



Australian Government



Australian
**Small Business and
Family Enterprise**
Ombudsman

27 February 2023

Senate Standing Committees on Economics

PO Box 6100

Parliament House

CANBERRA ACT 2600

via email: economics.sen@aph.gov.au

Dear Sir/Madam,

Inquiry into the influence of international digital platforms operated by Big Tech companies

Digital platforms have fundamentally changed the way in which Australian small businesses connect and sell to their customers. Digital platforms serve as single points of contact for businesses to reach a significant portion of the Australian and international markets, with many small and family businesses relying heavily on these platforms. However, we are aware of several small business concerns arising through the increased use of, and dependence on, digital platforms. These concerns include:

- unreliable complaint pathways and dispute resolution processes for small business
- small business' lack of resources in identifying and countering scams
- lack of transparency and the changing nature of algorithms
- investment in regional connectivity.

We make the following recommendations to address these concerns and better support small business' online engagement:

Recommendation 1: Digital Platforms should improve and clearly outline their internal dispute resolution processes for small business

It is crucial that clear, appropriate, and standardised procedures are in place to facilitate a timely resolution for small business disputes with digital platforms. Disputes between small businesses and digital platforms are typically difficult, as digital platforms use automated systems as complaint handling mechanisms, often with no human escalation point.

Between 1 July 2020 and 16 January 2023, our assistance function in the Australian Small Business and Family Enterprise Ombudsman (ASBFEO) has received 236 cases related to digital platforms. A recent example is a small business owner being locked out of their Facebook account as their account had been hacked. The small business was unable to make a complaint through Facebook's internal dispute processes as they could not gain access to their account to do so. In our interactions with the digital platforms, most have engaged constructively and have provided us with a direct contact to enable these disputes to be escalated. These escalation points are greatly valued by our office and regularly provide satisfactory outcomes. However, they are not always consistent and the necessity of a government body intervening to escalate a small business' dispute is not a satisfactory dispute resolution process.

It is recommended that the Committee consider codifying the existing, efficient and effective role of ASBFEO in terms of small business dispute resolution with digital platforms. Digital platforms



should be obliged to meet and maintain several pre-conditions to participate in this stream-lined and responsive service including have in place adequate 'self-help' guidance, a published internal escalation process and the promotion of ASBFEO as an external ADR option once in the event internal approaches are not successful. A participating digital platform would be obliged to nominate a real person as the ASBFEO contact point, and be expected to engage in good faith and responsively.

In our May 2022 submission to the Australian Competition and Consumer Commission (ACCC) Digital Platform Services Inquiry Interim Report No.5,¹ we recommended that digital platforms develop appropriate small business dispute resolution processes and provide escalation contact points. Implementing adequate internal dispute resolution processes and dedicated contacts would enable small businesses to have their dispute handled efficiently and resume operating their businesses sooner.

As previously recommended by this office, the Australian Government should also consider implementing a 'super-complaints' mechanism to escalate and refer matters to the ACCC.² This mechanism would allow ASBFEO and other credible dispute resolution agencies to refer cases directly to the ACCC for guaranteed investigation and, where necessary, enforcement action. Where the ACCC declines to investigate a case or enforce an outcome referred by a 'super-complainant' they should be required to provide an explanation for their decision.

Further, the creation of a Small Business and Codes List (the list) in the Federal Circuit Court of Australia would empower small businesses to defend their own economic interests, reducing the need for government intervention. As previously highlighted by this office,³ the introduction of the list would provide a low-cost alternative for small businesses to utilise should they seek a timely, cost-effective judgement, or where other dispute resolution options have failed.

Recommendation 2: The Australian Government should implement the ACCC's recommendation of a mandatory 'notice-and-action' mechanism for digital platforms to protect against scams, harmful applications and fake reviews.

While digital platforms provide a mechanism for small businesses to undertake their sales and marketing activities, they can also facilitate fraudulent activities. A 'notice-and-action' mechanism would allow any individual or entity to notify digital platforms of potential illegal content on their service, and a requirement for the digital platform to act on this notification.

Small businesses are especially vulnerable to fake review campaigns and fraudulent misrepresentation, as they lack the knowledge and resources to prevent and combat scams. In our consultations for this submission, we heard about cases of small businesses being held to ransom over fake reviews, with scammers only removing them once they had received payment. We have heard of commercial service providers that claim to support consumer traction for new entrants by generating hostile contrived reviews for existing providers in a target market.

¹ Australian Small Business and Family Enterprise Ombudsman (ASBFEO) (2022) *Submission to ACCC Digital Platform Services Inquiry*, ASBFEO

² ASBFEO (forthcoming) *Submission to Treasury's Digital Platforms – Consultation on Regulatory Reform*, ASBFEO.

³ ASBFEO (2022) [Submission to Treasury's Treasury Laws Amendment \(Competition and Consumer Reforms No. 1\) Bill](#), ASBFEO



The 2022 ACCC *Digital Platform Services Inquiry Interim Report 5* notes the *Competition and Consumer Act 2010* and the Australian Consumer Law are not well suited to digital platform services. Enforcement action is retrospective, applied on a case-by-case basis, and investigations can take a long time.

These lengthy processes are damaging to small businesses engaging with digital platforms, as fake reviews and fraudulent misrepresentation of their business may remain visible while investigations take place. The inaction on these fake reviews and fraudulent misrepresentations during investigation processes often results in small business owners watching the damage to their business occur in real time with no ability to stop it. This can impact not only business viability but the mental health of the small business operator and their employees.

Recommendation 3: The government should continue to adequately resource the Digital Platform Regulators Forum to investigate the impact of algorithms

For the most part, digital platforms' algorithms dictate the online visibility of a small business. However, these algorithms are complex, opaque to a service user, and are continuously changing. This further reduces the capacity of a small business to understand and influence their digital presence.

In March 2022, the Digital Platform Regulators Forum (DP-Reg) was formed by the Australian Communications and Media Authority, the ACCC, the Office of the Australian Information Commissioner and the Office of the eSafety Commissioner. The DP-Reg's purpose is to share information and collaborate on the regulation of digital platforms. One of its key strategic priorities for 2022–23 is examining the impact of algorithms on Australians. We urge the government to continue adequately resourcing the members of the DP-Reg to undertake research into the impact of algorithms and to consider, in addition, how algorithms can adversely affect small businesses.

Recommendation 4: The government should continue to invest in regional connectivity to support the digital transformation of small businesses

For small businesses to engage on digital platforms, the ability to gain access to fast and reliable broadband is critical for innovation, competition, wellbeing and growth. However, parts of Australia still have inadequate access to traditional forms of digital technology and stable connectivity.

Fast and reliable internet is an essential service to most small businesses and especially to the 758,447 small businesses operating in regional and remote parts of the country.⁴ New and emerging technologies have facilitated small businesses in reaching new customers and to grow and transform their business by extending beyond the traditional bricks-and-mortar business model. However, many small businesses in regional and remote areas are unable to take full advantage of online opportunities owing to insufficient levels of connectivity.

For example, in the 2021 census 36% of regional small businesses, with 0-19 employees as defined by the ABS, were owned by women.⁵ In my office's consultations with female business owners in 2021, improving internet services was raised as a support measure that would address the barriers

⁴ ASBFEO Calculations, ABS, customised data (2022)

⁵ ASBFEO calculations, Australian Bureau of Statistics, 2021 Census, accessed 21 February 2023



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that prevented their business growth. Female small business owners in regional areas noted that the internet is slow and expensive, presenting a significant disadvantage for business in rural Queensland.

We are encouraged by the Australian Government's October 2022-23 Budget allocation of \$2.4 billion over four years for the *NBN Repair Job*, which will see over 660,000 regional premises being provided 'world-class internet speeds'.⁶ This is in addition to the \$656 million commitment to improve regional communications as part of the *Better Connectivity Plan for Regional and Rural Australia*. We encourage the government to also consider any outstanding recommendations from the *2021 Regional Telecommunications Independent Committee report: 2021 Regional Telecommunications Review – A step change in demand*, to ensure that regional and remote areas have competitive access to the digital economy enabling small businesses to innovate and be competitive.

Thank you for the opportunity to comment. If you would like to further discuss this submission, please contact Mr Jake Thomas on 02 5114 61466 or at jake.thomas@asbfeo.gov.au.

Yours sincerely,

The Hon. Bruce Billson

Australian Small Business and Family Enterprise Ombudsman

⁶ Treasury (2022) *Budget Paper Number 1*, Treasury 1:21.