



ASIC

Australian Securities & Investments Commission

What is ASIC doing to help small business?

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CHECK AGAINST DELIVERY

Thank you for the opportunity to speak with you all.

As mentioned, I'm one of ASIC's Commissioners with responsibility for a range of stakeholders, including small business.

I think it is important to start by saying that if I had been asked to speak to you about what ASIC is doing to assist small business five years ago, it would be quite different from what I will talk to you about today.

The first and most obvious difference is that ASIC now has a dedicated team responsible for our engagement with and regulation of small business.

This team was established in July 2013 and is very focused on engaging with small business operators and supporting small and medium enterprises (SMEs). We also work closely with industry and professional associations and intermediaries to better engage with small business operators.

The second difference is that we are engaging with small business in a proactive manner. Being able to speak directly to business owners at events such as this allows us to not only tell you what we are doing, but to also seek feedback on what you think we should be doing more of.

The third big difference is that we are working much more closely than ever before with the Australian Taxation Office (ATO), the Australian Competition and Consumer Commission (ACCC), the Fair Work Ombudsman and other Commonwealth agencies on small business problems.

So yes, there has been a change in the way that ASIC engages with small business. But, you may be wondering why someone from ASIC has been invited to speak to you this morning and the relevance we have in regards to issues that affect small business.

One of ASIC's key objectives is to ensure we have financial markets and, more generally, a business environment that is fair, transparent and efficient. They might sound different but, in context, we are very much trying to help organisations that operate within our financial markets do exactly the same – that is, we want organisations to have the best opportunity to succeed in business. I'll talk more about how we do that later.

So today, I'd like to talk broadly about the importance of SMEs to the Australian economy and how this relates to ASIC's role. I'll also touch on some of the initiatives we've been working on to make it easier for small business to do business.

But first, I'd like to provide you with some brief insights into ASIC as an organisation, who we are, what we do and why we do it.

ASIC is the Australian Securities and Investments Commission. We are Australia's corporate, markets and financial services regulator.

ASIC's Strategic Framework is focused on three strategic priorities or outcomes.

First, ASIC is focused on promoting investor and financial consumer trust and confidence. Education is key to this and we want to ensure people understand investing – before they part with their money. Also, we will hold gatekeepers or business advisers like lawyers, accountants, auditors and directors accountable for their actions.

ASIC's second priority is ensuring fair, orderly and transparent markets. We achieve this through our role in market supervision and competition and by ensuring those who manage companies adopt good corporate governance practices.

Our third priority is providing efficient and accessible registration with a focus on small business and deregulation. That's important because we want to remove, as much as possible, bureaucratic red tape and make it as easy as possible for people to start businesses.

Now that I have spoken briefly about the role of ASIC, let me now move onto our work with small business and the importance of small business to ASIC.

The importance of SMEs to the Australian economy

Small and medium-size businesses are significant contributors to the Australian economy, both in terms of the number of people they employ and their output. They collectively employ half the Australian workforce and account for one-fifth of Australia's gross domestic product.

SMEs also contribute to local economies by bringing growth and innovation to the community in which they're established. They stimulate economic growth by providing employment opportunities. They also benefit larger businesses within the same local community, as many large companies rely on small businesses either as customers, or as suppliers, for the completion of various business functions through outsourcing.

At ASIC, our fundamental objective is to maintain, facilitate and improve Australia's financial system and the businesses that operate within that system, so engaging and supporting, as well as regulating, SMEs that contribute to local economic growth is also an integral part of what we do.

Small business is ASIC's largest customer. Of all the Australian companies and businesses registered with us, approximately 96% are considered to be small businesses with fewer than 20 employees (using the Australian Bureau of Statistics definition).

The team within ASIC that has most interaction on a daily basis with small businesses is our Registry function.

Over the past five years, Registry has undertaken a number of enhancement projects that assist small business. I'll go through some of these now.

Since ASIC took over the registration of business names, people now have the ability to register a business name online. In fact, of the 327,000 new business names registered with ASIC in the 2014–15 financial year, all except 36 registered online. This is another example of how we are reducing red tape and making the administration process easier. Another interesting statistic is that 30% of new business names registrations occurred after hours, demonstrating the importance small businesses place on being able to access information and services at a time that is convenient to them.

While talking about registration matters, we are currently working with government to make it easier to start a business by streamlining business registration processes.

The Streamlining Business Registration Measure was tabled in the 2015–16 Federal Budget. The Government has made a provision of \$32.4 million over five years from 2014–15 for the ATO, ASIC and the Department of Industry and Science to:

- create a single online portal for business and company registration
- publish application programming interfaces (APIs) for Australian Business Number (ABN), business name and company registrations – an API allows information to be exchanged between different systems in a seamless manner, and enables software developers to build registration software
- reduce the number of business identifiers by making the ABN the primary identifier for businesses and companies.

Under the Streamlined Business Registration model, to be implemented by mid-2016, an individual planning to start a business will be able to log onto business.gov.au and access:

- the Australian Business Licence and Information Service (ABLIS) to identify the government licences, permits, approvals and registrations required
- ABN registration
- company registration
- business name registration
- GST registration
- PAYG (withholding) registration

- fringe benefits tax registration
- an Australian Business Account to provide an integrated business account with government
- online payment for registration.

With the wide ranging use of social media channels, Registry has also introduced a number of initiatives to help small businesses connect with us. We have a range of social media channels where small businesses can interact directly with us. These include Facebook, Twitter and YouTube. These channels provide ASIC with a means of getting tailored messages out to small businesses, while ensuring small business has the ability to engage directly with ASIC.

We are considering introducing live web chat in the coming year, which will increase accessibility and interactivity for our clients, and we have recently introduced data.gov.au to make free data more readily accessible for bulk download.

We are continually looking to improve our processes. For example, in the last week, we introduced a new reinstatements estimates tool. This online reinstatement calculator for companies, found on the ASIC website, allows customers to get an indication of how much will be payable to reinstate a company, so that they can decide for themselves whether it's worth it. We have also updated the information on reinstatements to make it easier for businesses to understand the process. This saves time, effort and cost for our customers and for us.

Finally, as part of the ATO-led Small Business Fix-it Squad, we have enhanced the business names transfer process to make it easier for business owners to buy and sell their businesses and also provided guidance and resources for people thinking of transitioning their business from a sole operator to a company.

While Registry continues to do a lot of work to enhance our interactions with small businesses, our Small Business team is also focused and committed to helping small businesses.

ASIC's Small Business team

As I've mentioned earlier, one of ASIC's main functions is to protect the reputation and wellbeing of the Australian economy, so supporting small business is a priority.

As a regulator, we have an obligation to ensure that businesses operate within the law. Part of that means that we should, as much as possible, help businesses understand the law.

In 2012, our first small business stakeholder survey showed small business operators knew little about ASIC and the laws we administer and found it difficult to find clear and concise information about those laws. Further, discussions with industry confirmed many businesses lacked knowledge about their legal obligations or didn't have the time or resources to effectively manage their regulatory obligations.

As a result, we have taken a number of steps to enable small businesses to not only easily locate information about their compliance obligations, but to also make it easier to digest.

We published a dedicated small business page on the ASIC website called the ‘small business bub’, which brings together information particularly relevant to those operating small businesses through a company structure or using a business name.

The information housed on the small business hub has been specifically developed to allow small business owners the opportunity to easily locate information about ASIC and the laws relevant to their businesses. But, we have taken that a step further, by redrafting some of the more complex information into a form that is not only easier to understand, but is also less legalistic.

By doing this, we have taken the specific feedback small businesses provided us, and have tailored information to their needs.

The small business hub provides tools such as ‘1 minute guides’ on a range of legal, compliance and regulatory topics and acts as a gateway to more detailed information available on the ASIC website. A link to the small business hub can be found on ASIC’s homepage at www.asic.gov.au under ‘For business’.

As part of helping small businesses understand their legal obligations, we have drafted specific guides for small businesses to help them wade through the myriad compliance obligations.

In 2013, we published a booklet called *Your obligations as a small business operator*, which provides easy to understand information and highlights the key obligations for directors of small proprietary companies. You can download a copy from ASIC’s website.

We added to our assistance tools, when in June this year we released a document specifically for small business directors. The booklet, entitled *Guide for small business directors*, has been developed to provide directors who often have little time to understand their obligations with information that is easy to digest, accessible at a time that suits them and importantly has been developed because small business directors asked for it.

These two documents go some way to helping small businesses understand their legal obligations.

ASIC assistance and engagement initiatives

We haven’t just developed a small business hub and documents for small businesses.

Our Small Business team has worked with government stakeholders across Australia to better engage with small business.

One example is the Government Business Education Network (GBEN), which was established in Victoria to bring together federal and state government agencies with an interest in helping small business. The aim of GBEN is primarily to increase awareness of the government products and services available to small business and to help small business access these resources. ASIC participates in this program and finds it a very useful means of hearing directly from small businesses about issues that are impacting them directly.

ASIC also participates in the BizLinks program, which was developed by WA's Small Business Development Corporation and SA's Office of the Small Business Commissioner. Similar to GBEN, the aim of BizLinks is to bring together government agencies at the federal and state level to provide small businesses with an overview of the resources and services available to them.

Apart from direct engagement, we have also moved into the smartphone arena by developing and launching ASIC's first dedicated smartphone app for small business. As you may be aware, and I will talk a bit more about this shortly, small businesses are unfortunately the victims of some unscrupulous operators.

What small businesses have told us repeatedly is that they don't have the same resources as larger entities and therefore they may not have the same means to check out organisations or people with whom they might be entering into a new commercial arrangement. This subsequently may expose small business to a risk of being scammed.

We heard this and developed ASIC Business Checks.

ASIC Business Checks has been developed to encourage business owners and operators to start their due diligence early, before they enter into a business relationship with another party.

ASIC Business Checks has been developed to minimise business risks. It encourages businesses to:

- ask the right questions about the company, business and individuals they're dealing with
- check ASIC's public registers and verify that the information they've been given is accurate
- seek the support of a professional business adviser if they need it
- report suspected misconduct to ASIC if they believe a company, business or individual is acting unlawfully.

Importantly, it is a free, quick and simple tool that we hope will help small businesses take some steps to protect themselves from unscrupulous conduct.

ASIC Business Checks isn't a substitute for seeking trusted professional business advice, but rather a starting point for the checks any business should do before committing to a contract with another business.

Our app is easy to use and available on iTunes and Google Play. When you get a chance, I encourage you to take a look.

Phoenix and other unscrupulous activity

As I have outlined, ASIC has a strong focus on helping small businesses and we do this via our Registry function and also through our Small Business team.

Unfortunately, there are some unscrupulous operators out in business and, before I finish, I would like to take you through one of our regulatory initiatives which is helping us protect small businesses.

One issue that we do see small businesses face is being scammed by other businesses, as a result of illegal phoenix activity. Because of this risk we have taken specific steps to combat this misconduct.

This is an important initiative for the SME sector, because SMEs are not only among the entities who engage in illegal phoenix activity, but also among those companies and businesses who suffer when illegal phoenixing occurs.

It's important to note that almost all cases of illegal phoenix activity occur in the SME sector. Perpetrators who engage in this activity have a distinct commercial advantage over competitors that operate lawfully. With less or no debt, they're then in a position to 'undercut' their competitors by offering goods or services at lower prices.

But what is illegal phoenix activity?

Illegal phoenix activity typically involves winding up a company but continuing that business in the form of a new company, often with a similar company name, structure and staff.

The original company is often in financial distress, so directors transfer the assets of the potentially insolvent company to a new company (controlled by the same directors), for negligible consideration, with the intention of deliberately denying access to the company's assets by the creditors.

This conduct is a concern for ASIC and a number of other regulatory agencies, including the ATO, the Fair Work Ombudsman and the Australian Crime Commission.

Why?

Apart from the obvious breaches of directors' duties that are often associated with illegal phoenix activity, this activity has a significant effect on the Australian economy each year.

A 2013 PwC report commissioned by the Fair Work Ombudsman estimated that the total cost of illegal phoenix activity to the Australian economy is up to \$3.2 billion per annum.

This report estimates that the annual cost of this activity is up to:

- \$655 million for employees – in the form of unpaid wages and other entitlements
- \$1.93 billion for businesses – as a result of phoenix companies not paying debts or not providing the goods and services that have been paid for by creditors
- \$610 million for government revenue – mainly as a result of unpaid tax, but also due to payments made to employees under the Fair Entitlements Guarantee.

So, this activity doesn't just have an economic impact, it impacts directly on everyday Australians.

Through audit and surveillance activities and meeting with directors, we're taking proactive steps to deter and disrupt illegal phoenix activity.

During the last 18 months ASIC has conducted surveillance on more than 250 companies. Five matters were referred to our enforcement teams for further investigation and two matters were referred to the ATO for suspected contraventions of tax laws.

Perhaps more important than enforcement action, our analysis has shown that where we conduct surveillance activity, there is a greater level of compliance and fewer allegations of illegal phoenix activity when compared to companies we haven't looked at. That means that there are fewer risks for small businesses. We're continuing our surveillance campaign this financial year.

We also extended our surveillance work in the illegal phoenix space to focus on the building and construction industry – in particular, the issue of false statutory declarations submitted by contractors as a means of getting paid for goods and services. This campaign is looking at eight major construction projects across Australia and was implemented after ASIC and partner government agencies consulted with key industry stakeholders and we were told that small businesses often experience financial distress in the construction sector, as a result of non-payment of funds for services performed.

While the focus is slightly different, the overarching theme of the program is to ensure that company directors are not engaging in conduct that could amount to illegal phoenix activity.

We don't expect to stop companies from entering into external administration, but by engaging in a proactive way, we hope to dissuade directors from transferring assets in an illegal manner and therefore protecting small businesses that might be creditors of those companies.

Conclusion

One of the key challenges for ASIC (and indeed many federal government agencies) is identifying new and effective ways of reaching small business, tapping into communication channels small businesses use, and making our information and services simple and easy to find. Working more closely with our stakeholders at all levels of government and industry is key to ASIC increasing awareness of who we are and how we can support small businesses in Australia.

Our role includes ensuring that small businesses understand what is expected of them, providing them with tools to make that understanding easier to obtain and to take steps to punish those who seek to take advantage of small businesses.

Our Registry function continues to enhance its interaction with small business and we have a dedicated team with a specific strategy that seeks to ensure that ASIC is engaging with, educating and importantly helping small businesses protect themselves.