



Australian Government



Australian  
**Small Business and  
Family Enterprise**  
Ombudsman

26 June 2019

Mr Ben Preston  
Department of Industry, Innovation and Science

By email: [ip.consultation@industry.gov.au](mailto:ip.consultation@industry.gov.au)

*Ben*  
Dear Mr Preston

### Commercialising Business Ideas – Discussion paper

The further actions identified in the Commercialising Business Ideas – Discussion paper do not in our view fully address small business challenges with the intellectual property (IP) rights regime.

An easy to access IP regime is critical for small business. Of the 877,744 businesses that employ others, 71.5% are micro businesses employing less than 5 people with 30% of those businesses undertaking innovative activity.<sup>1</sup> A further 22% are small businesses employing between 5-19 people with 50% undertaking innovative activity.<sup>2</sup> However, small businesses often become aware of the commercialisation value of their IP too late and, even then, the cost and time required to secure and defend IP rights are prohibitive.

Your consultation showed that small business lacks the ability to exploit and enforce its IP due to system complexity, insufficient IP expertise and limited access to advice. To some degree this stems from small business owners not only generating the ideas but also acting as the operations manager, human resource department, IT department and legal expert. Acknowledging that the administrative demands placed on small businesses are already great, we do not support requiring small businesses with grants to manage complex IP arrangements and risks failing to meet grant conditions.

Actions to improve the system that focus on education and training require owners to take time away from their business to learn to navigate an area of law that remains technical and complex. For change to be effective, it must be driven from within the IP legislation and processes before seeking ways to better educate and train business owners. Given that stance, we are highly supportive of the proposed introduction of an improved IP arbitration process that provides IP dispute resolution and enforcement at a low cost and timely way since that goes to the heart of one of the problems.

However, further systemic change is required and we would be very pleased to work with you on options to better support small business with their IP. For that purpose, please do not hesitate to contact Miss Alexandra Hordern on 02 6121 5404 or at [alexandra.hordern@asbfeo.gov.au](mailto:alexandra.hordern@asbfeo.gov.au).

Yours sincerely

**Kate Carnell AO**  
Australian Small Business and Family Enterprise Ombudsman

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<sup>1</sup> ABS Catalogue No. 8166.0.002 Table 5 Summary of IT Use and Innovation in Australian Business 2016-17

<sup>2</sup> *ibid.*