



ASIC

Australian Securities & Investments Commission

ASIC and small business

April 2018

Report 571

About this report

This report provides an overview of our Small Business Strategy 2017–2020, and progress achieved to date.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Disclaimer

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this report are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

Contents

About this report.....	4
Our vision	5
Assisting small business	6
Engaging with small business	10
Protecting small business	14
Appendix: Accessible versions of figures.....	17

About this report

Small businesses employ half of Australia's workforce and make up one-fifth of Australia's gross domestic product.

As Australia's regulator for companies, financial markets and providers of financial services and consumer credit, ASIC works to help small business succeed as a key driver of the Australian economy.

ASIC's Office of Small Business was established in March 2017 to coordinate our work to assist, engage with and protect small business.

This report provides an overview of our [Small Business Strategy 2017–2020](#), and progress achieved to date.

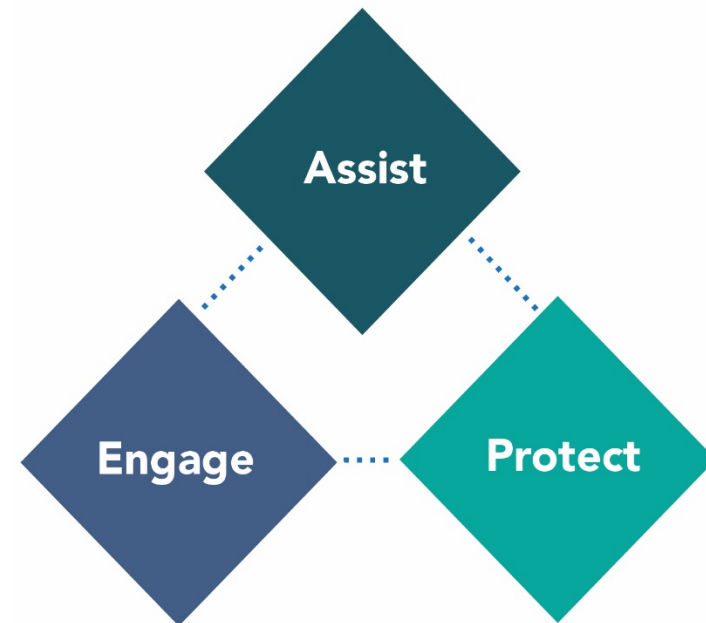


Our vision

We assist, engage with and help protect small business in Australia to ensure a strong and healthy economy for all Australians.

We do this by:

- **assisting** small business through our registry services and providing information and guidance
- **engaging** with small business and government bodies, to understand and respond to the challenges and opportunities faced by small business
- **helping to protect** small business by levelling the playing field through surveillance, enforcement and policy work, so that everyone is playing by the same rules.



Assisting small business

We assist small businesses by:

- providing efficient and effective registry services for small business (including business names)
- providing financial capability information and resources for small business owners and promoting an understanding of compliance obligations
- engaging and assisting fintech businesses through ASIC's Innovation Hub.

Registry services

ASIC's registry business – the companies register, business names register and other corporate and professional registers – forms a critical part of Australia's economic infrastructure and is essential to our economy.

We are streamlining our registry services to make it easier for small business to interact with us. In 2017, we created a single online portal for company and business registrations that connects with the Australian Taxation Office (ATO), so that small businesses do not have to contact both agencies when they register.

A positive step for small business: Registry modernisation

The Government is currently exploring approaches to modernise the business registers administered by ASIC, as well as the Australian Business Register administered by the ATO. It is considering establishing a whole-of-Government registry platform that will deliver modernised business registration and licensing services for the Australian community. Modernising the business registers will make it easier for businesses to

interact with Government, and forms part of the National Business Simplification Initiative. ASIC is actively involved in this exploration, which has the potential to positively affect small business.

Making it easier for businesses

The ASIC website is the primary source of information for our registry customers. Our website makes it easier for customers to access common transactions and information about our registers. Our Customer Contact Centre responds to customer inquiries.

We are committed to streamlining our processes and making it easier for businesses to interact with us.

'... level of customer service was refreshing.'

'... you turned a rather daunting and challenging experience into an easy smooth transaction.'

Stakeholder feedback

We have reduced ongoing annual compliance costs for businesses by almost \$455.7 million since 2013. We also estimate that the Business Names Register has saved businesses \$209.8 million in fees to register or renew business names since it was established (May 2012 to June 2017). The cost to register a business name in 2017–18 is \$35 for a one-year registration or \$82 for a three-year registration.

The ASIC registry supports small business through the provision of lodgement, registration and information services. Our information services provide customers with access to a comprehensive database of registry information about companies, businesses and individuals. Customers can search from the [ASIC website](#) or [MoneySmart website](#), using our NZAU Connect smartphone app, or by mail. Searches are also

available from the Government [data.gov.au website](https://data.gov.au) or through information brokers listed on the ASIC website.

Over 95% of searches of our registers are free and are for information about companies and business names.

ASIC Connect

Our online self-service gateway, ASIC Connect, provides all services related to registering and updating business names, and searching of ASIC registers, including business names, companies, self-managed superannuation fund auditors and other registers.

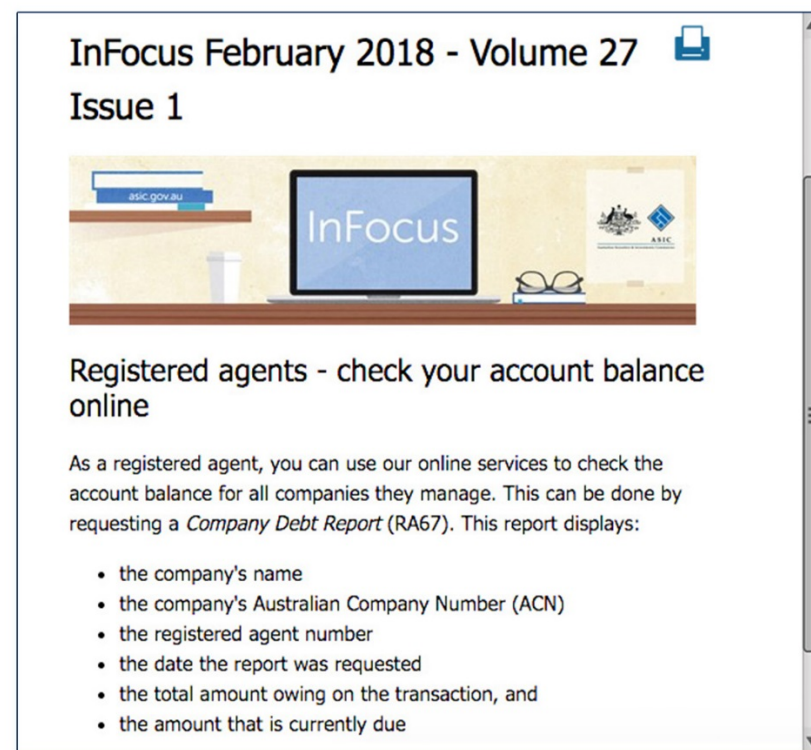
Innovation Hub

ASIC established an Innovation Hub to help fintech start-ups navigate our regulatory system. These start-ups are mostly small businesses. An initiative driven by the Innovation Hub is the creation of a regulatory sandbox environment in which entrepreneurs can develop and test their ideas.

InFocus newsletter

InFocus is our monthly newsletter for the small business community. It provides ASIC-related news, and important information and reminders about company and business name matters.

[Recent editions of *InFocus*](#) have included a case study about starting, running and closing companies, which aims to help business name and company holders understand their obligations.



Screenshot of *InFocus* online newsletter.

Small business hub

The dedicated [small business hub](#) on our website draws together useful information for people starting, operating or closing a small business. It includes ASIC publications relevant to small business, such as *Running a small business in Australia: What you need to know*, which was updated in 2017, as well as guides, webinars and links to other government agency websites.



***Running a small business in Australia: What you need to know* has been translated into Simplified Chinese.**

Social media and online help

ASIC uses Facebook, Twitter and YouTube social media channels to engage with customers online.

Popular videos on our YouTube channel include: 'True or false? You can only renew your business name for one year at a time'; 'I'm a company officeholder, what are my registration obligations?' and 'Your company's annual statement'.

We have also developed a web chat capability, through which we answered more than 20,000 inquiries between July and December 2017.

'Continue using the web chat option, it's very effective and a useful tool to communicate queries.'

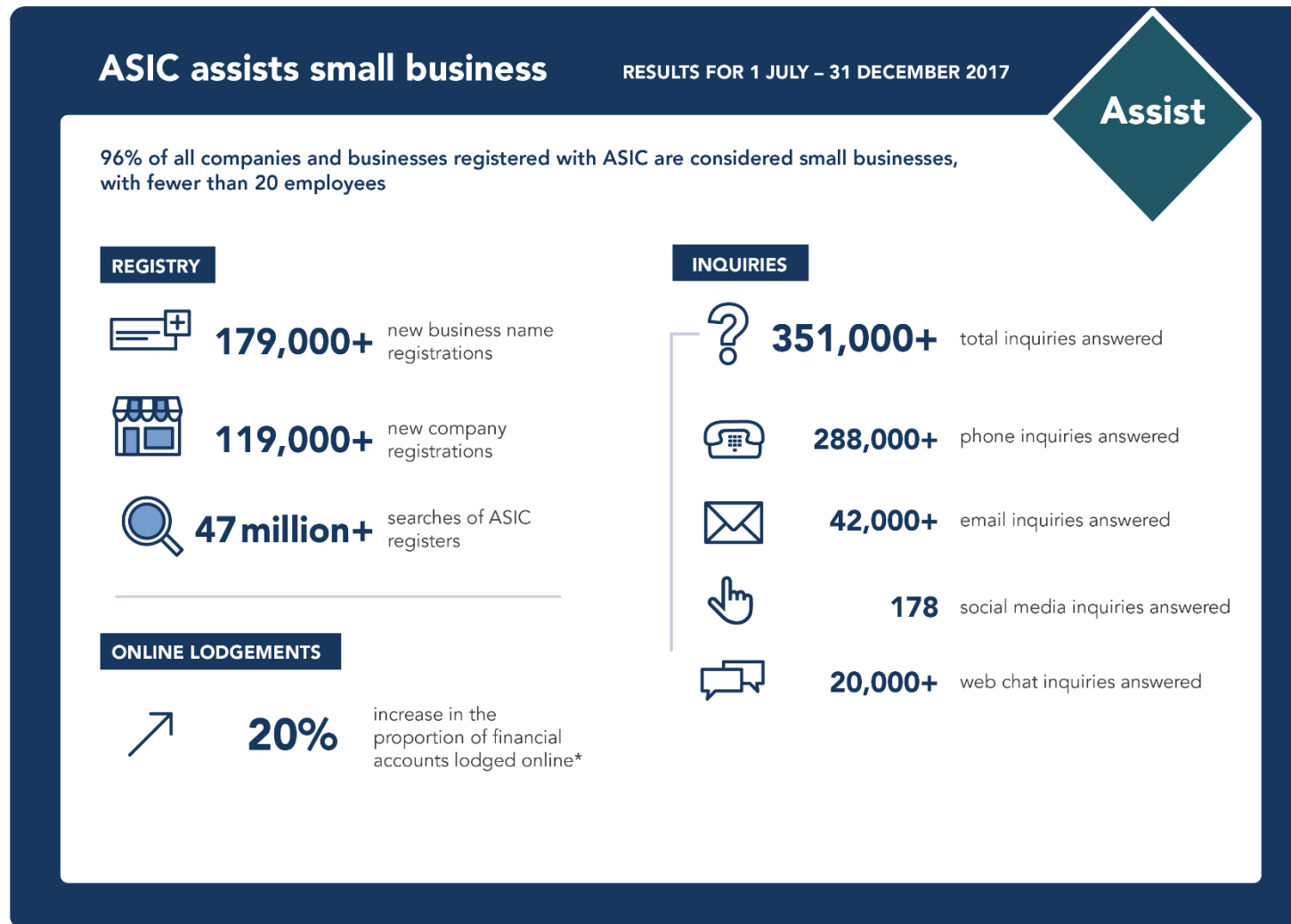
Stakeholder feedback

MoneySmart website

The [ASIC MoneySmart website](#) offers free, independent guidance and resources to help Australians make the most of their money. It had over 7 million visits in 2016–17. The MoneySmart website provides the following resources for small business:

- First Business online module and app
- Be MoneySmart online training resource
- workplace resources
- Track My Spend app.

Progress in assisting small business



* The increase in online lodgements is compared to the same period in 2016.

Note: See 'Progress in assisting small business' in the appendix for the information in this infographic (accessible version).

Engaging with small business

We engage with small business by:

- communicating with small business stakeholders through ASIC's registry function
- promoting and supporting greater financial capabilities for small business owners, including Indigenous small business owners
- engaging with industry and government, including participation in the Phoenix Taskforce.

What good looks like

We engage with small business and government bodies to understand and respond to the challenges and opportunities faced by small business.

One of the goals of engagement is to nationally increase awareness of 'what good looks like' for small business, and ASIC's role in supporting small business.

Our view of what good looks like for the small business sector is:

- small businesses ensure they register companies and business names with ASIC
- small business owners have the financial capability they need to run their business
- small businesses with a company structure adopt sound corporate governance practices.

We regularly attend forums, exhibitions and other small business related events to educate and engage with small business operators. ASIC also participates in a number of inter-agency committees to collaboratively examine the issues faced by small business. In 2017, ASIC presented at the Council of Small Business Australia (COSBOA) National Small Business Summit and the Law Council of Australia Business Law SME conference.



ASIC joins the Fair Work Ombudsman, Commissioner of Taxation and Deputy Chairman of the ACCC for a panel discussion at the COSBOA National Small Business Summit 2017.

Supporting Indigenous and migrant businesses

We are working with the Department of Prime Minister and Cabinet and Office of the Registrar of Indigenous Corporations to support initiatives to drive growth in the number, size and diversity of Indigenous-owned businesses. In March 2018, we hosted a national speakers' event celebrating Indigenous entrepreneurship and featuring business owners talking about their successes and challenges, and the role Indigenous identity plays in their business.

Increasing the engagement and accessibility of ASIC's information, tools and resources to culturally and linguistically diverse populations is also a priority. The *Running a small business in Australia: What you need to know* booklet was translated into Simplified Chinese and published on our website in June 2017. We are also exploring translating the booklet into other languages.

We attended and presented our resources at the Federation of Ethnic Community Councils of Australia conference in Darwin and the South Australia Migrant Small Business Expo in Adelaide.

First Business resource

The First Business resource was launched in 2017 to support young Australians starting a small business. The resource was developed by ASIC and the ATO, and has two components:

- an online module designed to help young people decide whether starting a small business is right for them, including business planning and budgeting
- a mobile app that helps guide people through the requirements for running a small business, including a business health check and ideas for developing business networks.



Screenshots of the First Business app.

Small business roadshow

ASIC joined with CPA Australia in 2018 to plan and present a national small business roadshow to engage the accounting profession. ASIC recognises the important role that accountants play in supporting small business. We have partnered with the ATO, ACCC, Fair Work Ombudsman, Australian Small Business and Family Enterprise Ombudsman and the state Small Business Commissioners to provide information and guidance to assist accountants to best support small business.

A voice for business: ASIC's Business Advisory Committee and Regional Liaison Committees

A national Business Advisory Committee allows ASIC to consult directly with the business community, providing input and opinion on the impact of our registry and licensing services, with particular emphasis on small business.

This committee meets biannually, in May and November each year. In 2017, two new members – from the Australian Retailers' Association and the Franchise Council of Australia – joined the committee to enhance the small business focus.

In each state and territory, ASIC Regional Liaison Committees bring together representatives of the business community, the professions and government to provide feedback on, and receive information about, ASIC activities. Meetings are usually attended by a Commissioner, together with the Regional Commissioner and senior ASIC staff.



ASIC engages with partner agencies such as the ATO and Fair Work Ombudsman to support small business initiatives.

Progress in engaging with small business

ASIC engages with small business and government

Engage

ENGAGEMENT

Understanding small business

**85** meetings, events, small business presentations (1 July – 31 Dec 2017)**8,144** subscribers to *InFocus* newsletter**33,339** views of the Small Business Hub (1 July – 31 Dec 2017)

RESOURCES

Easy access to important information

**7,406** downloads of the First Business app*Running a small business in Australia* booklet published in Simplified Chinese and English

SOCIAL MEDIA

Keeping small business up-to-date through ASIC Connect

**17,828** Twitter followers**9,075** Facebook likes**812** YouTube subscribers

Note 1: All statistics in this infographic are as at 31 December 2017.

Note 2: See 'Progress in engaging with small business' in the appendix for the information in this infographic (accessible version).

Protecting small business

We help to protect small businesses by:

- conducting surveillance
- investigating and, where appropriate, taking administrative, civil, criminal or other action
- contributing to key Government initiatives that affect small business.

Detect, understand and respond approach

ASIC is increasing protection for small businesses in a number of ways, including by ensuring all businesses comply with their obligations so that everyone is on a level playing field.

We will use our 'detect, understand and respond' approach and our regulatory toolkit to identify and address misconduct. That is, we will:

- detect wrongdoing through surveillance, breach reports, and reports from the public and whistleblowers
- understand our environment through continual scanning to identify issues and manage risks
- respond to wrongdoing, and the risk of wrongdoing, through education, guidance, enforcement and policy advice.

We receive reports of misconduct from, and about, small businesses. We rely on these reports to alert us to potential misconduct or illegal business practices occurring in the market, and use this information to determine whether to take action. We also conduct proactive surveillance.

Where necessary we may take administrative, civil or criminal action against companies, directors and other officeholders who fail in their duties.

We are working to combat illegal phoenix activity as part of our protection of small business. The unfair competitive advantage that operators get by engaging in illegal phoenix activity has a significant impact across a variety of sectors.

ASIC is also involved in supporting and contributing to the development and implementation of key law reforms. We provide input into Government inquiries that affect small business, including in relation to mandating the ePayments Code, open banking, dispute resolution and legislative reforms to address illegal phoenix activity. As this work continues we will seek to identify possible test cases where misconduct may be harming the interests of small businesses.

Unfair contract terms

The Government extended unfair contract terms protections to small business loan contracts in November 2016.

In March 2017, ASIC and the Australian Small Business and Family Enterprise Ombudsman conducted a review of small business loan contracts offered by the big four banks. Following the review, we successfully obtained commitment from the banks to implement comprehensive changes to ensure that small business borrowers will be protected from unfair contract terms.

For more information on how the unfair contracts law applies to small business contracts for financial products and services, see [Information Sheet 211](#) *Unfair contract term protections for small businesses* (INFO 211). [Report 565](#) *Unfair contract terms and small business loans* (REP 565) also gives guidance for bank and non-bank lenders about compliance with the unfair contract terms laws as they relate to small business.

Illegal phoenix activity

Directors who engage in illegal phoenix activity intentionally and dishonestly deny unsecured creditors (e.g. employees and providers of goods and services) fair access to their entitlement to the company's assets. We are taking strong action against illegal phoenix activity through our surveillance and enforcement work.

In 2017 we contributed to the Government's Phoenix Taskforce and Serious Financial Crime Taskforce to share information that will assist in identifying and responding to illegal phoenix activity. In February 2018 we launched a dedicated webpage about [illegal phoenix activity](#) on the ASIC website, aimed at small businesses, registered liquidators and other stakeholders.

Proactive director disqualifications

We initiated a proactive campaign to identify and remove directors who may be automatically disqualified from managing a company for having a relevant, dishonesty-related criminal conviction. The campaign aims to educate directors and business name holders.

ASIC and the Queensland Police Service collaborated in a joint surveillance in 2017 to identify and remove criminal syndicate and outlaw motorcycle gang members from managing corporations or having a registered business name. The operation identified:

- six people who were current officeholders with relevant criminal convictions and therefore automatically disqualified from managing corporations
- two people who had registered business names but whose criminal convictions automatically disqualified them from holding a registered business name.

We removed the officeholders from our corporate registers and gave notice that we would cancel the registered business names.

Procurement initiatives to support small business

ASIC supports small business participation in the Australian Government procurement market. Our procurement practices support small businesses by:

- encouraging the use of the Commonwealth Contracting Suite for low-risk procurements under \$200,000, where applicable
- presenting information in an accessible format
- encouraging the use of payment cards.

Progress in protecting small business

ASIC helps to protect small business

RESULTS FOR 1 JULY – 31 DECEMBER 2017

Protect

ASIC conducts surveillance, investigates and takes action to help protect small business

CRIMINAL OUTCOMES



Total criminal outcomes **232** individuals/entities prosecuted for **476** criminal offences

Registry outcomes **9** entities prosecuted for **44** offences relating to 'fair and efficient registration and licensing'

Liquidator Assistance Program outcomes **217** individuals/entities prosecuted for **425** offences

Director of Public Prosecution outcomes **6** individuals/entities prosecuted for **7** offences

BANNINGS, DISQUALIFICATIONS AND LICENCE CONDITIONS



27 director disqualifications

12 Australian Credit Licence cancellations

1 Australian Credit Licence suspension

ILLEGAL PHOENIX ACTIVITY

ASIC takes a strategic and coordinated approach to detect, understand and respond to illegal phoenix activity



www.asic.gov.au/phoenix

Outcomes include: Actions against* **17** registered liquidators, **2** companies and at least **15** directors between August 2013 and January 2018 for behaviour that involved, assisted or facilitated illegal phoenix activity

*Court and Companies Auditors Disciplinary Board decisions and enforceable undertakings

Note: See 'Progress in protecting small business' in the appendix for the information in this infographic (accessible version).

Appendix: Accessible versions of figures

Progress in assisting small business

96% of all companies and businesses registered with ASIC are considered small businesses, with fewer than 20 employees.

Registry

- More than 179,000 new business name registrations.
- More than 119,000 new company registrations.
- More than 47 million searches of ASIC registers.

Online lodgements

- 20% increase in the proportion of financial accounts lodged online (compared to 1 July to 31 December 2016).

Inquiries

- More than 351,000 total inquiries answered.
- More than 288,000 phone inquiries answered.
- More than 42,000 email inquiries answered.
- 178 social media inquiries answered.
- More than 20,000 web chat inquiries answered.

Note 1: Results for 1 July to 31 December 2017.

Note 2: These paragraphs set out the information in the 'Progress in assisting small business' infographic.

Progress in engaging with small business

Engagement: Understanding small business

- 85 meetings, events, small business presentations (1 July to 31 December 2017).
- 8,144 subscribers to *InFocus* magazine.
- 33,339 views of the small business hub (1 July to 31 December 2017).

Resources: Easy access to important information

- 7,406 downloads of the First Business app.
- *Running a small business in Australia* booklet published in Simplified Chinese and English.

Social media: Keeping small business up-to-date through ASIC Connect

- 17,828 Twitter followers.
- 9,075 Facebook likes.
- 812 YouTube subscribers.

Note 1: All statistics as at 31 December 2017.

Note 2: These paragraphs set out the information in the 'Progress in engaging with small business' infographic.

Progress in protecting small business

ASIC conducts surveillance, investigates and takes action to help protect small business.

Criminal outcomes

- Total criminal outcomes: 232 individuals/entities prosecuted for 476 criminal offences.
- Registry outcomes, relating to 'fair and efficient registration and licensing': 9 entities prosecuted for 44 offences.
- Liquidator Assistance Program outcomes: 217 individuals/entities prosecuted for 425 offences.
- Director of Public Prosecution outcomes: 6 individuals/entities prosecuted for 7 offences.

Note: Results for 1 July to 31 December 2017.

Bannings, disqualifications and licence conditions

- 27 director disqualifications.
- 12 Australian credit licence cancellations.
- 1 Australian credit licence suspension.

Note: Results for 1 July to 31 December 2017.

Illegal phoenix activity

ASIC takes a strategic and coordinated approach to detect, understand and respond to illegal phoenix activity: www.asic.gov.au/phoenix.

Outcomes include actions against 17 registered liquidators, 2 companies, and at least 15 directors between August 2013 and

January 2018 for behaviour that involved, assisted or facilitated illegal phoenix activity.

Note 1: 'Actions' includes court and Companies Auditors Disciplinary Board decisions and enforceable undertakings.

Note 2: These paragraphs set out the information in the 'Progress in protecting small business' infographic.