



Australian Government

OFFICIAL



Australian
**Small Business and
Family Enterprise**
Ombudsman

Submission to the ASBFEO Review

January 2025

OFFICIAL

Contents

1. Executive summary	3
2. Recommendations	7
3. Setting and context	9
3.1 Small business and family business	9
3.2 Who are we?	10
3.3 Our resourcing	10
3.4 ASBFEO review	11
4. Functions	12
4.1 Assistance	12
4.2 Advocacy	17
4.3 Inform	21
4.4 Data and analytics	24
5. Independence, entity-type and resourcing	27
Attachment A – Material provided to the ASBFEO Review	29

1. Executive summary

The ‘dirty boots people’. That’s what the ACCC Deputy Chair calls ASBFEO referring to how we are ‘in the field’ every day and working alongside real-life small and family businesses in an immediate and present sense.

It is both a mark of respect and a recognition of our distinction from more distant and system-focussed regulators and policymakers. The tag is a testament to the value ASBFEO provides through our in-depth insights, rich ‘field evidence’, problem-solving ability, and deep engagement with Australia’s small and family business community.

ASBFEO is a trusted and authoritative voice about what is *really* going on in the small business economy.

The ASBFEO is a young and maturing organisation delivering very specific and vital support, to Australian small and family businesses, the Australian Government and its departments and agencies, and to key economic regulators.

The modest annual taxpayer investment in ASBFEO represents excellent value for money.

For pure output, ASBFEO is a highly productive and efficient micro-agency. Through its dedicated (and often small business-experienced) staff, ASBFEO’s small yet agile team provides assistance, case support, better practice guidance, data analysis, advocacy submissions, policy and program design input, policy advice and thought-leadership through in-depth research and inquiries, information services, regulatory input and cross-agency collaboration.

A unique whole-of-government service

ASBFEO functions and activities are not duplicated elsewhere and other measures would be required to respond to the clear needs ASBFEO addresses if its scope of activity and/or resourcing were curtailed.

We serve a vital and valuable role as a trusted adviser and advocate to government, the Parliament and regulators, because we are able to explore policy issues at more granular levels, examine and contest problem-solving possibilities without the express constraints of ‘current policy’, and draw on our significant and unique expertise to identify specific issues affecting small and family businesses.

Originally designed as a whole-of-government resource and having demonstrated its credentials in fulfilling this ambition across a number of portfolios, some specific recommendations are proposed that would enable a more consistent and beneficial engagement of ASBFEO’s proven capabilities across Government.

Our independence and deep engagement with more than 50 small and family business-facing industry associations, and real-time practical information from thousands of small businesses, underpins our ability to provide the information so desperately sought by other branches of government.

Parliamentary and portfolio requests for ASBFEO input are common and increasing, reflecting a view that our contribution is necessary to obtain an up-to-date, robust and rigorous small business perspective, consistent with the objectives in the creation of ASBFEO.

Advocacy

The last ASBFEO (McGregor 2022) Review recommended a strengthening of the evidence-base and analytical rigor to the policy analysis that informs ASBFEO's advocacy. This was actioned (along with other recommended and identified capability uplifts) through an additional resource allocation as a specific 2021/22 Federal Budget initiative. The additional resources have been subsequently clawed back.

Despite this constraint, the ASBFEO has delivered a substantial inquiry referred by government on Commonwealth procurement, as well as material advice on the implications of 'environment, social and governance considerations for small businesses. We suggest that the Review recommend a resource restoration and a number of specific bureaucratic systems and process changes to ensure that the recognised ASBFEO value-add is available and embraced throughout whole-of-government policy and regulatory design and evaluation mechanisms where small businesses and family enterprises are impacted.

The widely acclaimed '14 steps' report of practical policy initiatives to 'energise enterprise' in support of the small business economy and to improve the operating environment, is a compilation of specific examples of increased policy rigor and sustained advocacy to earn influence and secure impact through ASBFEO's analytical work. A number of the recommended measures have been embraced by the small business sector and those involved in developing and assessing policies relevant to small business.

This advocacy is one of ASBFEO's 3 clear functions:

- Assist with dispute resolution and resource access for small and family businesses
- Advocate in policy development, regulatory design and the business support system
- Inform small and family businesses about 'better practice' guidance, support tools, helpful resources and data and research insights.

Assistance

Our assistance function is a key ASBFEO customer-facing service delivery role.

It remains true, as it did at the time of ASBFEO's conception, that in so many cases, the courts are no place for a small business seeking to resolve a dispute in a timely and affordable way, and to get back to business as soon as possible, while aiming to keep business relationships intact as far as possible.

There were 6,254 requests for assistance in 2023-24, which include both calls and actively managed cases.

Since being created 8 years ago, ASBFEO has handled over 50,000 cases, most of which involve disputes small businesses have with other businesses or Australian Government agencies.

We strive to help small businesses get back to business as fast as possible and pleasingly nearly two-thirds of the cases that come to us are helped quickly by our call centre or assistance team providing useful information and 'self-help' guidance to resolve disputes.

But some cases take longer and require more intense one-to-one assistance. This has included active encouragement of a solution mindset, nurturing an appetite for and identifying possible resolutions, through to arranging alternative dispute resolution pathways, such as mediation. What has become apparent though is more time needs to be spent on individual managed cases as the issues have become more complex.

Small business owners' identities are interwoven into their business and the stakes are so much higher than just a job. Many people have invested a lifetime and often their life savings – and put their family home on the line – to build up their business, which amplifies the emotional challenges.

We propose a number of measures to enhance ASBFEO's ability to facilitate the delivery of efficient and effective assistance support and improve prospects for small and family business dispute resolution (without them needing to consider resorting to an unrealistic and unaffordable justice system for recourse). These are consistent with the purpose, ambition and design of ASBFEO and aim to extend the existing modest assistance toolkit, encourage parties to engage and embrace a resolution mindset and respect Constitutional and jurisdictional limitations.

Helping small and family businesses navigate the complex, multi-faceted and evolving bureaucratic architecture and support ecosystem outside ASBFEO is a part of our 'concierge' approach to support. This navigational facilitation is valued by time-poor small businesses and by Government and its agencies alike.

Data and analysis

Another McGregor Review recommendation urged investing in and strengthening ASBFEO's data and economic analysis capabilities. This was enabled with the support for a 2021–22 Budget initiative. While subsequent Budget claw-backs have limited the full intended development of our data capabilities (with associated key-person risks and work program constraints), ASBFEO is now recognised as a leader in the field. Excellent research, data analysis and interpretative competencies and leading data handling and management disciplines have combined with subject matter expertise to establish ASBFEO as a top-tier researcher and data interpreter and communicator. This has led to supportive other departments seeking ASBFEO's leadership on a number of small business-related data projects.

The data we now produce and share, including through the data portal on our website, provides such rich evidence and insights that informs and explains the circumstances of small and family businesses. This is one of the key roles performed by our agency and we see that data repeatedly cited and used by small-business organisations, commentators and throughout the community.

We have taken this further to use rich information and evidence to provide a meaningful appraisal of the real and current circumstances of small businesses.

In August 2024 we marked a proud moment with the release of the ASBFEO Small Business Pulse, a world-leading health check of objective vital signs for small business that also takes into account business conditions and the 'animal spirits' that drive 'real time' decision making by the enterprising Australians – always on the look-out for delicious opportunities as they navigate challenges faced.

The Pulse provides an overall perspective of these challenges and opportunities for small businesses, drawing in sentiment, operating conditions, how business owners are responding to these conditions and the ability to transform or grow a business.

Importantly, the Pulse is forward-looking and able to capture what small business-people are thinking of doing and the decisions being taken.

The Pulse is released in February, May, August and November and has already been cited by the Reserve Bank in a recent report on the economy.

Resource constraints have limited the rate of development of the data function and slowed the roll-out of the much-anticipated work program.

Given the keen interest and value of this work, we recommend a restoration of the resources to enable the acceleration of the work program, addition of the small business data compliance streams identified

as priorities after the abandonment of the modern business register initiative and to enable the key person risks to be addressed.

Opportunities to enhance ASBFEO contribution

A number of specific and implementable recommendations are proposed to further enhance the effectiveness, influence and activities of ASBFEO to deliver even more value and support for the small and family business community. These reforms represent a natural evolution of ASBFEO. They offer the prospect of greater value and benefit for Government, departments and regulators, many of which have already recognised the advantages of early, regular and mutual engagement.

While the independence of the Ombudsman continues to be respected and no governance concerns have arisen, the actual operations of the ASBFEO organisation is constrained by controls over budget and resourcing (embedded in Divisional allocations). Inconsistent engagement in key Treasury processes, recruitment approvals, staff being formally Treasury employees and contradictory views on ASBFEO organisational status and the capacity to respond independently to inquiry requests from Ministers other than the Minister for Small Business, are just some of the areas.

This is where ASBFEO independence could be enhanced and entity status and operating posture improved and clarified.

This third-in-a-decade review is an opportunity to consciously reassert the independence and whole-of-government utility of ASBFEO in terms of small business and family enterprise issues, interests and impacts through a more suitable entity status, predictable and transparent resourcing (as was recommended in the McGregor Review) and system design to ensure the value of ASBFEO's contribution is fully operationalised and available across Government.

2. Recommendations

To enhance the value, effectiveness, and impact of ASBFEO to the benefit of small businesses and family enterprise, Government and its departments, regulators and key stakeholders, we recommend that the Review:

1. Recognise ASBFEO as valuable and necessary agency, delivering excellent value for money and a vital provider of services, support and considered advice to small business and to the Commonwealth (ministers, departments, agencies and regulators) – services that are not replicated elsewhere and that involve a significant breadth of activity
1. Consider that the effectiveness, efficiency and impact of ASBFEO be enhanced by a fuller embrace of its intended whole-of-government remit, concierge function and real time engagement with the small business economy for the benefit of small and family businesses
2. Assess whether the value and benefits ASBFEO delivers for small and family business and the Commonwealth (ministers, departments, agencies and regulators) would be enhanced and extended by establishing a more transparent and predictable funding model as recommended by the last review (McGregor 2021) and by reconstituting the organisation as a standalone agency structure supported by demonstrable independence, a specific budget line-item, separate operational posture and its own PGPA accountabilities (in a model similar to the Inspector General of Taxation/Taxation Ombudsman)
3. Consider the benefits of providing ASBFEO with additional dispute resolution tools to support the delivery of convenient and effective assistance for operators of small businesses and family enterprises. Such tools could include:
 - a. Scope to trial in-house dispute resolution by repealing the current legislative prohibition and providing appropriate resourcing, to establish if this is a lower-cost option for parties to a dispute and a more cost-effective process than the current outsourced model, particularly for lower value disputes
 - b. Authority and discretion to publish the names of businesses that fail to respond to extensive approaches by ASBFEO to engage in its processes or in dispute resolution
 - c. Authority to provide a certificate as an account of the adverse conduct of a party to an assistance matter that may proceed to a determinative legal process
 - d. Extension of the Division 3A (sections 74A and 74B) of the *Australian Small Business and Family Enterprise Ombudsman Act 2015* to allow the Ombudsman to give assistance for matters including conduct that may be in contravention of Part V of the *Competition and Consumer Act 2010*
 - e. Conferred and resourced power to name large corporate and government entities that are good and poor payers of small business suppliers under the *Payment Times Reporting Act 2020* including ready access to registry data
 - f. Improving the prospect of ASBFEO facilitating arbitrated dispute remedies in the franchise sector by enabling a franchise system to optionally pre-commit to arbitration which would be prominently publicised on the Franchise Disclosure Register and in disclosure documentation
 - g. Establishment of external dispute resolution process MoUs with the Fair Work Commission to support ASBFEO facilitating the timely referral and resolution of disputes outside the

Commission's new employee-like terms and condition jurisdiction for independent contractors.

4. Assess whether the benefit of the ASBFEO's interaction and collaboration with business, regulators and representative organisations would be enhanced by embedding ASBFEO engagement in key policy, program, legislative and regulatory formation and review processes. This would include:
 - a. Issue formal advice to engage with and seek advice from ASBFEO (and support for bringing in relevant stakeholders and specific expertise) as part of the preliminary and subsequent regulatory impact processes for initiatives intended for or likely to impact small business and family enterprises
 - b. Consulting with ASBFEO as part of the New Policy Proposal and Cabinet coordination processes for initiatives intended for or likely to impact small business and family enterprises
 - c. Including a small business impact section in all Cabinet submissions
 - d. Updating the Department of Finance Regulator Performance guidance (RMG128) to expressly provide for 'right-sized' engagement and performance considerations in dealing with small business and family enterprise respondents, including consultation with ASBFEO on the design and operation of processes, communication and any enforcement activities
 - e. Tabling ASBFEO's quarterly and annual accountability reporting in Parliament
 - f. Clarifying that any minister can make an inquiry referral to ASBFEO with accompanying resources
 - g. Providing resources to establish and maintain a whole-of-government single-point small business consultation portal to support the identification of and engagement with input opportunities by time-poor small business and their representative bodies.
 - h. Consider the broad benefits of supporting the development and durability of the ASBFEO's data analytics capability by adequately resourcing this function to meet the extensive work program – including projects that arise from the discontinuation of the Modern Business Register initiative.
 - i. Commending the ABS integrated small business database initiative co-led by ASBFEO and use-case priorities
 - j. Including the consolidation of available data to address inconsistencies and errors in industry classifications in the Franchise Disclosure Register and improving sector statistics (as recommended by the Schaper Review) in the future work program
 - k. Recognising ASBFEO's top-level data governance disciplines that enable and accompany full-access collaboration and data use with data custodians
 - l. Continuing work to define 'family business' for research, data collection and analytical purposes
5. Provide resourcing for an awareness-raising campaign, including possible consideration of a revised nomenclature naming if it is established that the current name is an impediment to awareness or utilisation of ASBFEO services, functions and support.

3. Setting and context

3.1 Small business and family business

Small business is a dynamic, fast-growing and exciting sector that allows people with an entrepreneurial spirit to pursue their dreams and livelihoods. We celebrate the vital and deeply personal commitment made by more than 2.5 million¹ small and family businesses to our community.

Small business is rightly celebrated for generating 33% of our nation's Gross Domestic Product and providing jobs for 5.36 million people – 42% of the private workforce².

But in 2006, small business contributed 40% of GDP and employed 53% of those with a private sector job³. This is a worrying trajectory.

One of the specific recommendations of the McGregor Review of ASBFEO called for the agency to deepen the evidence base and robustness of data about the circumstances and outlook for small business.

A snapshot of that data reveals:

- 46% of small businesses did not make a profit in the most recent year of accounts available⁴.
- Three-quarters of self-employed business owners, for whom their business is their full-time livelihood endeavour, are earning less than the average total weekly, full-time wage⁵.
- Small business owners are getting older with the average age now 50⁶.
- In the 1980s there were twice as many small business owners aged between 30 and 49 as there were aged over 50⁷.
- Today, only 8% of small business owners are under the age of 30, half what it was in the 1970s⁸.
- Around 98% of all businesses are small businesses, and more than 90% of all employers are small businesses⁹ yet the small business perspective is too often overlooked in policy and program implementation.

¹ Australian Small Business and Enterprise Ombudsman, *Data portal: Number of small businesses in Australia*, June 2024.

² Selected industries in the private sector. Australian Small Business and Enterprise Ombudsman, *Data portal: Contribution to Australian Gross Domestic Product and Contribution to Australian Employment*

³ Based on ABS, *Australian Industry, 2007-08*.

⁴ Small businesses have company income less than \$10 million. Based on ATO, *Taxation Statistics, 2021-22*, Companies Table 6.

⁵ Based on ABS, *Census of Population and Housing, 2021*, TableBuilder.

⁶ Based on ABS, *Census of Population and Housing, 2021*, TableBuilder.

⁷ Based on ABS data.

⁸ Based on ABS data.

⁹ Small businesses have fewer than 20 employees. Based on ABS, *Counts of Australian Businesses, Including Entries and Exits*, July 2020 – June 2024.

3.2 Who are we?

The Australian Small Business and Family Enterprise Ombudsman (ASBFEO) is a micro-agency established by the *Australian Small Business and Family Enterprise Ombudsman Act (2015)* and is currently located within the Treasury portfolio.

We have 3 clear functions identified in the Act:

- assist with dispute resolution and access to resources
- advocate in policy development, regulation and business support systems
- inform the community and small and family businesses about better practice, support available and developments in the small business area.

In accordance with the Act, the staff necessary to assist the Ombudsman in their independent Statutory role are persons engaged under the *Public Service Act 1999* and are made available for this purpose by the Secretary of the Treasury.

Successful delivery of the assistance, advocacy and informing roles relies on ASBFEO having a professional, responsive, flexible and capable workforce who are empowered to deliver client-focused services that promote the interests of small business and family enterprise. The current structure of the ASBFEO office has been reformed to better reflect the functions identified in the Act, reduce supervisory 'layers' and to advance the organisation's strategic objectives.

3.3 Our resourcing

ASBFEO is funded via an allocation from the Treasury appropriation assigned to the Small Business, Housing, Corporate and Law Division, and is subject to Treasury's internal Budget processes and controls.

ASBFEO's final 2021–22 recurrent Budget (after a MYEFO measure to support the implementation of McGregor Review recommendations and capability uplift) was \$7.645 million supported by an approved staffing level of 35.7 EFT employees.

A one-off \$8 million allocation to ASBFEO for a 'My Business Future' initiative was announced in the initial 2022–23 Budget (March 2022) as part of a 'Small Business Support Package' to improve awareness of and access to 'best of breed' support, information and 'how to' resources for time-poor small businesses,

The subsequent approved 2022–23 Budget (October 2022) led to a reduction in ASBFEO's operating budget to \$6.5 million with an approved staffing level of 27.8. This budget also withdrew and reprioritised the 'My Business Future' initiative funding.

Additionally, separate Administered Funds to support the Tax Concierge Service was also reduced via the 2022–23 Budget to better reflect demand. The policy approval for the use of the remaining funding was expanded in the 2024–25 Budget to support subsidised specialist legal advice for a broader range of disputes (beyond contested ATO Determinations), with an emphasis on Code-related franchising disputes.

For 2024–25, ASBFEO's resource allocation from Treasury is an indicative recurrent operational Budget of \$6.477 million and an ASL of 29.9 FTE. A 'levy' is being considered as part of the Mid-Year Department review that may further trim the operating budget (and consequently may impact ASL) as part of a Treasury-wide Budget repair.

Treasury continues to provide accommodation, IT, corporate services and security support without charge to ASBFEO. An earlier plan to accommodate ASBFEO within Treasury's main office complex to reduce rental cost has not proceeded, with the welcome decision to continue to have ASBFEO operate from separate premises.

3.4 ASBFEO review

Section 95 of the *Australian Small Business and Family Enterprise Ombudsman Act (2015)* mandates that a periodic review must be conducted on ASBFEO's assistance function and the review must consider prescribed matters. These are:

- the kinds of assistance requested during the period being reviewed
- whether the assistance given was convenient and effective for the operators of small businesses and family enterprises who requested assistance, and
- whether amendment of the Act is needed to more conveniently and effectively assist the operators of small businesses and family enterprises.

The commission of this review, like its two predecessors, has asked the Independent Reviewers to conduct a broader review of ASBFEO beyond the matters set out in section 95 of the Act. It has been determined that this review should also:

- assess whether the ASBFEO's assistance and dispute resolution function is fit-for-purpose within the broader dispute resolution ecosystem in supporting small business and family enterprise access to justice
- evaluate the ASBFEO's effectiveness and efficiency in undertaking its functions, including whether the ASBFEO's service offerings align with the needs of the small business community
- assess the efficacy of the ASBFEO's role in the franchising sector, taking into account the findings of the 2023 Independent Review of the Franchising Code of Conduct, and
- assess the suitability of the nomenclature and branding attached to the statutory office having regard to nature of the role, possible future functions and community awareness of the office and its services.

In considering these matters the review has been urged to have regard to the 2 previous reviews of the ASBFEO in 2017 and 2021.

4. Functions

4.1 Assistance

4.1.1 Assistance service overview

There were 6,254 requests for assistance in 2023–24. Seasonal variations to total demand for assistance requests continue with noticeable call-case and assistance request spikes after prominent and sustained Ombudsman ‘earned media’ appearances and more challenging economic conditions.

Methodologies for more precision in forecasting likely demand have not been developed to date (as recommended by McGregor) beyond recording surges and seeking to identify triggers, that may be useful for attributing demand-responses to future promotion and awareness-raising activities.

Comprehensive data on assistance requests, case management, ADR activation and case outcomes has been separately provided to the Review team.

(a) Information and guidance

We produce a range of better practice guides on issues that affect small businesses. While we don’t provide direct financial or legal advice, we give small business owners the information to help make better informed decisions. We develop these guides in response to issues small business owners raise with us, as well as issues that arise in current affairs and the small business operating environment.

Some of the recent guides we have developed include:

- Handling debts
- Getting the most out of your digital marketing service provider
- Mental health

(b) Call centre

We work with call centre agents who provide up-to-date information to callers. They listen to the issue the caller is experiencing and provide the necessary information. They also triage and may refer the call to our case managers or to other services or agencies that are best placed to help the caller.

The data collected by the call centre provides useful information and insights on issues impacting small business, their thinking and the small business operating environment. This data is then de-identified and used to inform policy development, shared with other government agencies and is incorporated in ASBFEO’s Small Business Pulse methodologies.

(c) Dispute resolution

We help small and family businesses address disputes with other businesses and/or with government agencies. Some of these disputes involve:

- franchising
- hardening of commercial negotiating positions
- payment disputes
- ‘ghosting’ or avoidance
- disruption of digital platform accounts

Our first step is our self-help dispute support tool on our website. The tool provides small businesses with step-by-step information and leading questions to help them understand and articulate the issue clearly and get a clear idea of their options and their next steps. The purpose of this tool is to empower small businesses to independently work through the matter to reach a solution.

(d) Case referral

As is required by our Act, ASBFEO does not duplicate service and dispute resolution support provided by other agencies or where a peer agency is better suited to respond to the request for assistance.

Warm referral processes have been established with peer-ADR agencies and collaboration is reinforced through high-level and respected inter-agency fora.

The ASBFEO's cooperation with other agencies is formalised by the Ombudsman's chairing of regular meetings of the Federal Regulatory Agency Group (FRAG) and state Small Business Commissioners, his co-chairing of the Small Business Stewardship Group with the Australian Taxation Office, and his involvement in the Australian Competition and Consumer Commission's Small Business and Franchising Consultative Committee.

(e) Case management

We actively case manage around 1,500 matters per year. Of the cases closed in the last financial year, around one quarter were provided with information to enable self-help, around half were personally case managed by the Assistance team, nearly 100 were referred to external ADR providers and the remainder were referred to another party.

The number of cases closed annually has remained consistent over the last 3 financial years. The complexity of cases can vary widely, and in part reflects the changing small business operating environment.

4.1.2 Assistance service observations

In the past 4 years, we have seen some changes to the types and numbers of cases we're seeing. Some of these changes include:

- increased rates of payment disputes
- emergence of digital disputes as a major part of our service
- increased prevalence and significance of mental health concerns in our cases.

To respond to these changes, our assistance team has focussed on addressing the most common areas of disputes. We've refined our service offerings and introduced new processes and resources.

Aside from the changes in the small business operating environment, we have focussed on ongoing improvement in the way governments and services engage and communicate with small businesses and with each other.

We have refined the way in which we collaborate with other Australian Government and state and territory government agencies. In the context of our assistance function, some of our improvements include:

- establishing the National Assistance Group (NAG) that connects our assistance team with small business commissioners' counterparts and is a forum to share insights and information

- establishing a stronger relationship with the Australian Competition and Consumer Commission (ACCC) including the ACCC having a dedicated inbox for our referrals and committing to investigate and action complaints of possible breaches of the Franchising Code
- establishing a stronger relationship with the Australian Securities and Investment Commission (ASIC) as part of its enhanced small business focus and engagement
- introducing the Australian Financial Complaints Authority (AFCA) and Australian Financial Security Authority (AFSA) to the ASBFEO-convened Federal Regulators Group (FRAG) and supported enhanced inter-agency collaboration

As per the McGregor recommendation, these steps, enhanced inter-agency collaboration with peer ADR providers, and a focus on engaging trusted advisers has ensured that ASBFEO's assistance function for small business is integrated with the support ecosystem.

Payment disputes are by far the greatest area of concern for small businesses and now account for 42% of our assistance cases in 2023–24, up from 35% the previous year. An emerging area of concern is the increase in the number of requests for assistance by small business owed money by another business, which is also be experiencing cash flow issues, and is unable to pay the outstanding debt. In other words, disputes where both parties are experiencing financial problems.

With the volume of payment disputes increasing so significantly, we created templates to streamline our case management processes. Through this streamlining, we can provide more timely support – acknowledging that debt disputes are often linked to cashflow issues. This streamlining also allows us to avoid the role of proxy debt collection agency.

The Payments Reporting Register that places duties on larger entities is not discernibly improving payment times performance. Most commonly, payment disputes raised with ASBFEO are between small businesses and not impacted by the larger corporate supply chain focus of the current payment terms and performance reporting regime.

Some 20% of requests involved contract disputes (fulfilment of obligations, work quality, dispute activity, etc.), prompting us to develop a contracting guide to support parties being aware of and responsive to contractual obligations and duties.

Around 10% of our cases relate to franchising. We provide referrals to ADR services under the Franchising Code. In 2023–24 financial year alone, we managed over 120 cases relating to franchising. Some of the common issues in franchising disputes include:

- payment disputes, including debts incurred during COVID-19
- profitability of the franchise system
- unfair trading practices
- leasing issues
- franchisor-led negotiations
- deposits paid to franchisors that are not refunded when the small business does not proceed with the purchase of a franchise
- issues with the termination, sale or transfer of a franchise
- touts that prove to be untrue, such as the provision of leads or territorial exclusivity
- intersection of the Franchising Code with state-based retail leasing legislation.

The Schaper Review of the Franchise Code and associated measures recognised a positive view of ASBFEO's role in sector survey responses. The greater focus on education being led by ASBFEO will be helpful in supporting informed decision-making and Code awareness and compliance, dispute resolution processes and conduct expectations. The scope for ASBFEO to facilitate an arbitrated ADR process subject to both parties agreeing, has not been used. Enacting a mechanism for franchise systems to publish a precommitment to arbitration may improve use of this ADR option.

Increasingly, small businesses are having disputes with Big Tech digital platform providers and digital disputes now make up 26% of cases and have doubled over the past 2 years. In the September 2024 quarter, the number of digital platform disputes was 86% higher than the same time a year earlier. The new Code requirements on Digital Platforms, which emphasise a positive duty on respondents to protect users from digital fraud and financial loss, also needs to ensure that adequate and responsive dispute resolution is a key objective. ASBFEO's experience and focus on problem solving and account reactivation which enable small business users 'to get back to business' could assist with the agency identified as an external dispute resolution resource. This would address the absence of a clear 'problem solving' escalation point on many digital platforms.

4.1.3 Assistance service opportunities

The McGregor Review assessed that 'Treasury should consider the nature and impact of unresolved disputes on the small business sector, the factors driving lack of resolution and the relevant areas of legislation. Treasury should then ascertain whether there is a need for further dispute resolution avenues for small businesses and, if so, what role ASBFEO should play.'

A few, limited specific positive steps have been taken in spirit of this recommendation including:

- clarifying that ASBFEO can use its current notification powers for franchise matters
- expanding the type of cases for which subsidised limited legal advice may be made available to unrepresented parties to a dispute, particular for Code matters
- establishing ASBFEO as the mediation adviser for the Franchising Code of Conduct and the Dairy Code of Conduct (and prospectively the Oil Code and Horticulture Code).

Some opportunities to advance this recommendation have been missed including, formalising ASBFEO's proven role in digital platform dispute resolution. Another is the decision to subsume the proven and effective role of ASBFEO on payment times public advocacy and performance commentary within Treasury's regulator function, notwithstanding the Emerson Review recommendation and governance risk around the regulator providing public performance commentary on entities in the regulated population.

There is considerable scope to enhance ASBFEO's dispute resolution tools to better support the delivery of convenient and effective assistance support for operators of small businesses and family enterprises.

The current Act (s.73) directs that alternative dispute resolution processes are not to be conducted by the Ombudsman or a delegate or agent of the Ombudsman. The shared cost of the 'out-sourced' ADR practitioner can be a financial impediment (or in some cases, tactical obstacle) to engaging in the process which is not subsidised, in contrast to ASBFEO's peer ADR agencies.

There would be scope to trial in-house dispute resolution by repealing the current legislative prohibition. With the provision of appropriate resourcing to undertake a trial of in-house ADR, we could establish if this is a lower-cost option for parties to a dispute and a more cost-effective process than the current outsourced model, particularly for lower value matters.

We have observed an increase in the number of respondents using ‘ghosting’ tactics to avoid the dispute. Our encouragement to engage currently includes reference to our legislative powers under Section 71 of our Act to issue a Notice to Mediate (or participate in other forms of ADR), under Section 76 to issue a Notice for a party to produce information and documents, and under Section 74 to ‘name’ and notify the small business community about an entity that would not participate in ADR.

To address non-engagement (as distinct from the active adverse steps of a refusal to mediate or bad faith conduct), we propose that ASBFEO gain the authority and discretion to publish the names of businesses that fail to respond to extensive approaches by ASBFEO to engage in its processes, including notices to produce information, or in dispute resolution. In addition, we suggest that ASBFEO be given legal authority to provide a certificate as an account of the adverse conduct of a party to an assistance matter that may proceed to a determinative legal process. A review of the penalty units applied for non-compliance by larger businesses may be appropriate.

In terms of assistance ASBFEO can provide for legal processes, the existing Division 3A (sections 74A and 74B) of the *Australian Small Business and Family Enterprise Ombudsman Act 2015* allows the Ombudsman to give assistance for matters including conduct that may be in contravention of Part IV of the *Competition and Consumer Act 2010* (CCA). As the provisions most relevant to ASBFEO’s role and function are the subject of Part V of the CCA, it is suggested that the scope for the Ombudsman to give assistance be extended to Part V.

The effective and established role of ASBFEO publicly commenting on performance and ‘naming and proclaiming’ large corporate and government entities that are good and poor payers of small business suppliers under the *Payment Times Reporting Act 2020* should be reactivated. This role and accompanying resources should be transferred from Treasury to ASBFEO, including ready access to registry data.

To encourage use of arbitration to resolve franchise disputes without imposing additional regulatory burdens, franchise systems should be encouraged to make an optional pre-commitment to arbitration that is prominently published on the Franchise Disclosure Register and in disclosure documentation. This would enable ASBFEO to quickly facilitate arbitration ADR processes after obtaining only the consent of the franchisee or group of franchisees.

The current practice of independent contracting or ‘gig’ parties seeking to resolve disputes with their engaging business by seeking ASBFEO’s assistance will be disrupted by the commencement of the Fair Work Commission’s new employee-like terms and condition jurisdiction for independent contractors.

The current efforts of ASBFEO to establish an external dispute resolution process memorandum of understanding with the Fair Work Commission should be encouraged to support sure-footed management of disputes/grievances and the timely referral to ASBFEO of matters outside the Commission’s remit.

4.2 Advocacy

4.2.1 Advocacy function overview

Our advocacy function is a resource to both government and small businesses. We help fill the ‘missing middle’ between the many Commonwealth agencies and over 2.5 million disparate small and family businesses.¹⁰

Our advocacy and engagement are broad and varied. The *Australian Small Business and Family Enterprise Ombudsman Act 2015* directs us to identify the concerns of owners of small businesses and family enterprises in relation to relevant legislation, policies and practices across the Commonwealth (s. 14(a)). We endeavour to ensure that the distinctive needs of small and family businesses are considered by ministers, parliamentarians, departments and regulators.

We do this by:

- conducting research
- providing information and advice to the Minister
- making submissions
- reviewing proposals on Commonwealth legislation, policies and practices that affect (or may affect) small and family businesses.

The Ombudsman may inquire into matters or proposals on their own initiative, or the Minister may refer matters or proposals to the Ombudsman (s. 14(b)-(d)).

The breadth of the ASBFEO’s remit is reflected in diversity of substantial inquiries and advice that the Ombudsman has undertaken at the request of ministers or at their own initiative. Over the past 4 years, the ASBFEO’s advocacy has encompassed:

- encouraging disaster preparedness
- assessing the feasibility of discretionary mutual funds for particular sectors
- accelerating least-cost routing for dual-network, debit-card transactions
- improving Commonwealth procurement
- understanding what environmental, social and governance (ESG) means for small businesses
- facilitating entrepreneurship
- enhancing regulatory discipline and consultation.

Many more topics have been covered in responding to parliamentary inquiries and departmental consultations.

At the same time, the ASBFEO Act requires us to avoid duplicating the work of any other agency of the Commonwealth, a state or territory (s. 16(b)). Consistent with this requirement, the ASBFEO Advocacy function supports and complements the work of the Small and Family Business Division in Treasury. The division provides advice and programs to facilitate the growth and resilience of small and family

¹⁰ Australian Small Business and Enterprise Ombudsman, *Data portal: Number of small businesses in Australia*, June 2024.

businesses, with a focus on franchising, payment times, wellbeing, international councils and committees, and small business digital support.

4.2.2 Advocacy function observations

The McGregor Review (Recommendations 2 and 3) canvassed the fundamental challenge facing the ASBFEO Advocacy function; namely, to select a discrete number of material issues from the vast array of policy and regulatory matters that affect small and family businesses.

This is done by taking account of:

- the relative weight and incidence of matters affecting small and family businesses
- case trend data arising from the ASBFEO Assistance function, which provide real-time information about recurrent and emerging issues affecting small and family businesses
- the ASBFEO's legislative requirement to avoid duplicating the work of other agencies
- the ASBFEO's ability to effect change
- the limited resources at the ASBFEO's disposal
- the assessed interest in and appetite for the likely work and recommendations.

Over the past 4 years, the ASBFEO has continually refined the matters on which it advocates, strengthened relationships with government agencies, state counterparts and small and family business organisations, and enhanced our effectiveness and impact.

In 2021–22, Ombudsman instituted broad, multi-year strategic pillars to guide the Advocacy team's work:

- Pillar 1 – Addressing sector impediments: Efforts to ease what is holding sector back.
- Pillar 2 – Enhancing sector opportunities: Realising new opportunities.
- Pillar 3 – Supporting transformation and sector 'future state': Assisting the transition and preparing small business for future adjustments.
- Pillar 4 – Shifting the dial for sector advantage: Improving the enterprise environment.

From 2022–23, the Advocacy team has further concentrated its efforts with annual core priority areas, which advance the longer-term strategic objectives. Areas of concern have been identified, selected and tested through consultation with the ASBFEO Policy Forum, other Commonwealth entities, state small business commissioners, other organisations that service or represent small and family businesses, and business owners themselves.

More focused and persistent advocacy has generated positive results, including:

- a heightened evidence-base and rigour of representations
- greater uptake of ASBFEO recommendations or addressing of the substance of issues raised
- more entities coming to the ASBFEO for insights and input, especially early
- sustained cooperation with entities on difficult or systemic issues
- broader and more frequent amplification of ASBFEO advocacy by third parties
- helping to raise awareness of the ASBFEO and the services it provides.

The ASBFEO's Procurement Inquiry is a good example of ongoing and fruitful advocacy. Encouraged by the ASBFEO, the previous federal government asked the ASBFEO to independently examine

procurement rules and processes, to bring fresh thinking to this long-standing area of contention and frustration for small businesses.

In February 2023, the new Minister for Finance refreshed the predecessors earlier referral, by asking the ASBFEO to:

- review the implementation of the 1 July 2022 changes to Commonwealth Procurement Rules
- assess the impact on small businesses that participate in Commonwealth procurement
- recommend future changes to the Commonwealth procurement framework
- have regard to the implementation of the Buy Australian Plan.

The ASBFEO consulted extensively with current and aspiring small business suppliers, government departments, procuring officials and agencies in developing specific, constructive, and practical recommendations to maximise opportunities for small businesses to compete.

The ASBFEO is encouraged by improvements to Commonwealth procurement that the Australian Government has made since we completed our inquiry, which address some of the key issues we raised.

Similarly, the *Treasury Laws Amendment (Mergers and Acquisitions Reform) Act 2024*, which clarifies that creating, strengthening or entrenching market power can amount to a substantial lessening of competition, reflected representations made by the ASBFEO in successive consultations and submissions.

For issues that are systemic, difficult, or not front of mind for decision makers, the impact of the ASBFEO's advocacy is more likely to be incremental and done in partnership with others, notably entities with relevant portfolio responsibilities. Examples of these types of matters include:

- achieving better policy design, regulatory discipline and deliberative engagement across the Commonwealth
- encouraging entrepreneurship through policies that improve the risk-reward balance
- broadening the scope for small businesses to enforce their economic interests in relation to unfair practices, including by introducing a Small Business and Codes List in the Federal Circuit and Family Court of Australia
- facilitating the transition from a small-business exemption under the Privacy Act, to an information management approach that brings together privacy, cyber security and data use
- accelerating least-cost routing for both in-person and online transactions.

The ASBFEO's views are sometimes sought on emerging issues for small and family businesses. In June 2023, the Minister for Small Business requested that we provide advice on environmental social and governance (ESG) considerations for small businesses, having regard to the government's mandatory climate-related financial disclosure requirements for large businesses and the Sustainable Finance Strategy.

In preparing this advice, the ASBFEO convened an 'ESG for SMEs Symposium' in March 2024, harvesting the experience and insights of 115 leading thinkers, policy professionals, practitioners and smaller enterprises across Australia and overseas. While the ASBFEOs report and recommendations (lodged in June 2024) have not yet been published by the Minister, we have been approached for assistance and insights by regulators; and we continue to work with agencies and small business advisory bodies to:

- help address the misperception among small businesses that ESG represents a new set of onerous regulatory requirements for them

- develop accurate and accessible information for small businesses with other organisations and agencies
- ensure cascading information requests from large firms to small businesses are reasonable.

In concentrating advocacy efforts on a selection of material matters, a strong evidence-base and long-term impact, the ASBFEO has had to accept the inevitable trade-off of a smaller total number of representations. In 2021-22, the Advocacy team made 102 submissions, compared to 70 in 2022-23 and 40 in 2023-24. The decrease in submissions in 2023-24 was a function of reallocating scarce and reduced staffing resources to the ASBFEO Procurement Inquiry and Ministerial request for advice on ESG considerations for small businesses. In the first two quarters of 2024-25, the Advocacy team has produced 29 submissions.

The Advocacy's team's strategic focus does not preclude nimble responses to significant developments for small and family businesses. For instance, in September 2023, the ASBFEO made substantive submissions to both the Senate Education and Employment Legislation Committee on the Fair Work Legislation Amendment (Closing Loopholes) Bill, as well as the Independent Review of the Franchising Code of Conduct. Even though the overlapping consultation periods were less than 4 weeks, the ASBFEO made detailed, constructive contributions that have informed findings and assisted implementation.

In the case of the Closing Loopholes Bill, the ASBFEO's recommendation to remove the proposed civil penalty for 'misrepresenting' a contract as casual was accepted. Further, the ASBFEO continues to advocate for a number of other measures to better reflect the 'special circumstances' of smaller workplaces.

In the case of the Franchising Code Review, and reflecting the frequent 'insider-outsider' nature of ASBFEO's Government engagement, we were active in shaping and informing the Reviews work and analysis and also participated in the formal submission and consultation process. The ASBFEO has a direct role in implementing 6 recommendations and is being consulted on other recommendations. The ASBFEO has also made a submission to the subsequent inquiry into introducing a licensing regime for franchise systems.

The Department of Finance reached out to ASBFEO in the formative stages of its revised regulatory reform agenda and valued and incorporated many of our suggestions on how best to support the right-sizing of regulatory and compliance imposition on small business respondents.

These positive examples signpost how ASBFEO's advocacy function could be better supported by targeted and specific action to embed and resource ASBFEO engagement in key policy, program, legislative and regulatory formation and review processes.

4.2.3 Advocacy function opportunities

The benefit of ASBFEO's capacities and insights described from ongoing and meaningful interaction and collaboration with business, regulators and representative organisations would be enhanced by specific system and process changes.

A revision to the 'Australian Government Guide to Regulatory Impact Analysis' to include formal advice to engage with and seek advice from ASBFEO (and support in bringing in relevant stakeholders and specific expertise) as part of the preliminary and subsequent regulatory impact processes for initiatives intended for or likely to impact small business and family enterprises, would greatly improve this process. This would also support the positive examples cited above becoming more the rule than the exception, improving governing processes to the benefit of and enhanced responsiveness to small and family business interests and concerns.

Similarly, early consultation with ASBFEO as part of the New Policy Proposal and Cabinet coordination processes for initiatives intended for or likely to impact small business and family enterprises, would assist in ensuring these considerations were ‘front of mind’ in decision-making. This could be reinforced by the inclusion of a small business impact section in all Cabinet submissions.

Another positive action could be updating the Department of Finance regulator performance guidance (RMG128) to expressly provide for planning for ‘right-sized’ engagement and performance considerations in dealing with small business and family enterprise respondents, including consultation with ASBFEO. Regulators would be assessed on how well small and family business circumstance are factored into the design and operation of processes, communication and any enforcement activities

The ASBFEO’s quarterly and annual accountability reporting is delivered to the Minister for Small Business and Treasury executive, and subsequently supplied to parliamentarians, key regulators and peer agencies. The tabling in Parliament of these documents would promote discussion and awareness of ASBFEO’s function, services and advocacy. Upon tabling, there is scope for parliamentary debate, discussion and questioning about intended Government responses.

Since the last review, concern was expressed about the prospect of a Minister not being the Minister responsible for ASBFEO under Accountable Authority Instructions, seeking to make an inquiry referral to the Ombudsman. It has been highlighted that only the responsible Minister may exercise the referral powers under Division 3 of the Act. As ASBFEO was intended to be a whole-of-government resource, the Review could propose clarifying that any Minister can make an inquiry referral to ASBFEO. For Minister outside the ‘host’ portfolio, it may be appropriate that a referral under Division 3 be accompanied by enabling resources or that the Ombudsman can decline the request if resource limitations impede the conduct of an inquiry.

The circulation of consultation and input opportunities to Policy Forum members and identification of which of these opportunities ASBFEO intend engaging in, has highlighted how difficult it is for small and family business-facing industry associations to be aware of all consultation processes. This has particularly been the case since the Department of Prime Minister and Cabinet discontinued its centralised and consolidated resource and portfolios have established their own mechanisms and portals. To support time-poor small business and resource-constrained industry association engagement, the review should recommend an expansion of the informal ASBFEO consultation engagement ‘product’. This would involve resourcing the establishment and operation of a whole-of-government single-point small business consultation portal, to support the identification of and engagement with input opportunities by small business community, stakeholders and their representative bodies.

4.3 Inform

4.3.1 Inform function overview

A key ASBFEO objective is to engage, influence and strengthen relationships with the small business community, decision makers, regulatory agencies, industry groups, trusted advisers and to build ally relationships which support and energise small business and family enterprise.

Important elements of informing are to:

- increase the visibility and services/assistance offered by the ASBFEO Support sharing of regulators/government agencies key messages

- provide information about legislative and other changes which may impact on small and family business
- develop and maintain proactive relationships with industry groups and trusted adviser networks.

In keeping with our legislation, we work cooperatively, as far as possible, with Commonwealth and State/Territory agencies to develop national strategies in relation to legislation, policies and practices that affect, or may affect, small businesses or family enterprises.

Best practice in government and supplier/service provider interactions with small and family businesses is also showcased and promoted as helpful 'how to' guidance.

A significant uplift in the appeal and useability of the ASBFEO website, sustained social media activity and engagement, and a refreshed subscription newsletter are key audience channels. The audience size and engagement continues to grow, although still representing a small percentage of the active small and family business community.

The first points of engagement for most small businesses needing help and assistance are our call centre and website. These channels offer instant access to information and in the case of the call centre, a friendly voice to help people access the services offered.

A Communications Strategy, social media planning, regular opinion-piece contributions and targeted sponsorship and event participation (linked to key ASBFEO functions), guide the effective use of limited promotional resources.

In order to ensure the ASBFEO messages are shared broadly, we also chair a National Small Business Media and Communication Network meeting. These quarterly meetings bring together a wide range of officers from various FRAG and over 20 representative from other policy and regulatory agencies. Not only does this meeting allow the ASBFEO to share our key messages, issues and upcoming media engagements and policy changes which may impact small business, it also enables messaging and event participation to be coordinated and information shared effectively.

ASBFEO also engages routinely with ministers and their advisers, parliamentarians and their advisers, departments, regulators, other ombudsman's offices, state small business commissioners, and local councils, to provide information, advice and assistance on matters relating to small and family businesses.

We also liaise regularly with the broader small business community, including owners of micro, small or family-owned businesses, professional advisers, industry associations, chambers of commerce, and other organisations that support or advocate for small and family businesses.

As part of this broad engagement, the ASBFEO has sought to extend its reach to First Nations and culturally and linguistically diverse communities.

Our Policy Forum incorporates organisations with large memberships, less representation outside Canberra, and business owners with diverse backgrounds.

We also work with Supply Nation, National Indigenous Australians Agency, Office of the Registrar of Indigenous Corporations and other agencies to expand opportunities for recruitment, procurement and engagement.

Further, we endeavour to promote First Nations' entrepreneurship in partnership with organisations and businesses such as Gurugun, Willyama Indigenous ICT Services, Indigenous Defence & Infrastructure Consortium, Western Australian Indigenous Tourism Operators Council and WA Local Government Association.

4.3.2 Inform function observations

Strategic communications, stakeholder engagement, awareness raising, audience growth and influence/impact are key areas we have given attention to since the last review. This has been enabled by the additional resource provided by the 2021–22 MYEFO measure to support the implementation of McGregor Review recommendations and capability uplift.

As a clear strategic priority, organisational structure changes and role clarification have supported progress. Rather than viewing strategic communications as an integrated, multi-channel planned message distribution, we have sought to bring a listening and situational awareness focus to a more two-way discipline. This has helped refine and promote our advocacy positions and insights in a more influential and impactful way as we better understand the views and position of key stakeholders, opinion-leaders and decisions makers.

The idea of nurturing influence and winning ‘hearts and minds’ to bring people along as important preconditions for impact, has been challenging for traditional APS communications specialists. It has required us to bring in external expertise. This represents a key person risk requiring considerable contingency planning and internal adjustment.

Limited awareness of ASBFEO outside previous clients, collaborators, trusted advisers, stakeholders and those referred to us remains a significant concern. Earned media, public appearances and targeted social media campaigns have been our favoured ‘audience and awareness growth’ approach. Notable percentage audience increases across our channels is welcome, but it is off a relatively small base when compared to the broader small and family business population.

Remarks about the agency title and ‘less than snappy’ name/acronym are common but are not often cited as a cause for hesitation to engage with ASBFEO and its services. Anecdotally, there is the occasional unmet expectation that the term ‘Ombudsman’ infers that we can deliver a determinative outcome for matters raised with us (which we can’t) or that it is ‘too official’ to have a small business raise a grievance they might feel doesn’t warrant the degree of ‘serious officialdom’.

We don’t have compelling evidence to conclude that nomenclature is a primary obstacle or disincentive to engaging with the ASBFEO. The pressing issues are awareness and audience growth for our various communications channels, if ASBFEO is to deliver full value to the small and family business community and fulfill its mission.

4.3.3 Inform function opportunities

A number of approaches to exponentially grow the awareness of ASBFEO, its functions, support and audience have been identified through partnering with peer agencies and responsibly accessing contact information. Implementation of these approaches will require resourcing, astute data management and privacy safeguards.

An accompanying surge in requests for assistance and contacts to our call centre and the ASBFEO website is anticipated, that will need to be planned for, resourced and managed.

The Review should consider recommending the provision of adequate resourcing for an awareness-raising campaign including research funding for testing a revised nomenclature if it is established that the current name is an impediment to awareness or utilisation of ASBFEO services, functions and support.

This campaign could embrace any nomenclature refinement needed to accompany the recommended ‘independent agency’ entity change.

4.4 Data and analytics

4.4.1 Data and analytics function overview

ASBFEO is committed to strengthening the evidence-base to its policy analysis, advocacy and positions in a small business policy environment that has in the past, often been informed by observations or ‘anecdota’. A view that economic impact would play an increasing role in policy evaluation, influence and central-agency interest also advanced the case for ASBFEO to develop and deploy a high-quality data and analytics function.

In addition, the McGregor Review (recommendation 3) urged ASBFEO to provide insights as to the organising concepts for the small business sector by providing clarity on the composition of the small business sector and characterising its nature with improved qualitative and quantitative models. We were also urged to consider the strategic value of offering a data clearing house facility providing access to small business sector insights from a range of sources to support small business policy development.

The resulting output from a small, dedicated and highly regarded team include the ASBFEO data portal bringing together key statistics on small businesses. The portal incorporates interactive features for people to customise data visuals and outputs. It consistently remains one of the most visited areas of the ASBFEO website and is regularly cited by a wide range of stakeholders.

‘Small Business Matters’ is an ASBFEO publication that brings together a wide range of data on small business owners and their important economic and social contributions. This received wide recognition and extensive media coverage. This included small business owners contacting Queensland media to share their stories as the publication resonated with them. This publication continues to regularly be cited and has provided the platform for developing the ASBFEO Small Business Pulse.

The ASBFEO Small Business Pulse is a world-leading innovative combination of non-traditional and traditional data to produce an indicator of small business health. The Pulse was created in line with OECD best practice and brings together a range of data sources that can provide early indicators of changes in the lived experience of small business and the motivations that drive them. This is particularly important when conditions are changing rapidly, which traditional sources of information and point-in-time surveys often miss. The Pulse is widely used by policy makers such as FWO and RBA. In addition, small business owners themselves have contacted us to tell us how much they appreciate data that is close to real time is so well targeted for them.

We have undertaken preliminary work to develop a database in collaboration with ABS bringing together data from a range of sources to create an evidence base on small and family businesses to support policy development and evaluation. This database uses the new linked data asset, combining information on individuals with business information for new insights including surfacing micro business activity for cohorts that are under-counted including women, First Nations and culturally and linguistically diverse people and regional activity. For the first time, we can undertake longitudinal analysis to better understand the life cycle of startups including milestones, as well as indicators of resilience. This is an ASBFEO project hosted on ABS data infrastructure. ASBFEO acts as a clearing house for researchers undertaking small and family business data analysis for policy or research purposes.

We continue to share data and insights with a wide range of stakeholders including:

- regularly sharing insights at the Small Business Communications and Media Network, bringing together a range of Commonwealth and state agencies. This includes intelligence relevant to members such as queries from small businesses on emerging issues

- sharing insights through meetings and presentations to stakeholders including regulators, jurisdictions and local councils
- putting data sharing arrangements in place with other agencies
- providing expanded commentary in the quarterly report on the links between the broader economic environment and our assistance data.

ASBFEO is actively advocating for improved data collection to better reflect the full extent of entrepreneurialism:

- exploratory research into whether data collection is keeping pace with economic change e.g. whether social media content creators identify as business owners
- meeting with small and family business owners to better understand their responses to key data collections and working with the relevant data custodians to improve identified gaps
- ongoing collaboration to improve family business data collection, while promoting existing data collections such as contributing family workers and family/business relationship data through ASBFEO communication channels including social media and op-eds.

4.4.2 Data and analytics function observations

ASBFEO's data and analytics function has been acclaimed and embraced across all levels of Government, the bureaucracy, data research community, stakeholders, peer agencies, industry association and sector advocates.

There is a constant stream of requests for data and research from willing collaborators that we are not able to accommodate due to resource constraints. The development of the interactive data portal is intended to deflect some of this data appetite and analytical ambition to this self-help resource.

The clear and evident capacity constraints and key person risks create a vulnerability in terms of future capability and the ongoing confidence of vital data custodians and trusting collaborators. The durable capabilities of a very small team and advancement through an already significant program of work require additional investment.

The preliminary work on the ABS integrated database is important but it will diminish in utility without significant additional resources and is unlikely to reach its full potential. The aim is to build on this preliminary work program to address the more difficult and time-consuming evidence gaps including:

- better understanding of business exits and closures. This provides an evidence base for better understanding economic changes as well as informing and evaluating policy settings
- analysis of the experiences of small and family businesses following natural disasters
- improved evidence of female entrepreneurship
- expanded analysis of the journey of small and family business owners from culturally and linguistically diverse backgrounds and First Nations where possible.

ASBFEO is expected to coordinate and lead key research initiatives. Currently, engagement is ad hoc, with state Small Business Commissioners and other stakeholders regularly contacting us for advice, information, and data on a range of issues. We are broadly aware of a number of research initiative and often provide in-kind support. But we have not joined up stakeholders or created structures to this engagement. Ideally, State SBCs have the option to link their data to our database to better understand the effectiveness of the service they provide. This would provide a more coherent national overview as it adds to our own linked data.

4.4.3 Data and analytics opportunities

The integrated database provides the opportunity for other stakeholders to link their business identifiers to better understand policy, program and intervention impact. For example, it would enable undertaking longitudinal analysis of business performance after grants.

Collaboration with stakeholders on key priorities for analysis would be needed as the database has the functionality to provide state and regional breakdowns. E.g. the natural disasters analysis can drill down to localised key issues such as cyclones in Qld (subject to privacy and confidentiality requirements).

ASBFEO would directly benefit from more structured sharing of insights for input into the Pulse and granular and targeted information shared from it. Engagement from a range of state and federal agencies, SBCs and the Small Business Media and Communications Network have shown a clear appetite for this, but we have not had capacity to meet demand. These are a range of important and often localised issues that we identify in the wide range of data that we now have access to. This helps to mobilise small and family business owners as well as informing them of key issues or information.

Current resourcing won't enable the full development of the integrated databases and attainment of the identified benefits as existing resourcing are focused on the data portal, legislative reporting requirements and preparatory work and analysis for the new database. These are different skillsets to those required for the continued production of the acclaimed Pulse.

We are also focused on the development and delivery of open data standards for small business data. ASBFEO has undertaken preliminary work, consultation, and user testing with a local and state government, but we lack capacity to build further on this work. It is increasingly likely that the absence of these open data standards to ensure relevant data are accessible for small business will inadvertently deliver a competitive advantage to larger businesses.

As the future state delivers more quantitative insights, there will be increasing need to supplement this with broader research and qualitative insights on behavioural drivers. We will also build on our existing exploratory insights. For example, we are evaluating the relationship between observing other family members' entrepreneurial activity and views on entrepreneurship in the 2024-25 Australian Social Attitudes Survey. If there is a statistically significant relationship, more detailed research would unpack this, e.g. to examine whether this is part of the reason for declining youth entrepreneurship.

We encourage the review to highlight the significant value of, confidence in, and audience for ASBFEO's data analytics by recommending support for the further development and durability of this function. This involves adequately resourcing this function to meet the extensive work program – including projects that arise from the discontinuation of the Modern Business Register initiative.

The ABS integrated small business database initiative, co-led by ASBFEO, warrants commending along with the identified use-case priorities. This initiative also lends itself to improved data integrity in the Franchise Disclosure Register by utilising the consolidation data to address inconsistencies and errors in industry classifications in the Franchise Disclosure Register and the improvement of sector statistics (as recommended by the Schaper Review).

Continuing work to define 'family business' for research, data collection and analytical purposes should be encouraged.

5. Independence, entity-type and resourcing

The establishment of the ‘Australian Small Business and Family Enterprise Ombudsman’ saw the independence of the Ombudsman defined and enshrined by the enabling legislation and appointment process.

The objective was clear. The Ombudsman would work for Australian small business and family enterprise and with Government for the fulfilment of ASBFEO’s purpose and functions and to advance the sector interests. Not the other way around.

Government has been able influence ASBFEO’s priorities and activities through regular Ministerial and senior officials engagement and consultation with the Ombudsman. Coordination of inquiries has been useful in targeting policy research, analysis and advocacy in areas of genuine appetite and interest, and to where APS disciplines might constrain innovative, novel and or pioneering policy thinking. This can give rise to small business policy department confusion, wariness and disquiet about ASBFEO’s comparative policy analysis, advocacy and work program ‘freedoms’.

An overt constraint on the potential scale and scope of ASBFEO functions and activities are disciplines contained in the enabling legislation, adjacent to the flexibility and range of working methods available to the Ombudsman in the performance of the Ombudsman functions. A more direct constraining mechanism that has to date not been exercised, is the power in section 20 of the *Australian Small Business and Family Enterprise Ombudsman Act 2015* provided to the Minister to give written direction via legislative instrument to the Ombudsman about the performance of the Ombudsman’s functions.

There is no question that the Ombudsman’s independence in statutory terms has been respected.

What is of growing concern to ASBFEO and some small and family business stakeholders is how operational settings are indirectly impacting on the Ombudsman’s independence and capacity to fulfill ASBFEO’s purpose and functions.

Since the last review, ASBFEO has benefitted from an end to what was a series of ‘machinery-of-government’ changes that involved multiple moves between ‘host’ departments, with an accompanying sense that portfolio alignment was temporary. ASBFEO and small business policy is now firmly located within the Treasury portfolio. This is the preferred location given the Treasury’s role in shaping the entrepreneurial eco-system and adjacency to key economic regulator and agencies.

With the incoming Government, small business policy generally and ASBFEO specifically were affirmed as appropriately located within the Treasury portfolio and the Department has taken steps to embed and consolidate this administrative alignment.

However, this welcome stability has come at the cost of ASBFEO being considered as ‘part of Treasury’ and being intertwined into the Department’s internal processes and bureaucracy, rather than simply ‘fed and watered’ by its Treasury host. It exposes the inherent tension between institutional independence and financial and operational dependency on the Department.

Moreover, this operational dependency on the host portfolio presented challenges with the management of a dispute where the case respondent was Treasury. These challenges and the need to encourage good faith engagement in the process was navigated, not without the complainant raising concerns about ASBFEO’s impartiality.

The ability for Parliament and the Senate Estimates process to hold ASBFEO to account for the public resources it has been assigned is not assisted by the opaque nature for funding allocations and approved staffing levels. Inferred claims about ASBFEO receiving ‘additional funding’ through the 2024–

25 Budget have been queried by small business representatives and stakeholder organisations, unable to discern the true situation through the Budget Papers or portfolio annual reporting.

The operations of the ASBFEO organisation are constrained by controls over budget and resourcing (embedded in Divisional allocations), inconsistent engagement in key Treasury processes, recruitment approvals dependency, staff being formally Treasury employees and contradictory views on ASBFEO organisational status.

The review is urged to recommend a conscious reassertion of the independence of ASBFEO and its organisation through a more suitable entity status, predictable and transparent resourcing (as was recommended in the McGregor Review) and the associated clearer accountabilities. We commend the Inspector General of Taxation/Tax Ombudsman entity type as a suitable model system design to ensure the value of ASBFEO's contribution is fully operationalises and available across Government.

One of the key challenges with the current name, 'Australian Small Business and Family Enterprise Ombudsman,' is the confusion it creates between the role of the office and the function of the Ombudsman. While the office serves as a key advocate and resource for small businesses and family enterprises, the focus on the term 'ombudsman' can lead to a misunderstanding that our role is solely about addressing individual complaints or grievances, rather than being a broad-based advocate for small business interests across policy development.

The term 'ombudsman' inherently suggests a reactive, complaints-handling function, (with an accompanying misconception that we have determinative powers) which may overshadow the proactive work that we do in advocating for regulatory reform, policy development, and broader systemic improvements for small businesses. This has, at times, limited our ability to convey the full scope of our role and impact in government and policy discussions.

Attachment A – Material provided to the ASBFEO Review

ASBFEO Responses to specific questions from the Review team

2024 APS Census – ASBFEO results

2024 ASBFEO Census Action Plan

ASBFEO Contact list – all contact details for stakeholders

ASBEQ Advocacy Information – 21/22 to Q2 24/25

ASBFEO Assistance Case Management Guide

ASBFEO CALD – Small Business Information Needs data tables

ASBFEO Call data since 21-22

ASBFEO New Case data 21-22

ASBFEO Organisational Chart

ASBFEO Strategic Plan 2022-26

ASBFEO People Plan 2024-25

ASBFEO Quarterly Reports

ASBFEO Small Business Pulse

ASBFEO 14 Steps to Energise Enterprise

Beyond ESG – A right sized Framework for small business durability report (currently with the Minister – not published)

Assistance Case management flowchart

Assistance Case Manager letter timeline

Assistance team referrals checklist process

Assistance Phone response scripts

Franchising code Review Feedback

ASBFEO Induction pack

ASBFEO Customer Satisfaction data

Information and Assistance case closure process

Overview of data processes