



Australian Government



Australian
**Small Business and
Family Enterprise**
Ombudsman

Quarterly report

Q2 [April-June] 2020

Australian Small Business
and Family Enterprise Ombudsman

Message from the Ombudsman



The past few months have brought challenges unlike anything we have ever seen in Australia.

A global pandemic on the heels of a horror bushfire season and prolonged drought – all contributing to the worst economic conditions experienced since the great depression.

Australia is now in recession and small businesses that were strong

and viable just a few months ago, are now fighting to stay viable. While restrictions have lifted in some states, small businesses in parts of Victoria are in a world of pain as they face at least another month of lockdown.

ABS data tells us 900,000 businesses are getting JobKeeper payments and about 690,000 businesses have received cash flow boost assistance from the government, while 38% of businesses still trading have renegotiated their rent arrangements, and many have delayed payments on bank loans.

Sadly, ABS data tells us about 200,000 small businesses stopped trading in response to the crisis by the time JobKeeper was announced. We know that figure could have been much worse if the Government hadn't introduced JobKeeper.

Two-thirds of businesses were still reporting reduced revenue in June. Of those businesses, about a third were reporting revenue losses of 50% or more.

There really has never been a tougher time to be in business and the road to recovery will realistically be years, not months.

That is why my office has produced a [COVID-19 Recovery Plan](#) detailing a number of changes to create a small-business-friendly landscape including:

- Legislating 30 day payment terms for small businesses
- Creating a federal small business claims tribunal with ASBFEO to provide triage services
- Abolishing Fringe Benefits Tax for small business
- Making the small business instant asset tax write-off of \$150k permanent
- Ensuring least cost routing for electronic payments is available to all small businesses
- Unfair contract terms automatically void in contracts up to \$10m
- Creating a small business procurement panel for any government contract under \$10m to ensure SMEs get a much bigger slice of government procurement
- Introducing a Small Business Award
- Implementing regtech solutions to help small businesses navigate our complex regulatory system
- Amending the Small Business Fair Dismissal Code

Our Recovery Plan aims to restart the Australian economy by getting people back to work and building economic confidence – after all, small business is the cornerstone of economic activity, employing more than half the workforce.

Ultimately, it's all about getting a framework in place that provides essential support for Australian small businesses to drive the economic recovery as we emerge from this crisis.

Meantime, a new MYOB survey of small business owners has found COVID-19 is now their biggest concern and a contributing factor to mental health challenges. I would urge you all to visit our [My Business Health web portal](#) for tailored resources and seek support if you need it.

Kate Carnell AO

Australian Small Business and Family Enterprise Ombudsman

Key activities

OUTREACH

- Major media appearances: The Drum, 7:30 Report, ABC Breakfast, SBS News, Newscorp Ask the Experts, Kochie's Business Builders, columns in The Australian
- Key media topics: COVID-19 Recovery Plan, payment times, supply chain finance, My Business Health, small business support measures.
- Events: The Ombudsman participated in 15 webinars held via online platforms, including the Australian Chamber of Commerce and Industry, European Australian Business Council and Canberra Business Chamber.

ADVOCACY

- Advocated to Government on COVID-19 support issues, including ongoing engagement about coverage and availability of support measures.
- Developed and delivered a COVID-19 Recovery Plan, providing a comprehensive reform agenda for government, designed to support the small business sector in the post-COVID recovery phase.
- Appeared at a Senate Committee hearing into the COVID-19 pandemic and the Government's response.
- Continued activities to support bushfire affected businesses including working with state governments and Small Business Commissioners on eligibility and accessibility issues.
- Provided feedback to the Natural Disaster Royal Commission.
- Released the final Supply Chain Financing Review paper.
- Provided feedback on the Payment Times Reporting Framework Rules and continued to engage with stakeholders to gather feedback on payment times issues.
- Continued to advocate for individual businesses facing difficulty with payment times, particularly during the COVID-19 lockdowns.

ASSISTANCE

- Received 2,437 contacts – 78% were requests for information, up from 71% last quarter.
- 173 contacts under the Franchising Code, one under the Horticulture Code, one under the Oil Code and three under the Dairy Code.
- Main issues – lease disputes (30%), payment disputes (26%) and contract issues (19%). Issues included concern over COVID-19 government support, retail lease negotiations, small businesses affected by restructuring in the financial planning industry, online digital platforms.
- Work continued to upgrade the CRM to allow for a more effective case management system.
- Work continued to refine processes for dispute resolution under the Dairy, Horticulture and Oil Codes of Conduct.

Outreach: communications and stakeholder engagement

- Representing Australia’s small and family businesses, the Ombudsman attended 41 meetings with government and engaged with 30 key external stakeholders.
- The Ombudsman participated in 64 media interviews, which resulted in 1,152 media mentions across TV, radio, print and online. Columns by Robert Gottlieb and Alan Kohler on Supply Chain Finance final report and COVID-19 Recovery Plan. Appeared across all NewsCorp metro mastheads for an Ask the Experts Q&A.
- Nine opinion pieces and four ‘Pivotal moments’ success stories were developed and published on the ASBFEO website, and 10 videos were recorded.
- Ambassador for the AMEX Shop Small Campaign, which was brought forward this year to support small businesses emerging from COVID-19 hibernation.
- A Small Business Champion for Kochie’s Business Builders’ initiative Small Business First.
- Appeared in the first ever LinkedIn live #TogetherInBusiness session published by LinkedIn News with over 169,000 followers.
- The Ombudsman won Communicator of the Year Award – Executive Leader category by the International Association of Business Communicators Asia Pacific Region.
- Implemented a My Business Health Campaign following the inclusion of a dedicated COVID-19 section. During this reporting period there were 15,588 visits to the portal.



Ombudsman Kate Carnell with her Communicator of the Year Award.

Traditional and Social Media



22 media releases



2,921 newsletter subscribers



4,092 followers
80 posts



Ombudsman
1,764 followers | 103 tweets
ASBFEO
1,841 followers | 106 tweets



163 followers
| 29 posts



1,152 mentions



67,737 visits to website



10 videos published
361 subscribers



Ombudsman
12,872 followers | 61 posts
ASBFEO
1,680 followers | 37 posts

Advocacy: a voice on policy and legislation

COVID-19 Recovery Plan

- A wide ranging [recovery plan](#) was developed during April and May 2020, to provide government with a comprehensive reform agenda to support the small business sector.
- Recommendations included things that should be simple to implement, and longer term areas of systemic reform that need to be addressed.
- The Plan was the result of significant consultation with the small business sector through industry bodies and direct feedback from small businesses.
- Key areas of reform included the taxation system; government procurement; the industrial relations system; ensuring a 'small business friendly' operating environment; access to justice; and access to a skilled workforce.
- Some of the recommendations include mandating 30 day payment terms, removing Fringe Benefits Tax for small businesses, streamlining the taxation system, establishing a small business procurement panel, systematising employment awards, and making changes to the insolvency system to make it work for small businesses.



Bushfire Recovery

- Work has continued with relevant state governments, the Federal Government, State Small Business Commissioners, and industry bodies, to ensure that support for small business in the wake of the 2019/2020 bushfires remains available and appropriate.
- The Ombudsman gave evidence to the Royal Commission into National Natural Disaster Arrangements, speaking about the need for consistency of information flow to the small business sector.
- We are continuing to support small businesses that have ongoing issues with accessing appropriate support following fire damage to their business.

Insolvency Report

- Following further feedback from industry, the report into insolvency practices is being finalised for release in July.
- Further engagement has been conducted with relevant stakeholders including the Australian Taxation Office, the Australian Securities and Investments Commission, industry bodies, and individual business owners.

Advocacy: a voice on policy and legislation

Payment Times

- We have continued to engage with government and the Department of Industry, Science, Energy and Resources on the Payment Times Reporting Framework legislation and rules.
- As noted in our Supply Chain Financing Report, we have seen a number of instances where large businesses are extending their payment times to small businesses, citing COVID-19 challenges as a reason.
- We have continued to call for legislated 30 day payment terms to small businesses in order to address these issues.
- Significant feedback has been provided to the Department on the Payment Times Reporting Framework Rules, and a submission has been provided to the Senate Education and Employment Legislation Committee, on the Payment Times Reporting Framework Bill.



Supply Chain Financing Report

- The final report was released on 20 April 2020, following feedback received on the interim Position Paper from February 2020.
- The report makes seven clear recommendations to ensure supply chain finance is a real choice for small businesses that want to be paid faster than 30 days.
- Recommendations include ensuring transparency around payment times, legislating 30 day payment times to small businesses, and ensuring that supply chain financing is only ever used as a real choice by small businesses, and not forced on them.
- The report also pointed to further reviews of the product by the ACCC and ASIC, to ensure it is being used appropriately within the competition framework and as a financial product.

Advocacy: a voice on policy and legislation

Major input into policy, inquiries and legislation

- Provided feedback to ASIC on the e-payments Code.
- Engaged with the ACCC on a number of interim authorisations, and around the agricultural machinery after-sales market.
- Provided evidence to the Royal Commission into National Natural Disaster Arrangements.
- Highlighted the importance of the small business sector to producing Australian screen content.
- Provided feedback to the National Injury Prevention Strategy.



Submissions

Australian Competition and Consumer Commission	4
Australian Securities and Investments Commission	1
Department of Industry, Science, Energy and Resources	2
Department of Infrastructure, Transport, Regional Development and Communications	1

Royal Commission into National Natural Disaster Arrangements	1
Standing Committee on Tax and Revenue	1
The George Institute for Global Health	1
TOTAL	11

Assistance: supporting SMEs

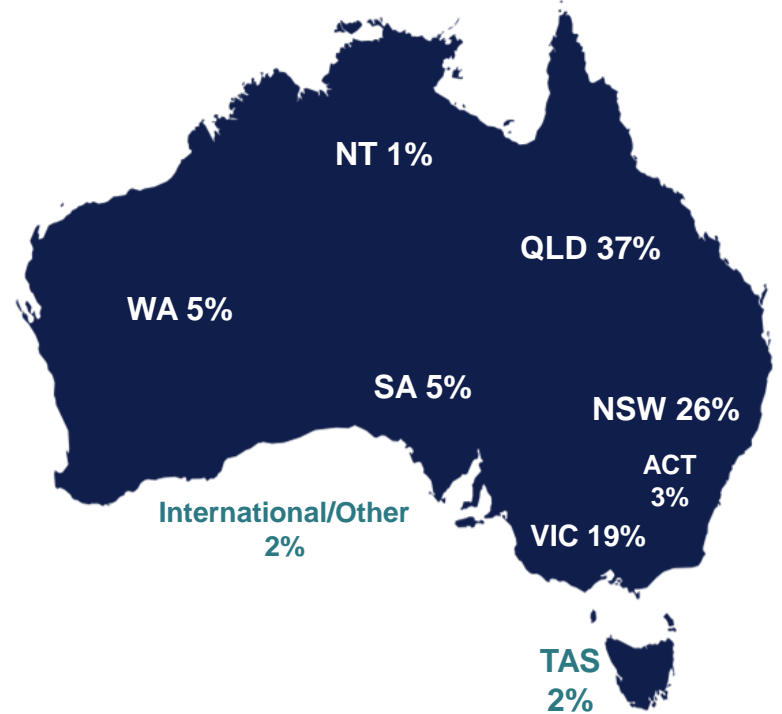
2,437 contacts received via phone, email, web inquiry.
The majority of the direct contacts were business to business disputes.

89% of disputes were business to business

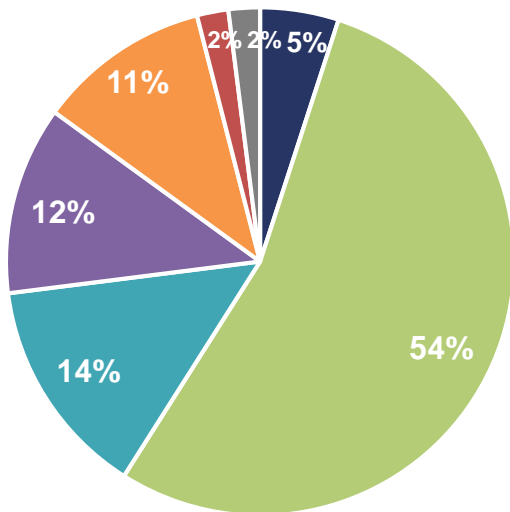
4% of disputes were business to government

90% of contacts came from small and family business owners

Contacts by state/territory



Resolution Pathways



- In progress
- Assisted via info provided
- Referred to State Small Business Commissioner
- Referred to appropriate agency
- Triaged by ASBFEO call centre & referred to case management
- Assisted via direct action (resolved by ASBFEO)
- Mediation

CONTACTS FOR ASSISTANCE



Assistance: supporting SMEs

Industry Codes | Franchising–Horticulture–Oil–Dairy

- In our role assisting with disputes that fall under the Franchising, Horticulture, Oil and Dairy Codes of Conduct, our case managers have:
 - answered 175 enquiries under the Franchising Code, one enquiry under the Horticulture Code, one enquiry under the Oil Code and three enquiries under the Dairy Code.
 - acted on 86 cases related to the Franchising Code, of which 79 were franchisee initiated and 7 were franchisor initiated.

- We use qualitative and quantitative mechanisms to assess the mediation process. To date, key findings include:



59%
resolved at
mediation



96%
of parties acted
in good faith



\$2,767
average cost
of mediation

Small Business Tax Concierge Service

- Since the Small Business Tax Concierge Service commenced on 1 March 2019, we have assisted 71 small businesses with their disputes with the ATO by helping the small business owner understand the new AAT process and provide information on costs and timelines.
- The Small Business Tax Concierge Service includes one hour with an experienced small business tax lawyer at a cost of \$100 to the small business owner. Once an appeal is lodged with the AAT, the small business owner is offered another hour with the lawyer free of charge.



Next steps

OUTREACH

- Publicise the release of the Insolvency Practices Inquiry and second phase Access to Justice Report.
- Produce a video to help small businesses understand the mediation process.
- Announce Terms of Reference for inquiry into insurance for SMEs.
- Provide regional and remote media with electronic video and audio grabs.
- Continue to promote the COVID-19 section of the My Business Health web portal via social media advertising.
- Continue to produce videos and develop materials to support small businesses impacted by COVID-19.

ADVOCACY

- Finalise and release the report into Insolvency Practices.
- Finalise and release the second phase Access to Justice report.
- Finalise the report into what a good tax system looks like.
- Commence a review of the Personal Property Security Register and how it can be made workable for small businesses.
- Commence an inquiry into SME access to appropriate insurance products.

ASSISTANCE

- Further improve the ADR feedback system relating to the mediation and other processes to help inform our advocacy and other work, and improve the effectiveness of ADR.
- Work closely with the Advocacy team to identify emerging trends for further research.
- Further refine the ADR process under the Dairy, Horticulture and Oil Codes of Conduct, including processes that enable small businesses to access both mediation and arbitration under the relevant Codes.

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