



Australian Government



Australian
Small Business and
Family Enterprise
Ombudsman

Quarterly Report

Q2, 2022 (1 April to 30 June 2022)

Australian Small Business and
Family Enterprise Ombudsman

Message from the Ombudsman



It is clear the new Federal Government under Prime Minister Anthony Albanese is focussed on fulfilling its election commitments and we look forward to working together to support small businesses and family enterprises and entrepreneurship.

The Prime Minister used one of his first speeches to pledge that he was “serious about reaching out to small business and working on ways in which we can improve things for small business.”

It was great to see Small Business retain its status in the Cabinet with the appointment of Julie Collins as the new Minister for Small Business.

We welcome the Minister and her early engagement with us, in particular to celebrate World Micro, Small and Medium Enterprise Day.

I'd like to also thank the former minister, Stuart Robert, for his commitment to small and family businesses and welcome the new shadow minister, Sussan Ley, to the portfolio.

MSME Day, held on 27 June, is an initiative of the United Nations which aims to raise public awareness of the contribution made by smaller businesses to sustainable development and the global economy.

The day was a huge success this year with community leaders, including Minister Collins, featuring in a video thanking small businesses and family enterprises for their ongoing contribution to their local communities and economies that was broadcast on social media and media channels.

Floods have again caused great destruction to homes and businesses in parts of the country, just months after devastating flooding in Northern New South Wales and South-East Queensland which the Insurance Council says has caused \$4.8 billion in insured damages and now ranks as the third costliest weather event in Australia's history behind only Cyclone Tracy in 1974 and the Sydney hailstorm in 1999.

Across the country trading conditions remain mixed and many small businesses and family enterprises are having to navigate crushing supply chain disruptions and leaping input costs, soaring energy bills, higher wage costs and a chronic labour shortage just to keep their doors open and serve their communities.

The latest snapshot of Business Conditions and Sentiments from the Bureau of Statistics confirms that it is tough out there for many small business and family enterprise owners and managers.

Small businesses and family enterprises are more likely to expect a fall in revenue than larger businesses while operating expenses have risen for nearly half.

Almost one in five small businesses believe they will find it difficult or very difficult to repay their debts in the next three months, while two in every five are experiencing supply chain disruptions.

Small business women and men take on a big and often stressful responsibility. It is not just an enterprise but their life – often their home and mortgage, family and identity are all emotionally tied together.

As support measures that were introduced during the COVID-19 pandemic are wound up, pressures on business are increasing, with analysts warning of a potential spike in insolvencies. Small businesses and family enterprises who lack the resources of their larger counterparts are often faced with unique challenges when navigating the prospect of restructuring or winding up a business.

We have highlighted the impact the complicated insolvency process may be having on the productivity of Australia's small businesses and family enterprises. A recent submission to the Productivity Commission recommends considering how clarifying insolvency rules, developing tools to review business viability and simplifying the winding up process for small business owners may reduce underemployment as the labour market reallocates staff where restructure or business closure is necessary.

As Omicron infection rates play havoc with staffing illness and availability, more is being asked of small business and family enterprise owners and leaders as they seek to cover roster gaps and sick days amongst their teams.

The best way to support small businesses and family enterprises is to be a kindly customer – patient and understanding, with good and generous intent. Small businesses are run by real people who deserve our respect and empathy every day.

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 1,452 contacts, of which 1,140 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 and franchising disputes and those affected by and recovering from disasters including COVID related issues and flooding.
- Provided assistance to franchise participants, including assisting with 86 franchise related disputes, down from 116 in Q1, 2022 (1 January to 31 March 2022).

Advocacy

- Welcomed the budget announcement of funding to deliver a My Business Future Initiative. This Initiative aims to make it easier for small businesses and family enterprises to access and navigate expert business advice and support by:
 1. working better to inform and engage with small business and family enterprise about available government support to assist building financial capacity and resilience
 2. curating and improving access to public and private sector resources and tools
 3. expanding the reach and participation in support and advice programs offered by proven providers and trusted advisers.
- Continued work to address supply chain issues for small business and family enterprises, including providing recommendations to several consultations on removing regulatory barriers.
- Undertook work to better understand opportunities to operationalise Least Cost Routing in Australia.
- Commenced investigating ways to support small businesses and family enterprises to include Environmental and Sustainable Governance (ESG) principles into their business in a practical and right-sized way.

Data/Economics

- Conducted a survey on small business and family enterprise information needs as the first step in optimising ASBFEO's communication approach, channels and networks, with a focus on small business and family enterprises that come from cultural and linguistically diverse audiences.
- Surveyed the amusement, leisure and recreation industry sector regarding the availability and cost of insurance.
- Supported University of the Sunshine Coast research into small business and family enterprise experiences with digital service marketing providers.
- Commissioned research into how crises affect small businesses and family enterprises, and which factors aid recovery and foster resilience.

Outreach

- Major media appearances: AFR, Herald Sun, Neos Kosmos, Kachie's Business Builders, Inside Small Business, Smart Company, Minister's Media Centres (the former Department of Education, Skills and Employment and The Treasury), 2GB, 2AD, 2BS, 2DU, 2HD, ZOO FM, 2EL, 2GF, 2GGG FM, 2HC, 2LM, 2PK, 2RE, 2SM, 4GY, 8HA, GEM FM, Hill FM, NEW FM, NOW FM, REAL FM, ROCCY Fm, Radio 97.

Key Activities

- Key media topics: invoicing and digitisation, Micro, Small and Medium Enterprise Day, cultural and linguistically diverse audience engagement, 1 July changes, retailers and shopping locally, 2022-23 Budget, Taxation system, natural disasters, contract disputes, digital platforms and advocacy submissions.
- Events: The Ombudsman made 11 presentations and participated in 1 webinar. This included a panel with the Australian Cyber Security Centre, the Australian Taxation Office, the Australian Federal Police and the Australian Banking Association about business email compromise and the importance of small businesses and family enterprises being vigilant with cyber security requirements to avoid being scammed, and resulting damage to financial, personal and mental wellbeing of small business and family enterprise owners.
- The ASBFEO led Australia's involvement in the World Micro, Small and Medium Enterprise (MSME) Day on 27 July 2022. MSME Day is an initiative of the United Nations General Assembly, which aims to raise public awareness of their contribution to sustainable development and the global economy. The day was a huge success, with community leaders – including the new Federal Minister for Small Business, The Hon. Julie Collins MP – featured in a compilation video thanking small businesses for their ongoing contribution to their local communities and economies that was broadcast on social media and media channels.



The Ombudsman (centre) with Trent Cotchin - Richmond Football Club (left), and Lynda McAllary-Smyth - Victorian Small Business Commissioner (right), met to discuss MSME Day and small business and family enterprise matters in Victoria.

Assistance: Supporting Small and Family Businesses

Industry Codes | Franchising - Horticulture - Oil - Dairy

- We 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 86 enquiries from franchising participants.
 - Actively case managed 39 franchise disputes, 31 were initiated by franchisees and 8 by the franchisor.
- We continued to provide a list of produce assessors to support the Horticulture Code of Conduct, and actively managed one request for assistance under the Oil Code of Conduct.



63% resolved at mediation*



100% of parties acted in good faith*



\$2,960 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 received 10 requests for assistance from small businesses seeking assistance with negative decision letters received from the Australian Taxation Office (ATO), and 8 enquiries about the service.
- We 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.



Australian Cyber Security Centre *Act Now Stay Secure* Campaign Panel Event in June.

Left to right: Ombudsman, Bruce Billson, Chris Goldsmid - Australian Federal Police, Stephanie Crowe - Australian Cyber Security Centre, Derek Bopping - Australian Cyber Security Centre, Mark Stockwell - Australian Taxation Office, and Christine Cupitt - Australian Banking Association.

Assistance: Supporting Small and Family Businesses

1,452 contacts received via:



11,546

visits to assistance website info

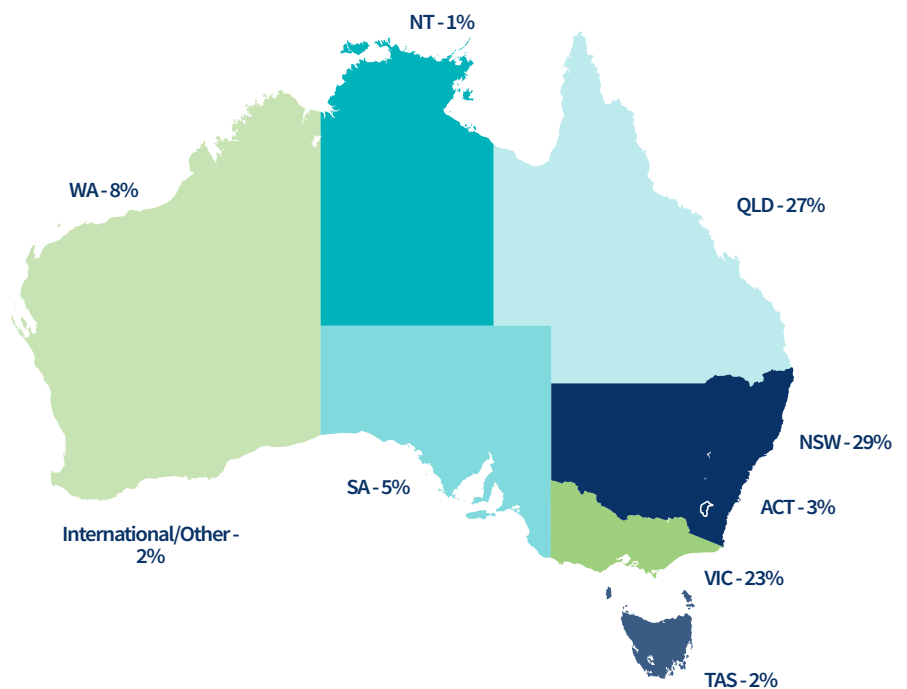
319

small businesses and family enterprises supported by a case manager

77%

of contacts came from small business and family enterprise owners

Contacts by state / territory



Case Management Outcomes

66%

provided active case management support, including providing information to progress dispute.

19%

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

5%

referred to Small Business Tax Concierge lawyer or Alternative Dispute Resolution practitioner.

7/10

finalised Alternative Dispute Resolution processes were resolved.

How we helped callers to our info line

55%

given information and directed to the Dispute Support Tool.

22%

referred to ASBFEO case management.

17%

referred to more appropriate agency.

6%

referred to Small Business Commissioner.



93% of calls answered within 10 seconds



Over **98%** customer satisfaction rating

A Voice on Policy and Legislation

Insolvency

- As support measures that were introduced during the pandemic are wound up, pressures on business are increasing, with analysts warning of a potential spike in insolvencies. Small businesses and family enterprises who lack the resources of their larger counterparts are often faced with unique challenges when navigating the prospect of restructuring or winding up a business.
- Operators are often emotionally and financially tied to their business, adding to the impact of an insolvency. The ASBFEO continues to progress work on solutions addressing small business and family enterprise challenges with Australia's insolvency system.
- As part of this work, we have highlighted the impact the complicated insolvency process may be having on the productivity of Australia's small business and family enterprise owners. A recent submission to the Productivity Commission recommends considering how clarifying insolvency rules, developing tools to review business viability and simplifying the winding up process for business owners may reduce the underemployment as the labour market reallocates staff where restructure or business closure is necessary.

Unfair Business Practices

- Small businesses and family enterprises can face a significant 'power imbalance' when negotiating outcomes with larger corporations. The ASBFEO is concerned that large corporations can use this imbalance to disadvantage small businesses and family enterprises, often resulting in extremely challenging business conditions and lessening of competition.
- The ASBFEO is conducting research into examples of business practices that disadvantage small businesses and family enterprises. These practices include:
 - shifting liability and risk to small businesses and family enterprises
 - making it difficult for small businesses and family enterprises to enforce their rights, whether under contract or not, such as by denying the smaller party access to fair remediation of issues
 - ensuring small businesses and family enterprises accept unfair terms through implied negative repercussions.
- We continue to seek case studies and examples of practices that small businesses and family enterprises perceive to be unfair but can't be dealt with under existing legal mechanisms.

Access to Banking Services and Finance

- Access to secure, cost efficient, and reliable banking services is a key requirement for small businesses and family enterprises.
- As banking is an essential service for small business and family enterprise operators, de-banking remains a significant priority for the ASBFEO. De-banking is occurring for many operating legitimate businesses, drastically damaging their capacity to continue to operate and increasing the likelihood of falling into the shadow economy.
- The ASBFEO provided input to the post-implementation review of the Basel III liquidity ratios in Australia, raising concerns that under the risk-based capital requirements, SME lending is considered high-risk compared to other loan types such as residential mortgages. This risk profile effectively encourages limitations on SME product offerings and reduces competition for small business and family enterprise lending in the banking sector.
- 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 and family enterprises.

Advocacy: A Voice on Policy and Legislation

Government Procurement

- Access to Commonwealth procurement opportunities continues to be a challenge for small businesses and family enterprises. Significant changes to the Commonwealth Procurement Rules (CPRs), in line with ASBFEO's advocacy, came into effect on 1 July 2022, including:
 - unbundling of major projects
 - limiting insurance requirements in contracts to reflect the actual risk borne by suppliers, and suppliers not to be directed to take out insurance until a contract is to be awarded
 - enabling Defence to limit tenders to SMEs for contracts worth up to \$500,000.
- The ASBFEO is monitoring the efficacy of the implementation of these changes to the CPRs and the impact this has on small business and family enterprise access to Commonwealth procurement, with a particular interest in seeing small businesses and family enterprises win capacity building contracts.
- Small Business Minister Julie Collins and Finance Minister Katy Gallagher announced that 20% of Commonwealth procurements by value must be sourced from small and medium enterprises, doubling the previous target of 10%, and that procuring officials will consider climate change implications when undertaking the core 'value for money' assessment.

Major Input into Policy, Inquiries and Legislation

Consumer Data Right

- Completed submissions for several consultations regarding the implementation of the Consumer Data Right (CDR) including to the Sectoral Assessment for the Open Finance sector – Non-Bank Lending and the Statutory Review of the CDR. Through these submissions we highlighted:
 - concerns that the continued roll-out of the CDR is not allowing opportunity to adequately analyse the benefits and shortfalls of the program
 - the substantial costs of participating in the CDR which create a barrier for small businesses and family enterprises
 - the potential competitive disadvantage businesses face if they elect not to participate as data holders.

Right-sized Regulation

- Responded to the Department of the Prime Minister and Cabinet's consultation paper on regulatory responsiveness. This recommended that regulators:
 - seek to proactively engage with industry regarding the practicality and communication of regulatory changes
 - preference targeted support and education over punitive action
 - consider the implementation of temporary simplified regulations to support economic resilience where necessary and consider long-term implementation where this simplified regulation is demonstrated to be the minimum effective intervention to achieve the desired standard.
- Recommended that where possible international and Australian safety standards be right sized and synchronised to achieve comprehensive international best practice and consumer protection whilst limiting unnecessary red tape.
- Responded to the Treasury's consultation on the Crypto asset secondary service providers: *Licensing and custody requirements*, supporting the introduction of 'right-sized', proportionate and minimum intervention regulation of service providers to encourage innovation, competition, and consumer confidence.

Advocacy: A Voice on Policy and Legislation

Small Business Tax Objections

- Responded to the Inspector General of Taxation and Taxation Ombudsman's inquiry into the ATO's Administration and Management of Objections. We raised significant concerns that small businesses and family enterprises are often reluctant to object to a tax ruling due to perceived barriers to justice. This includes the time taken to resolve a dispute, costs involved, likely distress they will suffer during the dispute, and opaque outcomes if they object.

Submissions

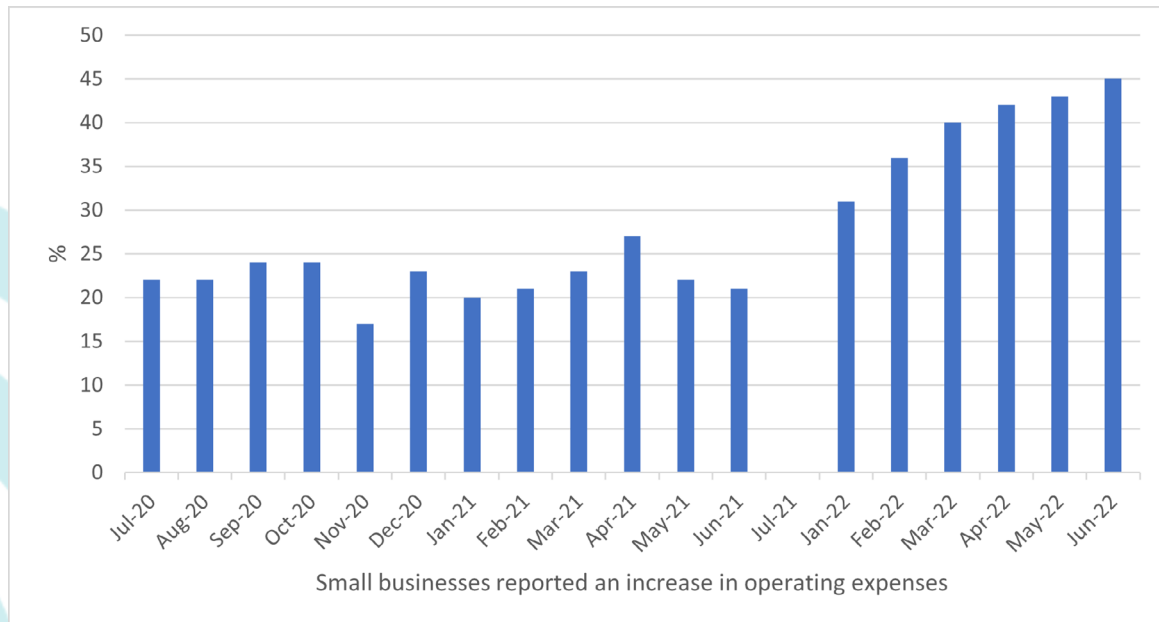
Recipient	Number	Recipient	Number
Department of Treasury	5	Inspector General of Taxation and Taxation Ombudsman	1
Department of Industry, Science, Energy and Resources	1	Australian Securities and Investments Commission (ASIC)	1
The Productivity Commission	1	The Energy Charter	1
Prime Minister & Cabinet	1	Australian Competition and Consumer Commission (ACCC)	2
Banking Code Compliance Committee	1	Australian Prudential Regulation Authority (APRA)	1
Department of Infrastructure, Transport, Regional Development and Communications	1		



The Ombudsman (left) with Stuart Strutt-Shotton, founder of Enigma Fine Chocolates in Braddon, Canberra.

Increases in Small Business Operating Expenses

Small businesses and family enterprises have consistently reported a rise in operating expenses this year. In June 2022, nearly half (45%) of small businesses and family enterprises reported a rise in their operating expenses over the last month. Over the same period, only 11% had a rise in revenue.



Note

1. Businesses reported changes over the last month.
2. The Australian Bureau of Statistics did not conduct the Survey of Business Conditions and Sentiments between July 2021 to December 2021 (inclusive).

Source: Australian Bureau of Statistics, Business Conditions and Sentiments

The June 2022 MYOB Business Monitor Report found that fuel prices are the biggest source of pressure on small and medium enterprises. Almost half (48%) of SME's reported feeling 'extreme' or 'quite a lot' of pressure due to rises in fuel prices. This was an increase from 30% in June 2021¹.

Inflationary pressures are also affecting revenue for small businesses and family enterprises in industries that rely on discretionary spending. The Xero Small Business Insights Index found that small businesses in industries who rely on discretionary spending had a slowdown in sales over the 12 months to May 2022². This aligns with the CreditorWatch May 2022 Business Risk Index, which found that the industries with the highest probability of payment default over the next year are:








- Food and beverage services (7.1%)
- Arts and recreation services (4.8%)
- Transport, postal and warehousing (4.7%).

¹ MYOB Business Monitor Report, June 2022.

² Xero Small Business Index Australia, Monthly Update, May 2022, [Australia Update - May 2022](https://www.xero.com/au/insights/small-business/index) (xero.com)

Outreach: Communications and Stakeholder Engagement

- An integral part of the ASBFEO's MSME Day communication strategy involved engaging our stakeholders to promote the day among their own networks and audiences.
- Our stakeholders included Federal Members of Parliament, state Small Business Commissioners, federal and state/territory government departments and agencies, small business and family enterprise industry associations, community leaders, well-known individuals and the media.
- They were provided with a pack to promote MSME Day on their own channels. It included content for newsletter, intranet and website articles, social media copy and tiles, infographics, posters and key messages for media opportunities.
- The ASBFEO also sought video contributions from our stakeholders. Their messages were used in a compilation video thanking small businesses and family enterprises for their ongoing contributions to their communities and local economies.
- Contributions for the compilation video were received from:
 - The Hon. Julie Collins MP – Minister for Small Business
 - Maree Adshead - Queensland Small Business Commissioner
 - David Eaton – Western Australia Small Business Commissioner
 - Trent Twomey – National President of the Pharmacy Guild of Australia
 - Anna Bligh – CEO of the Australian Banking Association
 - Georgie Harman – CEO of Beyond Blue
 - Michael Waters – CEO of Retail Drinks Australia
 - Anne Nalder – CEO and Founder of Small Business Association of Australia
 - Derek Bopping – First Assistant Director-General of the Australian Cyber Security Centre
 - Matthew Addison – Executive Director of the Institute of Certified Bookkeepers.
- The ASBFEO also created a second compilation 'heart boomerang' video with contributions from the individuals mentioned above, as well as:
 - Lynda McAllary-Smyth – Victorian Small Business Commissioner
 - Chris Lamont – NSW Small Business Commissioner
 - Council of Small Businesses of Australia
 - Trent Cotchin - Richmond Football Club
 - employees of the ASBFEO.
- An Opinion Piece was published in the Herald Sun and an MSME Day press release, radio interviews and grabs were distributed.

Traditional and Social Media	 3,093 newsletter subscribers	 6,302 followers 87 posts	 Ombudsman 7,292 followers 15 tweets ASBFEO 2,125 followers 80 tweets	 404 followers 50 posts
 5 media releases	 47,617 visits to the website	 496 subscribers 10 videos published	 Ombudsman 3,633 followers 20 posts ASBFEO 4,177 followers 99 posts	 130 mentions

Assistance

- Update our website and forms to improve the information we provide to and receive from small businesses and family enterprises, to allow us to provide faster and more targeted assistance.
- Continue 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.
- Promote the Dairy, Horticulture and Oil Codes of Conduct to encourage those in dispute to contact us for assistance early.

Advocacy

- Identify the challenges and opportunities for small businesses and family enterprises in understanding and implementing Environmental, Social and Governance best practice.
- Continue advocacy work around the challenges for small businesses and family enterprises in navigating the complex insolvency system.
- Research into understanding the social and economic impacts surrounding the insurance crisis facing the amusement leisure and recreation sector.
- Continue improving small business and family enterprise access to Commonwealth procurement, including understanding the impacts of the changes to the Commonwealth Procurement Rules.

Data/Economics

- Build the data infrastructure to make our small business and family enterprise contact data more broadly available to small business and family enterprises, stakeholders and the broader community.
- Refresh our flagship statistics publication, Small Business Counts, to better suit a digital format.
- Expand our small business reporting to include more granular geographic information.
- Support the expansion of research including quantitative survey data and analysis into small business and family enterprise experiences with digital service marketing providers.

Outreach

- Continue progressing phase two of website redevelopment, including content, functionality and usability improvements with a focus on reviewing content and inclusion of a data hub.
- Publish a Speaking Engagement Policy to our ASBFEO website, to enable requesting parties an understanding of what the ASBFEO prioritises in terms of such requests.
- Ongoing awareness raising of the My Business Future Initiative.
- Release of 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 domain name URL changes.
- Ongoing outreach with stakeholders and small businesses and family enterprises across Australia, including face-to-face consultations in Tasmania, Queensland, New South Wales, Western Australia, Victoria, South Australia and the Northern Territory to understand current sentiment and identify scope for action.
- Represent at a range of forums including with Ministers, elected officials and external parties.
- Ongoing promotion of Assistance Team outcomes, arising from assistance requests and promotion of alternative dispute resolution processes.
- Ongoing promotion of the Advocacy Team's work through the sharing of submissions, research reports and key findings/recommendations to address issues facing small and family businesses.

Canberra

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