

Small Business in 2018 – top things to watch out for

Ms Morgan: Hello, and welcome to this year's small business webinar and thank you for joining us. I'm Elysse Morgan, host of the ABC's The Business program. As an experienced business reporter, I know that while small businesses represent such a huge and critical role in the economy, so often they feel forgotten. The demands of running a small business mean it's difficult to find the time to stay informed and across changing rules and regulations. And it can also be overwhelming trying to work out where to go for the right information and guidance. Help is at hand. The major agencies are working to make it easier for you. In this webinar, we're going to cover some of the initiatives available to help small businesses. We'll cover new resources and tools specifically designed for small business. On the panel, we have representatives from the five big government agencies. I'd like to introduce, on my left, Deborah Jenkins, Deputy Commissioner of the Australian Tax Office. We have John Price, ASIC Commissioner, David Salisbury, General Manager of the ACCC, Small Business Ombudsman, Kate Carnell and Tom O'Shea, Executive Director from the Fair Work Ombudsman.

Mr O'Shea: Thanks for having me.

Ms Morgan: Thank you all. Firstly, Kate, what is your role as Ombudsman?

Ms Carnell: Well, my role is an interesting one, Elysse, and it's quite new, only two years old. But two years ago, legislation was passed to set up an independent office federally to represent small business. So, fundamentally, my boss is small business in Australia. Because the role is independent, I don't actually report to the government directly, but I do report to small business. We do two things; we assist small business that have got problems, problems with big business, with contracts not being paid on time, a whole range of those sorts of issues, and also problems that they might have with federal government agencies generally. We also have an advocacy function. So we listen to small businesses on the things that are driving them crazy or the things that they want changed. So we input into government to try to address issues that aren't working so well for small business, but we also do inquiries into things that small business want us to look at, like payment times and contracts with banks, those sorts of issues. So what we're there for is to make life easier for small businesses to grow their businesses and to employ.

Ms Morgan: Thanks, Kate. David, what's happening at the ACCC?

Mr Salisbury: Well, at the ACCC, of course, we're the national competition and consumer protection regulator. It's a busy time for us. What we do is to enforce the *Competition and Consumer Act*, including the Australian Consumer Law. Now, that contains a number of protections for consumers in there, things like consumer guarantees, there are rules in there about advertising and marketing that you need to know for your business, there's protections for small business with unfair contract terms, and there is also certain regulations which give you some protection as a small business if you're operating under one of the codes of the conduct, like in the franchising sector. So part of what my role with the ACCC is to educate small businesses, let them know what their rights and responsibilities are, to tell them how they should be dealing with their consumers and other businesses, and so we've just released our priorities for the year.

Ms Morgan: What are you focusing on this year?

Mr Salisbury: This year there's some important issues for small business. The business to business unfair contract term provisions, something we'll be looking closely at. We're also aware of concerns around franchising systems, and we're looking more closely at that as well. There's a range of other

things we'll be looking into and a few of those I'll mention tonight. Country of origin labelling, a very, very big reform coming in; we'll be informing businesses about scams and, particularly, giving people some tips on how to avoid scams, and the ACCC has also been up to - there's some important changes to the laws that we're administering at the moment in codes of conduct. So right now we're inputting into how should the franchising code look, how should a food and grocery supermarket's code look. So we're putting our two cents into that.

Ms Morgan: Thank you so much. To you, Tom, what is happening at the Fair Work Ombudsman?

Mr O'Shea: Thanks, Elysse. The FWO is responsible for regulating most Australian workplaces and our role is actually to promote workplace laws and to ensure compliance with them as well. We help businesses, especially small business to understand what their rights and their obligations are. We have a number of free dedicated services for small businesses, especially our small business helpline. We've got a web presence, fairwork.gov.au is actually hit up more than 15 million times a year, and it contains a whole range of resources for small business. Of course, as a regulator, we've also got that hard edge as well. We do around 4,500 audits a year, we resolve workplace disputes, we investigate matters, and in a small percentage of cases we actually take litigation as well. Of course, that helps to create a level playing field for small business to make sure that the ones who are doing the wrong thing are held to account in that very end stage. But, of course, we're hoping that it never gets to that point and that's why we put so many resources into making sure that the tools and resources are available for small business, so we want them to come to us, and I'll go through some of those things tonight.

Ms Morgan: Thanks so much. John, what about the ACCC – sorry, what about ASIC and how that is interacting with small business?

Mr Price: Thanks very much, Elysse. Well, look, as most people hopefully know, ASIC is Australia's corporate markets and financial services regulator. And, importantly, for people watching tonight I think, small business is really our biggest customer. So small business operators will typically deal with ASIC when they do things like open a company, update company details, close a company, get a business name, update details, get rid of that business name. Importantly, if small business has concern about corporate conduct, they may well be lodging a report of misconduct with us. And, finally, ASIC has a whole variety of really useful information, including free information that business can search when they need to. But, more generally, I think the key thing I want people to remember is that when it comes to small business, ASIC's aim really is to assist, engage with and help protect small business.

Ms Morgan: Deborah, last but not least, probably everyone has tuned in to hear specifically what the tax office is looking at in small business.

Ms Jenkins: Absolutely. Thanks very much, Elysse. My role is really about supporting small businesses to thrive. And so whether you're a brand new business starting out or whether you might just be a business that's about to expand or take on a new employee it's really important that we, as the ATO, help small business operators stay on top of their tax and superannuation obligations. So we provide a lot of services and tools, and we might talk about those a little bit later on, but we also do a lot in the areas of engagement and support. So we're out there in the community. We run lots of different seminars and provide lots of information to really help people understand what they need to do to comply with their tax and super obligations. But there's another part of what we do too, and we also know that our role is creating an environment where those people who don't do the right thing are actually - we help them to do the right thing to make sure that we can create a level playing field. So we do deliver lots of new tools to help people and also provide a lot of customised support that we'll have a chat about a little bit later on so that people can really get the support they need.

Ms Morgan: Thanks so much. So now we know a little bit about each of the agencies and their role in small business, let's find out more about the work that they've been doing this year and what else is on the horizon. Plus, we'll take a look at some top tips that small businesses should keep in mind. Firstly, let's hear from you, David. I know there's been a lot happening at the ACCC.

Mr Salisbury: Indeed, there has, thanks, Elysse. We recently reflected on 2017. We know that more and more businesses are contacting us and seeking some guidance. So we put together some things that we think all businesses should need to know and so when they're advertising and selling, for example, remember about consumer guarantees. Now, these are rights that are put into every consumer contract and it's important that companies represent them accurately. Products and services must be of acceptable quality, and they must do the things that you expect them to. So you must deliver on any promises you're making regarding your products or services. Now, if the product or service doesn't meet the consumer guarantees, then businesses need to provide a remedy. And the type of remedy depends on if it's a minor fault or a major fault. A minor fault, you might be able to fix it up and repair it, but if it's a major fault, you should really be replacing or refunding. Now, I think important for small business is that they're often in the position of being a consumer. So the Australian Consumer Law treats small businesses and a lot of transactions as a consumer. So as a small business, exercise your consumer rights. Selling online, it's pretty important with so many small businesses going online now, all the same rules apply. And so advertise accurately and also monitor your social media responses to make sure there's no misleading information going up in your social media work.

Ms Morgan: So where can people actually go for some guidance on this?

Mr Salisbury: Well, our ACCC Infocentre and Small Business Helpline are always available. We respond to inquiries, we provide guidance and we take reports of alleged misconduct under our Act. Now, we carefully consider all reports, but our focus is on conduct that is widespread, has widespread detriment, including to small businesses. We don't provide individual dispute resolution or mediation services, but there are a number of state and federal agencies that can assist with that. And if people end up with us, we try and get them where they can go to get their problem solved as soon as we can.

Ms Morgan: Thanks, David. Some excellent tips there. Just a reminder to our viewers that you can find links to the relevant tools and publications from each of these agencies, all of the documents and things that we talk about tonight, they will be on the 'Resources' tab on your screen. Now, Kate, your office plays a little bit of a different role to some of the other agencies here, more of a support and advocacy role. What can you tell us about the support that you can actually provide? I'm assuming that the ACCC may pass some small businesses to you?

Ms Carnell: Look, absolutely. In fact, we all pass to each other because our job, all of us, is to try to solve the problems for small business. Now, we've got a great dispute resolution tool on our website. So the first thing you can do, if you've got a dispute or a problem, is go to our website and use the dispute resolution and guidance tool to determine what the next step might be. One of the problems we have is often small business wait too long. They wait until they've got a very real problem or they might be in the court system or whatever, and it's just really too late then to solve problems easily. So what we want people to do is come to our website, have a look at our dispute resolution tool, determine what the next steps are. If necessary, then give us a ring on 1300 650 460, but listeners can have a look on the website to have a look at that. We've got about 110 cases at the moment, which is about normal. We solve most of them, and we solve most of them by approaching the entity that they've got a problem with and, regularly, that can solve the problem really quickly. I often ring Deb--

Ms Jenkins: Absolutely.

Ms Carnell: --and solve problems very, very quickly. So the issue is be proactive.

Ms Morgan: So it's those disputes ranging from business to business, to business to tax office?

Ms Carnell: Yeah, that's right. They can be late payments, missing payments, problem with the tax office, phoenixing, franchising, issues with government contracts, all sorts of issues that small businesses feel that they are just too small to deal with and no-one will listen to them. The fact is the agencies sitting around the table here tonight do listen and are interested in solving problems, but again, be proactive, get in early, your problem can be solved.

Ms Morgan: Don't leave it too late until the lawyers are involved.

Ms Carnell: That's the one.

Ms Morgan: Sorry, Deborah, we're going to you next.

Ms Morgan: While we're speaking about lawyers, what's the ATO focusing on this year? What's there for small business?

Ms Jenkins: Yeah, absolutely. Well, there is so much happening, but I thought just a few things to talk about today. So you probably saw that there was an amnesty announced around superannuation. So paying superannuation is a really important part of being an employer, and often many small businesses struggle with that, so the Minister for Revenue and Financial Services recently announced that there was a 12 month amnesty. So we really are encouraging people to think about if you've got behind in your superannuation guarantee payments, take a look at this particular opportunity that's coming through. It means that you can make those payments without penalty. But in addition to that, we're also trialling a new independent review facility. So we're trialling that from 1 July, and it will allow independent reviews for certain small business audits, and the intention is that over time we'll be able to give people that opportunity regardless of their size. And that's going to really help us. As Kate was talking about too, it's about making sure we get sort of an appropriate resolution to some of those issues. In addition to those two new things, we have a Business Assistance Program, which is one on one support that's provided over a 12-month period, and that's by phone. It's something a lot of people actually don't know about.

Ms Carnell: And it's really good.

Ms Jenkins: I know, it is. See, and even Kate says it's good.

Ms Carnell: Oh yeah. I give them a hard time.

Ms Jenkins: And we've got Small Business Assist, which is we understand that small businesses don't have time to call us from nine to five, so there is a click to chat and a live chat service as well, and you can also book a time to call us. So there's some lots of great things that we're offering people to get in touch with us.

Ms Morgan: And to make it easier?

Ms Jenkins: To make it easier, absolutely.

Ms Morgan: John, ASIC is looking at a couple of things, one of them in particular is this unfair contract terms. Now, this is relatively new in the regulation space, but obviously critical for small business to get across.

Mr Price: Oh, look, it's really, really important I think, and the government made these important reforms to extend unfair contracts legislation and protection to small business loan contracts in November 2016. And, since that time, we've worked closely with Kate's office, actually, to try and get

the big four banks, in particular, to remove unfair terms from their small business loan contracts where those contracts go up to \$3 million, and we really focussed first on the big four banks because they provide the majority of credit to small businesses through loans. So we managed to negotiate some very important changes with the big four banks that actually go beyond strict legal requirements and we outlined what those changes were in a publicly available report that people can download from our website, which is report 565. So that's available on our website. Importantly, when we made that media release about our report earlier in the year, we also indicated that the guidance in that report was quite important for other lenders to have regard to, so including fintech lenders, for example, we encourage consumers to read the report to get a better understanding of what their rights are as well.

And it's not just a case of set and forget - having released this report, we're going to forget about this - we are monitoring, as we speak, what the big four banks have done to meet the promises they've made and we're also looking at other lenders in the business community to make sure their practices are up to scratch as well, and that's quite important to know. So the other important area that I just wanted to mention quickly is perhaps a bit less exciting, it's about what we call registry services. It's about information that businesses provide to us and how we can make it easier for businesses in giving information to government agencies. So what we've done recently is we've participated in the development of something, a single online portal for company and business registrations that actually connects to Deborah and the ATO. And we've done that so small business isn't having to give the same piece of information to lots of different government agencies all the time, and I can fully understand why people would think that's a silly thing to do. So we're trying to stop that. The beta version of that portal is now live and it's accepting registrations from companies, for ABNs, for the GST, just to name a few things, so I would strongly encourage people to have a look at it, and we'll continue to modernise and improve the portal and add to it as time goes on.

Ms Morgan: I'm sure there's many people out there who would appreciate the streamlining of that paperwork that you're giving them. But the Fair Work Ombudsman, Tom, is also doing something about sort of streamlining your resources and tools.

Mr O'Shea: Yeah, that's right. We've recently launched our Small Business Showcase. It's a virtual one stop shop that provides resources for small business owners seeking information about their workplace obligations. It runs alongside our Workplace Basics Campaign and it was developed to equip small business owners with the tools and information they need to manage workplace relations issues as they arise, and we all know IR issues are pretty complex - the Act is this thick. So what we see time and time again is that the same mistakes are made and we think that the workplace - sorry, the Small Business Showcase consolidates - sorry, I've lost where I'm up to - it consolidates all of our online resources in a single, easy to access and navigate hub, making it simpler and quicker for businesses to access quickly. It focuses on the different aspects of running a small business, regardless of where they're at in their life cycle, and topics include hiring employees, paying employees, keeping the right records and also how to keep up with the changes that happen from time to time, like the annual wage review that we saw. Small businesses can brush up on their workplace relations knowledge, they can download practical resources, and find out more about the assistance that we provide. And I will talk about the Workplace Basics Campaign as well.

Ms Morgan: So are they going to find a whole bunch of, basically, how-to guides here?

Mr O'Shea: That's exactly right.

Ms Morgan: How not to step out of line when hiring, firing, et cetera?

Mr O'Shea: That's exactly right, and it links to all of our online learning courses, it links to information from other agencies as well, some of our friends around the table and, really, it's a one stop shop for small business owners to come to the Fair Work Ombudsman to access so many tools and resources that we think will set them up in the right way to be compliant.

Ms Carnell: And, Tom, they can do that without any fear, that they won't be held accountable because they didn't know stuff they should have known.

Mr O'Shea: Absolutely, Kate. We're encouraging people to come to us. This isn't a compliance moment, this is an education moment. We want to stop compliance problems before they start.

Ms Morgan: Well, surely, it's more work for you?

Mr O'Shea: Totally, and for the taxpayer, Elysse, holding business to account in a court costs millions and millions of dollars, not to mention the impact on the level playing field, not to mention the impact on the employees. Promoting workplace compliance is what we're all about and it's the quickest, simplest and easiest and best way to do it.

Ms Morgan: Deborah, a major issue for businesses is cash flow, what's the ATO doing to help businesses with that?

Ms Jenkins: Yeah, absolutely. I mean if you think about, when I talk to small businesses what they say to me is the number one thing that they lie awake in bed at night about is cash flow. So we thought about this at the ATO and we thought, look, how can we really practically help? So what we have developed is something called our Cash Flow Coaching Kit. The Cash Flow Coaching Kit is designed to actually be white labelled, so we've got tax practitioners, accountants and other advisors who are using our kit to workshop or talk or educate small businesses about how to manage cash flow - which I know Kate has dealt with this many a time - which is if you can actually get some of those basics right on cash flow, it's going to make a huge difference. In developing this, we have worked closely with a whole range of people to say is this tool actually going to work, does it help them think about that effective cash flow from day one because, ultimately, if they can get that cash flow under control it's going to make life a whole lot easier.

Ms Morgan: You've got, Tom, speaking of making life easier for businesses, a Workplace Basics Campaign.

Mr O'Shea: Yeah, that's right.

Ms Morgan: Talk me through it.

Mr O'Shea: So basically, our people will be out in the field educating and assisting over a thousand businesses to access and navigate the wide range of free resources that we provide, that I spoke about earlier, so they can pay workers correctly and follow record keeping and payslip laws, which is really important, and I'll talk more about payslip laws later. Our experience suggests that most businesses want to do the right thing, but a lot of them, especially new businesses, they don't know where to start. The legislation is huge. There's 122 modern awards. Complying with workplace relations laws can be really difficult, but we want small businesses to know that we provide the resources, the tools and the information they need and, really importantly, it's available free online 24/7, so you don't need to come to us during business hours, if you're out on the tools all day, or if you're in the shop, or if you're doing your small business work, you can catch up when you need to, when it suits you.

Ms Morgan: And so what will actually happen throughout the campaign as it happens?

Mr O'Shea: So we'll be inviting businesses, we'll be writing to them first, we'll be talking to them about it, we'll be then going out and meeting with them, we'll be running them through our Small Business Showcase and then we'll be checking up on them later. But, again, this isn't a compliance moment, this is an education moment. So it's that sort of consultancy, if you like, that we're out actually with small business people helping them to understand the basics.

Ms Morgan: Thanks, Tom. And speaking of the basics, the ACCC is trying to get the information out there, the basics of how to avoid scams. So we hear a lot about scams that target old people at home, are small businesses also targeted?

Mr Salisbury: Elysse, unfortunately, one of the most entrepreneurial, innovative sectors we have is scams, and they target everyone they find. There's a scam for everyone, whether it's puppies or whatever a vulnerability might be. Now, in the case of small business, they're busy and so the vulnerability of a small business is they're very busy and so they might not check as closely some demands for payment. So, unfortunately, we saw a 23% increase in the scams that were reported by businesses last year, and that included small businesses. And some of the most common ones, for example, is false billing. Someone just sends a false invoice and a busy small business person doesn't take the time to check it, just pays it, has lost the money to a scammer. They're very well-organised. So we try to drop in a few top tips, if you like, double check who you're paying, make sure who you're paying, regularly update your security, particularly your cyber security, change your passwords and backup your data, keep backups, and consider then also what you publish and what you post on social media and think about the amount of information you might be sharing which might be giving scammers clues about how to infiltrate your small business.

Ms Morgan: And with the billing, false billing, is it from just completely random companies that you don't do business with, or is it people identifying business that you do business with, but just changing the account of who to pay?

Mr Salisbury: We've seen the range, and I think you've hit that sort of range. We have a scatter gun effect where people just send out demands, say we've got this new business directory, sign up, and people don't know, they must think they have to sign up or register and they send their money in. And then there is quite sophisticated scams where the scammer will impersonate, for example, they'll infiltrate the emails of the business, impersonate the CFO and ask or demand that the amount of money be authorised across to another bank account. And so that really goes to the sort of internal controls you need to have around your business to make sure that they're sound, and that's why I talk about those practices. We talk about we can't police our way out of scams because they're based offshore, and so we really try and harden the targets, we try and harden the defences that small businesses and all businesses need to have against scams.

Ms Morgan: So check twice, and if there's a change in account numbers or bank details, question it?

Mr Salisbury: Exactly.

Mr O'Shea: And, mind you, keeping on top of all of this is in addition to actually running the business.

Ms Morgan: Yeah.

Ms Carnell: Sometimes they even pretend to be the ATO or the ACCC.

Mr Price: Or even ASIC.

Ms Carnell: Or even ASIC, that's right.

Mr Price: We've seen quite a few scams where people are sending out false invoices, bogus invoices, and I don't mean bogus in a good way. We have a section on our website that deals with what to do if people think they've got a false invoice, and I would encourage people to look at it if they think they've got a strange bill.

Ms Jenkins: And for the avoidance of doubt, I'm sure none of us actually accept payment in iTunes cards.

Ms Morgan: Okay.

Ms Jenkins: Just common sense.

Mr Salisbury: And none of us will ever threaten you. If you owe us money we will not threaten you.

Ms Morgan: Good to know, a very handy hint. So, as you've heard already, these agencies are supporting the small business sector in many ways, but they also help ensure small businesses receive the protections of the laws and scammers. From time to time there are changes or new laws. As a result, small businesses need to make adjustments. Sometimes it can be difficult for small business owners in their busy work environments to keep up and find out how they may be affected. So let's talk about some recent changes that small businesses need to know. We'll start with you, John. I understand that ASIC is changing the way it's funded. How does that affect small business?

Mr Price: Well, it is a very important change. We're moving to what's called an industry funding model. And, in short, what that means is that the people we regulate will pay, directly pay for the work we do. So the relevant industry sector will directly pay for the amount of money it costs to regulate that sector. And what that means in practice is that some businesses will be subject to a flat levy and other businesses will be subject to a graduated levy, or sometimes there will be a mixture of the two things. And exactly how the bill will apply will depend very much on who you are and what you do. So subsectors that require higher levels of regulation will obviously pay higher fees under this new model.

Ms Morgan: So what does industry funding look like for a small business operator?

Mr Price: Yeah, look, a typical small business owner would probably be operating through a small proprietary company, for example, and for small proprietary companies there's only a very small impact, so we expect their annual fee to go up by approximately \$4 a year. Now, if that small business also carries on other activity that ASIC regulates, for example, they're a financial advisor, there will be additional charges that apply relating to them carrying on that financial advice business. But for most people, as I say, who are carrying on a small business, I would expect there will simply be a small additional fee of about \$4 per year.

Ms Morgan: Okay, should be affordable. Kate, your office has been working on some important inquiries, there's a lot on but, particularly, payment times and practices inquiry, what's going on with those two?

Ms Carnell: Look, Elysse, what surprised me when I first took over this role is we went out and spoke to small businesses and asked what was the most important thing in their businesses? And, interestingly, it was cash flow, as Deb talked about earlier. And the reason they often had cash flow problems was that big businesses weren't paying them on time. Sometimes that was even governments weren't paying in a reasonable timeline. So we did an inquiry and we found that one in two businesses had over \$20,000 owing to them, 14% of businesses had over \$100,000 owing to them. So we found a range of problems. I think 50% reported that 40% of invoices were being paid late. So lots of businesses had lots of outstanding money and this was causing them significant cash flow problems.

Ms Morgan: We saw some payment times up to 90 days?

Ms Carnell: That's right, and some of the great dilemmas here were some of the contracts that small businesses were being forced to sign had 90 and 120 days as standard payment times before they were even late. Now, no small business can last for four months, five months for their money because, unfortunately, you do have to pay your staff on time--

Mr O'Shea: You do.

Ms Carnell: --or the Fair Work Ombudsman gets cross with you, you have to pay your ATO bill and so on, and so you should. So we came down with a range of recommendations on how we address that, and one of those was to set up a National Transparency Register, where we are putting on a register that's on our website, businesses that are doing the right thing, that are paying businesses in under 30 days. They're reporting on that, so you can't just sign it and then do nothing, they have to actually deliver, and one of the good things is the federal government has taken a leadership position and has announced that they will pay small businesses in 15 business days by the middle of next year. And when the US government did that, it delivered 75,000 new jobs to the American economy and about \$6 billion in increased pay cheques, and that's something that Australia needs right now.

Ms Morgan: It certainly gives a level of security to a small business, doesn't it, if you've got that cash flow and it's guaranteed to come in within 30 days.

Ms Carnell: It's absolutely essential if you want to, as a small business, to invest, to pay your debts on time, to employ new people. This is fundamental. If we really want the economy to get moving it's absolutely essential that big business pays small business in 30 days or less. Fascinatingly, small businesses are paying each other quicker than they ever have. It's businesses with more than 500 employees that are the laggards in this space.

Ms Morgan: And so we've talked a little bit about some people are moving, the government is moving, how successful is it?

Ms Carnell: Look, one of the other inquiries that we've done recently is the Small Business Loans Inquiry. The federal government asked us to do that because there was lots of small businesses that were saying that the way they had been treated by predominantly the big four banks, and ASIC and John and I have worked really closely together, we did an inquiry, came down with a range of recommendations and, fundamentally, what we are trying to do is make it simpler for small businesses to enter into contracts that they understood with the major banks. Now all businesses, from time to time, need to borrow money, but 80-page contracts with lots of fine print, lots of associated documents and so on are pretty tough for small businesses to understand. So, along with ASIC, we have new, shorter, plain English documents. We've also got the banks to agree to get rid of a lot of their non-financial default clauses, and what they are is a capacity for banks to default you as a small business even when you've paid what you are supposed to pay on time. Now, I have to say, I ran small businesses for a long time, I always thought that if I paid the bank what I was supposed to pay them on time that would be good enough. Except, there were all these clauses that allowed the bank to default you, even if you'd paid on time, for a whole range of other reasons.

Ms Morgan: As we've heard so much about it in the Royal Commission recently.

Ms Carnell: And we have. And we have. And a number of those clauses are now gone as a result of the work that ASIC and my office has done. The other thing that we found was regularly payment times, or the time the banks gave small businesses to adapt to changes was just too short. So a bank decided that it wouldn't rollover a loan and it told you a week before. Well, pretty hard to refinance in that time. So we've got a chunk of changes that will make it lots safer and easier for small businesses to be confident when they enter into a contract with a major bank and, over time, other financial institutions as well.

Ms Morgan: Yeah, so you think you'll be rolling those out further?

Ms Carnell: That's the plan, isn't it, John?

Mr Price: That's the plan.

Ms Carnell: Yes.

Ms Morgan: Deborah, from the beginning of the new financial year for 2018 there'll be some changes on single touch payroll for small business?

Ms Jenkins: Certainly will. It's really exciting. From 1 July this year, if you have 20 or more employees you will need to report to the ATO using single touch payroll. What that means is at the same time that you push the button to pay your employees, you'll actually report the information on PAYG withholding, superannuation, salary and wages to us. So what that means is that we have simpler reporting obligations, but also that we have more visibility over what information there is, and we obviously get it a lot quicker as well. A lot of people have asked me, well, what if I have 19 employees? Well, there is legislation currently before the parliament, and if that goes through, effectively all entities will need to report from 1 July next year. But we get that it's not going to be easy necessarily for small businesses to transition, and we're already working actually with a number of people around this table on what other options might be available, so low cost or no cost solutions. It's really important though that people, if they aren't already ready for single touch payroll, to have a chat to either their digital service provider, so whoever provides them with their payroll or accounting software, or have a chat to their business or tax advisor just to understand what they need to do. It's really important to know though that while the start date is 1 July, the first year is a transition year, so it is very important that people take the time to get it right, but I'd really encourage people, if they aren't aware of single touch payroll, they're saying hey, Deb, I've never even heard of that, to get in touch with either their software provider or their BAS or tax agent or their business advisor and ask what they need to do to get ready.

Ms Morgan: So if they're not ready, I mean a lot of people - I mean we're recording this before the beginning of the new financial year, they may not be ready - are there going to be penalties, is there a full year to get across it before there's going to be anything sort of directed their way?

Ms Jenkins: Yeah, absolutely there is. So the first year is what we call a transition year, so there are no penalties, and a bit like Tom was talking about, this is really about the education. We want to make sure that people are in the right position to get that done. So the start date is 1 July this year, but already the software providers and also the employers themselves are able to apply for a deferral or, in some cases, an exemption, and many of those are already under way. Some exciting news to share with you though, even though it doesn't start till 1 July we've already got high numbers, I think it's over 300 employers are already reporting to us using single touch payroll, and I think it's exciting because if you think about why it's there, it's going to give us a lot more visibility over superannuation, and if you hear people talking about making sure that people are matched with their superannuation, so it's a big part of single touch payroll.

Ms Morgan: Do you think it will also reduce paperwork?

Ms Jenkins: I do hope so. I really do hope so. I know for some people, getting over that first hurdle of going online, it feels a bit scary, doesn't it? But we do believe it's going to reduce paperwork, so we won't have payment summaries, you won't need to produce a whole lot more information, and people will be able to go onto myGov and actually get their information very, very quickly. So we will be definitely reducing paperwork through single touch payroll.

Ms Morgan: Thanks, Deb. Tom, there are changes to the *Fair Work Amendment (Protecting Vulnerable Workers) Act*.

Mr O'Shea: Yeah, that's right.

Ms Morgan: What does that mean?

Mr O'Shea: So the PVW Act, as we like to call it, but the *Protecting Vulnerable Workers Act* came in, really it was introduced by the government in the wake of the 7/11 scandal, which I'm sure we've all

heard about, which saw the exploitation of workers really brought into the mainstream and really the spotlight shone on it, and the government and the parliament thought that powers and penalties might need to be tweaked a little bit. So we're working really hard to make sure that small businesses and all businesses understand what their new obligations are. A couple of the changes relate to payslips and record keeping and, in fact, that's where we're focusing a lot of our attention because the penalties for not keeping payslips and pay records have increased significantly, up to tenfold for deliberate and serious contraventions. So that's a big change. The other change that's pretty critical that people understand is if small businesses don't keep payslips, don't provide payslips and don't keep pay records now, there's now a reverse onus of proof. So if the employer, who is the duty holder, doesn't do it, then a court will actually go on the information that the employee provides. So if they didn't need more incentive to comply then I think that's a really good one. The laws also bring in some really interesting new provision for franchisors, and so for the first time we see head franchisors have some responsibility for the pay in their network of the franchisees. Now, obviously franchising is a whole spectrum of business and what we're really seeing there is businesses trying to come to terms with how they can take reasonable steps within their network to make sure that the franchisees, sometimes who they don't speak to pretty regularly, are paying their workers properly. So that's a big shift and we're creating all sorts of online guides and things like that. The other change that I think people should know about - and of course it's self-fulfilling in a way, the people who are logging onto this are probably the ones who are doing the right thing and so they don't do this - but there's some tougher penalties now for what we call the cash back scam, and this was something that came up quite a lot when we started looking into it, which is especially with migrant workers who are very keen to stay on the visa or to come here in the first place we see, sadly, too many cases where businesses take money from those workers and then obviously pay it back in forms of wages and things like that. So that's now prohibited directly under the PVW Act.

Ms Morgan: It's probably a good thing for the workers. Thanks, Tom. I encourage our viewers to check out the online resources on the Fair Work Ombudsman's website. And don't forget, you can also find these links on the 'Resources' tab which is on your screen now. So, David, I know there's often new laws or changes that are affecting small businesses, the ACCC plays a fairly big role in monitoring and enforcing them. Now, recently you were involved when the small business unfair contract terms law was introduced - we've spoken about that earlier - now the ban on excessive surcharging has been expanded to include small business. What does that mean for a small business owner?

Mr Salisbury: Thanks, Elysse. This is about the card payment. So when you go online if, for example, you go down and pay for your flight, for example, you get down and there's the add-on, the extra to pay, there's a surcharge for paying with a card.

Ms Morgan: All about the dreaded credit card surcharge.

Mr Salisbury: Indeed, it is. And not just credit cards, some other cards too. So, if your business uses EFTPOS, Visa, MasterCard, American Express, they're all covered, and a ban applies to that. Now, what's excessive actually goes back to anything more than your bank charges you or your financial institution charges you to make that transaction will be excessive, and so that's the key thing that businesses need to know. They need to check in with their bank, find out what it's costing them to accept that sort of card payment, and then be careful about how they're representing that to consumers. And so, really, with the top tips check that those surcharges that you're putting on reflect the cost of the payment, that it's actually costing you to accept it. Instead of perhaps putting a flat fee on, it's probably more of a percentage, and so don't simply get your cup of coffee at \$4 and slap 50 cents on just for a card - we'll probably get a thousand calls to the ACCC if that happens - but actually think about, well, what is the right amount there? And so the other thing is you can't factor in your own costs to that surcharge, you just can't load it up with your overheads and everything. The cost of the card is exactly what you can charge. Now, of course, all this only applies if you put a surcharge on it

and you call it a charge for accepting cards as well. If you don't put a surcharge on, then it won't apply.

Ms Morgan: And so I'm assuming that small businesses should check, I guess, annually because, I mean, charges and things change and they've stuck a little notice up at the business or on your website saying it's X per cent, or whatever, that could change?

Mr Salisbury: It could change. It could change, so it's worth being proactive. Contact the people who are providing your card service.

Ms Morgan: Deborah, the ATO has also been working on protections for small business owners. What's the update on these protections?

Ms Jenkins: Absolutely. So we know that the vast majority of small businesses absolutely want to do the right thing, but we do know that there are people who don't do the right thing. And, if you think about it, we see people who don't report all of their income, people who pay cash wages and then don't actually report that or, as Tom was talking about, don't give the payslips, all those other sorts of things, there are people who don't pay the superannuation for their employees, and there are also those who don't register for GST when they need to. So one of the things that we've been doing is going out - you might have heard them referred to as the cash only visits - where we actually go out into the community where we know that there is high use of cash or low use of merchant facilities and we actually talk to them. We have a town hall session. We bring them in and we actually just say, hey, did you even know what you need to do? We run record keeping sessions. But then we also do visit a number of small businesses who are using cash only, and I do want to emphasise there is no problem with actually paying by cash or accepting cash, it's when you don't then report that as your income. That's where we have a bit of a problem. A lot of a problem actually, I should say.

Mr O'Shea: A lot of a problem.

Ms Jenkins: We do have a lot of a problem. So we've been doing some amazing visits, and we visited so many people across the country and, the vast majority of the people, it's actually about education. So we run the sessions, and we had a really, really good response from the community to those things. And, look, it is about making sure that we are protecting those honest small businesses and levelling that playing field, so making sure that they've all got the chance to thrive and survive.

Ms Morgan: A major problem is phoenixing.

Mr Price: Yes.

Ms Morgan: How is ASIC managing this problem?

Mr Price: So it's very good that we've got other regulators in the room because phoenixing is not just a problem for ASIC. The Fair Work Ombudsman is very concerned about it.

Ms Carnell: We are.

Mr Price: The Australian Taxation Office is very concerned about it. But let me start with the question of what is phoenixing, okay? Part of the challenge here is there is no legal definition of phoenix activity, let alone what illegal phoenix activity is. But, typically, in my experience, illegal phoenix activity occurs when directors transfer the assets of one company for either no value or for not as much value as they should be paying to another company, and they do that with the intention of leaving all the debts to creditors in a shell, so that's the company they've transferred the assets from, and they want to keep carrying on business from this new company that they've transferred assets to. They put that first company that was the shell into liquidation and, as I said, there's nothing to pay the creditors with so people get ripped off. Now, if you can show that the directors, in doing that, their

intention was to defraud the creditors, or act in a dishonest manner, that is a criminal offence, you go to jail for that sort of thing, but you need to be able to prove that bad intention. And that is the challenge.

Ms Morgan: Is it always directors that are involved in phoenixing?

Mr Price: No, it is broader than that, Elysse. So there are a range of untrustworthy advisors. So if you're running a company and it gets itself into financial trouble and someone contacts you out of the blue, be it a lawyer or an accountant or whatever, and they say we can solve all of your problems, you should be very careful because there are these untrustworthy advisors out there.

Ms Morgan: So there are actually advisors going out there and actually finding businesses to phoenix?

Mr Price: That's right. They look for companies that have had basically notices lodged against them saying you need to pay your debts, and then they contact them out of the blue saying we note you've got cash flow problems, we can solve all your issues, just do what we say. You need to be very careful if someone contacts you in that way. There are also valuers, so valuers might provide a friendly valuation, they might look at a company and say we think all the assets in this company are worth a very low amount when they get transferred, and what that means is not the right amount of money gets paid to that company that's over here with all the creditors. There are sometimes liquidators, liquidators who turned a blind eye and they don't ask the right question when they look at the company that's being liquidated. And there are also what's called dummy directors. So sometimes, literally, people will find someone at the pub and say I want you to be a director of this company, and little do they know, in accepting that they are putting their own position in serious risk when they're becoming a director of a company they know nothing about. So, all of those people can be part of the problem and, importantly, the law can hold each of them equally liable to the sort of mastermind. So if it's shown that these people aided, abetted, counselled, helped in this illegal phoenix activity, they can be in just as much big trouble as the mastermind behind the whole scam.

Ms Morgan: So small businesses so often get burnt by companies who owe them money phoenixing.

Mr Price: Yeah.

Ms Morgan: What can a small business - is there anything that they can do to protect themselves?

Mr Price: Yes, there is. There's a few basic things that I think small business should be doing. Start by asking questions about who you're doing business with, right? So people who are operating legitimately should not have too much of a problem in telling you what their structure is, how they're operating and what they're doing. That's the first thing. The second thing I'd do would be, I mentioned before that ASIC has a lot of free information that's available from its websites, do some basic checks, such as are you dealing with someone who's been banned as a director by ASIC, or disqualified from doing particular business? You might want to even check whether someone is bankrupt at the moment. So they're basic checks you can do. You can think about protecting your position by lodging what's called a charge, protecting your interests, and you can lodge a formal legal document to try and protect your debt, and you do that through a register called the Personal Property Securities Register. Look, it sounds pretty basic, but keep books and records. Like if a company you're dealing with goes broke and liquidators are appointed, you won't actually get any money back unless you can prove that you're a creditor of that company. So it's really, really important for you to keep books and records.

Ms Carnell: And, John, one of the things, as we talked about earlier, if you start not being paid, if you're a subbie on a building site or whatever and you start not being paid, do something about it early.

Mr O'Shea: Something's going on if that's happening.

Ms Carnell: Something is going on, and it could be that this is what's happening. And if, once voluntary administration happens, two cents in the dollar is not a lot.

Mr Price: You're so right, Kate, because I have seen too many cases where people think, well, I'm in for \$2,000, if I just do a bit more work the payback is going to come, and it's just the wrong--

Ms Morgan: It never does. It never does.

Mr Price: There's a real risk it doesn't.

Ms Morgan: Before we get to questions from the audience, I just want to very quickly ask you about the country of origin changes.

Mr Salisbury: Sure. Thanks, Elysse. Well, look, this is a new change. We've got tax changes coming in on 1 July, so we've got country of origin changes coming in on 1 July. So this is an important new reform for Australia, it's a real initiative for consumers. Essentially, it's going to be advice on the front of most food products about what percentage of the product you're buying has actually got Australian ingredients in it. So the ACCC's role is to enforce, make sure businesses are doing the right thing. We're in the educative approach in the lead up to the introduction, we're educating businesses at the moment now. So it will apply to most businesses that offer food for retail sale - there's exceptions for takeaways, cafes and food sort of prepared and delivered and eaten on the spot - but people will start seeing the logos coming up soon. If you're a business who is involved, if you're a retailer, manufacturer, a producer, you're going to be needing to be familiar with these labels and producing them soon so people start really getting familiar. There's a three part label for things with a lot of Australian ingredients, very familiar, green kangaroo on top, a bar chart.

Ms Morgan: And that bar underneath, isn't it, that's a golden bar?

Mr Salisbury: Yeah, that will tell you that percentage of Australian ingredients, and then a text message that will give a bit more descriptive information about the nature of the product.

Ms Morgan: And how long is that phase in period, when do penalties start, when do people need to get their act together?

Mr Salisbury: People need to get cracking. It is 1 July. People have had two years to transition. Now, we know people are making, really, their best efforts to get there in 1 July, but we're really reaching out. So the penalties do apply from that date, but we're also mindful that this is a really big change, important consumer reform, and so if businesses are really trying to do the right thing, then there won't be a guillotine come down on 1 July.

Ms Morgan: To a couple of the questions. Aaron asks, to Tom, *"There might be a change coming to the minimum rate of pay coming up?"*

Mr O'Shea: Yeah, that's right.

Ms Morgan: Yes, there is. We heard that last week.

Mr O'Shea: There is. There's the annual wage review decision has been handed down by the Fair Work Commission. That was done last week. A 3.5% increase to the minimum wage. Now, the minimum wage is to be paid to everybody as a minimum wage, and that 3.5% will actually flow through to the award wages as well. So the new minimum wage - I actually wrote it down because I thought someone might ask today - it's \$18.93 per hour, that's a full-time and part-time minimum wage for an adult. When you consider all of the classifications in all of the awards, all of the junior

workers, the apprentices, the trainees, there are hundreds of thousands of different permutations. The best thing people can do is log onto the Fair Work Ombudsman's website. We are updating it and it will be live from 1 July when the new wage takes effect, and we have a pay and conditions tool, which is a calculator. You can put in all your information, it will tell you what the new minimum wage is. We see time and time again people not paying attention, not taking account of the pay rises as they go along, and I'll tell you, if you have a payroll of any size, if that can drag on for a month or two months, you get into the one, 10, \$50,000 pretty quickly and that becomes a big issue. The best thing people can do is understand the change and stay on top of it.

Ms Morgan: And how long do they have to sort of rectify if they're a little bit slow?

Mr O'Shea: Yeah, well, they would need to back pay. It is a hard and fast, there is no transition period with the minimum wage. There is a minimum wage already and it goes up from time to time. So people need to understand that it goes up next on 1 July and it will be 3.5%. Of course, we're a pretty commonsense regulator, if somebody misses and then agrees to back pay the staff, there's normally no problems whatsoever. Voluntary compliance is what we are trying to achieve but, as I've said a few times today, the education before we get to a problem is really what we're paid for. Come to us and take advantage of the free tools and resources.

Ms Morgan: To John, there's a question from Sonia. She says that she falls within the regulated population for ASIC's new funding model.

Mr Price: Okay. Yeah.

Ms Morgan: How can she prepare for the changes?

Mr Price: So in June we will send you a letter, so later this month we'll send you a letter, and that will give you an ASIC contact for your particular organisation. It will have a security key for you to log online into a special regulatory portal we're setting up that's unique to your organisation and, once you get that, you need to log into that portal and all the relevant information will be there for you.

Ms Morgan: Okay. Thanks, John. Kate, this is a question I have as well for you, "*What happens if your office can't resolve a dispute?*"

Ms Carnell: Well, first of all we make sure that a person with a dispute gets to the right place because sometimes the right place to sort out a dispute is with the ATO or the Inspector General of Tax or the ACCC, or whatever. There's also, of course, state Small Business Commissioners, there's AAT, Admin Appeals Tribunals in each state and federally as well. So our job is to make sure that small businesses get to where they want to go. What we then do is get in touch with the right people. That might be the ATO, as we talked about earlier, but it's regularly getting in touch with the CEO or the board of the company involved in saying, hey, what are you doing here? So a little bit of cage rattling, I suppose, and alerting people.

Ms Morgan: So you do go in to fight. You're not just there to mediate?

Ms Carnell: Oh no. No, no, no, that's not what we do. We, first of all, use a range of the powers that we have. We have powers to subpoena documents to get evidence of what businesses might be doing inappropriately. So there's a range of powers we have. We have some limited powers to fine as well, and then we can require mediation. But there's still an issue with access to justice in Australia, there's no doubt. Small businesses really struggle to afford the justice system. And our latest inquiry is an access to justice inquiry, trying to look at how we can have a much more solid system in place that small businesses have somewhere to go to get justice. And, right now, on our website small businesses can fill in our survey form to give us information that we need to be able to put in place

some policy direction to help them going forward, because it's really true, going to court is really expensive.

Mr Price: And, Kate, it's probably worth mentioning that there have been some reforms that have been put through that mean, for financial services and credit type issues, there will be like a dispute resolution scheme that some small businesses will be able to use.

Ms Carnell: That's it.

Mr Price: And that's starting later on this year.

Ms Morgan: And while we're on that topic, David, Steve has written in and said he runs a small business which has been targeted by scammers. Should he report it, should he report it to you?

Mr Salisbury: There's a number of options. I think Steve needs to protect himself and, as quickly as possible, get in those good practices, and there's a number of online resources available, check our website. And so the ACCC, we run a service called Scamwatch, and so if you'd like to look up Scamwatch on your favourite search engine, you'll find our resources there, some tips of how to protect yourself. And Scamwatch is a sort of service we offer to the community, and so that is a service whereby people can tell us what scams they're experiencing, and what we try and do there is monitor that and send out warnings to the community. So on Scamwatch he can also sign up to the warnings we send out related to Scamwatch. So protect yourself. If you've lost money, if Steve has lost money, then the ACORN, the Australian Cybercrime Online Reporting Network, is another opportunity for him to be able to report, particularly if his business has lost money.

Ms Morgan: Okay. Deborah, there's actually two for you. *"I'm a tradie trying to do the right thing, but my competitors are doing cheaper quotes and taking cash payments."* That's clearly unfair. Should he do them in? What's the ATO going to do to help him?

Ms Jenkins: Look, this is really tough, isn't it, and I feel for - I've forgotten his name.

Ms Morgan: Steve.

Ms Jenkins: Steve.

Ms Morgan: Sorry, Stuart.

Ms Jenkins: Stuart, okay.

Ms Morgan: Apologies, Stuart.

Ms Jenkins: No, that's okay. So, Stuart, look, we understand that that feels really unfair. So we were talking a little bit earlier about the cash only visits that we do have, but through the Black Economy Taskforce, which recently handed down - the government actually, it released a report, there's a whole lot of things that we are going to try and do to really help and make it fairer for Stuart to operate. So we are looking at using data analytics and a whole lot of other things to match and try to understand where those hotspots are, to try and get out there in the community and also educate people. We get it's really tough when someone down the road is doing the cash job. So through our work, through our compliance work and also our education support and assistance, that's where we're at. But obviously it's an issue for Tom as well, we all work together on some of these things.

Ms Carnell: And they should report it.

Ms Jenkins: They absolutely should. So there's a tax, so it's called our TERC line. And, so, if you look online, there is a--

Ms Morgan: Kind of like lurk with a T.

Ms Jenkins: Lurk with a T. It's the Tax Evasion Referral Centre, and we do take those referrals really seriously, and we do use that to inform some of our compliance activity.

Mr O'Shea: And it's really important to note that if businesses are not complying with one part of the law, they're probably not complying with a lot. And whilst we work in administrative areas, and if staff aren't paid or if tax isn't paid or if there are consumer issues, that's really bad, and sometimes that goes into workplace health and safety, or the product that is going out to the consumers that might be unsafe. So if someone is doing one thing dodgy, the chances are they're probably doing a few things dodgy and, between us, we want to know about it.

Ms Carnell: And, look, let's be fair, it's hard enough to make a quid in small business when you don't have other people avoiding their tax.

Mr O'Shea: The level playing field.

Ms Carnell: The level playing field really matters, so if you know somebody who is not doing the right thing--

Ms Jenkins: Absolutely tell us.

Ms Carnell: Please tell us.

Ms Morgan: On that note, so small business, we have reached the conclusion of the webinar. I'd like to thank the panel, Deborah, Kate, John, David and Tom. Thank you very much for providing us with your very useful information and sharing some of the tools and resources that you have available. To you, the viewers, thank you so much for tuning in and we hope that you've gained some insight and key tips that will help you with your business and in running it. I'd like to mention that the webinar will be available for viewing on demand shortly and, of course, the resources are always available to you. Thank you again and goodbye.

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