

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

2016 - 2017

Department/Agency: ASBFEO

Question: BET221-236

Topic: Small Business Ombudsman

Reference: Written - 5 May 2016

Senator: Chris Ketter

Question:

"221. Should an ombudsman be impartial?

222. Is it appropriate for an Ombudsman to make statements that support particular political positions or policies?

223. Is it appropriate for an Ombudsman to make a partisan statement in a public debate?

224. Should an Ombudsman be commenting on divisions between the Government and Opposition?

225. If an Ombudsman demonstrates partisanship in a debate, how might this affect consumers and customers who have issues with the Government? Where can small businesses go, if they see the Ombudsman as an arm of government?

226. Who can dismiss an Ombudsman?

227. What kind of inquiries should the Ombudsman seek to undertake?

228. How extensive do you believe these inquiries should be?

229. What resources does the Ombudsman have to effectively undertake a large inquiry?

230. What type of issues merit an Ombudsman-led inquiry?

231. In a recent Joint Standing Committee report, recommendations from the Government to the Ombudsman included:

- The design of a process for additional costs that a bank incurs when a loan is in default
- Lead and coordinate the implementation of the outcomes of the inquiry
- Bring together a team of financial service, ethics and education specialists to establish standards for banks
- Nominate independent experts to critically examine contentious cases of unconscionable conduct
- Create a user pays system industry funding model as a tribunal to consider cases of unconscionable conduct

Will you require additional resources to fulfil this program of work if requested by the Govt?

232. How many commercial financial/legal specialists do you employ currently?

233. Is a request to the Ombudsman to effectively undertake the work of a Banking Royal Commission (which is the request by the many individuals who have complained about bank behaviour) likely to satisfy the many aggrieved individuals who have been seeking a root and branch review of bank behaviour?

234. Should the Ombudsman reject the recommendation to correct and repair the behaviour of the banks given your current staffing levels and your role as an Ombudsman (i.e. dispute resolution before a legal process is initiated)?

Senator Ketter also asked the following additional questions:

235. What kind of activity should an impartial ombudsman refrain from engaging in?

236. The Parliamentary Joint Committee report into loan impairment recommends that

ASBFEO investigate the disputed cases of loan impairments that were raised by the inquiry. What experience does the ASBFEO have in investigating loan or credit disputes?"

Answer:

221. Answered by Mr Lonsdale - page 119 of the Hansard of 6 May 2016.
222. Answered by Mr Lonsdale - page 119 of the Hansard of 6 May 2016.
223. Answered by Mr Lonsdale - page 119 of the Hansard of 6 May 2016.
224. This goes to opinion and is an issue for government in terms of what the role of an ombudsman should be.
225. Answered by Mr Lonsdale - page 119 of the Hansard of 6 May 2016.
226. Answered by Mr Lonsdale and Mr Boneham - page 119 of the Hansard of 6 May 2016.
227. Sections 36 and 46 of the *Australian Small Business and Family Enterprise Ombudsman Act 2015* state that the Ombudsman as part of its advocacy function undertakes own initiative inquiries and Minister-referred inquiries into:
- (a) the effect of relevant legislation, policies and practices on small businesses or family enterprises, or a class of small businesses or family enterprises; and
 - (b) ways in which relevant legislation, policies and practices might be improved to assist small businesses or family enterprises, or a class of small businesses or family enterprises.
- The Act also provides for various other advocacy activities, such as working cooperatively on national strategies (section 59), contributing to inquiries (section 61), reviewing proposals (section 62) and promoting best practice (section 64).
228. This would be determined on the elements of each inquiry and could include a number of factors such as subject matter, scope, timeframe etc.
229. The Ombudsman has a budget that is designed to permit a range of inquiry sizes, including large inquiries.
230. The Ombudsman, for example, conducted an open consultation with small business and family enterprise and their representatives. The consultation was designed to allow business to raise issues with the Ombudsman and will form the basis of a publicly announced work program. Issues that might merit Ombudsman-led inquiries are being raised as part of that consultation and would be decided in accordance with the *Australian Small Business and Family Enterprise Ombudsman Act 2015*, particularly section 36. The Minister has also referred matters for inquiry.
231. This would be a matter for Government.
232. Three.
233. This goes to opinion.
234. Answered by Ms Carnell - page 120 of the Hansard of 6 May 2016.
235. The Ombudsman is bound by the *Australian Small Business and Family Enterprise Ombudsman Act 2015* in the exercise of its functions and powers. That Act specifies certain positive requirements (such as relate to how assistance and advocacy functions are to be performed), circumstances where the Minister may terminate an appointment (such as for misbehaviour, bankruptcy and absence) and how information should be handled (secrecy).

236. The Ombudsman has been in place since 11 March 2016. Since that time, loan and credit issues have been considered in both our inquiry into the impact of the recent Road and Safety Remuneration Tribunal Order and its impact on small business owner drivers as well as a part of our general consultation on small business issues. The Ombudsman has also been engaged in various loan and credit matters as part of its assistance function.