



Australian Government



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

# Quarterly Report

Q4, 2022 (1 October to 31 December 2022)

Australian Small Business and  
Family Enterprise Ombudsman

# Message from the Ombudsman



Our small and family business community were able to celebrate the first Christmas trading period without lockdowns or restrictions since 2019, but the challenges of adjusting to this 'new normal' abound for those now grappling with supply chain disruptions and chronic skills shortages.

The year ended with the Reserve Bank handing down the eighth consecutive monthly increase in interest rates worth a combined 3 percentage points, which combined with high inflation and the ending of some support schemes is feeding a return to higher insolvency rates.

It's timely that Australia's insolvency laws are being reviewed for the first time in more than three decades and we were pleased to provide [practical recommendations in our submission](#) to the Parliamentary Joint Committee on Corporations and Financial Services to improve the insolvency system to make it easier for small business owners to navigate.

The current system is not sympathetic to honest failure and genuine prospects for recovery of the business or business owner.

It assumes that the failure of a business is due to poor management. Yet, when a crisis shocks an economy, even the best managed businesses will face enormous headwinds and may not survive.

The system seldom considers an insolvent company's longer-term prospects, its competitiveness, assets, or brand value, or the interest of key non-credit stakeholders, including the business owner's capacity to provide opportunities for ongoing employment, investment and wealth creation. The system is too heavily geared towards secured creditor interests and because of this, too ready to trigger closure and liquidation.

All we are saying is give restructuring a chance so that businesses that are facing some choppy waters can sit down, have a genuine conversation about their credible prospects of recovery and what creditors can do to help with that process so they are better able to pursue a credible restructure, save jobs and rebuild.

Our [Small Business Natural Disaster Preparedness and Resilience Inquiry report](#), completed earlier in the year, was tabled in Federal Parliament in November. It contained the disturbing finding that only one in four small businesses have a current business continuity plan.

The [16 recommendations](#) in the report were based on the on-the-ground experiences from the small and family businesses we met across the nation whose livelihoods have been ripped apart by natural disasters and unimaginable events beyond their control.

During the quarter, the Australian Government handed down its first Budget following the election. It offered some useful and welcome responses to immediate pain points for many small and family businesses such as the \$15m for the New Access for Small Business Owners mental health support program and the Small Business Debt Helpline.

With the Budget predicting lower economic growth and a spike in electricity and gas prices, we are keen to work closely

with Ministers and the Parliament to energise enterprise through encouraging policy settings.

To that end we welcomed a visit to our office by the Hon Julie Collins MP, Minister for Small Business. We also hosted a policy forum roundtable with the Hon Dr Andrew Leigh MP, Assistant Minister for Competition, Charities and Treasury, focusing on competition challenges for small businesses and how they might be more effectively addressed.

Small businesses of course have a proven track record of lifting our nation. Coming out of the global financial crisis, almost 60% of the new jobs were created by small employers even though the sector only accounted for 40% of the workforce.

Small and family businesses can again drive our economic uplift and I continued to be inspired by the enterprising women and men producing new ways of delighting customers and new ways of creating wealth and opportunity.

I look forward to helping to ensure Australia is the best place to start, grow and transform a small business and family enterprise in 2023.

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 1,665 contacts seeking information and or assistance, of which 1,390 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 digital platforms matters.
- Provided assistance to franchise participants, including assisting with 57 franchise related disputes, an increase from 31 in quarter 3 (1 July to 30 September 2022).

## Advocacy

- Provided significant feedback to the Parliamentary Inquiry into Australia's Food Security, highlighting the critical role small businesses play in local supply chains.
- Held a policy forum roundtable with the Hon Dr Andrew Leigh MP, Assistant Minister for Competition, Charities and Treasury, focusing on prevailing competition challenges for small businesses and how they might be more effectively addressed.
- Provided practical recommendations to the Parliamentary Joint Committee on Corporations and Financial Services, about improving the current insolvency system to make it easier for small business owners to navigate.

## Data/Economics

- Released Australia's first regional small business statistics on the ASBFEO data portal.
- Initiated data and information sharing on the conditions faced by small businesses and optimising communication with cohorts of small business owners.
- Commissioned research into the unique operating environment of family enterprises.

## Outreach

- Disseminated important information across a range of channels about payments times, insolvency laws, cybersecurity, disaster preparation and disaster recovery, the federal budget, advocacy submissions, the Australian Small Business and Family Enterprise Ombudsman (ASBFEO) data portal releases, invoicing and digitisation.
- Created and began implementing a strategically focused forward plan for ASBFEO's outreach program in collaboration with Australian Government Federal Regulatory Agencies and state Small Business Commissioners.
- The Ombudsman delivered 17 presentations and participated in 13 webinars. This included hosting the Policy Forum on Insolvency inquiry. Other notable webinars included The Tax Summit, Regional Tourism Convention, LGAQ Annual conference, SEANNA Symposium, ASIC Annual Forum, and the Xero Small Business Month invoicing event.



## Key Activities



ASBFEO Policy Forum

From left to right: Dr Matthew Steen, Executive Director, Policy & Advocacy, ASBFEO; Rhiannon Kerin, Director, Small and Family Business Division, Treasury; Cameron Dyson-Smith, A/g Director, Policy & Advocacy, ASBFEO; Sam Bide, Adviser, Office of the Hon Dr Andrew Leigh MP; Chloe Andrews, Adviser, Office of the Hon Stephen Jones MP; Leisa Baynham, Assistant Director, Policy & Advocacy, ASBFEO (former); Peter Grist, Principal Economist & A/g Director Innovation, Productivity and Sustainability, ACCL; Kent Johns, Head of Government & Regulatory Affairs, NECA; Gino Grassia, Assistant Secretary, Small and Family Business Division, Treasury; Dr Craig Latham, General Counsel and Executive Director of Data and Information & Assistance, ASBFEO; and The Hon Dr Andrew Leigh MP, Assistant Minister for Competition, Charities and Treasury.



Australian Small Business and Family Enterprise Ombudsman, Bruce Billson, and Minister for Small Business, Hon Julie Collins MP.



# Assistance: Supporting Small and Family Businesses

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

- The ASBFEO provided information to franchise participants relating to the 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. This included:
  - responding to 111 enquiries from franchising participants
  - actively case managing 57 franchise disputes, 47 were initiated by franchisees.
- The ASBFEO continued to provide a list of produce assessors to support the Horticulture Code of Conduct with two specific requests and actively managed one request related to the Oil Code of Conduct.

## Small Business Tax Concierge Service

- The ASBFEO's Tax Concierge Service (TCS) continued providing information and assistance across a range of taxation matters. We received:
  - nine requests for assistance from small businesses seeking assistance with ATO negative decision letters received, a decrease from nine requests last quarter
  - six enquiries about the service which was a decrease from 12 last quarter.
- The TCS worked with the 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.
- The ASBFEO is continuing to promote the availability of the TCS to small business and family enterprises.



Ombudsman, Bruce Billson, presenting at the Local Government Association of Queensland Annual Conference.

# Assistance: Supporting Small and Family Businesses

## 1,665 contacts received via:



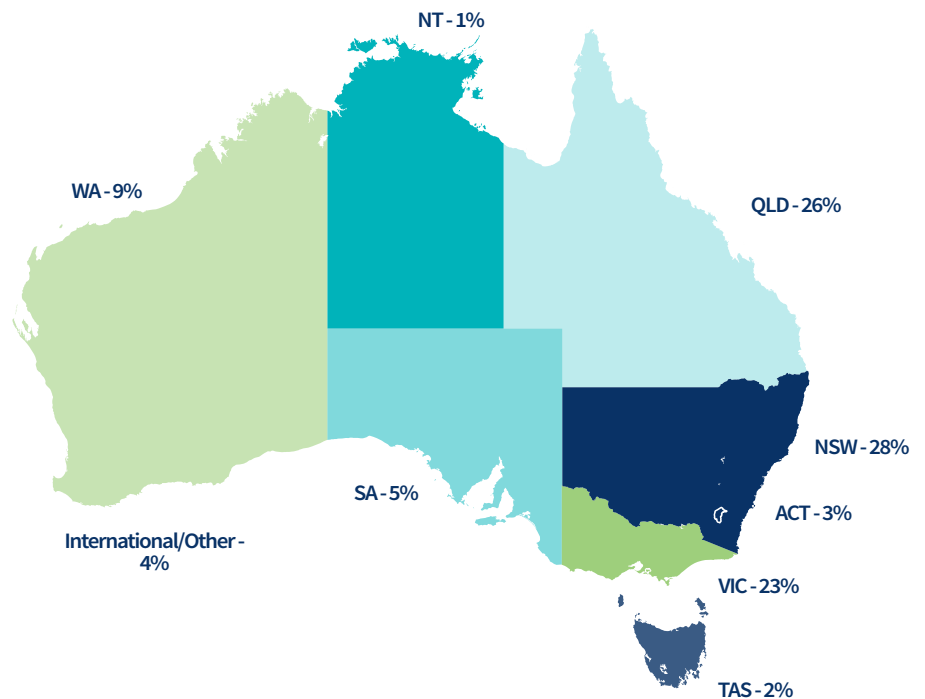
**12,049**  
visits to the ASBFEO assistance  
website information

**417**  
small businesses and family enterprises  
supported by a case manager

**84%**  
of calls were from small business and  
family enterprise owners\*

\* where details of caller are confirmed

## Contacts by state / territory



## Case Management Outcomes

**75%**  
required active case  
management support,  
including providing  
information to progress  
dispute

**24%**  
referred to more  
appropriate agency  
(usually relevant Small  
Business Commissioner,  
or alternative government  
agency)

**1%**  
referred to an Alternative  
Dispute Resolution  
practitioner

## How we helped callers to our info line

**59%**  
given information and  
directed to the Dispute  
Support Tool

**9%**  
referred to ASBFEO case  
management

**21%**  
referred to more  
appropriate agency,  
usually the relevant  
Small Business  
Commissioner

**12%**  
emailed with additional  
information



**94%** of calls answered  
within 10 seconds



Over **99%** customer  
satisfaction rating

## A Voice on Policy and Legislation

### Review of Corporate Insolvency in Australia

- The ASBFEO provided a submission to the Parliamentary Joint Committee on Corporations and Financial Services on Corporate Insolvency in Australia on 5 December and appeared before the committee on 13 December.
- The ASBFEO has undertaken significant work on corporate insolvency practices over many years, and made key recommendations including:
  - establishing response protocols that will support businesses in future emergencies
  - improving financial acumen and access to quality advice to better support small business
  - undertaking broader reform of the insolvency system, including reviewing and improving the small business restructuring provisions
  - reviewing insolvency practitioners' fee structures and responsibilities, as well as the role of government agencies in insolvency.
- The ASBFEO also recommended that government consider how best to support subcontractors in the construction industry in times of insolvency, owing to the complexity of state and territory security of payment legislation.

### Workplace relations changes

- The Australian Government passed Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022 on 6 December.
- The ASBFEO provided substantial feedback to government on its proposed changes and their likely impact on small and family businesses, consistent with the government's aim of enhancing job security and increasing wages.
- We also emphasised that the existing definition of small business in the Fair Work Act posed challenges for the intended operation of the Secure Jobs, Better Pay Act.
- The ASBFEO's recommendations included:
  - providing more time to review new provisions on bargaining rules
  - ensuring that small businesses have sufficient safeguards to prevent them being involuntarily joined to an enterprise agreement
  - making the Fair Work regime more accessible to small business operators by:
    - creating a Small Business Division or Commissioner to provide a streamlined jurisdiction and ensure procedures are 'right-sized' for small businesses
    - implementing the early triage or filtering of unfair dismissal and general protections applications.

### Taxation

- The ASBFEO provided a submission to the House of Representatives Standing Committee on Agriculture on Australia's food security. The submission highlighted the critical role small and family businesses play in delivering our nation's food supply and recommended that the Australian Government:
  - involve governments of all levels in its efforts to plan for and strengthen national food security, including by leading consultations with small businesses to take account of the distinctive challenges they face



# Advocacy: A Voice on Policy and Legislation

- o develop a list of critical import dependencies in consultation with a range of industries and business representatives
- o implement provisions to prevent 'unfair business practices' against small businesses and include solutions on how best to educate large businesses of their obligations
- o leverage the National Reconstruction Fund towards value-adding sovereign food manufacturing, particularly towards additives identified by the Office of Supply Chain Resilience
- o consider how it can actively support primary producers in developing, refining and articulating their environmental, social and governance (ESG) performance.

## Major Input into Policy, Inquiries and Legislation

### Taxation and payments

- The ABSFEO provided feedback on the Treasury Laws Amendment (2022 Measures No. 4) Bill in December, recommending that:
  - o the requirements to complete a digital game should be adjusted for the digital games tax offset to allow for milestone payments, and that the minimum spend of \$500,000 on qualifying Australian development expenditure be reduced to \$300,000
  - o fringe benefits tax reporting should be aligned with other tax reporting obligations
  - o the expenditure period for the skills and training boost and technology investment boost be extended to allow more than six months for eligible expenditure following passage of the bill.
- The ASBFEO provided submissions to the independent review of the Buy Now, Pay Later (BNPL) Code of Practice and the Treasury consultation on the future regulatory framework for BNPL. The submissions highlighted the need for government to clarify how BNPL products interact with other Codes of Practice and support more effective regulation.

### The ABN system

- The ASBFEO provided feedback on a proposal to strengthen the ABN system, noting that:
  - o the ABN update should be integrated within existing processes, for example, the tax returns or business activity statement process
  - o the retroactive application of reinstatement from the day of ABN cancellation should be explicitly stated in the legislation, not just in the explanatory materials
  - o we support the flexible and responsive implementation of the reinstatement grounds, enabled by a robust information sharing process between the Australian Taxation Office and Australian Business Registry Services
  - o we endorse the ABN contingency grounds to function as a means to initiate the 'right' types of behaviour from businesses, not as punitive measures
  - o the Registrar should consider additional interventions to complement the ABN contingency grounds, to proactively rectify practices that compromise ABR data quality.

# Advocacy: A Voice on Policy and Legislation

## Productivity

- The ABSFEO provided feedback to the Productivity Commission on the 5 Year Productivity Inquiry, recommending that to support Australia's productivity performance consideration be given to:
  - o how the measurement of productivity and classification of industries can better capture the contribution of small businesses and identify impediments to business transformation
  - o that policy settings for workplace relations, education and migration ensure small business access to skilled workers is improved
  - o how government can empower small businesses to prepare for the threat, exposure and aftermath of a natural disaster
  - o how government can improve small business awareness of procurement opportunities and access to them
  - o the benefits of creating a Federal Small Business and Codes List in the Federal Circuit Court of Australia to provide affordable, determinative, and timely access to justice for small businesses and regulators
  - o the practicability and benefits of harmonising regulations and licensing requirements across jurisdictions
  - o what would be the appropriate settings for encouraging small businesses to investigate restructuring prior to partaking in an insolvency process.

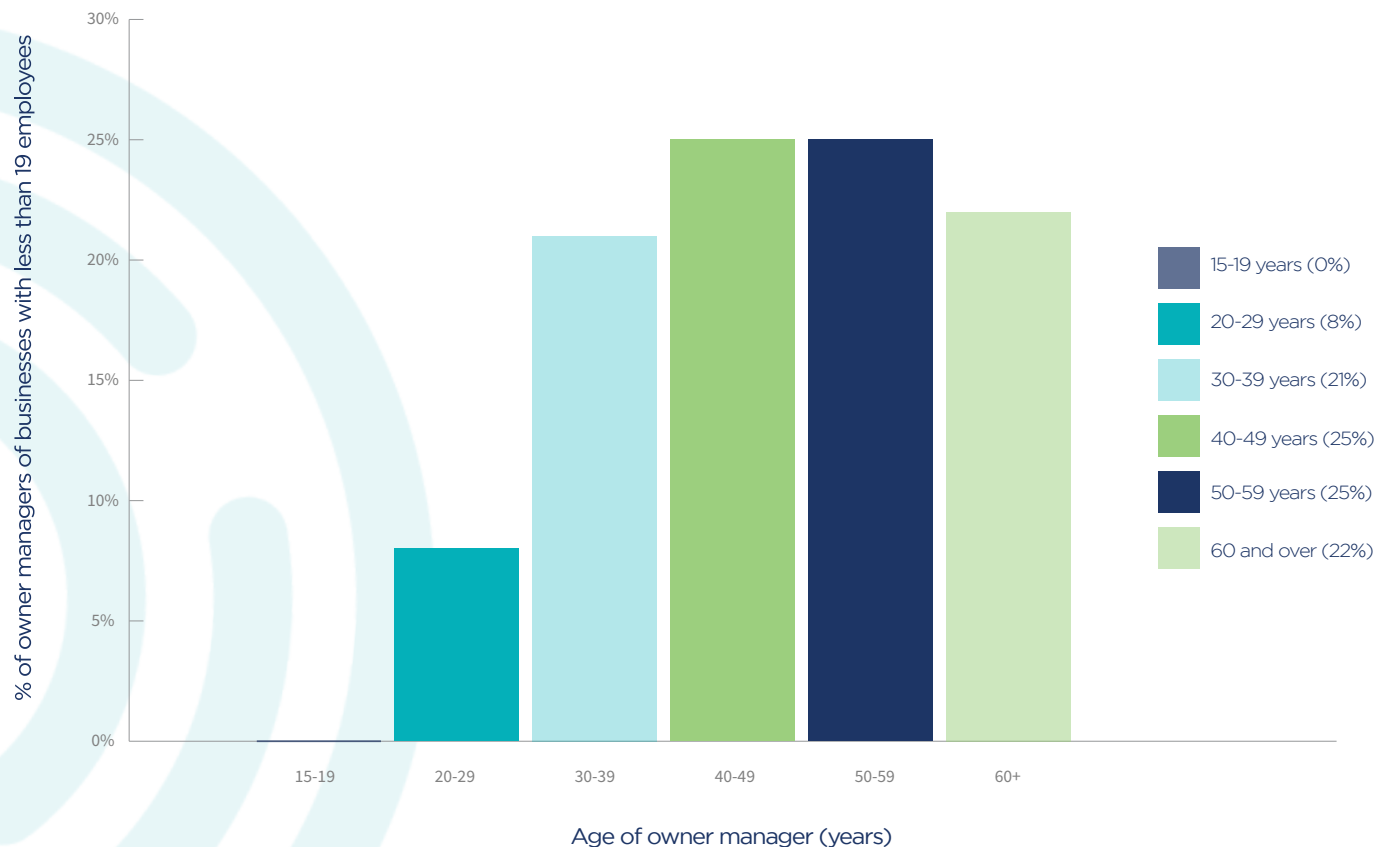
## Submissions

Recipient	Number	Recipient	Number
Parliamentary Committees	7	Australian Finance Industry Association	1
Productivity Commission	2	Department of Climate Change, Energy, the Environment and Water	3
The Treasury	7	Inspector General of Taxation and Taxation Ombudsman	1
Australian Competition and Consumer Commission	1	Australian Transaction Reports and Analysis Centre (AUSTRAC)	1
Australian Taxation Office	1	Attorney-General's Department	1
Australian Bureau of Statistics	1		

## Stats Snapshot

- The Australian Bureau of Statistics (ABS) released further information on the demographics of small business owners from the 2021 Census. There were 549,924 female small business owners in 2021, accounting for 35% of all small business owners.
- Nearly half (47%) of small business owners were aged 50 and over in 2021, as shown in Chart 1. Only 8% of small business owners were aged under 30 in 2021. Small businesses are those with less than 20 employees.

Chart 1: Age of owner managers of businesses with less than 20 employees



Source: Based on ABS TableBuilder, Census 2021



Ombudsman, Bruce Billson, presented at the Australian Regional Tourism Convention in Ballarat, Victoria.



# Outreach: Communications and Stakeholder Engagement

- The ASBFEO highlighted poor payment times by big businesses in several media interviews and media releases, with new analysis revealing almost one in four big businesses took more than 120 days to pay their small business suppliers. The findings were based on data collected by the Payment Times Reporting Register and the Ombudsman described them as appalling. He said with cash flow being vital to the survival of small business, the words of support from big business representatives rang hollow when only 31% of big businesses paid their small business invoices within 30 days (the Business Council of Australia's benchmark).
- Coverage of the payment times interviews and releases included a story on SBS TV news, radio interviews on ABC News Radio, ABC SA South East, 2CC Canberra, 2SM Sydney 2HD Newcastle and Flow FM. An AAP story was also published on 118 websites and other stories were published in The Canberra Times, Newcastle Herald, Border Mail, InQueensland and Accountants Daily.
- Following an appearance before a parliamentary committee looking at updating insolvency laws, the Ombudsman outlined reform recommendations in several interviews and a media statement. Coverage included a story on WIN TV News that ran across its regional TV network and an interview on the Money News program broadcast on radio stations 2GB, 3AW and 4BC. Articles appeared in the West Australian newspaper and 13 regional affiliate WA newspapers, The Mandarin, Inside Small Business, Accountants Daily, Retail World, Queensland Glasshouse Country, Maleny News and a column for Kochie's Business Builders.
- Another focus of the ASBFEO's outreach was on raising awareness of cybersecurity and support for small businesses, particularly in the wake of high-profile hacking events at Medibank Private, Optus and disputes small business operators were having with social media platforms after being hacked. The ASBFEO issued releases, wrote columns and conducted media interviews highlighting simple steps small business could take to be better protected. The ASBFEO also supported campaigns by the Australian Cyber Security Centre (ACSC).
- The cybersecurity media outreach was complemented by social media directing our audience to updated ASBFEO website content, outlining simple steps that small businesses and family enterprises can take to help avoid or reduce the impact of cyber security incidents can be taken and links to a range of external resources, including those offered by the ACSC.
- The tabling in Federal Parliament of the Ombudsman's Small Business Natural Disaster Preparedness and Resilience Inquiry report was supported by opinion pieces, a media release, several interviews, social media and the ASBFEO website content including disaster preparation and recovery checklists and useful links to a range of external resources to help small businesses and family enterprises.
- During the quarter, the Australian Government handed down its first budget following the election. The Ombudsman said there were useful responses to immediate pain points for many small and family businesses. In particular, he welcomed the \$10.9 million in extra funding for the New Access for Small Business Owners mental health support program and \$4 million extra for the Small Business Debt Helpline. The Ombudsman noted there was more required to make sure there's a longer-term vision to energise enterprise with encouraging policy settings.
- The ASBFEO issued press releases and conducted media interviews about the budget measures which included appearances on AusBiz TV, Radio 2BS Bathurst and coverage on Sky News, the Sydney Morning Herald, Smart Company, Public Accountant, Insider Small Business, Convenience World and Retail World among others. Media outreach was complimented by social media posts, a release to electronic subscribers and a simple 'small business snapshot'.
- The Australian Financial Review, The Australian and Smart Company published articles about the ASBFEO's submission to the Senate inquiry into the Secure Jobs, Better Pay legislation.



# Outreach: Communications and Stakeholder Engagement



Shop Small Parliamentary Showcase, Australian Parliament House

From left to right: Ombudsman, Bruce Billson, Minister for Small Business, Hon Julie Collins MP, Speaker of the Australian House of Representatives, Hon Milton Dick MP and Managing Director of American Express, Corrina Davison.

## Assistance

- Finalising new web forms and providing updated information 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 encouraging 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

- Continuing to encourage reforms to the corporate insolvency system.
- Reviewing the proposal of the amusement, leisure, and recreation industry to establish a discretionary mutual considering additional empirical data and recommending next steps.
- Identifying the challenges and opportunities for self-employment and women-owned and led small businesses, as well as policy measures to support them.
- Examining opportunities to improve digital acumen and access to digital technology and connectivity for small businesses operating in rural and remote communities
- Ongoing work on competition issues affecting small businesses, including businesses affected by breaches of regulatory codes
- Continuing work to ensure that small and family business owners can get timely and effective access to justice.

## Data/Economics

- Releasing state and territory information on the demographics of small business owners. This relies on the next tranche of data from the Australian Bureau of Statistics Census 2021 data.
- Compiling a Small Business Health index to highlight the conditions faced by small businesses.
- Continuing analysis of the Payment Times Reports Register.

## Outreach

- Continuing to progress phase two of website redevelopment, including a complete website content review and update, implementing self-help functions for small business owners in disputes and embedding My Business Health content into the primary ASBFEO site.
- Promoting communications targeted for small business and family enterprise across ASBFEO channels focusing on matters of high risk to small business including Cybersafety, disaster preparation and recovery and steps for looking after mental health.
- Implementing the ASBFEO Small Business Tax Concierge communication strategy in close consultation with the Australian Taxation Office.
- Continuing implementing the ASBFEO's outreach program for small and family businesses in collaboration with Australian Government Federal Regulatory Agencies and state Small Business Commissioners. This includes securing the ASBFEO's presence at key outreach and engagement activities during 2023.
- Ongoing promotion of Assistance Team outcomes, alternative dispute resolution processes and ways that small business owners in disputes can self-help.



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