

# Quarterly Report

Q4 [October-December] 2021

Australian Small Business  
and Family Enterprise Ombudsman



# Message from the Ombudsman



Many small and family businesses were eager to make the most of the end-of-year festivities, with Australian shoppers spending an estimated \$60 billion in the pre-holiday rush.

The increase in consumer activity was a welcome relief for businesses emerging from lockdowns and restrictions, however they were still contending with headwinds such as supply chain constraints, challenges accessing staff, long delivery delays and heightened customer expectations.

In the weeks leading up to the festive season, my office actively encouraged consumers to consciously shop at small and family businesses. We urged shoppers to be kindly customers - patient, understanding. It was a friendly reminder that small businesses are run and staffed by real people who deserve respect and empathy.

## Consider hiring mature aged workers

Many small businesses owners have been run off their feet, covering for staff in isolation and struggling amid nation-wide labour shortages. My office has encouraged small and family businesses to welcome applications from all-ages when hiring staff, highlighting the many benefits of mature age employees. Age diversity is good for business. Older workers can elevate an entire workplace, with their knowledge, experience and transferrable skills forged over many years. We welcome any further support MPs can provide in helping to spread this important message to their small business constituents.

## Help is available

As small businesses navigate the challenges presented by this new normal, they may also be feeling weighed down by this stress. Help is available for those who aren't coping and my office has continued to work collaboratively with other organisations to promote the mental health support services accessible to them.

In the last quarter of 2021, I participated in a webinar with Beyond Blue CEO Georgie Harman and host David Koch. We spoke about the kind of things that keep small business owners up at night and Beyond Blue's New Access for Small Business Owners program. This generated a significant number of new registrations to this tailored, evidence-based program. We also continued to promote our [My Business Health](#) web portal, which provides free practical tools to help with running a business and links to other useful mental health resources.

## Discretionary Mutual Fund final report

In December, we released our final report into the insurance crisis facing Australia's amusement, leisure, and recreation sector. The report, *The Show Must Go On*, found a Discretionary Mutual Fund (DMF) is the most practical and durable solution to enable the amusement, leisure and recreation sector to remain operational in a hardened global insurance market. To put it into perspective, the sector employs over 7,000 people and contributes \$1.84 billion to the economy in total. If these businesses cannot secure risk protection, they face imminent closure and that will lead to significant job losses (particularly in regional areas) and a loss of economic activity generated by metro and regional shows and amusement parks. In this light, our final report endorses the Australian Amusement, Leisure and Recreation Association's (AALARA) proposal to establish a DMF as the only current workable solution to the immediate need for coverage in the sector.

Finally, my office has spent much of the final quarter of 2021, laying the groundwork for what we expect will be a very busy 2022. Our mission is to help make Australia the best place to start, grow and transform a business. We thank small and family businesses as they lead the nation's economic recovery and we hope that in the year to come, they can get on with what they do best – running their business.

## The Hon. Bruce Billson

Australian Small Business and Family Enterprise  
Ombudsman

# Key activities

## ASSISTANCE

- Received 1,695 contacts to our Office, of which 1,402 were requests for assistance directly related to small business disputes
- Provided assistance to small businesses affected by and recovering from COVID related restrictions, across a range of payment, contract and franchising related matters
- Streamlined dispute resolution processes for small businesses in dispute with online platforms including information sharing with small business commissioners
- Provided assistance to franchise participants, including assisting with 165 franchise related disputes
- Received Expressions of Interest from alternative dispute resolution (ADR) practitioners seeking to participate in our ADR providers list

## ADVOCACY

- Completed and published a report recommending the establishment of a discretionary mutual fund to address inability to access insurance in the amusement, leisure and recreation sector.
- Advocated for and monitored the implementation of least-cost routing for debit payments for small businesses.
- Facilitated a meeting of the National Policy Forum to enable high level sharing of industry concerns by peak bodies to further small business outcomes.
- Engaged with the Collaborative Partnership on Mature Age Employment as part of our work on solutions to labour shortages.

## OUTREACH

- Major media appearances and mentions: A Current Affair (Nine Network), 6PR (Perth live), AFR, The Australian, West Australian, The Age, Sydney Morning Herald, ABC radio, 2SM with John Laws, 2GB, Smart Company, Gold Coast Bulletin, The Guardian Australia, Sky News.
- Key media topics: Discretionary Mutual Fund Review, insurance accessibility, banking, mature aged workers, payment times reporting register, e-invoicing, least cost routing, Covid support and recovery.
- Events: The Ombudsman participated in 12 presentations and webinars. He presented at the Western Sydney Women Awards (virtual) and was also part of the judging panel for the Australian Export Awards (virtual).

# Assistance: supporting SMEs

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

- We are assisting franchisors and franchisees with the dispute resolution process outlined in the Franchising Code of Conduct. This includes the Ombudsman appointing alternative dispute resolution (ADR) practitioners to assist with disputes:
  - We responded to 165 enquiries from franchising participants in the December quarter 2021.
  - We acted on 99 cases related to franchising, of which 96 were franchisee initiated and 3 were franchisor initiated.
- We continued to provide a list of produce assessors to support the Horticulture Code of Conduct, and responded to one enquiry relating to the Horticulture Code in the December quarter 2021.



**63%**  
resolved at  
mediation



**100%**  
of parties acted  
in good faith



**\$3,150.55**  
average cost  
of mediation

## Small Business Tax Concierge Service

- In December Quarter 2021, the Small Business Tax Concierge Service received 22 inquiries from small businesses seeking assistance with negative decision letters received from the Australian Taxation Office.
- Many of the enquiries continued to be from small businesses deemed ineligible for Job Keeper or Cash Flow Boost, or with concerns related to Superannuation Guarantee arrangements and penalties.

*“It’s been an amazing experience and has reaffirmed my faith in amazing public servants” NSW Small Business Owner about the case management process at ASBFEO*

# Assistance: supporting SMEs

1,695 contacts received via:



1,225



318



143

20,870

visits to  
assistance  
website info

544

small  
businesses  
supported by a  
case manager

85%

of contacts came  
from small and  
family business  
owners

## HOW WE HELPED WITH CASE MANAGEMENT

50%

provided active case  
management support  
including providing  
information to progress  
dispute

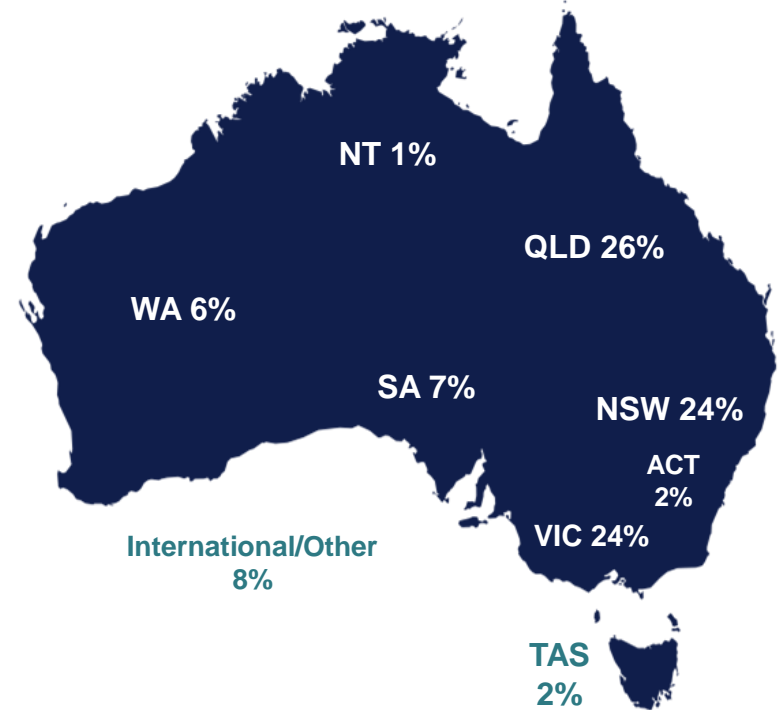
44%

referred to a more  
appropriate agency (usually  
relevant small business  
commissioner, or alternative  
Government agency)

6%

referred to an  
alternative dispute  
resolution process  
(mostly mediation)  
of which the  
majority resolved or  
partially resolved

## Contacts by state/territory



## HOW WE HELPED CALLERS TO OUR INFO LINE

44%

Given info and  
directed to  
Dispute Support  
tool

29%

Referred to  
more  
appropriate  
agency

23%

Referred to  
ASBFEO case  
management

4%

Referred to  
Small Business  
Commissioner



98% of calls  
answered within 10  
seconds



Average of 4.8 out of 5  
satisfaction rating



# Advocacy: a voice on policy and legislation

## Insolvency

- When a business becomes insolvent, it can be a costly and drawn-out process to wind up business affairs.
- In response to the Federal Treasury Clarification of treatment of trusts under insolvency law discussion paper, this office advocated for the simplification of insolvency laws as they apply to small business and to small business trust structures.
- This office has suggested that using alternative dispute resolution processes and early engagement during the insolvency process is more likely to achieve better outcomes for small businesses and their creditors.



## Access to insurance and alternative risk protection models

- This office further engaged with the Cyclone and Related Flood Damage Reinsurance Pool Taskforce recommending:
  - the pool increase the cap on commercial insurance policies to provide adequate cover for small business; and
  - the inclusion of Marine industry policies in the pool from the outset.
- Small businesses in the amusement, leisure and recreation sector have reported being unable to access insurance in the existing marketplace.
  - This office undertook a comprehensive review into options for alternative risk protection in the sector.
- The review recommends the establishment of a discretionary mutual fund (DMF) to provide risk protection to the industry.
  - A DMF would offer a 'certificate of protection' and provide discretionary risk coverage.
  - The review concluded that a DMF would be the most durable and affordable solution to address the predicament the sector is facing, and one could be established with a range of other risk mitigation strategies, along with educating consumers about the type of coverage it provides.
  - The report recommends the Australian Government to provide loan funding as 'seed capital' to establish the fund, and to engage with State, Territory and Local Governments to further the proposal.

# Advocacy: a voice on policy and legislation

## Access to affordable banking

- Access to secure and reliable banking is a requirement for small business to function effectively.
- This office continues to advocate for several significant changes to the Banking Code of Practice to ensure ongoing access to banking services, including in the event of local bank branch closures in rural or regional towns.
- Previous advocacy by this office has recommended banks refrain from denying a banking service without appropriate explanation to the customer why they have been denied the service. This recommendation was adopted in the recent review of the Banking Code of Practice (recommendation 58).
- Other recommendations from this office were also adopted in the review of the Banking Code Compliance Committee (BCCC) including:
  - the inclusion of a small business representative on the BCCC; and
  - improving engagement with the small and agribusiness advisory panel.
  - We continue to advocate for the application of default least cost routing of debit payments to reduce the cost burden of payment transactions on small business.

## Government procurement

- Government procurement opportunities continue to be out of reach for many small businesses.
- We have recently advocated for the promotion of small business participation in industry sustainability criteria.
- This office submitted to the House of Representatives Standing Committee on infrastructure, transport, and cities, recommending the unbundling of Government infrastructure projects, where possible, to make them accessible to small businesses, and the introduction of the South Australian Industry Advocate Model for procurement at the Federal level.
- This office is currently undertaking research into opportunities to increase access for women owned and women led small businesses to networks and procurement.





# Advocacy: a voice on policy and legislation

## Major input into policy, inquiries and legislation

### Enhancing digital engagement

- Submitted on the need to streamline business practices by:
  - modernising document execution including technological neutrality of document execution;
  - allowing for AGMs to be held online; and
  - improving technology neutrality laws.
- Recommended that telecommunications and online services embed security-as-a-service functions into their service for small business.
- Highlighted the impact of negative online reviews for small business.
- Identified the lack of protections for small business in the ePayments Code and recommended this be remedied immediately.

### Improving business practices

- Made recommendations to support effective application of industry codes including:
  - ensuring the Franchise Disclosure Register uses clear and concise language and have comprehensive, searchable, and readable functions; and
  - amending the insurance brokers code recommending there should be no conflicted remuneration for insurance brokers, or at the very least, all remuneration should be disclosed to all small business clients.
- Provided advice on the Insolvent Safe Harbour laws and the need to simplify and refine them for small business, while calling for the efficient and cost-effective treatment of trusts under insolvency law.

### Right sized regulation

- Responded to the inquiry into the Fair Work Commission's Annual Report encouraging communication and consultation with small businesses along with an educative approach for inadvertent first offender errors.
- Recommended that, until alternative existing data sources can be used to mitigate reporting burden, small business not be required to report under the Workplace Gender Equality Act and that education to small business be preferenced over punitive action.

### Essential services

- Advised of our support of the Australian Energy Market Operators application for industry participants to share information to reduce the critical maintenance backlog for electricity infrastructure.
- Recommended alternatives and changes to the Banking Code of Practice in several consultations.



# Advocacy: a voice on policy and legislation

Major input into policy, inquiries and legislation

## Submissions

| Recipient   | Number | Recipient  | Number |
|---|--------|--|--------|
| Department of Treasury                                | 8      | ASIC   | 1      |
| Department of Industry, Science, Energy and Resources | 1      | National Insurance Brokers Association                   | 1      |
| Prime Minister and Cabinet                            | 2      | Select Committee on Social Media and Online Safety       | 1      |
| QLD Education, Employment and Training Committee      | 1      | ACCC   | 1      |
| Banking Code Compliance Committee                     | 1      | Standing Committee on Employment, Education and Training | 1      |
| Senate Economics Legislation Committee                | 1      |  |        |

# Outreach: communications and stakeholder engagement

- The Ombudsman encouraged Australian 'kindly customers' to consciously shop with small businesses, supporting campaigns such as American Express' "Shop Small" and COSBOA's "Go Local".
- On 21 December, 2021, ASBFEO's redeveloped website went live. Along with upgrading to the latest version of Drupel to optimise the website's functionality, the website underwent a significant redesign to improve user-experience and appropriately reflect the Ombudsman's vision for the agency.
- Representing Australia's small and family businesses, the Ombudsman attended a total of 92 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 26 media interviews, which resulted in 358 media mentions across TV, radio, print and online. The Ombudsman appeared on A Current Affair – Nine Network, 6PR (Perth live), ABC radio, SBS, Sky News, the AFR, West Australian, The Age, SMH and The Australian. The Ombudsman contributed to columns in publications such as The Australian Hardware Journal, Convenience World Magazine and Kochie's Business Builders.
- Three videos were published to social media, including a message to encourage small business owners to welcome mature workers to ease labour shortages and a National Agriculture Day video focusing on the assistance ASBFEO can provide for businesses in a dispute under the Horticulture Code.
- Promoted the final report of The Show Must Go On. The final report found a Discretionary Mutual Fund (DMF) is the most practical and durable solution to enable the amusement, leisure and recreation sector to remain operational in a hardened global insurance market.
- The Ombudsman co-presented a webinar with Beyond Blue CEO Georgie Harman and David Koch on Kochie's Business Builders to raise awareness about mental health and the New Access for Small Business Owners program. He also spoke about mental health and Smiling Mind as part of a webinar hosted by MYOB.

## Traditional and Social Media



15 media releases



3,190 newsletter subscribers



6,087 followers  
66 posts



Ombudsman  
7,330 followers | 26 tweets  
ASBFEO  
2,088 followers | 54 tweets



348 followers  
36 posts



358 mentions



69,432 visits to the website



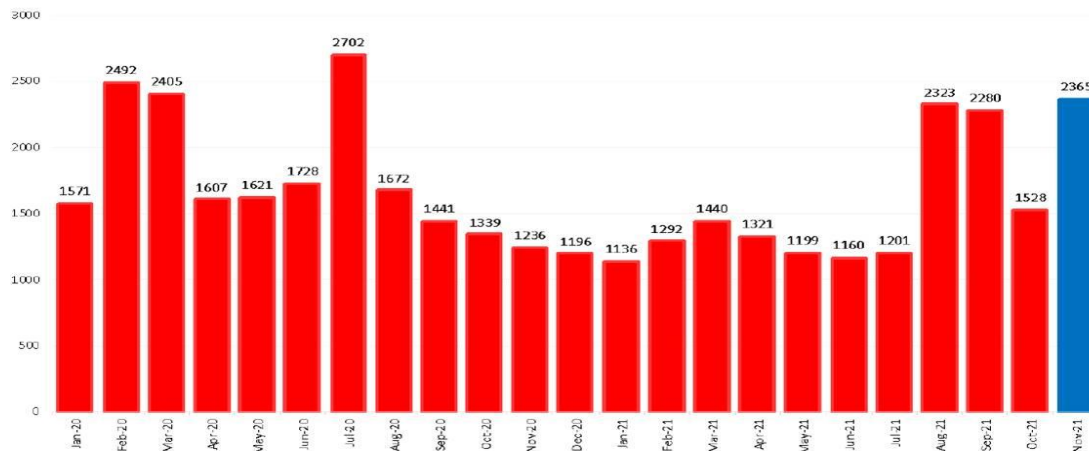
3 videos published  
460 subscribers



Ombudsman  
3,360 followers | 50 posts  
ASBFEO  
3,646 followers | 66 posts

# Stats Snapshot

Court Actions

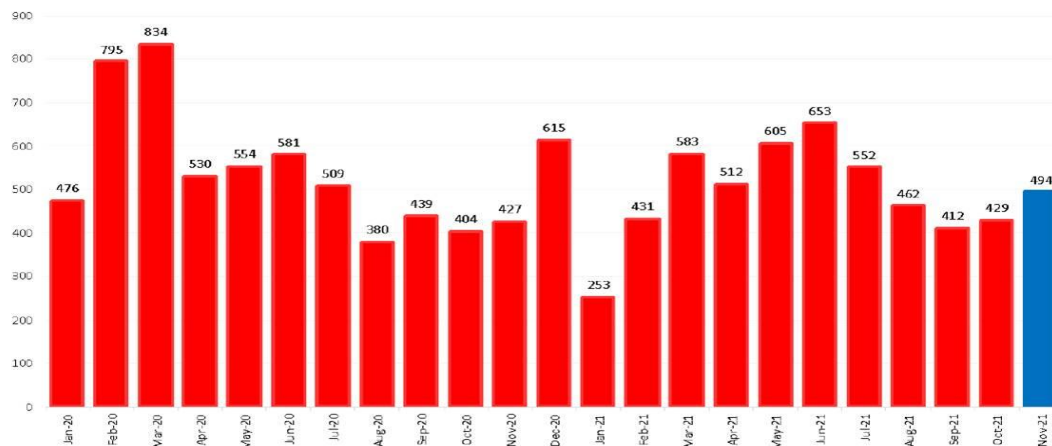


Source: CreditorWatch

## Court actions

- CreditorWatch data shows the number of court actions spiked by 85 per cent in November.
- The number of court actions is at its highest since March 2020.

Number of Administrations



Source: CreditorWatch

## External administrations

- The latest ASIC data shows the number of external administrations increased by 15 per cent in November, the second consecutive monthly increase.
- This result follows consistent falls from June in the lockdown periods.
- The first official Payment Times Report Register, showing the payment policies of more than 6,000 large businesses, showed 30% of invoices are being paid late. Average payment terms are 37 days. The manufacturing industry has average standard payment terms of 50 days.

# Next steps

## ASSISTANCE

- Update the dispute support tool on ASBFEO's website and streamline case management processes to provide consistent and effective assistance in response to small business requests.
- Renew and finalise ASBFEO's alternative dispute resolution (ADR) practitioner list.
- Encourage the use of the dispute resolution options under the Franchising Code of Conduct, including arbitration if agreed, and continue to streamline the appointment process for ADR practitioners under the Code
- Encourage industry participants in the Dairy, Horticulture and Oil Codes of Conduct to contact us for assistance early when in dispute
- Continue to review small business data sources and examine options to make more broadly available small business and family enterprise information and data for small businesses, stakeholders and policy makers

## ADVOCACY

- Commence an inquiry into Small Business Natural Disaster Preparedness and Resilience.
- Continue to promote fairer competition & industry code effectiveness along with code harmonisation.
- Support the reliable provision of Essential Services such as the enhancement of digitisation for productivity improvements.
- Work to elevate awareness of the small business and family enterprise sector increasing voice and recognition.

## OUTREACH

- Begin phase two of website redevelopment, improving digital stakeholder engagement, online dispute resolution tools and further improvements to user experience.
- Promote the Minister-referred inquiry into small business natural disaster preparedness and resilience.
- Continue to communicate outcomes of the Discretionary Mutual Fund Review.
- Focus on social media and promoting an awareness of the role of the ASBFEO, particularly with CALD communities.
- 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.



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