

## ***ASBFEO Access to Justice Inquiry – Phase 1***

It is well known that small business owners are time-poor, vulnerable to imbalances in bargaining power, and lack dedicated resources of the kind enjoyed by larger businesses. In ASBFEO's consultations with small businesses, access to justice is consistently brought up alongside payment times and practices as a pressing issue. The ability of small businesses to resolve disputes affects the viability of the sector and, as a result, the efficiency of our economy.

Small businesses are not simply scaled down big businesses; the challenges they face are different to those of big businesses, and again of individual consumers. Small business access to justice may be different in terms of the nature and cause of the dispute or the unequal power the disputants each have in the relationship. Small businesses may not consider taking action to resolve disputes under a threshold that is unacceptably high.

Pathways to resolve disputes are not always clear; a small business may decide to pursue resolution through the formal system of courts and tribunals, through alternative dispute resolution (ADR), or take no action at all.

Legal action is a daunting prospect for many small businesses. Faced with an adversarial process they are not familiar with, the justice system becomes a foreign world of esoteric terms and procedures, with uncertainties around costs, time commitment, impact on relationships and other unknown impacts on their business. It is important to consider this together with the fact that small businesses are often disadvantaged by imbalances in power in many of their relationships.

To gain a comprehensive and up-to-date understanding of the state of small business dispute resolution in Australia, ASBFEO is running an inquiry into small business access to justice over the next 12 to 18 months. The first phase of this inquiry will involve collecting robust data from small businesses, both quantitative and anecdotal, to form the basis of our engagement on this topic.

In the first phase of the inquiry we will examine;

- The nature and incidence of small business disputes in Australia, identifying patterns and trends,
- The level of awareness of options available to small businesses, particularly of alternative dispute resolution (ADR),
- Actions taken by small businesses when faced with a dispute,
- Reasons for decisions made throughout the dispute resolution process, and
- Developments and trends in similar jurisdictions overseas.

Concurrent to surveying small businesses directly, ASBFEO will also consult with various experts in the area of business dispute resolution. The data collected in this phase will inform subsequent phases, and update existing research on this topic for Treasury as well as other departments.

For further information, please contact [inquiries@asbfeo.gov.au](mailto:inquiries@asbfeo.gov.au).