



Australian Government



Australian  
**Small Business** and  
**Family Enterprise**  
Ombudsman

# Quarterly Report

Q3 [July-Sept] 2021

Australian Small Business  
and Family Enterprise Ombudsman



# Message from the Ombudsman



The September quarter continued to be challenging for small business and family enterprises with lockdowns remaining across much of NSW, Victoria, and the ACT.

The pandemic has increased the general understanding of how small businesses and family enterprise contribute so much to our communities and our economy. These businesses are owned and led by real people who have embraced the responsibilities of ownership to create opportunities for themselves, those around them and the communities they actively contribute to.

## Creating certainty

The need for predictability and certainty has been a catchcry for small business and family enterprise representative

organisations throughout the period of the pandemic, and this has never been truer. As a light emerges at the end of the tunnel with states coming out of lockdown, clarity around reopening rules, what businesses can and can't expect from their staff and their customers, and what they need to do to support their community and operate safely, has never been more important. Clear advice and guidance will give small business the confidence to reopen and start trading and rebuild their business operations.

## State of small businesses

Small and family businesses are certainly reporting a lack of confidence. Xero's Australian Small Business Index, part of their Small Business Insights, fell 9 points in August 2021 to 92 points. This is the first time the index has fallen below 100 this year and is the lowest it has been since September 2020. This is almost certainly a reflection of lockdown restrictions across the eastern seaboard, and we are hopeful that the next index will see an uptick in sentiment.

The same Xero report shows jobs growth has weakened slightly with a rise of just 1.3% year on year in August, which is the slowest pace of growth since October 2020. This is consistent with what we are hearing from small business owners. Interestingly, we are also hearing that where small business owners are looking to hire new staff, they are finding this increasingly difficult. Given that history tells us that at times of recovery small businesses make a disproportionate positive contribution to employment growth leading to sustaining the economy, it is therefore critical that small businesses are able to find the right staff.

## Supporting small business recovery

We also continue to hear from small business associations keen to ensure least-cost routing is rolled out to all small and family businesses by the banks, to support their recovery. I was pleased to see the Treasurer's support of the application of least-cost routing and I have called on banks and other financial service providers to do more on this issue.

## A way forward for small businesses

With a collaborative approach to resolve issues with the delivery of perishable goods to support small business food producers, in this quarter my Office was able to identify the issues Australia Post was facing and work together to find a palatable solution. The result saw the continuation of perishable goods being resumed throughout Australia to the delight of numerous small and family businesses.

With a new outlook for many businesses as lockdowns come to an end, we are looking forward to seeing business confidence resume and a blockbuster end to 2021 over the next quarter. We will continue to encourage consumers to 'go local first' and support their small local small and family businesses as they revitalise their businesses and their communities.



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# Message from the Ombudsman

## What small business needs for COVID recovery



Dependable Implementation of recovery plans

Clarity & a seat at the table for small businesses

Ensuring payment times remain as short as possible

Simplifying access to valuable support policies & programs

Clear & dependable instructions for rules & advice

\*Key points from the National Small Business Commissioners Forum Communique

## How policy makers & the private sector are being encouraged to help

Government and private sector support has and continues to be vital for many small and family businesses. At a meeting of small business commissioners, we issued a communique saying as Australia considers the pathways out of the most restrictive infection response and containment policies, we urge policy makers, the private sector suppliers and customers to continue their support of the 'lift off', as so many have done during periods of 'lockdown'.

We congratulate governments, financial and essential business services providers, landlords and suppliers who have overwhelmingly been key allies supporting smaller businesses throughout the pandemic.

Our encouragement is to continue to ensure that support policies and programs prioritise timely delivery, tailored to recognise the resource constraints of small business and that they, are readily accessible and not overly administrative burdensome.

For regulators and health advisers, we urge that rules and advice be considerate of small business capability and resources. Advice that requires further interpretation is problematic for small businesses without in-house regulatory and compliance expertise. Clear and dependable instructions are required so these can be put into action and be the most helpful and suitable, to assist the needs of small and family businesses.

## 'My Business Health' web portal

My Office continues to encourage small business owners to take the time to look after themselves, and reach out for help if they are struggling, or just need someone to talk to. The national awareness campaign about Beyond Blue's *NewAccess for Small Business Owners program*, which offers free one-on-one telehealth sessions with specially trained mental health coaches, was extremely well-received with Beyond Blue seeing a large uptake in interest.

Our My Business Health web portal, which links to mental health support services, while also providing simple, practical tips on the day-to-day tasks of running a small business, is also available for some practical support.

## ASBFEO is here to support your small business

We are still seeing several small businesses needing assistance from my Office, with 1835 contacts, and over 460 cases being managed by our case managers over the September Quarter.

The additional funding we received in the 2021-22 Federal Budget is being put to good use with new team members from diverse backgrounds including advocacy & policy, communications, administration, data analytic and direct small business assistance, all due to join us in the coming months to support this important work assisting and helping small and family businesses.

My Office also responded to 180 enquiries under the Franchising Code, two enquiries under the Horticulture Code and one enquiry each under the Dairy Code and Oil Code. We acted on 77 cases related to the Franchising Code, of which 70 were franchisee initiated and 7 were franchisor initiated.

## Future considerations

We continue to hear from small and family business that the cost of doing business is rising. Access to affordable insurance continues to be an issue for many in the sector, and I look forward to contributing ideas about how to address this through the Insurance Council of Australia's Business Advisory Council.

My Office's work on the review of the Discretionary Mutual Fund proposed by the Australian Amusement, Leisure and Recreation Association (AALARA) on behalf of its members continues, with a consultation paper expected in the near future.

**The Hon. Bruce Billson**

Australian Small Business and Family Enterprise Ombudsman

# Key activities

## ASSISTANCE

- Received 1,835 contacts to our Office, of which 1,445 were requests for assistance directly related to small business disputes.
- Provided assistance to small businesses affected by COVID-19, across a range of payment, contract, leasing and franchise related matters.
- Supported franchise participants to understand the new changes to the Franchising Code of Conduct (implemented 1 June 2021), including assisting with 180 franchise disputes (up from 121 in the previous quarter).
- Helped a rising number of Queensland businesses in the quarter, up from 457 in the June Quarter 2021 to 549 this quarter.

## ADVOCACY

- Continued to provide feedback on changes to the Franchising Code of Conduct.
- Provided further advice to the Treasury on the implementation of the Payment Times Procurement Connected Policy and appropriate dispute resolution mechanisms.
- Resolved work with Australia Post to address issues with delivery of perishable goods from small producers.
- Continued work with the amusement, leisure, and recreation sector, along with the mutual insurance sector, to examine the feasibility of a discretionary mutual fund for the sector.
- Engaged with the Federal Regulatory Agencies Group about the effects of cumulative regulation on small businesses.
- Provided advice on payment systems regulation to the Reserve Bank of Australia, including advocating for the application of least-cost routing for small businesses.
- Provided feedback on a number of proposed changes or additions to industry codes.

## OUTREACH

- Key media topics: Tax Time for small businesses, cancellation and suspension of Australian credit licences, least-cost routing, Payment Times Procurement Connected Policy, supply chain finance, Australia Post and posting perishable items, insolvency protections, women-owned and women-led small businesses, up-lift of small business registrations during COVID, Discretionary Mutual Fund Review, National Family Business Day and COVID support and recovery.
- Major media appearances and mentions: The Today Show – Channel 9, The Sydney Morning Herald, Dynamic Business, Inside Small Business, News.com.au, The Age, 6PR (Perth Live), ABC Radio and SBS.
- Events: The Ombudsman gave 10 presentations and speeches, conducted 7 podcasts/interviews and participated in 17 webinars/events including RU OK? Day, BiziNet, NetStripes, Femeconomy and the Australian Financial Industry Association Conference.

# Assistance: supporting SMEs

## Industry Codes | Franchising–Horticulture–Oil–Dairy

- We are assisting franchisors and franchisees with navigating and accessing the improvements to the Franchising Code of Conduct were made on 1 June 2021:
  - We are working to inform participants about the changes.
- During the September quarter in our role assisting with external dispute resolution under the Franchising, Horticulture, Oil and Dairy Codes of Conduct, our Office has:
  - Responded to 180 enquiries under the Franchising Code, two enquiries under the Horticulture Code and one enquiry each under the Dairy Code and Oil Code.
  - Acted on 77 cases related to the Franchising Code, of which 70 were franchisee initiated and 7 were franchisor initiated.

We use qualitative and quantitative mechanisms to assess the mediation process. For September quarter 2021, key findings include:



64%  
resolved at  
mediation



100%  
of parties acted  
in good faith



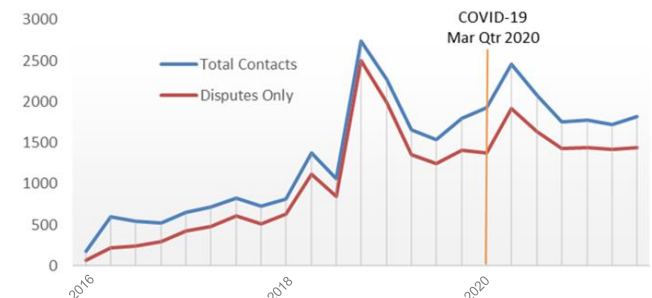
\$2,819  
average cost  
of mediation

*“ASBFEO is an undervalued asset to small business, and their strength in leadership helps bridge the gap in what is still a significant power imbalance between large and small business.”*  
NSW Small Business Owner

## Small Business Tax Concierge Service

- In September Quarter 2021, the Small Business Tax Concierge Service received 23 inquiries from small businesses seeking assistance with negative decision letters received from the Australian Taxation Office.
- Many of the requests for assistance were from small businesses deemed ineligible for JobKeeper or Cash Flow Boost, and some with concerns relating to Superannuation Guarantee arrangements and penalties.

## ASBFEO REQUESTS FOR ASSISTANCE



# Assistance: supporting SMEs

1,835 contacts received via:



1,336



379



113

40,152

visits to  
assistance  
website info

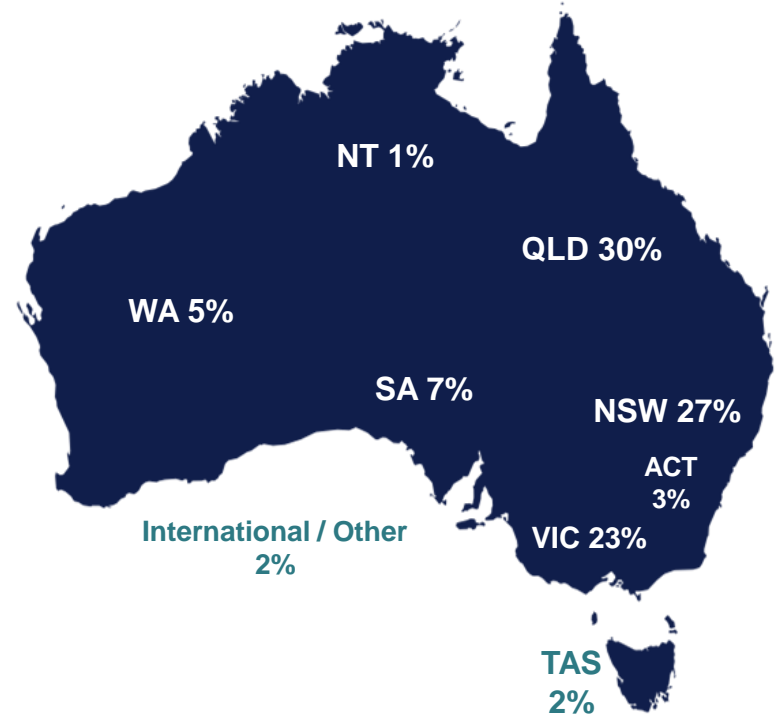
463

small  
businesses  
supported by a  
case manager

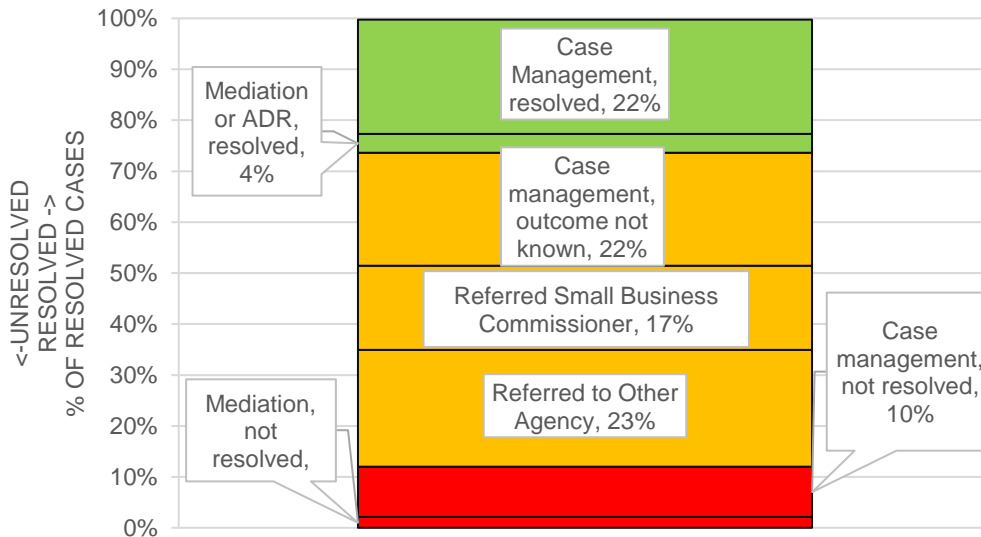
84%

of contacts came  
from small and  
family business  
owners

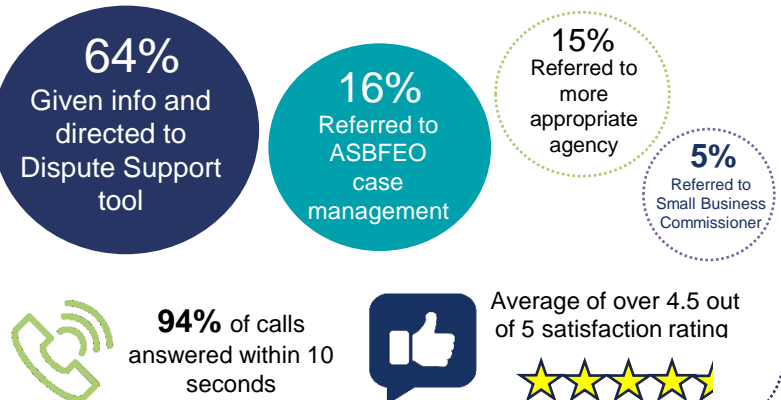
## Contacts by state / territory



## CASE MANAGEMENT OUTCOMES



## HOW WE HELPED CALLERS TO OUR INFO LINE



# Advocacy: a voice on policy and legislation

## Insurance

- The Ombudsman continues to hear from small businesses struggling to access insurance.
- Work on the proposed discretionary mutual fund for the amusement, leisure and recreation sector has continued, with a consultation report now in the final stages of preparation.
- Complexities have arisen around data availability and these are being addressed to inform a final report.
- The Ombudsman provided an update on the DMF project to the Australian Standing Council on Tourism in early September.
- The Ombudsman has joined the Insurance Council of Australia's Business Advisory Council, to contribute to the creation of a framework to improve the affordability and availability of commercial insurance products for the small business sector.



## Payment times

- The Federal Government's Payment Times Procurement Connected Policy (PT PCP) came into force on 1 October 2021.
- The Policy & Advocacy team has worked closely with the Small Business division at the Treasury to support development of resources for small business sub-contractors covered by the PT PCP.
- The Ombudsman has developed a Fast Facts Sheet for small businesses looking to understand more about the PT PCP, which is available on the website.



# Advocacy: a voice on policy and legislation

## Codes Consultations

- There have been a number of code-related consultations with submissions made on matters relating to the review of the Dairy Code, the proposed Automotive Franchising Code, the penalties regime under the Franchising Code, and the review of the Banking Code Compliance Committee.
- Feedback across the board has been highlighting the need for right-sized and proportionate approaches to regulation to address power imbalances and the problematic behaviour that can flow from such imbalances.
- The Ombudsman provided clear feedback on the need for robust and effective Alternative Dispute Resolution services to allow for resolution of disputes while maintaining business relationships.
- The Ombudsman has also proposed consideration be given to establishing a Small Business and Franchising List in the Federal Circuit Court to allow for determinative decisions to be made in a timely and cost effective way.

## Payment Systems

- The Ombudsman regularly receives complaints about payment systems and merchant fees for small businesses.
- A submission was made to the Reserve Bank of Australia's Payment System Review urging the application of least-cost routing, possible re-examination of the 'no surcharge' rule, ensuring dual network debit card issuance, and improving transparency of payment costs for merchants.
- We were pleased to see the Treasurer's support for least-cost routing for small businesses as reported in early September.

## Australia Post

- The Ombudsman welcomed an announcement from Australia Post in August that it would continue to provide carriage of perishable goods, reversing their previous decision.
- The Ombudsman worked closely with Australia Post, producers/vendors/retailers, and State regulators to assist in reaching this sensible outcome.
- Certainty is critical for small businesses, and this decision has provided much needed clarity for small producers.



# Advocacy: a voice on policy and legislation

## Major input into policy, inquiries and legislation

- Provided advice on the ePayments Code and how to make it work better for small businesses.
- Made a submission to the RBA on Payment Systems regulations.
- Engaged with DFAT on Pacific Labour Mobility and the impact of the scheme on small business.
- Consulted with the Australian National Audit Office on the Research & Development Tax Incentive.
- Submitted on the implementation of a reporting regime for sharing economy platforms.
- Advised on the procurement practices for Government-funded infrastructure projects.
- Engaged with the review of the Banking Code Compliance Committee.
- Made a submission on the review of the Dairy Code.
- Provided advice on proposed penalties under the Franchising Code of Conduct.
- Engaged on modernising business communication including using technology to hold meetings and sign and send documents.

### Submissions

Australian Securities and Investments Commission	1	Department of Infrastructure	2
Reserve Bank of Australia	1	Australian Taxation Office	1
Senate Committees	4	The Treasury	13
Digital Transformation Agency	1	Productivity Commission	1
Therapeutic Goods Administration	1	Australian Banking Association	2
Australian National Audit Office	1	Australian Competition and Consumer Commission	1
Department of Foreign Affairs and Trade	1	National Transport Commission	1
House of Representatives Committee	1	Department of Home Affairs	1
Department of Defence	1	Department of Agriculture, Water, and Energy	1
Board of Taxation	1	Department of Prime Minister and Cabinet	1
		DISER	1

# Outreach: communications and stakeholder engagement

- In light of COVID-19 lockdowns across the eastern states, the Ombudsman supported several initiatives and social media campaigns to support small businesses during difficult times including the ATO's tax time, scam alerts and Job Maker Hiring credit campaigns, the ACCC's small business online retail marketplace survey, Grow with Google, COSBOA's Go Local First campaign and the Commonwealth Government's COVID-19 disaster payment.
- Representing Australia's small and family businesses, the Ombudsman attended a total of 52 meetings with government and key external stakeholders including 6 meetings with Ministers. The Ombudsman also participated in a meeting with State Small Business Commissioners to collaborative efforts within their jurisdictions to support the nation's vital small business community.
- The Ombudsman gave 15 media interviews, which resulted in 173 media mentions across TV, radio, print and online.
- The Ombudsman contributed to columns in publications such as The Australian Retailers Association, Convenience World Magazine and Kochie's Business Builders.
- 11 videos were published on YouTube, including for National Family Business Day and NAIDOC Week 2021.
- Appeared in/on: The Today Show – Channel 9, Sydney Morning Herald, Dynamic Business, Inside Small Business, 6PR (Perth Live), ABC Radio and SBS.
- Promoted our dispute resolution services with our Assistance *Dispute Support* tool which saw 11,051 visits during the period.
- Continued to run the national marketing campaign raising awareness about Beyond Blue's *NewAccess for Small Business Owners* program via social media which drove significant traffic to the My Business Health portal. During this reporting period there were 13,012 visits to the portal.

## Traditional and Social Media



11 media releases



3,621 newsletter subscribers



6,004 followers  
28 posts



Ombudsman  
7,357 followers | 9 tweets  
ASBFEO  
2,059 followers | 23 tweets



321 followers  
5 posts



173 mentions



42,377 visits to website



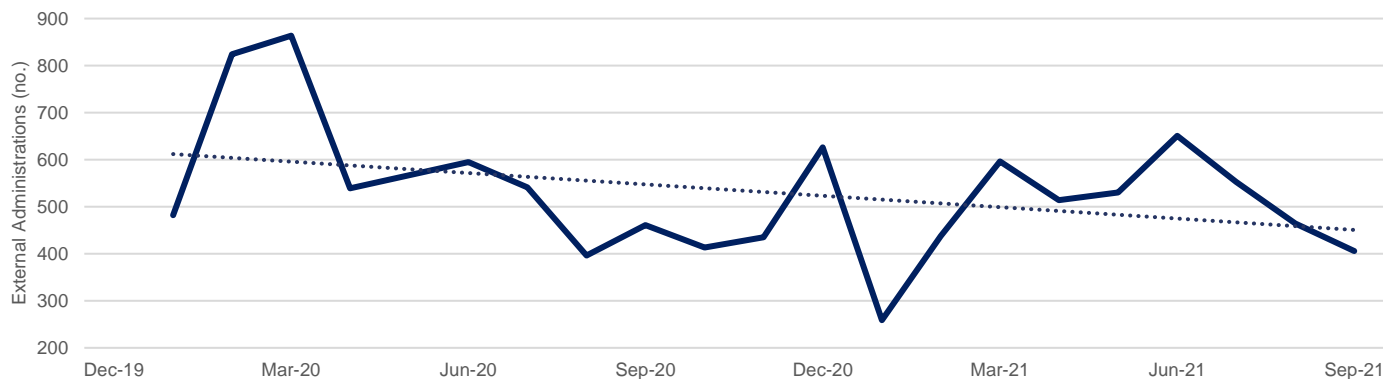
11 videos published  
453 subscribers



Ombudsman  
3,201 followers | 17 posts  
ASBFEO  
5,531 followers | 26 posts

# Stats Snapshot

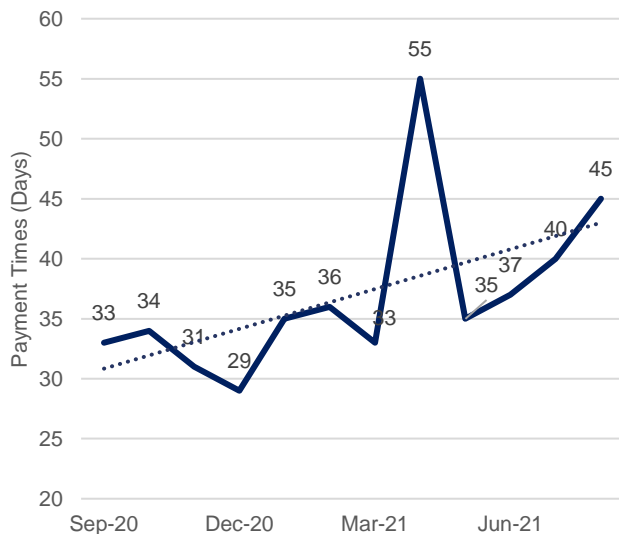
External Administrations since Jan 2020



ASIC data shows external administrator appointments in September 2021 are down 12.5% compared to August 2021. External administrations in September 2021 are also up 11.9% down compared to September 2020.

Source: CreditorWatch external administrations, Obtained October 2021

Payment Times since Sep 2020



CreditorWatch payment times have increased 12.5% in August 2021 compared to July 2021. Payment times have steadily increased over the last 12 months.

The short term spike in payment times in April 2021 has been identified as an anomaly.

Source: CreditorWatch Payment Trends, Obtained October 2021

Probability of Default in September 2020 (%) by state

State / Territory	PD GeoRisk
Queensland	6.20%
Western Australia	5.80%
New South Wales	5.80%
Victoria	5.70%
Northern Territory	5.60%
Australian Capital Territory	5.50%
South Australia	4.90%
Tasmania	4.80%

Source: CreditorWatch Business Risk Index, Obtained October 2021

CreditorWatch Business Risk Index highlights the probability of default (PD) per state. For September 2021, Queensland had the highest probability of default and Tasmania has the lowest probability of default.

# Next steps

## ASSISTANCE

- Continue to promote the new changes to the Franchising Code of Conduct and encourage small businesses in dispute to seek assistance using the dispute resolution options under the Code, including arbitration as agreed.
- Continue to assist relevant small businesses with the dispute resolution options available under the Dairy, Horticulture and Oil Codes of Conduct, including encouraging industry participants to contact our office for assistance early in a dispute.
- Examine online platforms to simplify online dispute resolution processes for small businesses seeking assistance with alternative dispute resolution.
- Review small business data sources and examine options to make more broadly available more comprehensive and accessible information and data on small business health.

## ADVOCACY

- Finalise review of the Discretionary Mutual Fund and monitor the broader insurance market for challenges for small businesses.
- Continue to monitor the progress of moving towards least-cost routing for small businesses.
- Review the first reporting quarter of the Payment Times Reporting Scheme.
- Monitor the implementation of the Payment Times Procurement Connected Policy.
- Consult on and continue to develop a plan for possible future inquiries.

## OUTREACH

- Continue the redevelopment and improvement of the ASBFEO website, following results obtained during user testing phase.
- Publish Strategic Plan.
- Communicate outcomes of the Discretionary Mutual Fund Review.
- Focus on social media and promoting an awareness of the role of the ASBFEO.
- Promote women-owned and women-led (WOWL) businesses survey and communicate results of findings in terms of how the shared experiences can contribute to investigation of options into policy solutions that will improve opportunities and better support small WOWL businesses.
- Promote the work of ASBFEO's assistance team through testimonials and the work of the Advocacy team through social media and media promotion.
- Continue to promote the My Business Health portal via social media advertising and Beyond Blue's *NewAccess for Small Business Owners* program.



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Cover page: acknowledgement to local Canberra business  
Janine's Florist of Bailey's Corner

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