



Australian Government



Australian
**Small Business and
Family Enterprise**
Ombudsman

Quarterly Report

Q3 [July-September] 2020

Australian Small Business
and Family Enterprise Ombudsman

Message from the Ombudsman



The Australian small business community has been hit hard by the COVID crisis, with many struggling to survive the past few months.

It was amid predictions of a 'tsunami' of insolvencies to come that my office handed down our Insolvency Practices Inquiry final report in July.

Our report found that in many cases, small businesses were not getting the

chance to turn their businesses around. Instead, they were finding themselves on a one-way express train to winding up with zero control over the process.

In September, the Federal Government announced welcome plans to overhaul insolvency rules in line with the recommendations detailed in our report. It's clear the Federal Government heard our concerns that insolvency practices were not working for small and family businesses.

The reforms flagged by the Federal Government include allowing small businesses to restructure their debts with the support of a small business restructuring professional, while remaining in control of their businesses. For those businesses that sadly do need to wind up, the liquidation process will be simplified.

We know the COVID crisis, which followed devastating natural disasters, has driven many small businesses to the brink.

Deloitte Access Economics modelling estimates 240,000 small businesses are at risk of failure. It highlights the urgent need for small businesses to sit down with their trusted financial adviser for a viability assessment.

That's why my office – in coordination with the national peak accounting and bookkeeping bodies – continues to call for the establishment of a small business viability program. This would give small businesses access to up to \$5,000 so they can get a viability assessment and cash flow

support from their trusted financial advisor. Then they can make an informed decision about the future of their business.

In addition to a viability assessment from an accredited professional, small businesses also need insurance to operate. In August, we launched our Insurance Inquiry, which attracted a huge public response. More than 800 surveys were completed by small businesses and over 20 submissions were received by industry stakeholders.

The feedback we have had from small businesses has been insightful and concerning, with many reporting they have been denied necessary insurance. It's particularly impacting small businesses seeking public liability insurance, which is essential to their operations. Trade credit insurance has also become difficult to source.

We've heard from a number of small businesses that have been unable to get insurance for floods or bushfires. These businesses also report that cost has emerged as a major issue, with premiums as much as tripling in the past few years.

My office will be investigating these issues over the coming months and examining if small business insurance products are fit for purpose. A final report is scheduled for release by December.

In the meantime, mental health is proving to be the next big challenge to come from the COVID crisis and small business owners are at high risk.

It's vital to seek help if you need it. Our My Business Health web portal provides free practical resources to help with running your business and also links to leading mental health organisations such as Beyond Blue. If you work in a small business that advises other small businesses, Beyond Blue has just launched a free online training course to help support the mental health of your small business clients.

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, Seven's 'Surviving the Crash' and numerous radio interviews.
- Key media topics: COVID-19 Recovery Plan, insolvency, childcare, insurance, mental health, payment times, small business support measures.
- Events: The Ombudsman participated in 17 webinars/podcasts held via online platforms, including SmartCompany, My Business and Small Biz Matters, and two face-to-face events.

ADVOCACY

- Continued to advocate to Government on COVID-19 support issues, including ongoing engagement about coverage and availability of support measures.
- Released the report of the Insolvency Practices Inquiry, delivering a suite of recommendations to simplify the system for small businesses.
- Provided evidence to the Senate Committee hearing on the Payment Times Reporting Bill.
- Continued activities to support bushfire affected businesses including working with state governments and Small Business Commissioners on eligibility and accessibility issues.
- Commenced an inquiry into the insurance industry and impacts of availability and affordability on small businesses.
- Commenced a review of the Personal Property Securities Register.
- Continued consultation around small business access to justice.
- As co-Chair of the Centre for Defence Industry Capability (CDIC), supported a major review of activities.

ASSISTANCE

- Received 2,035 contacts – 79% were requests for assistance with disputes.
- 151 contacts relating to the Small Business Concierge Service providing assistance to small businesses receiving an ATO negative decision letter.
- A large proportion of small businesses contacting our Office have additional mental health issues due to impact of COVID-19
- Main issues – ATO negative decision letter (particularly relating to CashFlow Boost and JobKeeper), Payment disputes (25%), general disputes (19%) and contract disputes (18%). COVID-19 issues were prevalent, including concern over COVID-19 government support, and payment or contract negotiations for affected parties.

Outreach: communications and stakeholder engagement

- Representing Australia's small and family businesses, the Ombudsman attended 25 meetings with government and engaged with 44 key external stakeholders.
- The Ombudsman participated in 115 media interviews, which resulted in 2,782 media mentions across TV, radio, print and online.
- Six opinion pieces and four 'Back in business' success stories were developed and published on the ASBFEO website, and three videos were recorded.
- Delivered a National Press Club address on how the Government and community can support small businesses in their recovery. This resulted in several articles in mainstream print media including The Australian.
- Appeared in Seven's 'Surviving the Crash', ABC's The Drum, RN Breakfast, RN Drive, The Today Show, 2GB with Deb Knight, 3AW, Triple J's Hack, Sky News, ABC Weekend Breakfast, SBS News, Channel Nine News, ABC24 News and LinkedIn Live with Natalie MacDonald.
- Continued the My Business Health campaign. During this reporting period there were 17,669 visits to the portal.



Ombudsman Kate Carnell
celebrating National Family
Business Day

Traditional and Social Media



30 media
releases



3,005
newsletter
subscribers



4,601 followers
109 posts



Ombudsman
1,764 followers | 97 tweets
ASBFEO
1,841 followers | 106 tweets



209 followers
| 22 posts



2,782
mentions



53,325 visits
to website



12 videos
published
392 subscribers



Ombudsman
14,621 followers | 54 posts
ASBFEO
2,105 followers | 44 posts

Advocacy: a voice on policy and legislation

Insolvency Practices Inquiry

- The final report of the Ombudsman's inquiry into [Insolvency Practices](#) was released on 21 July 2020.
- The report included a suite of ten recommendations aimed at simplifying the insolvency system and effectively supporting small businesses that are struggling. Recommendations include ensuring access to timely support, responding effectively to systemic shocks, providing a cost-effective insolvency process, modernising the approach to information provided as part of an insolvency process, and ensuring proactive and targeted handling of complaints against registered liquidators.
- The recommendations and report were consulted on extensively with the small business sector, and other interested parties including the banking and insolvency sectors.
- Key recommendations from the review include the provision of a Business Viability Review, development of a Director's Insolvency Agreement, and simplified liquidation for small businesses.

Insurance Inquiry

- The Ombudsman's inquiry into the practices of the insurance industry that impact small businesses was launched on 28 July 2020 following a number of reports of small businesses being unable to access insurance.
- The inquiry will focus on availability and coverage of policies provided to small business, policy affordability, the role of brokers in securing the right coverage, timeliness of insurance payouts, effectiveness of dispute resolution frameworks, and contracting issues including Unfair Contract Terms.
- The initial small business survey received an overwhelming response with more than 800 small businesses completing the survey.
- The Ombudsman also received more than 20 submissions.
- Consultations are now being conducted with small businesses, their representative bodies, insurance companies and regulators.
- The inquiry is expected to report in December 2020.



Advocacy: a voice on policy and legislation

PPSR Review

- A review of the Personal Property Securities Register (PPSR) commenced in August 2020.
- The review will examine the operations of the PPSR and how small business interact with it, to determine whether it is user-friendly for small businesses.
- Extensive stakeholder consultation is now underway with small businesses, peak bodies, legal representatives and financial services providers.
- The review is expected to report in November 2020.



COVID-19 Recovery

- The Ombudsman continued to advocate for reforms necessary to ensure a strong small business recovery from COVID-19.
- The Ombudsman's [COVID-19 Recovery Plan](#) has been well received with support expressed by peak bodies and think tanks for a number of recommendations.
- The Ombudsman is in regular correspondence with the Treasurer in relation to issues affecting small business recovery.

Payment Times

- The Ombudsman continued to provide feedback on the Payment Times Reporting Bill in the lead up to its introduction to Parliament.
- The Ombudsman has received further complaints from small businesses about payment times being extended by their large suppliers, and will continue to engage with both the small and large business sectors to attempt to address these issues as they arise.

COVID-19 Recovery Plan

Recommendations

Taxation

- Permanent small business instant asset tax write-off of \$150k.
- Optional single payment to the ATO to cover PAYG(W), superannuation guarantee and GST.
- Period of review for small business tax returns to be one year following lodgement.
- Abolish Fringe Benefits Tax for small business.



Access to Justice

- Create a Federal small business claims tribunal with ASBFEO to provide triage services.
- ASBFEO to refer to independent, binding arbitration.
- Unfair Contract Terms automatically void in contracts up to \$10 million.



Small business friendly environment

- Introduce a government provided revenue-contingent small business loan.
- Ensure least cost routing for electronic payments.
- Legislate 30 day payment terms for small businesses.
- Reduce small business disruption by Government infrastructure projects.
- Improve the farm debt mediation system and ensure that it is nationally consistent.
- Improve access to skills for small business.
- Fund "Buy Small Business Australia" campaign.
- Retain National Cabinet to deal with cross border regulatory and other barriers.



Turnaround and Insolvency

- "Fit for business" advice service for small business, with a grant in FY20/21 and 21/22.
- Increase thresholds for statutory demands to \$5,000 with a response required within 45 days.
- Administrators working with small business to help identify ways to make the business viable.
- ASIC to ensure costs of an insolvency are proportionate.
- ASBFEO to provide financial difficulty concierge services.



Government Procurement



- Create a small business procurement panel for any Government contract under \$10m.
- Government to actively monitor contracts managed through a prime contract.
- Government procurement processes to be fully digitised by 2025.
- By FY 2021/22, all Commonwealth entities will procure by value a minimum 33% from small business.
- Government to utilise the OECD 'smart specialisation' policy.

Industrial relations

- Introduce a new Small Business Award.
- An Awards reg-tech solution providing fully compliant advice.
- Permit employees to easily move between awards and classifications.
- Fair Work Ombudsman and Safe Work Australia to provide guidance that small businesses can rely on.



Access to skilled workforce

- Expedite the *Delivering Skills for Today and Tomorrow* package announced in 2019.
- Workers who have returned overseas should have visas processed in two weeks.
- Government processing of new visa applications within one month.



In order to adequately support the small business sector and implement the range of measures outlined in this paper, we propose the introduction of a Small and Family Business Act. This Act would govern small business engagement with a range of legislative and regulatory aspects of doing business in Australia.

Advocacy: a voice on policy and legislation

Major input into policy, inquiries and legislation

- Provided feedback to the Senate on the Payment Times Reporting Bill.
- Engaged on issues around the future of Australia Post's delivery service.
- Input into the ACCC's review of Consumer Data Rights.
- Made a pre-budget submission to the Treasury.
- Provided input to the ATO's review of R&D Tax Incentives and JobKeeper, and their review of occupation and industry specific advice.



Submissions

Australian Accounting Standards Board	1
Australian Competition and Consumer Commission	2
Australian Taxation Office	2
Department of Agriculture, Water and the Environment	1
Department of Industry, Science, Energy and Resources	1
Department of Infrastructure, Transport, Regional Development and Communications	2

NSW Government	1
Queensland Government	2
Senate Education and Employment Committee	1
Senate Standing Committee on Environment and Communications	1
Tax Practitioners Board	1
The Treasury	1
TOTAL	16

Assistance: supporting SMEs

2,035 contacts received via phone, email, web inquiry.

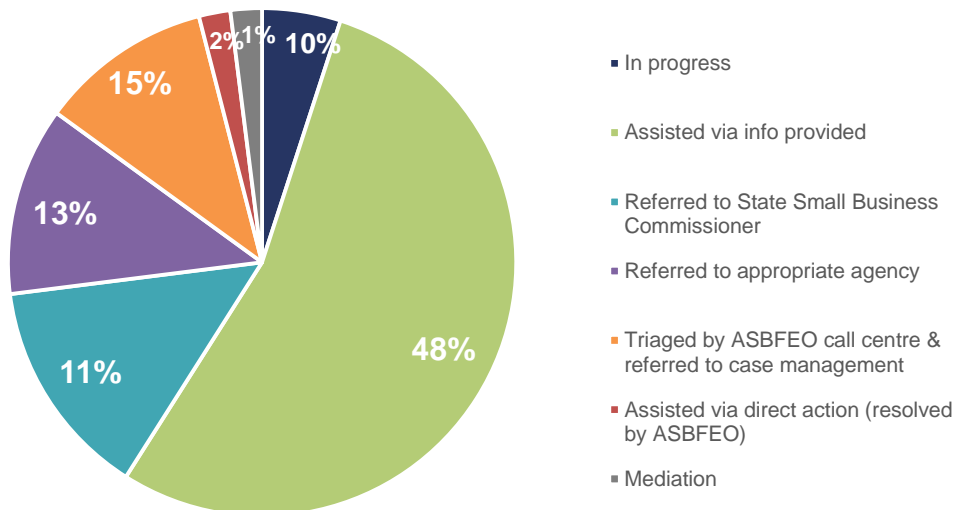
The majority of the direct contacts were business to business disputes.

70%
of disputes were business to business

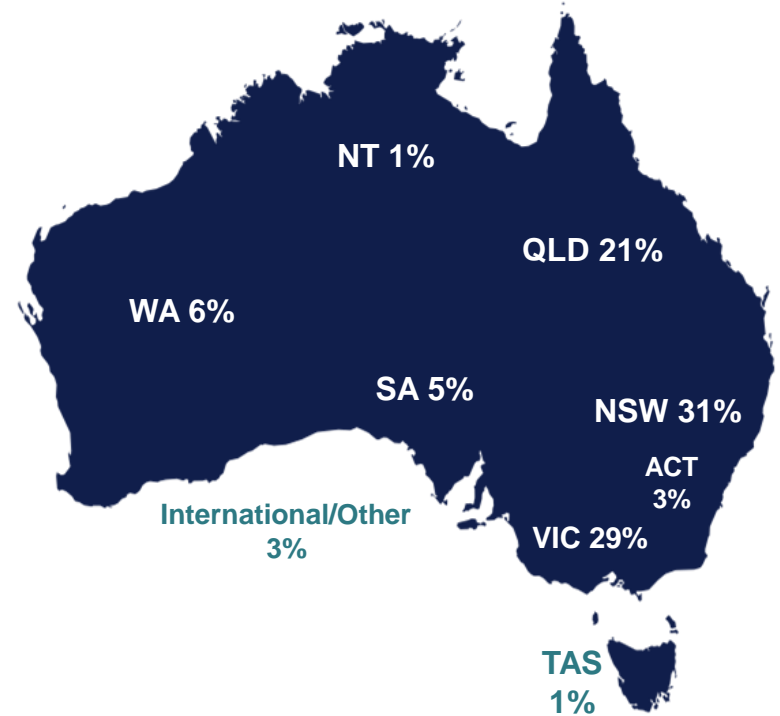
18%
of disputes were business to government

85%
of contacts came from small and family business owners

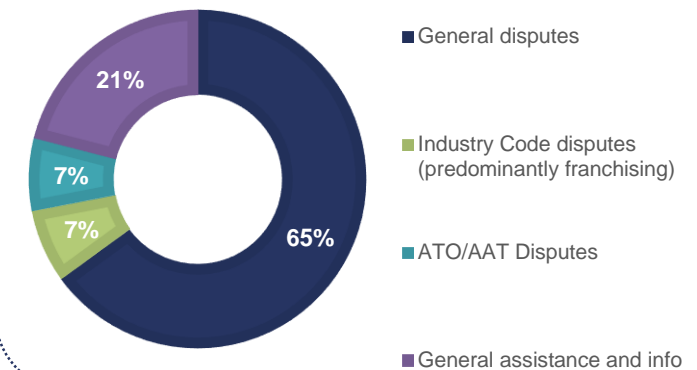
Resolution Pathways



Contacts by state/territory



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 135 enquiries under the Franchising Code, 1 enquiry under Dairy Code and no enquiries under the Horticulture and Oil Codes of Conduct.
 - acted on 48 cases related to the Franchising Code, of which 39 were franchisee initiated and 9 were franchisor initiated.

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



57%
resolved at
mediation



96%
of parties acted
in good faith



\$2,816
average cost
of mediation

Small Business Tax Concierge Service

- Our Small Business Tax Concierge Service has had an influx of small businesses deemed ineligible for either Cash Flow Boost or JobKeeper payments
- Since the Small Business Tax Concierge service started in March 2019 we have received 258 enquiries relating to this service with 151 being in the last quarter
- Reasons for ineligibility range from new business, change of business structure, business sale and lack of previous tax compliance



Next steps

OUTREACH

- Publicise the release of the second phase Access to Justice report, the Insurance Inquiry final report, Small Business Counts report and the final Business Funding Guide.
- Provide marketing support to the PPSR Review.
- Continue to promote the COVID-19 section of the My Business Health web portal via social media advertising.
- Promote Beyond Blue's *NewAccess for Small Business* service.
- Continue to produce videos and develop materials to support small businesses impacted by COVID-19.
- Focus on social media and developing ASBFEO's persona and brand identity.

ADVOCACY

- Finalise and release the second phase Access to Justice report.
- Finalise the report into what a good tax system looks like for small business.
- Finalise stakeholder consultation on the Insurance Inquiry.
- Finalise stakeholder consultation on the PPSR Review.
- Continue to work with Government to deliver small business support and advice through economic recovery.

ASSISTANCE

- Further improve the ADR system relating to the mediation and other processes to help improve the effectiveness of ADR. This will include streamlining our provider lists and ensuring providers are digitally competent.
- Work closely with the Advocacy team to identify emerging trends for further research.
- Further refine the ADR process under the Dairy, Franchising, Horticulture and Oil Codes of Conduct, including processes that enable small businesses to access both mediation and arbitration is relevant under the relevant Codes.

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