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Background

Year	2018–19	2019–20	2020–21	2021–22
Ongoing Departmental Funding (\$m)	5.6	6.4	6.5	6.5
Administered Funding (\$m)	1.4	1.4	1.4	1.4

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s22

From: s22
Sent: Thursday, 21 March 2019 2:43 PM
To: s22
Subject: RE: Stats for franchising [SEC=UNCLASSIFIED]

s22

From: s22
Sent: Thursday, 21 March 2019 2:35 PM
To: s22
Subject: RE: Stats for franchising [SEC=UNCLASSIFIED]

s22

From: s22
Sent: Thursday, 21 March 2019 2:33 PM
To: s22
Cc: s22
Subject: FW: Stats for franchising [SEC=UNCLASSIFIED]

Hi s22

This is a report off the back of our CRM. We haven't gone into any detail, not do we have our infoline stats for March.

Cheers

s22

From: s22
Sent: Thursday, 21 March 2019 2:24 PM
To: s22
Subject: Stats for franchising [SEC=UNCLASSIFIED]

Franchising Code Disputes

	Total Contacts (Infoline plus Cases)	Infoline Calls	No of ASBFEO cases	Initiated by Franchisee	Initiated by Franchisor	Currently Active	Resolved	Me
Dec-18	73	46	27	24	3	9	18	
Jan-19	67	43	24	22	2	11	13	
Feb-19	77	50	27	22	5	13	14	

Mar-19 to
date

11

9

2

9

2

TOTALS	217	139	89	77	12	42	47
---------------	------------	------------	-----------	-----------	-----------	-----------	-----------

Horticulture Code Disputes

	Number of Cases
Dec-18	0
Jan-18	0
Feb-19	0
Mar-19 to date	0
TOTALS	0

Oil Code Disputes

	Number of Cases
Dec-18	0
Jan-18	0
Feb-19	1
Mar-19 to date	0
	1

Kind Regards,

s22

Australian Small Business and Family Enterprise Ombudsman

P s22

E info@asbfeo.gov.au

Australian
Small Business and
Family Enterprise
Ombudsman



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Business
Hub**

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in Canberra?

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From: s22
Sent: Tuesday, 19 February 2019 12:57 PM
To: s22
Subject: returned call [SEC=UNCLASSIFIED]
Attachments: old mediations still progressing.xlsx

Hi s22

s22

Please find current list to date. We are still following up mediators. Bear in mind these mediations/matters have not been integrated into our CRM as they were pre our involvement.

Kind regards

s22

P: s22 | E: s22
L Level 2, 15 Moore Street, Canberra
Office of the Franchising Mediation Adviser

s47F

10.01.2019	notice of dispute withdrawn
25.01.2019	mediation resolved
13.02.2019	mediation unresolved
10.12.2018	mediation resolved
18.12.2018	mediation resolved
19.12.2018	mediation unresolved
13.03.2019	scheduled
6.12.2018	mediation withdrawn
6.12.2018	mediation withdrawn
6.12.2019	mediation unresolved
21.12.2019	mediation resolved

Usage of OFMA services

Data taken from OFMA quarterly reports

Enquiries by month and Code

Month	Total	Franchising	Oil	Horticulture
Dec 2017	27	26	0	1
Jan 2018	52	52	0	0
Feb 18	56	52	2	2
Mar 18	104	93	7	4
Apr 18	64	58	3	3
May 18	104	104	0	0
Jun 18	50	48	1	1
July 18	56	55	1	0
Aug 18	68	67	0	1
Sep 18	60	57	3	0
Oct/Nov 18	103	99	3	1
Dec 18		27	0	0
Jan 19		24	0	0
Feb 19		27	1	0
Mar 19		11	0	0
TOTAL				

Mediators appointed by months and Code

Month	Total	Franchising	Oil	Horticulture
Dec 2017	16	15	1	0
Jan 2018	11	11	0	0
Feb 18	13	13	0	0
Mar 18	11	11	0	0
Apr 18	15	15	0	0
May 18	18	18	0	0
Jun 18	14	14	0	0
July 18	6	6	0	0
Aug 18	12	12	0	0
Sep 18	22	20	2	0
Oct/Nov 18	83	79	4	0
TOTAL	221	214	7	0

In 2017-18, Franchising enquiries accounted for 95.6% of total enquiries, and mediators were appointed to Franchising disputes in 96.8% of all mediator appointments made.

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Australian Government

Department of Jobs and Small Business

Report on Mandatory Industry Codes Dispute Resolution

ACCC Small Business & Franchising
Consultative Committee

3 May 2019

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Introduction

This is the fifth report of the Office of the Franchising Mediation Adviser (OFMA) for the Australian Competition and Consumer Commission's Small Business and Franchising Consultative Committee (SBFCC). This report covers the six-month period from 1 October 2018 to 31 March 2019.

In this period, there has been a change in the Franchising Mediation Adviser, and the position is currently held by Ms Rose Verspaandonk, Branch Manager of the Deregulation and Small Business Branch, Department of Jobs and Small Business. The Adviser is currently assisted by the office of the Australian Small Business and Family Enterprise Ombudsman (ASBFEO), who has been undertaking the administrative duties of OFMA since the transition took effect on 1 December 2018.

The assistance team at ASBFEO, prior to taking over the administrative role of the Mediation Advisor, managed disputes for small businesses, and consequently the role amalgamated quite smoothly with their existing assistance function. The team is comprised of Case Managers in Canberra as well as an Infoline with 16 small business specialists in Melbourne. The Infoline is often the initial contact for franchisees and franchisors and they can provide much of the initial information required. They will refer a business to lodge a web form if the business is at that stage in dispute or, if urgent, they can be directly escalated.

Once a business has lodged a web form, it is logged in the Customer Relationship Management (CRM) system, is allocated a case number, and is considered a case. For the purpose of this report, cases are any matters recorded in the CRM, whereas enquiries include cases as well as any franchise-related contacts with the Infoline. The Case Managers and Infoline staff do not share a CRM system, but the Canberra team do receive reports from the Infoline and understand issues arising from that channel.

It is important to note that for the first two months of this reporting period (October 2018–November 2018), the OFMA role was performed by Dispute Resolution Associates Pty Ltd (DRA). ASBFEO will continue to identify and collect additional useful data to improve understanding of issues facing the franchising sector.

Feedback and Reporting

ASBFEO has developed feedback forms and reports for all parties involved in a mediation process to facilitate the needs of future reporting, and to assist the tracking of the effectiveness of the mediation process.

The Mediator's Report (**Attachment A**) seeks to understand the real issues which cause disputes, allowing ASBFEO to consider and track key issues within the franchising sector. The information gathered in the Mediator's Report will also allow us to understand the average costs and time associated with the mediation process.

The Mediator's Report also seeks to understand:

- whether the parties had legal representation;
- the roles of any legal representatives involved in a mediation process;
- whether the parties attended in good faith as this is a reported barrier to open discussion.

The Feedback Form for an Alternative Dispute Resolution Party (**Attachment B**) will allow us to consider the effectiveness of the mediators, and seeks to gain an understanding of general satisfaction with the process, style and overall conduct of mediations. The form will be provided to both the franchisee and the franchisor to compare both perspectives.

Current technical limitations have inhibited ASBFEO's ability to integrate these feedback forms into their current CRM system. We have been working to upgrade the system, which we hope will allow us to report with greater specificity in the future.

Themes and Implications

With the change in the appointment of mediation adviser, there has been a disruption to the statistics for the past 6 month period between 1 October 2018 and 31 March 2019. The statistics provided by DRA, the previous Mediation Advisor, for the period from 1 October 2018 to 30 November 2018 are reported in **Figure A**.

In the period 1 December 2018 to 31 March 2019, ASBFEO has:

- Answered 187 Infoline enquiries relating to the Franchising Code, 1 related to the Oil Code and no enquiries relating to the Horticulture Code (**Figure B**);
- Acted on 100 cases relating to the Franchising Code, of which 85 were franchisee initiated and 15 were franchisor initiated;
 - Of those 100 cases within ASBFEO, 37 were referred to mediation; and
 - On average, 30% of these cases were initiated from NSW based businesses, followed closely by 28% from Queensland and 24% from Victoria (**Figure C**).

The Types of Industries and Nature of Disputes

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In terms of outcomes, the majority of cases (62%) were resolved through ASBFEO's information provision and case management. Of the cases that went to mediation, 11 were successfully resolved, and 5 were unsuccessful. At the time of compilation, 21 mediation processes were still ongoing. On average, the time taken from referral of cases to mediation to conclusion was 33 days. These findings can be found at **Figure D**.

Key Findings and Moving Forward

ASBFEO has had a number of franchise disputes where a party has seemingly been in direct breach of the Franchising Code and the matter has been unable to be resolved through mediation. The concern in such instances is that there appears to be little recourse for these breaches aside from litigation. Such breaches have significantly impacted the businesses of franchisees, who, for the most part, are small businesses. In many cases, the franchisor allegedly in breach continues to operate with respect to its other franchisees, potentially affecting even more businesses.

ASBFEO has been advised that whilst the length of time for mediations varies considerably due to variations in the nature and complexity of the issues, based on the information available, mediations are typically billed for 12-20 hours, amounting to costs between \$3,960- \$6,600.

The number of mediations are lower than under the previous OFMA arrangements. It is ASBFEO's assessment that this is primarily due to their involvement at the early stages, which may assist the parties in reaching a resolution without mediation.

Moving forward, ASBFEO has plans to raise the profile of their role in assisting disputing parties under the Franchising Code. This is being developed by ASBFEO's marketing team and will involve the use of a Google 'AdWords' campaign, the Ombudsman's high media profile, and the use of various social media strategies.

ASBFEO is confident that mechanisms to gain additional useful and relevant data have been put in place. ASBFEO is also confident that these will assist franchisees and franchisors resolve their disputes without resorting to costly litigation.

Data - 1 October 2018 to 30 November 2018

A. FRANCHISING ENQUIRIES AND MEDIATIONS BEGUN 1 October 2018 to 30 November 2018

	Enquiries Made	Mediations Begun
Franchising Code	99	79
Horticulture Code	1	0
Oil Code	3	4
TOTAL	103	83

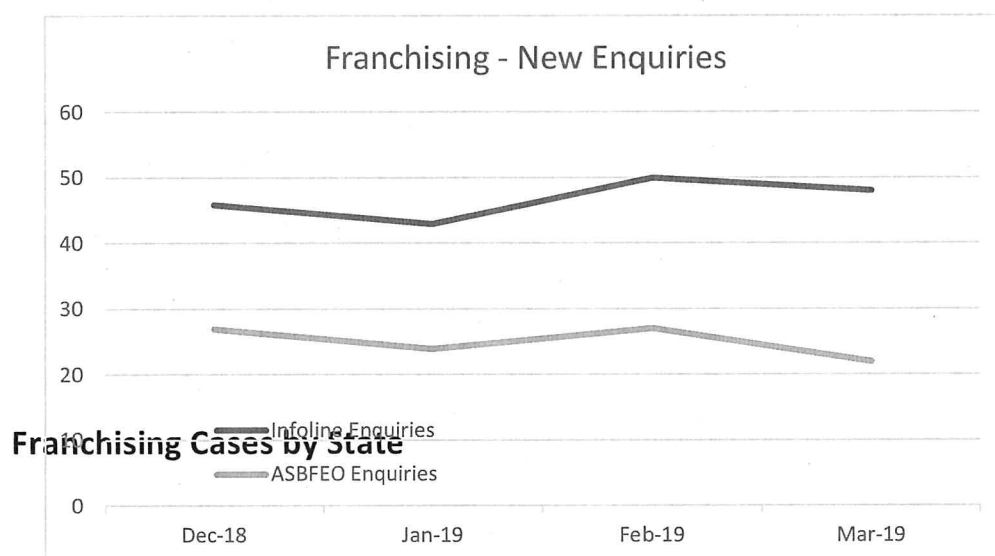
Data - 1 December 2018 to 31 March 2019

During the period from 1 December 2018 to 31 March 2019, ASBFEO supported OFMA. Statistics for this period are contained below.

Franchising Enquiries

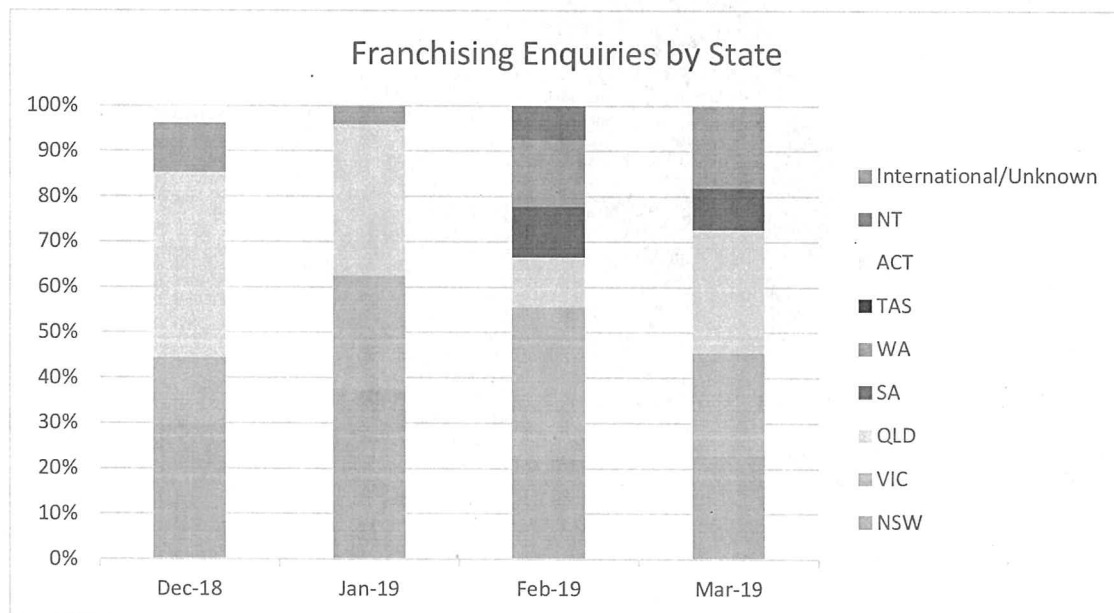
B. FRANCHISING ENQUIRIES No. received

Period	2018	2019		
	Dec-18	Jan-19	Feb-19	Mar-19
Infoline Enquiries	46	43	50	48
ASBFEO Enquiries	27	24	27	22



C. FRANCHISING CASES % received by state

Period	2018	2019	Average		
	Dec-18	Jan-19	Feb-19	Mar-19	Mth Avg
NSW	30%	38%	22%	23%	30%
VIC	15%	25%	33%	23%	24%
QLD	41%	33%	11%	27%	28%
SA	0%	0%	11%	9%	4%
WA	11%	4%	15%	18%	10%
TAS	0%	0%	0%	0%	0%
ACT	4%	0%	0%	0%	1%
NT	0%	0%	7%	0%	2%
International/Unknown	0%	0%	0%	0%	0%
TOTAL	100%	100%	100%	100%	100%



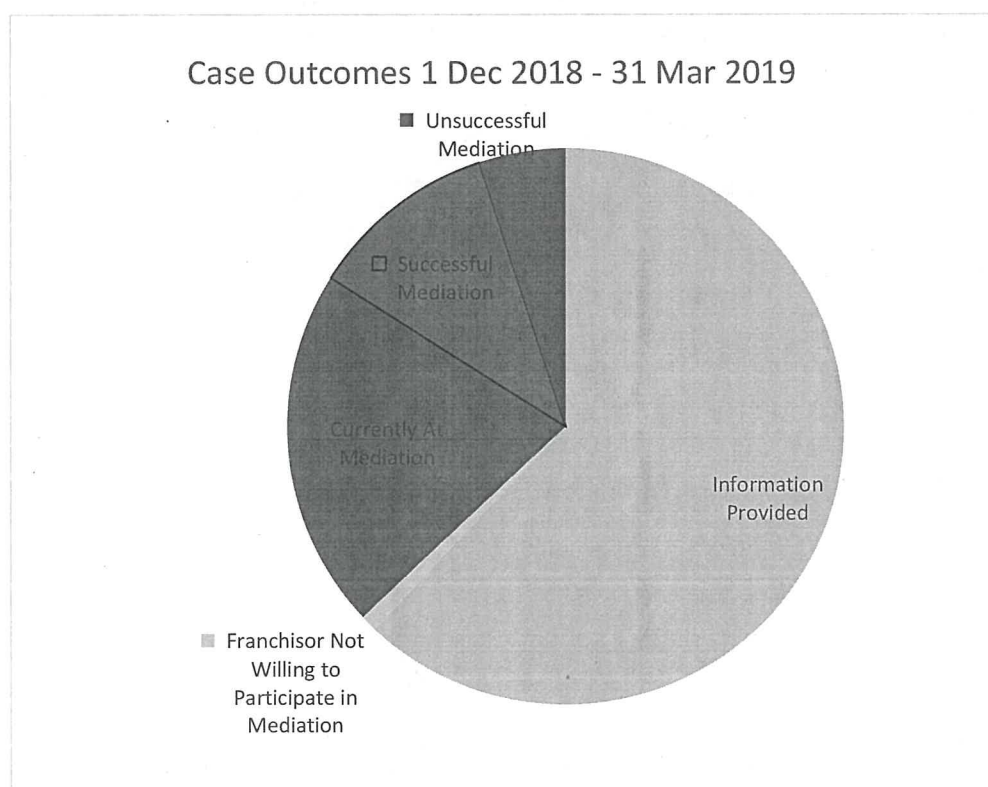
Case Outcomes

D. CASE OUTCOMES 1 DECEMBER 2018 TO 31 MARCH 2019 – No. of Cases

	1 December 2018 to 31 March 2019
Information Provided/Early resolution	62
Franchisor Not Willing to Participate in Mediation	1
Currently At Mediation	21
Successful Mediation	11
Unsuccessful Mediation	5

Average number of days taken between referral to mediation and conclusion

33



Report from ASBFEO Regarding Franchising Code Dispute Resolution

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Introduction

The Australian Small Business and Family Enterprise Ombudsman (ASBFEO) has been assisting businesses in dispute seeking Alternative Dispute Resolution (ADR) under the Franchising Code of Conduct since 1 December 2019. ASBFEO assists by providing access to a telephone service (Infoline) with 16 business specialists in Melbourne and a team of eight case managers in Canberra.

The Infoline is often the initial contact for franchisees and franchisors and can provide much of the initial information around ADR required. Once a franchisee or franchisor has reached the stage of requiring mediation, or more information is required, businesses can contact the ASBFEO Assistance team. Franchisees or franchisors may contact the Assistance team by lodging a webform on the ASBFEO website; emailing or phoning Assistance directly; or via the Infoline. Once a business has contacted the Assistance team, it is logged in our Customer Relationship Management (CRM) system, is allocated a case number and is considered a case.

Definition of Inquiries and Cases for Reporting

All contacts with the Infoline are logged, and all contacts relating to franchising are labelled **Inquiries** for the purposes of this report. All franchise related cases in the Assistance team's CRM are labelled **Cases** for the purposes of this report. The two areas do not share a Customer Relationship Management (CRM) system but the Canberra team do receive reports from the infoline so understand issues arising via that channel.

Feedback and ADR Reports

Our Office has developed feedback forms and reports for all parties involved in a mediation process to facilitate the needs of future reporting, and to assist our Office to track the effectiveness of the mediation process.

The Mediator's Report (Attachment A) seeks to understand the real issues which caused the dispute, from the perspective of a neutral person, to allow us to consider and track reoccurring key issues within the Franchising sector.

The Mediator's Report, along with the Certificate of Mediation (mandatory under the Code, Attachment B) will help us understand:

- whether the parties had legal representation;
- the roles of any legal representatives involved in a mediation process;
- the costs and time associated with the mediation process; and
- whether the parties attended in good faith as this a reported barrier to open discussion.

The Feedback form for an ADR Party (Attachment C) will allow us to consider the effectiveness of the Mediators, and seeks to gain an understanding on the satisfaction with the process, style and overall conduct. The form will be provided to both the Franchisee and the Franchisor to compare both perspectives.

It should be noted that the current IT departmental limitations have inhibited our ability to integrate these feedback forms into the current CRM system. We have been working to upgrade the system which we hope will allow us to report on specifics and capture data. We have produced some preliminary results manually with the forms received to date.

Themes and Implications

In the period 1 December 2018 to 30 June 2019, ASBFEO has:

- Answered 327 inquiries relating to the Franchising Code, one enquiry related to the Oil Code and no enquiries relating to the Horticulture Code;
- Acted on 151 cases within ASBFEO relating to the Franchising Code, of which 123 were franchisee initiated and 28 were franchisor initiated;
- Of those 151 cases within ASBFEO, 129 have been resolved and 16 are currently with mediation; and
- The majority inquiries and cases were initiated from NSW based businesses (32%), followed closely by 27% from Queensland and 23% from Victoria.

The Types of Industries and Nature of Disputes

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Key Findings and Moving Forward

ASBFEO has had a number of franchise businesses where a party has seemingly been in direct breach of the franchising code and the matter has been unable to be resolved via mediation. The concern for these businesses and for the franchise system overall is that there appears to be little recourse for these breaches aside from a court. In many cases these breaches have significant impact on these businesses (for the most part, small businesses) and worse still, these franchise businesses continue to operate potentially affecting even more small businesses.

Preliminary results from our mediators reports have found that in nearly half of all mediations, franchisees have legal advisors attend mediation with them. A significantly higher proportion of franchisors will rely on a legal advisor during mediation. The critical issue for this is that the

mediators need to be adept at ensuring there is still an even playing field for the franchisees in these matters and the matters are discussed without the unnecessary legalise.

We understand that whilst obviously the length of time for mediation varies considerably due to nature and complexity of the issues, preliminary results indicated that mediations are charged at between two and 13 hours, which amounts to the cost of mediation ranging from around \$700 to \$3,500. The average cost of mediation based on this preliminary data just over \$2,100.

Preliminary results from our ADR Feedback surveys show very positive outcomes of mediations, with positive feedback for the mediators involved.

We believe that the number of mediations are lower than under the previous Mediation Advisor due to a number of factors:

- ASBFEO's involvement at the early stages could assist the parties reach a resolution without mediation; and
- Possible confusion with the previous mediation advisor and ASBFEO taking on the role.

Moving forward ASBFEO have a targeted franchising media campaign to raise the awareness of ASBFEO in dispute resolution under the franchising code. This is being developed by our marketing team and will involve the use of google AdWords campaign, our Ombudsman's high media profile and the use of various social media strategies.

We continue to put in place various mechanisms to gain useful and relevant data moving forward that will assist franchisees and franchisors resolve their disputes without costly litigation.

Data - 1 December 2018 to 30 June 2019

Statistics for the period from 1 December 2018 to 30 June 20019 are contained below.

Franchising New Inquiries and Cases

NEW INQUIRIES AND CASES, number received

	Dec-18	Jan-19	Feb-19	Mar-19	Apr-19	May-19	Jun-19
Infoline Inquiries	46	43	50	48	39	46	55
ASBFEO Cases	27	24	27	22	17	16	18

Breakdown by State

FRANCHISING NEW INQUIRIES & CASES % received by state*

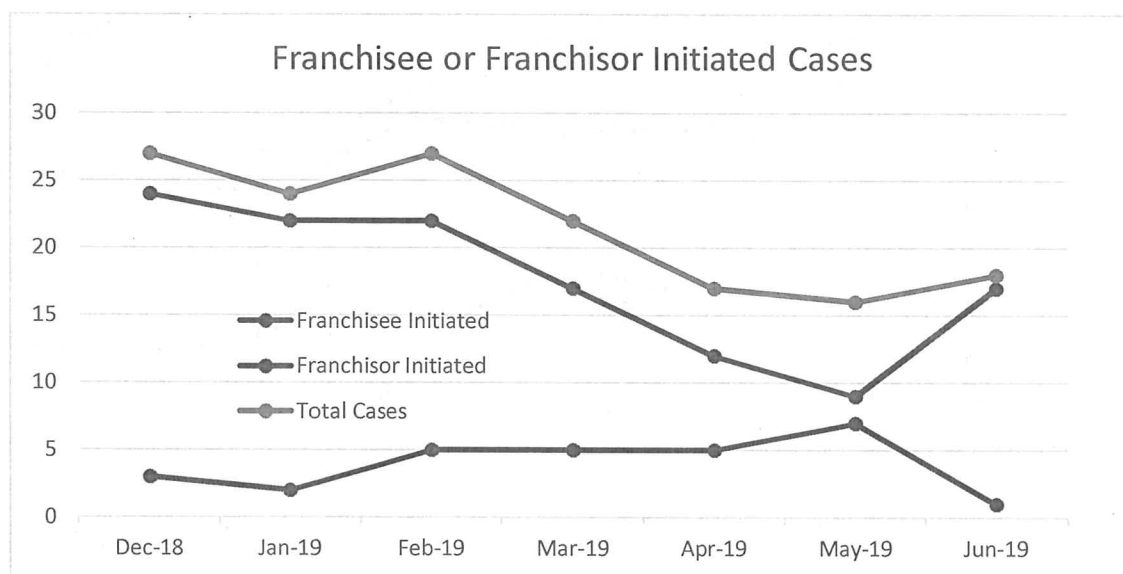
		1 December 2018 to 30 June 2019
NSW	New South Wales	32%
VIC	Victoria	23%
QLD	Queensland	27%
SA	South Australia	5%
WA	Western Australia	11%
TAS	Tasmania	1%
ACT	Australian Capital Territory	2%
NT	Northern Territory	1%
TOTAL		100%

*For Infoline and ASBFEO enquiries where state is known

Franchisee or Franchisor Initiated

FRANCHISING CASES - No of Cases

	Dec-18	Jan-19	Feb-19	Mar-19	Apr-19	May-19	Jun-19
Franchisee Initiated	24	22	22	17	12	9	17
Franchisor Initiated	3	2	5	5	5	7	1
Total Cases	27	24	27	22	17	16	18



Current Status of Cases

CURRENT STATUS OF CASES - 1 October 2018 to 30 June 2019*

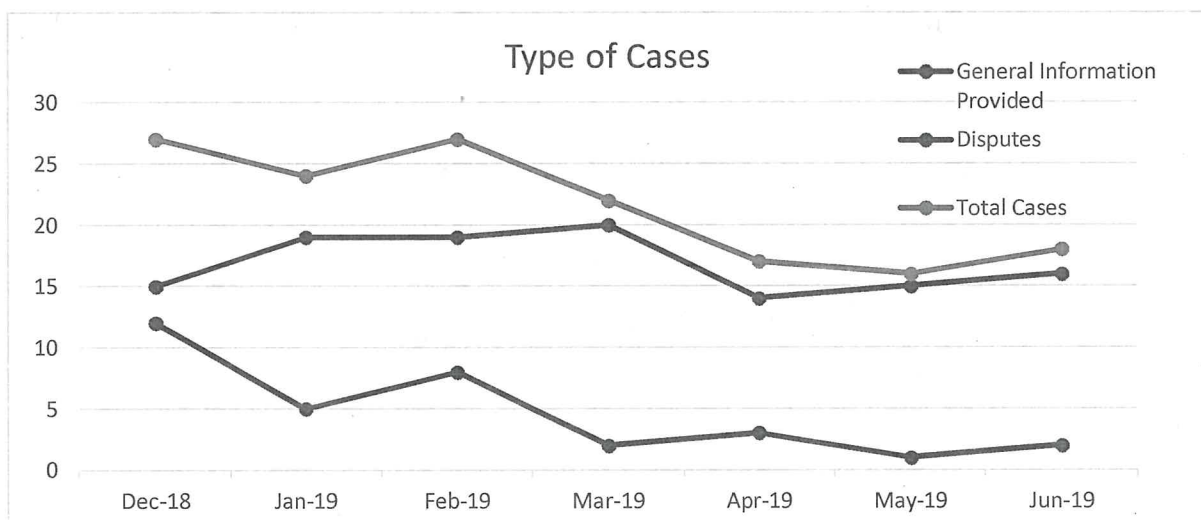
	No of Cases
Cases Resolved	129
Currently Active	22
With Mediation	16

* current status as at 21 August 2019

Type of Cases

TYPE OF CASES - No of Cases

	Dec-18	Jan-19	Feb-19	Mar-19	Apr-19	May-19	Jun-19
General Info Provided	12	5	8	2	3	1	2
Disputes	15	19	19	20	14	15	16
Total Cases	27	24	27	22	17	16	18



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Australian Government



Australian
**Small Business and
Family Enterprise**
Ombudsman



The Australian Small Business and Family Enterprise Ombudsman (ASBFEO) manages disputes under the Franchising Code of Conduct and provides the administrative function of the Franchising Mediation Adviser. The Ombudsman uses its infoline (1300 650 460) to respond to general enquiries and assistance for parties within the Franchising Industry in dispute and then dedicated Case Managers for one on one direct assistance. The one on one assistance is effective in providing early resolution advice for the parties and in helping reach a resolution prior to mediation. This report covers the six month period from 1 April 2019 to 30 September 2019.

The data used in this report relating to franchise disputes is drawn from our Customer Relationship Management (CRM) system, the reporting from the infoline combined with feedback forms provided to the parties and mediator reports as well as extensive engagement with those in the industry.

Over this period, ASBFEO has:

- responded to 401 enquiries relating to the Franchising Code;
- provided detailed assistance on 136 cases relating to the Franchising Code, of which 116 were franchisee-initiated and 20 were franchisor-initiated;
- of the 136 franchising cases, 100 were resolved and 18 were with mediation at the conclusion of the six month period, the remaining 18 are currently active; and
- the majority of enquiries and cases were initiated by Queensland based businesses (32%), followed by 28% from New South Wales and 23% from Victoria.

There was a broad range of industries the respondents operated in, with fast food outlets and cleaning industries the most dominant. Cases tended to predominantly focus on:

- misleading information or lack of information provided to franchisees prior to purchasing;
- lack of training and support from franchisors;
- lack of transparency surrounding use of marketing fund;
- lack of promotion from franchisor;
- issues with leases/high rent/shopping centres and lack of franchisor support in negotiation with landlords.

While the length of time for mediation varies considerably due to the nature and complexity of the issues, preliminary results indicate that mediations are charged between 2 and 17 hours, with costs of mediation (including room hire) ranging from no charge to \$6,387. The average cost of mediation based on this data is \$2,518. Given the significant costs of litigation this is obviously a far more affordable and effective method of dispute resolution for all parties.

Franchisees have legal advisors at nearly half of all mediations whilst 83% of franchisors rely on legal advice. Results from our ADR feedback surveys show very positive outcomes for mediations and positive feedback for the mediators involved, with 88% of participants returning the form indicating they are satisfied or very satisfied with the mediation process and mediators. However, where matters are not settled via mediation, court remains the only option despite it not being viable or affordable in most cases. This can occur even when there is an apparent breach of the Franchising Code.

Last month ASBFEO implemented a six month marketing and social media advertising campaign to promote the service under the Codes, with a particular focus on dispute resolution services under the Franchising Code of Conduct. Monthly reports will demonstrate the impact of the campaign.

Data Series 1 - Franchising Infoline enquiries and ASBFEO cases

Data in this section is based on a combination of calls to our Infoline (general information and assistance) and cases (with dedicated Case Managers) submitted directly to our Office. Cases come to ASBFEO mainly via our online Webform, email or telephone. There may be some overlap in numbers as some cases are referred directly from the Infoline or lodged with ASBFEO as a result of contact with our Infoline.

FRANCHISING - INFOLINE CALLS AND ASBFEO CASES number received

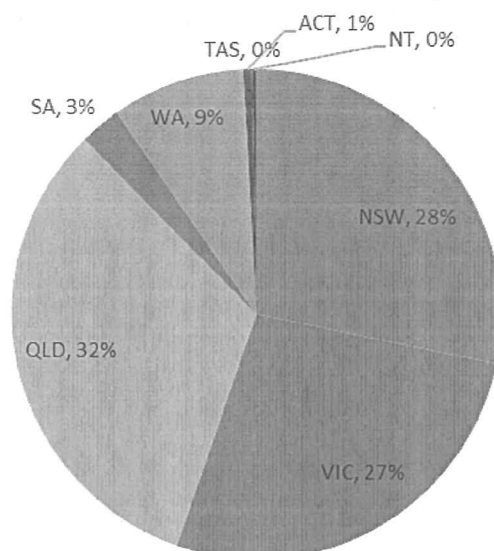
	Apr-19	May-19	Jun-19	Jul-19	Aug-19	Sep-19	Total
Infoline Enquiries	39	46	55	46	41	38	265
ASBFEO Cases	18	16	24	25	25	28	136

FRANCHISING INFOLINE CALLS & ASBFEO CASES % received by state*

		1 Apr 2019 to 30 Sep 2019
QLD	Queensland	32%
NSW	New South Wales	28%
VIC	Victoria	27%
SA	South Australia	3%
WA	Western Australia	9%
TAS	Tasmania	0%
ACT	Australian Capital Territory	1%
NT	Northern Territory	0%
TOTAL		100%

*For Infoline and ASBFEO enquiries where state or territory is known

Franchising Inquiries & Cases by State



Data Series 2 - Calls to the Infoline

This series of data is collected by our Infoline. The Infoline reports an outcome for the calls received in relation to franchising, as reported below.

INFOLINE OUTCOME OF ENQUIRY, 1 April 2019 to 30 September 2019

	1 April 2019 to 30 September 2019
Referred to ASBFEO	85
Referred to Another Government Agency*	6
Information Provided**	174
TOTAL	265

*ACCC, Small Business Commissioners, Tribunals etc

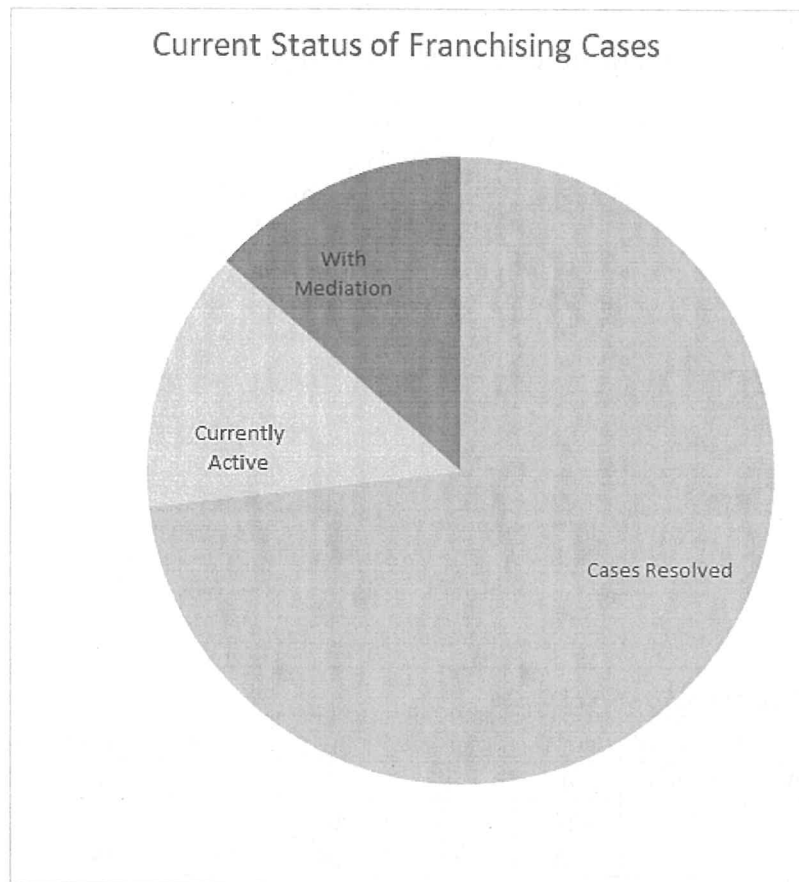
** Information on Franchising Code of Conduct, general dispute resolution information, referred to business.gov.au, suggested legal advice

Data Series 3 - Franchising cases

This data series is sourced from our CRM using the metrics of the cases that are lodged with our office.

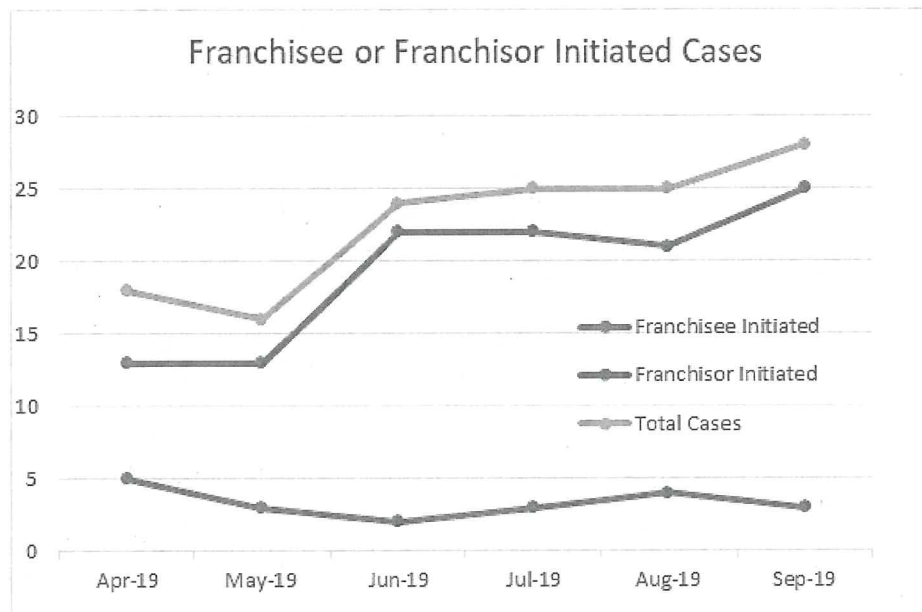
CURRENT STATUS OF FRANCHISING CASES - 1 April 2019 to 30 September 2019

	No of Cases
Cases Resolved	100
Currently Active	18
With Mediation	18
Total Cases	136

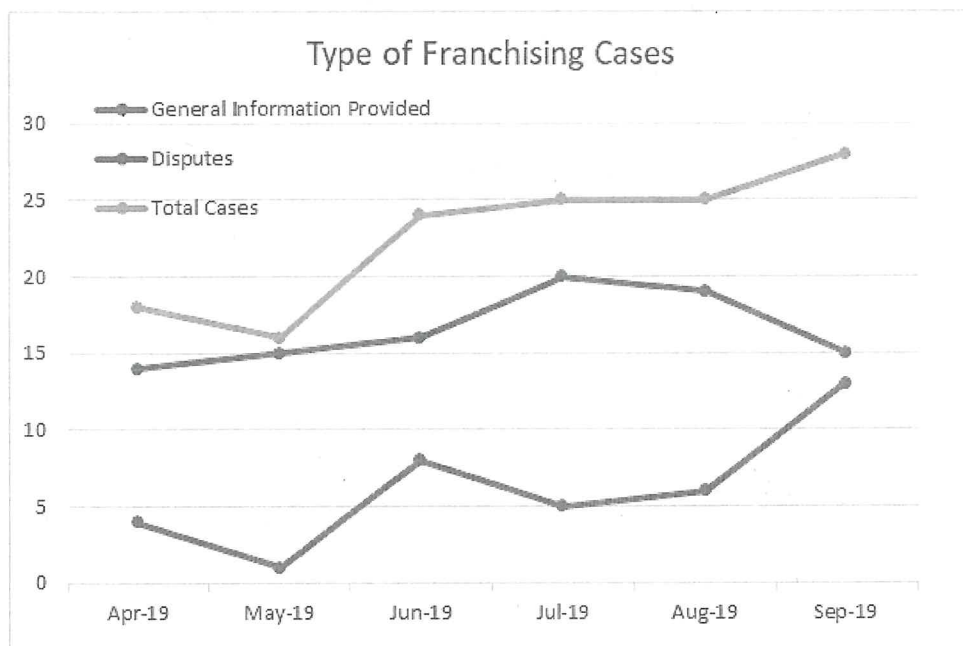


FRANCHISING CASES - No of Cases, 1 April 2019 to 30 September 2019

	Apr-19	May-19	Jun-19	Jul-19	Aug-19	Sep-19	Total
Franchisee Initiated	13	13	22	22	21	25	116
Franchisor Initiated	5	3	2	3	4	3	20
Total Cases	18	16	24	25	25	28	136

**TYPE OF FRANCHISING CASES - No of Cases**

	Apr-19	May-19	Jun-19	Jul-19	Aug-19	Sep-19	Total
General Information Provided	4	1	8	5	6	13	37
Disputes	14	15	16	20	19	15	99
Total Cases	18	16	24	25	25	28	136

**Data Series 4 - Mediator feedback – preliminary results**

The data below is sourced from information provided by mediators after a mediation has occurred. Given this new information, and the number of reports received to date, this data series relates to the entire period for which ASBFEO has been administering the Office of the Franchising Mediation Adviser. The

mediator, under the Franchising Code of Conduct, provides a Certificate of Mediation to all participants in the process. We have collated information from these Certificates of Mediation and a Mediators Report. We are further improving means of collection and collation of this data. The following data is a point in time data collection which will be updated as reports come back in.

**OUTCOME OF MEDIATION, 1 December 2018 to 10 October 2019,
No of Cases**

Dispute Resolved	25
Dispute Unresolved	11
Total	36

**PARTIES PARTICIPATION IN MEDIATION, 1 December 2018 to 10
October 2019, No of Cases**

Both Parties Acted in Good Faith	31
Both Parties Did Not Act in Good Faith	2
Total	33

*Both parties that were deemed not be acting in good faith were franchisees withdrawing from the process

**METHOD OF MEDIATION, 1 December 2018 to 10 October 2019, No of
Cases***

Face to Face Mediation	21
Teleconference/ Video/Other	6
Total	27

MEDIATION KEY STATISTICS, 1 December 2018 to 10 October 2019*

	Average	Minimum	Maximum
Length of Mediation, hours	7	2	17
Cost of Mediation, \$	\$ 2,518	0	\$ 6,387

COOPERATION WITH MEDIATOR, 1 December 2018 to 10 October No of Cases*

Cooperated with Mediator	33
For the Most Part	3
Did not Cooperate	2
Total	38

AUTHORITY TO ENTER AGREEMENT, 1 December 2018 to 10 October No of Cases*

Had Authority to Enter into Agreement	23
Had to Contact Another Person	5
Did Not Have Authority to Enter into Agreement	0
Total	28

Data Series 5 - Participation feedback – preliminary results

The data below is sourced from participant feedback forms, which are provided to participants by the mediator and returned either directly to our office or via the mediator. Given this new information, and the number of reports received to date, this data series relates to the entire period for which ASBFEO has been administering the Office of the Franchising Mediation Adviser. We have implemented processes to ensure follow up on collection and collation of these forms.

WHO INITIATED DISPUTE, 1 December 2018 to 10 October 2019, No of Cases*

Franchisor to Franchisee	5
Franchisee to Franchisor	10
Total	15

SATISFACTION WITH ADR, 1 December 2018 to 10 October 2019*

	No of Cases	Percentage
Very Satisfied	8	50%
Satisfied	6	38%
Neutral	1	6%
Dissatisfied	0	0%
Very Dissatisfied	1	6%
Total	16	100%

OUTCOME FROM MEDIATION, 1 December 2018 to 10 October 2019*

	No of Cases	Percentage
Resolved	10	63%
Partly Resolved	1	6%
Not Resolved	5	31%
Total	16	100%

*Totals for those mediations for which feedback forms have been received to date. This percentage reflects only those directly involved in mediation and does not include matters resolved at steps leading up to mediation (such as early resolution steps as taken by ASBFEO Case Manager)

LIKELIHOOD OF RECOMMENDING MEDIATOR, 1 December 2018 to 10 October 2019*

	No of Cases	Percentage
Likely to Recommend Mediator	13	87%
Unlikely to Recommend Mediator	2	13%
Total	15	100%

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FRANCHISING MEDIATION ADVISER, HORTICULTURE MEDIATION ADVISER AND OIL DISPUTE RESOLUTION ADVISER

Current arrangement

- The current appointee to the roles of Franchising Mediation Adviser and Oil Code Dispute Resolution Adviser is (since 1 December 2018) the 'Branch Manager of the Deregulation and Small Business Branch within the Department of Jobs and Small Business', which at the time of the appointment was Ms Rose Verspaandonk.
 - Since 1 December 2019, the appointee to the role of Mediation Adviser under the Horticulture Code is 'the person from time to time holding, occupying or performing the duty of Assistant Secretary of the Migration Policy and Deregulation Branch in the Department of Employment, Skills, Small and Family Business'.
- The Adviser is supported administratively by Australian Small Business and Family Enterprise Ombudsman (ASBFEO) staff.
- This arrangement will remain in place until relevant ministers sign a legal instrument appointing a new Adviser.
- The office of the ASBFEO currently administers the day-to-day functions of the Advisers under all three codes, including fielding inquiries, case management assistance with disputing parties, and advertising the availability of the service. To date, the function of the Adviser to appoint a mediator has not needed to be exercised.
- Stakeholder consultation has generally indicated that ASBFEO's service delivery has thus far been working well, and that ASBFEO is successfully managing disputes through their case management processes.
 - Some stakeholders, particularly mediators, have raised issues with the transparency of ASBFEO's mediator selection process, the publicity and awareness of the Adviser services, and the helpfulness of the phone lines and website.
 - The department has met with ASBFEO to discuss these matters and ASBFEO has taken appropriate action, for example by securing the domain name franchisingcode.gov.au (and related domains for the other Codes), updating ASBFEO's website, and reaching out to third parties asking them to update information related to the services.
 - ASBFEO has commenced a six month Google and social media advertising campaign to promote ASBFEO and Franchising Code dispute resolution services.
- Of the 136 Franchising Code cases in which further action was taken between 1 April 2019 and 30 September 2019, 116 cases were franchisee initiated, while only 20 were franchisor initiated.
 - 100 out of 136 cases were successfully resolved by ASBFEO, with 18 currently at mediation.
 - 88% of mediation participants who returned a feedback form reported that they were either 'satisfied' or 'very satisfied' with the mediation process and mediators.

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- From December 2018 to June 2019, only one inquiry related to the Oil Code was taken, while no inquiries were made regarding the Horticulture Code.

Current Status of ASBFEO Cases: 1 April 2019 to 30 September 2019

Current Status (as of 17 September 2019)	Number of Franchising Cases
Resolved	100
Currently Active	18
Currently with mediator	18

Breakdown of cases by State

State	Percentage of New Cases Originating from State
New South Wales	28%
Queensland	32%
Victoria	27%
South Australia	3%
Western Australia	9%
Tasmania	0%
Australian Capital Territory	1%
Northern Territory	0%

Key Mediation Statistics

	Average	Minimum	Maximum
Length of Mediation (hours)	7	2	17
Costs of Mediation (\$)	\$2,518	\$0	\$6,387

Future arrangements

- On 14 March 2019, the *Fairness in Franchising* report was tabled containing 71 recommendations.
- With respect to the Adviser services, the report recommends that an inter-agency Franchising Taskforce consider the appropriateness of:
 - merging the Office of the Franchising Mediation Adviser with ASBFEO, and that franchising be included in the name of any combined body
 - funding any combined small business and franchising ombudsman through an industry levy based on the number of complaints
 - all franchisees under the Franchising Code falling under the jurisdiction of the combined body if established
 - enhancing the powers of any combined body so that it may refer and direct parties to binding arbitration under the Franchising Code, and
 - the combined body being an independent assessor with the ability to review handling of disputes and the capacity to refer systemic or serious matters to regulators.
- The Franchising Taskforce is preparing to advise Government on these recommendations, including the recommendation to integrate the Mediation

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Adviser functions with ASBFEO's general small business dispute resolution functions, and other suggestions to improve the service.

- Stakeholder consultation in light of the Issues Paper and the Regulation Impact Statement will be considered as part of this process.

Past arrangement

- The Adviser service was previously contracted to Dispute Resolution Associates (DRA), led by Mr Derek Minus from 1 December 2016 to 30 November 2018. This appointment was made after a tender process managed by The Treasury.
- The contract with DRA expired on 30 November 2018. The then Department of Jobs and Small Business and DRA agreed that a contract extension was not a viable option because contract renewal negotiations were unsuccessful.

Background

- On 30 November 2018, the Treasurer, the Hon Josh Frydenberg MP, appointed the Branch Manager, Deregulation and Small Business Branch, Department of Jobs and Small Business, as Mediation Adviser under the *Franchising Code of Conduct* (Franchising Code) and Dispute Resolution Adviser under the *Oil Code of Conduct* (Oil Code). The Hon David Littleproud MP, the then Minister for Agriculture and Water Resources, made a parallel appointment under the *Horticulture Code of Conduct* (Horticulture Code).
- An updated instrument of appointment was signed by Senator the Hon Bridget McKenzie, the Minister for Agriculture, appointing the Assistant Secretary of the Migration Policy and Deregulation Branch within the Department as Horticulture Mediation Adviser following the expiry of the earlier instrument on 30 November 2019. The appointment was effective from 1 December 2019.
- Historically, the department with small business policy responsibility has managed all three Adviser roles, for administrative efficiencies and to ensure consistency in service delivery across these codes. This is in line with budget measures providing for the amalgamated delivery of industry code dispute resolution services. The department may also manage any future Adviser arrangements introduced under other mandatory industry codes (e.g. a new automotive code of practice).

FRANCHISING MEDIATION ADVISER, HORTICULTURE MEDIATION ADVISER AND OIL DISPUTE RESOLUTION ADVISER

Current arrangement

- The current appointee to the roles of Franchising and Horticulture Mediation Adviser and Oil Code Dispute Resolution Adviser is (since 1 December 2018) the 'Branch Manager of the Deregulation and Small Business Branch within the Department of Jobs and Small Business', which currently refers to Ms Rose Verspaandonk.
- Ms Verspaandonk is supported administratively by Australian Small Business and Family Enterprise Ombudsman (ASBFEO) staff.
- This arrangement will remain in place until relevant ministers sign a legal instrument removing Ms Verspaandonk from the position or appointing a new Adviser.
 - The exception is Ms Verspaandonk's appointment as Horticulture Code Mediation Adviser. The instrument of appointment expires on 1 December 2019, and a new appointment or instrument will need to be made.
- The office of the ASBFEO currently administers the day-to-day functions of the Adviser, including fielding inquiries, engaging in case management processes with disputing parties, and advertising the availability of the service.
- Stakeholder consultation has generally indicated that ASBFEO's service delivery has thus far been working well, and that ASBFEO is successfully managing disputes through their case management processes.
 - Some stakeholders, particularly mediators, have raised issues with the transparency of ASBFEO's mediator selection process, the publicity and awareness of the Adviser services, and the helpfulness of the phone lines and website.
 - The department has met with ASBFEO to discuss these matters and ASBFEO has taken appropriate action, for example by securing the domain name franchisingcode.gov.au (and related domains for the other Codes), updating ASBFEO's website, and reaching out to third parties asking them to update information related to the services. ASBFEO will also commence a Google AdWords campaign and will utilise the Ombudsman's high media profile to further improve visibility of the service.
- In the period 1 December 2018 to 30 June 2019, the ASBFEO office has:
 - Answered 327 inquiries relating to the Franchising Code, one enquiry related to the Oil Code and no enquiries relating to the Horticulture Code;
 - Acted on 151 cases within ASBFEO relating to the Franchising Code, of which 123 were franchisee initiated and 28 were franchisor initiated;
 - Of those 151 cases within ASBFEO, 129 have been resolved and 16 are currently with mediation; and
 - The majority inquiries and cases were initiated from NSW-based businesses (32%), followed closely by 27% from Queensland and 23% from Victoria.

Future arrangements

- On 14 March 2019, the *Fairness in Franchising* report was tabled containing 71 recommendations.
- With respect to the Adviser services, the report recommends that an inter-agency Franchising Taskforce consider the appropriateness of:

- merging the Office of the Franchising Mediation Adviser with ASBFEO, and that franchising be included in the name of any combined body
 - funding any combined small business and franchising ombudsman through an industry levy based on the number of complaints
 - all franchisees under the Franchising Code falling under the jurisdiction of the combined body if established
 - enhancing the powers of any combined body so that it may refer and direct parties to binding arbitration under the Franchising Code, and
 - the combined body being an independent assessor with the ability to review handling of disputes and the capacity to refer systemic or serious matters to regulators.
- The Franchising Taskforce is preparing to advise Government on these recommendations, including the recommendation to integrate the Mediation Adviser functions with ASBFEO's general small business dispute resolution functions, and other suggestions to improve the service.
 - Stakeholder consultation in light of the Issues Paper, and later the Regulation Impact Statement, will be considered as part of this process.

Past arrangement

- The Adviser service was previously contracted to Dispute Resolution Associates (DRA), led by Mr Derek Minus from 1 December 2016 to 30 November 2018. This appointment was made after a tender process managed by The Treasury.
- The contract with DRA expired on 30 November 2018. The then Department of Jobs and Small Business and DRA agreed that a contract extension was not a viable option because contract renewal negotiations were unsuccessful.

Background

- On 30 November 2018, the Treasurer, the Hon Josh Frydenberg MP, appointed Ms Rose Verspaandonk, Branch Manager, Deregulation and Small Business Branch, Department of Jobs and Small Business, as Mediation Adviser under the *Franchising Code of Conduct* (Franchising Code) and Dispute Resolution Adviser under the *Oil Code of Conduct* (Oil Code). The Hon David Littleproud MP, the then Minister for Agriculture and Water Resources, also appointed Ms Verspaandonk as Mediation Adviser under the *Horticulture Code of Conduct* (Horticulture Code).
- Historically, the department with small business policy responsibility has managed all three Adviser roles, for administrative efficiencies and to ensure consistency in service delivery across these codes. The department may also manage any future Adviser arrangements introduced under other mandatory industry codes (e.g. a new automotive code of practice).

Franchising Code Disputes

	Total Contacts (Infoline plus Cases)	Infoline Calls	No. of ASBFEO cases	Initiated by Franchisee	Initiated by Franchisor	Currently Active	Resolved	With Mediation	QLD	NSW	VIC	SA	WA	ACT	TAS	NT
Dec-18	73	46	27	24	3	9	18	4	11	8	4	0	3	1	0	0
Jan-19	67	43	24	22	2	11	13	8	8	9	6	0	1	0	0	0
Feb-19	77	50	27	22	5	13	14	9	3	6	9	3	4	0	0	2
Mar-19 to date			11	9	2	9	2	1	3	3	1	2	0		0	0
TOTALS	217	139	89	77	12	42	47	22	25	26	20	5	8	1	0	2

Horticulture Code Disputes

	Number of Cases	Oil Code Disputes	Number of Cases
Dec-18	0	Dec-18	0
Jan-18	0	Jan-18	0
Feb-19	0	Feb-19	1
Mar-19 to date		Mar-19 to date	0
TOTALS	0	TOTALS	1