEO and the ACCC and other agencies as relevant. Guides could be housed on the proposed FranchiseSmart website.</p> <p>17B. Initial matters for best practice guidance could include change management, the operation of marketing funds, supporting franchisees who wish to exit, and how to effectively participate in voluntary arbitration and multi-party dispute resolution.</p> <p>17C. Such guidance and education should ensure that the franchising sector is adequately informed about the impact of the new UCT provisions and any new unfair trading practice laws.</p> <p>18A. ASBFEO’s functions under the regulations that prescribe the Code could be expanded to include adverse publicity powers similar to those under section 74 of the Australian Small Business and Family Enterprise Ombudsman Act 2015 (Cth).</p> <p>19A. ASBFEO’s Small Business Tax Concierge function could be renamed and expanded to allow franchisees to access low-cost advice on their case prior to entering formal mediation.</p> <p>20A. Consideration should be given to ASBFEO being a designated complainant.</p>	
<p style="text-align: center;">No government response was issued for the reviews.</p>	

Glossary

AAT	Administrative Appeals Tribunal
ACCC	Australian Competition and Consumer Commission
ADR	Alternative Dispute Resolution
ASBFEO/The Ombudsman	Australian Small Business and Family Enterprise Ombudsman
ASBFEO Act	<i>Australian Small Business and Family Enterprise Ombudsman Act 2015</i>
ATO	Australian Taxation Office
Franchising Code	Franchising Code of Conduct (Schedule 1 to the <i>Competition and Consumer (Industry Codes – Franchising) Regulation 2014 (Cth)</i>)
Franchising Review	Independent Review of the Franchising Code of Conduct conducted by Dr Michael Schaper. Undertaken in 2023 and published by the Australian Government on 8 February 2024.
2017 Review	Independent Review of the Australian Small Business and Family Enterprise Ombudsman in 2017 completed by Ms Su McCluskey.
2021 Review	Independent Review of the Australian Small Business and Family Enterprise Ombudsman in 2021 completed by Ms Carmel McGregor PSM.
Small Business	Section 5 of the <i>Australian Small Business and Family Enterprise Ombudsman Act 2015</i> defines a small business as a business having fewer than 100 employees or revenue of less than \$5 million per year.
Family Enterprise	Section 6 of the <i>Australian Small Business and Family Enterprise Ombudsman Act 2015</i> defines a family enterprise as a small business operating as a family enterprise.
Treasury	The Department of the Treasury