



Australian Government



Australian
Small Business and
Family Enterprise
Ombudsman

Quarterly Report

Q3, 2022 (1 July to 30 September 2022)

Australian Small Business and
Family Enterprise Ombudsman

Message from the Ombudsman



Over the past three months as I have met with small and family business owners around the country one of the most obvious things I have noticed is that small business people are literally exhausted.

We shouldn't forget there has been no reprieve from the rolling natural disasters such as floods, bushfires and drought and the lingering effects from COVID-19 and the various lockdowns and restrictions.

As we emerge from those challenges, small businesses are now struggling to make rosters work and keep doors open due to labour and skills shortages; grappling with supply troubles that means critical inputs, goods and services are not always available; adjusting to higher inflation than many have experienced; rising interest rates; and on edge about cyber security fears.

Many small businesses are not making a profit and eating into whatever reserves and personal resources they have to pay their bills and service business debts.

It is no wonder there's an increase in the number of small business owners seeking advice about the future of their business amid rising financial stress and predictions of a sharp rise in insolvencies in some sectors, such as the construction industry where fixed-price contracts and delays in progress completion are prevalent.

So, it was bitterly disappointing to see the latest data on payment times by big businesses to small businesses from the Payment Times Reporting Regulator. More than half of the nation's big businesses missed their own mediocre deadlines for paying their small business suppliers.

We know cash flow is such a vital ingredient of small business survival and frankly words of comfort from big business representatives of their support for small business ring hollow when only 47% of big businesses paid their suppliers by their own agreed payment deadline and just 31% of big businesses paid their small business invoices within 30 days, which is the benchmark set by the Business Council of Australia. It is pleasing the Australian Government is taking this concern seriously.

It continues to be difficult for small businesses to get a bank loan so many go to non-bank lenders. It is even harder for female entrepreneurs, even though two-thirds of new small businesses are being started by women.

And the hardening of the global insurance market has meant small businesses in many sectors unable to find affordable insurance as it is either unavailable, or prohibitively expensive.

Yet, the entrepreneurial spirit that drives men and women to start a small business and the resilience to have a go, gives us optimism about the future.

I welcome the Australian Government's confirmation that small businesses with annual turnover of less than \$50 million will receive a bonus 20% deduction for expenses and depreciating assets associated with the uptake of digital technology and an extra 20% deduction for the cost of external training courses delivered to their employees by providers registered in Australia.

This will mean small businesses will get a \$120 tax deduction for \$100 spent on digital uptake and upskilling staff.

Deeper digital engagement has been the saviour for many small and family businesses throughout the pandemic and assistance to build their digital capacity is an important investment in their future.

Small Business Minister Julie Collins and the Finance Minister Katy Gallagher also announced changes to Commonwealth procurement rules that will mean that 20 per cent of Commonwealth procurements by value must be sourced from small and medium enterprises. This doubles the existing target of 10 per cent.

There is no substitute for customers and it's great to see the Commonwealth's commitment to be a bigger customer for small businesses.

The government also moved to introduce legislation into Parliament to crackdown on unfair contract terms and increase penalties for anti-competitive behaviour.

In this quarter we have also launched a new data portal on the ASBFEO website highlighting the latest statistics about small businesses and family enterprises and their contribution to the Australian economy.

For example, it shows small business accounts for 43% of all apprentices and trainees in training – nearly double the amount supported by a big business.

Check out the data portal at: www.asbfeo.gov.au/resources-tools-centre/small-business-data-portal.

A handwritten signature in black ink, which appears to read 'Bruce Billson'.

The Hon. Bruce Billson

Australian Small Business and Family Enterprise Ombudsman

Key Activities

Assistance

- Received 1,550 contacts, of which 1,199 were requests for assistance directly related to small business and family enterprise disputes.
- Provided assistance to small businesses and family enterprises across a range of payment, contract, franchising and other Competition and Consumer Code disputes.
- Provided assistance to franchise participants, including assisting with 96 franchise related disputes.

Advocacy

- Provided the Minister for Small Business, the Hon Julie Collins MP, with an update on the implementation of the automotive franchising industry's tripartite Memorandum of Understanding on an industry-led voluntary binding arbitration pathway to resolve automotive franchising disputes.
- Undertook significant advocacy work regarding the importance of adequate consultation on, and communication of, changes impacting small business. This included providing feedback to .au Domain Administration regarding the lack of small business awareness of the recent changes to domain names and the potential threat this has to the small business sector.
- Provided feedback to the Senate Education and Employment Legislation Committee on the *Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022*, highlighting critical areas of focus to ensure the effective implementation of this important piece of legislation.

Data/Economics

- Launched a data portal to help the small business community and stakeholders fully understand small and family businesses and the environment in which they operate. We will continue to add content to this portal over time.
- Commissioned further research on the amusement, leisure and recreation industry sector regarding the availability and cost of insurance.
- Supported the University of the Sunshine Coast's research into small business experiences with digital marketing service providers.

Outreach

- Disseminated important information about the Australian Small Business and Family Enterprise Ombudsman (ASBFEO) data portal launch and subsequent data releases, eInvoicing and digitisation, payment times, the introduction of .au domains by the Domain Administration and the lack of awareness among the small and family business community and the potential threat to the sector, advocacy submissions, insurance issues, supply chain issues, and insolvency.
- The Ombudsman delivered 8 presentations and participated in 3 webinars. This included hosting Policy Forum Roundtables for the Minister for Small Business, and the Minister for Skills and Training to inform and provide insights from the small and family business community for the Australian Government Jobs and Skills Summit. Other notable webinars included panel discussions with Chartered Professional Accountants and Australian Government Regulators (ACCC, ASIC, ATO and the FWO) to introduce the Regulators and explain how they all work together for the interests of the small and family business community. The Ombudsman also participated in webinars with the ATO on eInvoicing and digitisation.

Key Activities

- Led a national awareness raising strategic media campaign on the introduction of .au domains by Domain Administration. This media campaign was supported by many small business representative industry associations, small business advocates, other Australian Government departments and agencies, as well as state Small Business Commissioners.



The Ombudsman (left) with Robert Mallett and Geoff Fader of the Tasmanian Small Business Council, discussing ways ASBFEO can best support small businesses in Tasmania.



Australian Small Business Advisory Services (ASBAS) Digital Solutions | Darwin, Northern Territory

From left to right: Janet McIntyre - My Pathway, Jack Tanner, Storm Niland-Visser - Cyaround Australia Tours, Ombudsman, Bruce Billson, Agata Dharma, Dante St James - Business Station, and Katie Grazhdannikova, ASBFEO.

Assistance: Supporting Small and Family Businesses

Industry Codes | Franchising - Horticulture - Oil - Dairy

- The ASBFEO provided information to franchise participants in relation to use of the mandatory dispute resolution process under the Franchising Code of Conduct. We also arranged alternative dispute resolution (ADR) processes and appointed independent ADR practitioners to disputes when requested.
 - Responded to 96 enquiries from franchising participants.
 - Actively case managed 31 franchise disputes, 24 were initiated by franchisees and 7 by the franchisor.
- The ASBFEO continued to provide a list of produce assessors to support the Horticulture Code of Conduct, and actively managed 3 requests related to the Oil Code of Conduct and 2 requests related to the Dairy Code of Conduct.



54% resolved at mediation*



100% of parties acted in good faith*



\$2,741 average cost of mediation*

*All figures based on ADR practitioner reports over the past 12 months

Small Business Tax Concierge Service

- The Small Business Tax Concierge Service (SBTCS) received 9 requests for assistance from small businesses seeking assistance with negative decision letters received from the ATO, and 12 enquiries about the service.
- The SBTCS worked with these small businesses and the ATO to allow their issue to be readdressed or referred to independent tax lawyers to provide subsidised advice about appealing the decision.



Ombudsman Bruce Billson gave an address at the Sustainable Economic Growth for Regional Australia (SEGRA) Conference in Devonport, Tasmania | 2 September 2022.

Assistance: Supporting Small and Family Businesses

1,550 contacts received via:



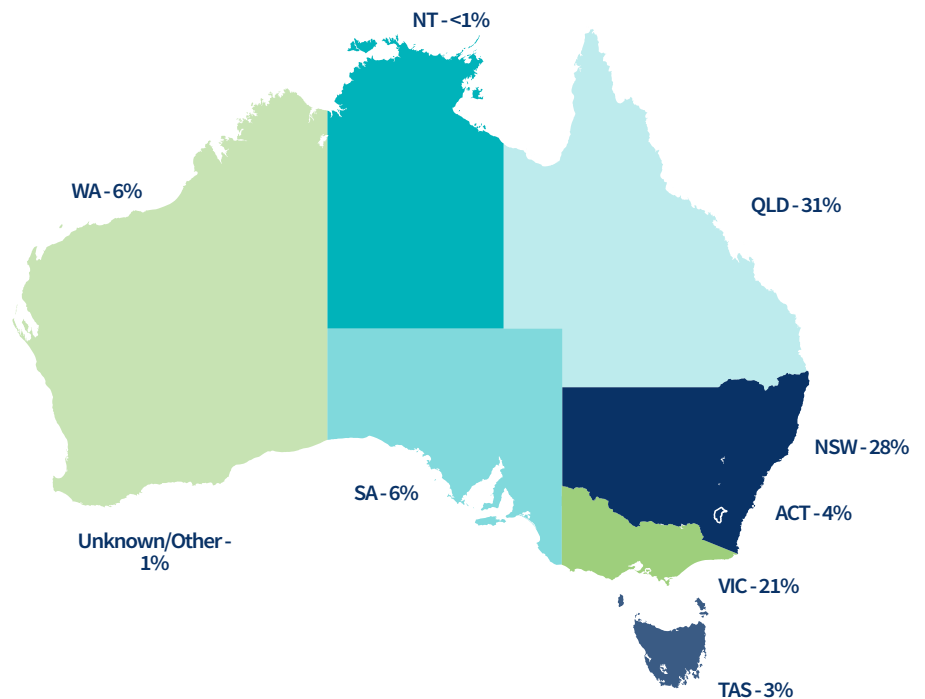
11,442
visits to assistance website info

346
small businesses and family enterprises supported by a case manager

82%
of contacts came from small business and family enterprise owners*

* where details of caller are confirmed

Contacts by state / territory



Case Management Outcomes

74%

required active case management support, including providing information to progress dispute

21%

referred to a more appropriate agency (usually relevant Small Business Commissioner, or alternative government agency)

5%

referred to an Alternative Dispute Resolution practitioner

7/10

finalised Alternative Dispute Resolution processes were resolved

How we helped callers to our info line

39%

given information and directed to the Dispute Support Tool

16%

directed to ASBFEO's online Dispute Support Tool

12%

referred to ASBFEO case management

6%

referred to more appropriate agency, principally Small Business Commissioner



91% of calls answered within 10 seconds



Over **98%** customer satisfaction rating

A Voice on Policy and Legislation

Small Business Access to Justice

- The Australian Government has introduced legislation into Parliament to expand coverage of unfair contract terms legislation and increase penalties for anti-competitive behaviour.
- The ASBFEO provided feedback on the draft legislation for Competition and Consumer Reforms supporting the intent of the increased penalties for businesses participating in anti-competitive conduct. The submission:
 - highlighted that while the increase in potential penalties will go some way to deterring large businesses, given the often-significant financial upside of this type of conduct, it is unlikely to sufficiently reduce anti-competitive behaviours without appropriate enforcement of the legislation.
 - recommended that a Federal Small Business and Codes List be created in the Federal Circuit Court of Australia to provide affordable, determinative, and timely access to justice for small businesses and regulators.
- Further, the ASBFEO provided support for the activation of a ‘super complainant’ mechanism for credible dispute resolution agencies. This mechanism recognises potentially anti-competitive conduct through significant cases or recurring matters that individually would not satisfy the ACCC’s enforcement criteria but represent significant harm to impacted parties, demonstrable non-compliance with Codes or a prima facie breach of competition and small business-related ACL provisions that have not been able to be resolved via ADR processes.

Regional and Rural Communities

- The ACCC released the consultation paper on 1 July 2022, commencing an inquiry into access to telecommunication towers and associated infrastructure in regional, rural, remote, and peri-urban Australia, and the feasibility of temporary mobile roaming during natural disasters and emergencies. The ASBFEO highlighted the critical role telecommunication resilience programs play in ensuring small businesses and their communities have access to telecommunications services during and after natural disasters. The ASBFEO also provided further feedback to the inquiry, recommending:
 - consideration of the development of a framework that prescribes service standards for small business mobile phone services in regional, rural, and remote areas
 - the Government consider developing a framework that promotes stakeholder co-operation to plan, invest in, and build fit for purpose mobile infrastructure that achieves high quality value for money services
 - commitment of adequate ongoing funding and consideration given to the expansion of the Mobile Black Spot Program, Regional Connectivity Program and state and territory co-investment programs to improve services in regional Australia.
- The ASBFEO also welcomed the proposed introduction of Better Practice Guidance (the Guide) for Farm Debt Mediation, suggesting instructive case studies are included to illustrate its practical application and explain how it interacts with state regimes and the Australian Banking Association’s Banking Code of Practice expectations. Another recommendation from the ASBFEO was that consideration be given to the adoption of appropriate legislation to better support a nationally consistent approach to Farm Debt Mediation.

Advocacy: A Voice on Policy and Legislation

Taxation

- The Australian Government's commitment to deliver tax breaks that will help small businesses have greater support, incentives, and skills to grow, comes at an important time as small businesses look to drive economic recovery and navigate a challenging labour market. The measures first announced in the March budget will see small businesses with annual turnover of less than \$50 million receive a bonus 20% deduction for expenses and depreciating assets associated with the uptake of digital technology and an extra 20% deduction for the cost of external training courses delivered to their employees by providers registered in Australia.
- The ASBFEO indicated his support for the measures and provided feedback on draft legislation and explanatory materials recommending additional clarity be provided to assist small business operators to understand the impact of the changes and claims eligibility.
- The ASBFEO provided support for the proposed increased threshold for eligibility of a shorter review period for small businesses with an annual turnover of \$10 million to \$50 million.

Major Input into Policy, Inquiries and Legislation

Financial Advice

- The ASBFEO provided submissions to multiple consultations regarding the financial advice sector, including the Quality of Advice Review – Proposal for Reform and Financial Adviser Education Standards Consultation.
- The ASBFEO highlighted the need to manage further transition for the sector and mitigate the risks associated with a potential dilution of the education requirements by recommending:
 - exemptions from professional adviser education requirements only be granted to advisers with at least 10 years' experience, a clean compliance record, and completion of both the Adviser Exam and Ethics course
 - professional year requirements be rightsized, flexible and proportionate for individual advisers
 - professional associations are provided with the necessary support and resources to assess, approve, and monitor qualifications and education standards.
- The ASBFEO provided feedback on the Quality of Advice Review – Proposal for Reform, suggesting:
 - the Review considers including a recommendation that a dedicated Financial Advice Standards Board be formed to proactively oversee the advice sector
 - the proposed reforms clearly delineate between simple advice that can be provided by Non-Relevant Providers and complex advice provided by Relevant Providers
 - the Review seeks to identify and quantify stakeholder benefits, efficiencies, and costs from its recommended changes to identify if any of the stakeholders will be disadvantaged by the proposed changes.

Insolvency

- The ASBFEO responded to the Department of the Treasury's consultation on improving Corporations and Financial Services Law, recommending:
 - simplifying the law whilst ensuring any reforms to the *Corporations Act 2001 (Cth)* strive for consistency and not cause adverse impacts across chapters or other legislation
 - considering broader insolvency reforms, including an external review of the restructuring and insolvency framework.

Advocacy: A Voice on Policy and Legislation

Submissions

Recipient	Number	Recipient	Number
Department of Treasury	8	Australian Finance Industry Association	1
Australian Competition and Consumer Commission	1	The Productivity Commission	1
ACT Government Justice and Community Safety Directorate	1	Department of Agriculture, Fisheries and Forestry	1
AusTrade	1	Senate Education and Employment Legislation Committee	1



The Ombudsman (left) with Michael Shadforth - Caloundra Chamber of Commerce and Maree Adshead - Queensland Small Business Commissioner.

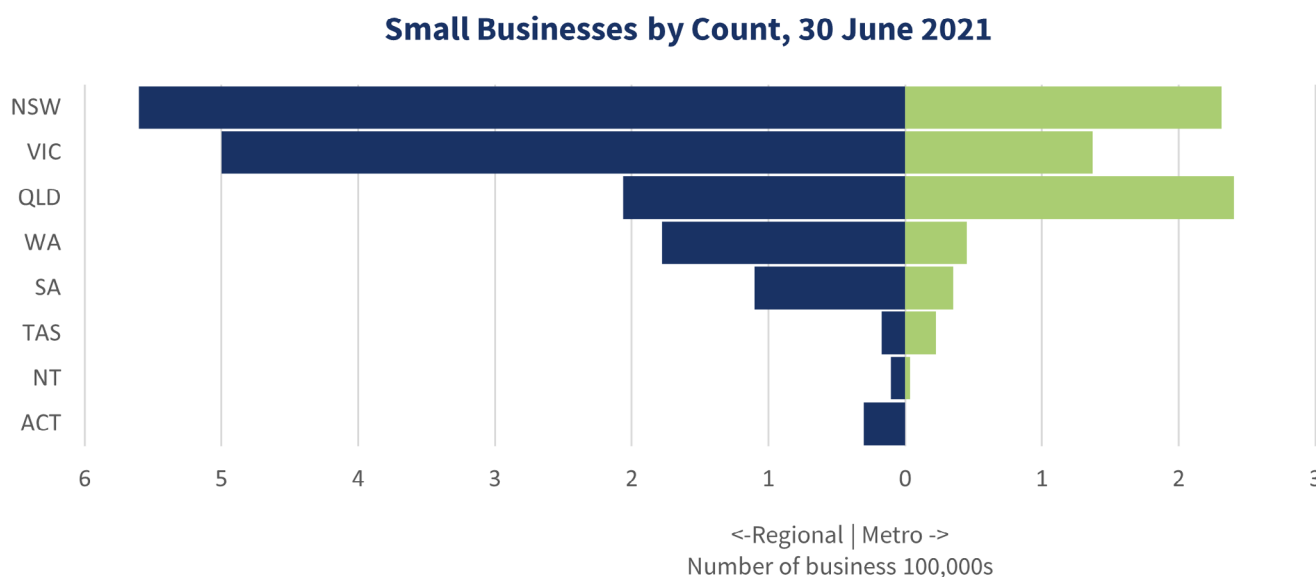
Stats Snapshot

This data presents small businesses in Australia according to their regional or metropolitan area classification, focusing on numbers, location, size, and demographics. A detailed report is also available on our [Data Portal](#).

Most small businesses are metro based

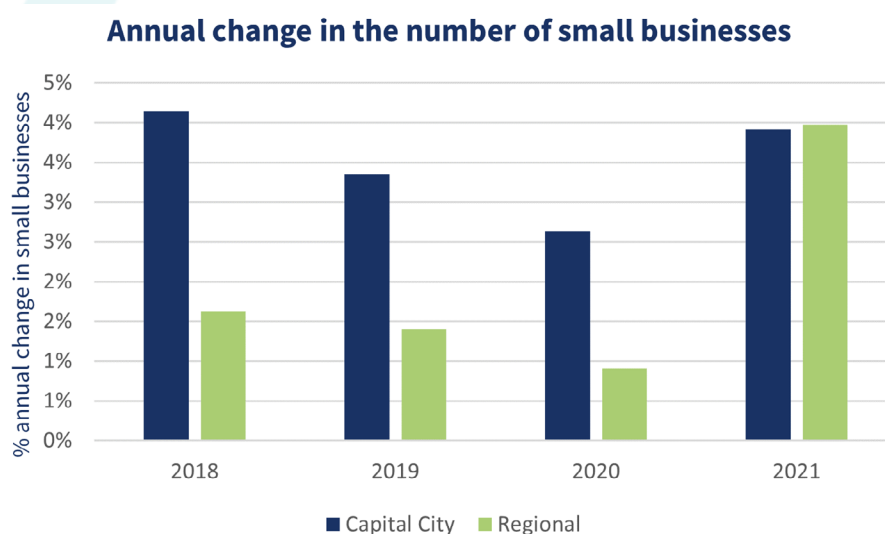
Of the 2.3 million small businesses in Australia, 1.6 million (69%) are located in the greater capital city areas and 31% (716,609) in regional areas on 30 June 2021. This closely reflects the split of the Australian population, with 67%¹ of all Australians living in the greater capital city areas².

Queensland and Tasmania had the greatest proportions of small businesses located in regional areas.



Excludes businesses not registered for GST. Source: Based on Australian Bureau of Statistics, customised data.

Increases in the number of small businesses have historically been higher in metro areas when compared to the regional areas. However, there was strong increase (4%) in the number of small businesses in both capital city and regional areas in the year to June 2021.



Excludes businesses not registered for GST. Source: Based on Australian Bureau of Statistics, customised data.

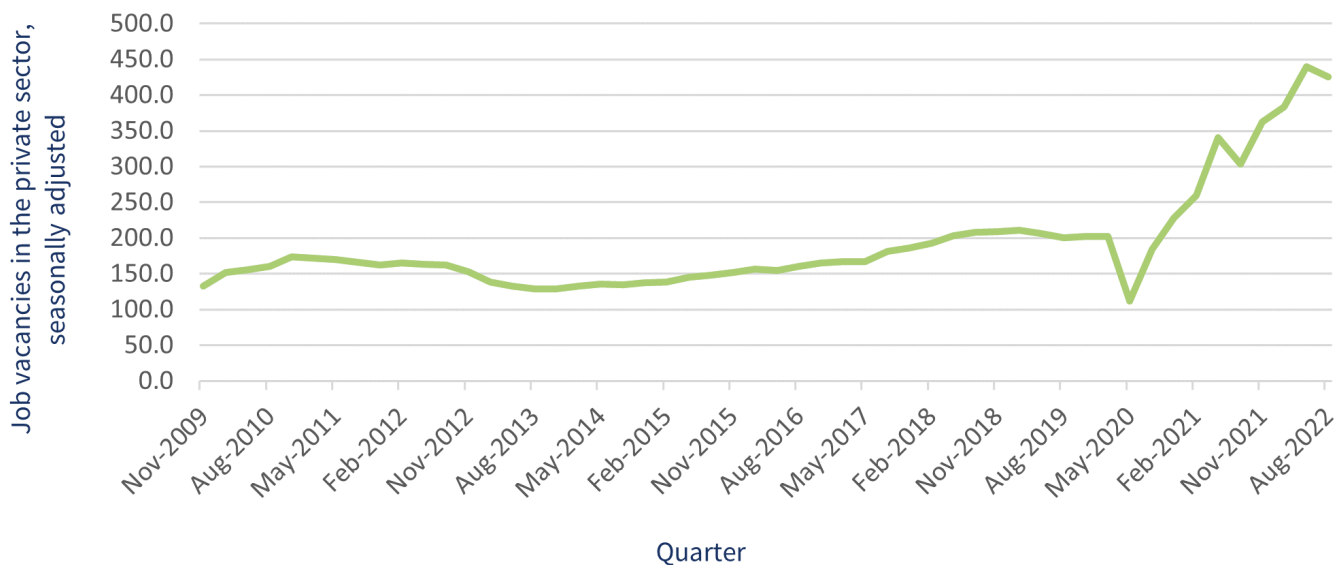
¹ Australian Bureau of Statistics (2021), [Regional Population](#), accessed 22 August 2022

² Please note that for this data the Australian Small Business and Family Enterprise Ombudsman (ASBFEO) defines small businesses as those with less than 20 employees. The data is classified using the Australian Statistical Geography Standard (ASGS), and excludes businesses not registered for GST. Source: Based on Australian Bureau of Statistics, customised data for 30 June 2021.

Business conditions

The statement by Phillip Lowe, Governor of the Reserve Bank of Australia³, on the October 2022 monetary policy decision highlighted the economic headwinds facing small businesses in Australia. Australia's inflation remains high, with further rises expected in the months ahead as global supply-side problems continue. Many businesses continue to struggle to hire workers in a tight labour market. There were 425,500 job vacancies in the private sector in August 2022. This was a 40% increase compared to August 2021, but a 3% fall compared to May 2022.

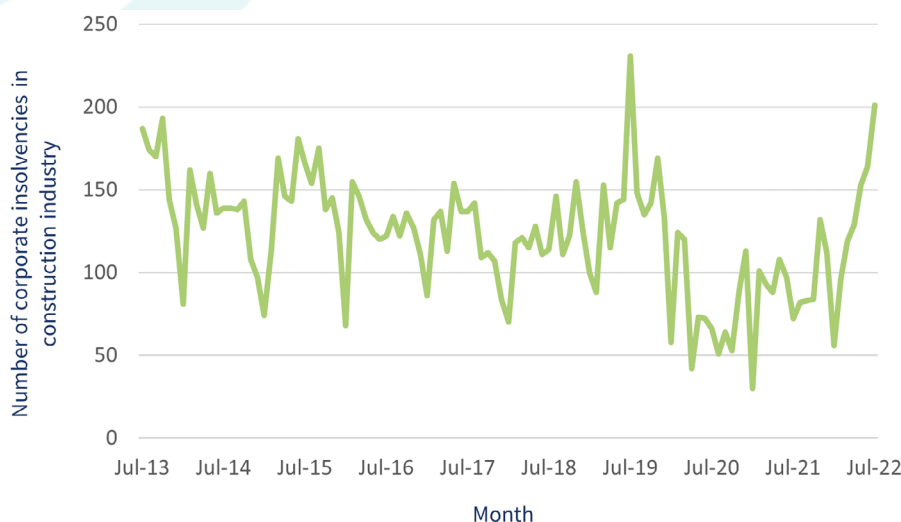
Job vacancies in the private sector



Note: Includes small, medium, and large employing businesses. The Australian Bureau of Statistics (ABS) do not include enterprises primarily engaged in agriculture, forestry, and fishing in the Job Vacancy Survey. More information is available from ABS, *Job Vacancies, Australia methodology, August 2022*.

Source: ABS, *Job Vacancies, Australia, August 2022*, Accessed 5 October 2022.

The CreditorWatch Business Risk Index in August 2022 suggests that more small businesses are experiencing financial difficulties. Trade payment defaults and court actions were both more than 50% higher year-on-year in August 2022. After subdued activity throughout the pandemic, corporate insolvencies are rising. This is particularly noticeable in the construction industry. There were 201 corporate insolvencies in the construction industry in July 2022. This is the highest number since July 2019.



Note: a breakdown by size of business is not available. ASBFEO analysis of ABS data in *Counts of Australian Businesses, including Entries and Exits, June 2017 – June 2021* found that 98.7% of businesses in the construction industry are small businesses.

Source: Australian Securities and Investments Commission, *Insolvency Statistics Series 1A Companies entering external administration and controller appointments by industry*. Accessed 5 October 2022.

³ Statement by Philip Lowe, Governor: Monetary Policy Decision, Number 2022-33, 4 October 2022. Accessed 5 October 2022.

Outreach: Communications and Stakeholder Engagement

- The ASBFEO led a national awareness raising strategic media campaign on the .au domain name registration period. This was required to address the low awareness of the introduction and adoption of .au domains among the small and family business community. Implementation included targeted media activities across Australia over a period of several months. There was strong dissemination of the ASBFEO's messaging from national media outlets to capital city and state-based media, media that focusses on regional Australia, specialist small business media websites and media that reached CALD and Indigenous communities. Awareness was raised via traditional and specialist television, print, radio, and online media outlets, including an excess of 100 news websites.
- This media campaign included four separate media releases (including tailored messages to Indigenous and migrant-led small businesses) and messages in the ASBFEO Newsletter and columns from the Ombudsman for Kochie's Business Builder, Convenience World Magazine, Hardware Journal and Connect magazine (newsagents).
- Articles about this issue were published by:
 - the AAP on 80 sites, including 7News.com.au, Daily Mail, Crikey and Yahoo News
 - The Herald Sun, Daily Telegraph and 11 other News Corp titles, including the Weekly Times and other major city titles
 - Australia Financial Review across its network
 - The West Australian and 11 regional WA papers
 - The Canberra Times and 13 large regional papers in its network including the Newcastle Herald and the Border Mail
 - The Adelaide Advertiser
 - numerous local papers, indigenous media, multicultural media, websites and blogs.
- Op-eds from the Ombudsman were published in print editions of the Herald Sun, Adelaide Advertiser and the Courier Mail.
- Television news stories about this issue were broadcast across Channel 9's stations, on SBS and Channel 10.
- There was radio coverage about this issue on more than 100 stations, including reports on more than 41 ABC stations, 30 commercial radio stations plus the Triple M network and SBS radio (some translated into other languages).
- Radio interviews with the Ombudsman regarding this issue were broadcast on Money News (Nine radio 2GB, 3AW, 4BC), ABC PM program, 6PR Perth, 5AA Adelaide, ABC Northern Tasmania, ABC regional SA, ABC Sunshine Coast, ABC Queensland & Far North, ABC Newcastle, ABC South-East NSW, 2CC Canberra and Bumma Bippa Media indigenous radio.
- Others wrote opinion pieces, letters to the editor or conducted radio interviews that were based on the Ombudsman's strategic media campaign's messaging.



Outreach: Communications and Stakeholder Engagement



*In line with the directive from the Australian Government, the ASBFEO did not publish major media releases or undertake social media during the period of mourning due to the passing of Queen Elizabeth II.

Assistance

- Continuing to refine our processes, particularly around payment issues, to allow small businesses and family enterprises to make informed decisions about how to best manage their disputes.
- Continuing to assist small businesses and family enterprises with dispute resolution options under the Franchising Code of Conduct and encourage disputing parties to consider arbitration to resolve issues where appropriate.
- Promoting the Dairy, Horticulture and Oil Codes of Conduct to encourage those in dispute to contact us for assistance early.

Advocacy

- Identifying the challenges and opportunities for women owned and led small businesses and policy measures to support these businesses.
- Continuing advocacy work to encourage broader reforms to Australia's complex insolvency system.
- Researching solutions to address the current and ongoing supply chain issues impacting small and family businesses.
- Continuing to examine opportunities for improved access to timely justice for small and family businesses harmed by unfair and anti-competitive conduct and breaches of regulatory Codes.
- Ongoing advocacy work to encourage policy settings that support small business innovation and productivity growth.
- Continuing research into supports for small and family businesses in understanding and implementing Environmental, Social and Governance best practice.
- Ongoing advocacy work on the impacts of the significant power imbalance small businesses face when dealing with their larger counterparts.

Data/Economics

- Expanding our data portal to include the demographics of small business owners.
- Designing interactive dashboards for our website redevelopment, with a focus on maximising useability while keeping sensitive data secure.
- Developing a small business index for a quick glance at changing business conditions facing small businesses.

Outreach

- Continuing to progress phase two of website redevelopment, including improving accessibility and WCAG 2.0 requirements. This redevelopment focuses on implementing interactive data dashboards for the data portal, self-help functions for small business owners in disputes, and embedding My Business Health content and functionality into the primary ASBFEO site.
- Releasing strategic communications targeted for small business and family enterprise across multiple ASBFEO channels regarding matters of potential high risk to small business including Cybersafety and the ASBFEO Small Business Tax Concierge.
- Improving and focusing the ASBFEO's outreach program (in collaboration with Australian Government Federal Regulatory Agencies and state Small Business Commissioners), with stakeholders and small and family businesses across Australia. This includes face-to-face events as well as sponsorship activities and having a presence at such events for the remainder of 2022 and into 2023.
- Ongoing promotion of Assistance Team outcomes, arising from assistance requests and promotion of alternative dispute resolution processes.

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