

Quarterly Report

Q4 [October-December] 2020

Australian Small Business
and Family Enterprise Ombudsman



Message from the Ombudsman



The final quarter of 2020 saw the culmination of months of work, with the major inquiries conducted by my office.

In December, we released our Insurance Inquiry final report, which found widespread market failure in regards to the availability and affordability of essential small business insurance products.

The final report makes a suite of recommendations designed to rebalance risks

taken on by insurers and make small business insurance products more accessible.

A major recommendation included in the report is to expand the Australian Reinsurance Pool Corporation to provide reinsurance for natural disasters on commercial property insurance.

The report also recommends mandatory Codes of Practice for insurers and brokers. This would include the Australian Financial Complaints Authority (AFCA) increasing its coverage to all insurance products.

A lack of availability of public liability and professional indemnity insurance is highlighted in the report, pin-pointing the unlimited nature of injury claims and potential for large damages as a key factor.

That's why we recommended Australia follow the lead of New Zealand, which has applied statutory caps on liability for personal injury. The risk environment for public liability litigation can only change through government intervention and the current framework of fault-based injury compensation creates uncontrollable risks for insurers and businesses.

The government should also implement the Productivity Commission's recommendation to roll out a no-fault National Injury Insurance Scheme (NIIS) to cover lifetime care for catastrophic injuries.

There were 800-plus small businesses that provided their feedback to this inquiry, with hundreds of SMEs telling my office they face closure if insurance remains unavailable to them.

We also heard reports of poor conduct by insurers, including very late notice of changed renewal terms and price hikes, effectively putting the small business in the position of being forced to accept the terms or be uninsured.

Ultimately insurance is a necessity for small businesses to operate and our Inquiry has found these products need to be fit-for-purpose and accessible, so businesses and consumers are protected when things go wrong.

Our Small Business Counts report, released in December, provided a statistical overview of small business performance in Australia, using the latest available data from the Australian Bureau of Statistics (ABS) and other trusted sources. The report highlighted ABS data revealing that 40% of businesses had adapted or pivoted their businesses in response to the COVID crisis. It also detailed how the pandemic was impacting small businesses, citing CreditorWatch data showing payment times had deteriorated in 2020.

In November, my office released our Access to Justice Inquiry Phase II final report, including a suite of recommendations to ensure small businesses have pathways to resolve their disputes quickly and effectively.

The report provided a plan to ensure small businesses have access to tailored dispute resolution processes that are less formal, more timely and cost effective.

The fourth quarter also saw the passage of laws regarding the national insolvency framework, which will help many small businesses, particularly those that have been heavily impacted by the COVID crisis.

The legislation, which is now in effect, makes it easier for small businesses to restructure or wind up - in line with the Insolvency Practices Inquiry final report released by my office in July.

Crucially, by moving to the 'debtor in possession' model, small businesses can restructure their debts while remaining in control of their business.

These insolvency reforms represent the most progress we have seen in decades in this space and it will benefit many small businesses in financial distress.

Finally, our My Business Health web portal was visited by thousands of small business owners in the last few months of the year, with traffic increasing amid lockdowns and border closures. We have worked consistently throughout the year to promote My Business Health to the small business community, working closely with leading mental health organisations such as Beyond Blue.

Small businesses have shown admirable courage and resilience in 2020 and I join them in hope of a much better year to come.

Kate Carnell AO
Australian Small Business and Family Enterprise Ombudsman

Key activities

OUTREACH

- Major media appearances and mentions: The Australian, AFR, The Drum, Channel 7 News, ABC Breakfast, SBS News, WIN News and numerous radio interviews.
- Key media topics: Insurance Inquiry, Access to Justice Inquiry, insolvency, travel agents, mental health, payment times, unfair contract terms, industry codes.
- Events: The Ombudsman participated in 26 webinars/podcasts held via online platforms, including SmartCompany, My Business and Small Biz Matters.

ADVOCACY

- Continued to advocate to Government on COVID-19 support issues, including ongoing engagement about coverage and availability of support measures.
- Worked with Government to support small business through COVID-19, including issues around coverage and availability of support measures.
- Released the report of the Insurance Inquiry, with a suite of recommendations to address insurance availability and affordability for small businesses.
- Provided input into the design of the Payment Times Reporting Framework.
- Released the Access to Justice Phase II report, outlining ways in which the justice system could be changed to better support small businesses.
- Consulted widely on reports being developed on the Personal Property Securities Register, and how a tax system should operate to best support small business.
- Commenced a review of government procurement and how it affects small business.

ASSISTANCE

- Received 1,727 contacts – 81% were requests for assistance with disputes.
- 196 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 Cash Flow Boost and JobKeeper), general disputes (29%), payment disputes (26%), and contract disputes (15%). 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 18 meetings with government and engaged with 63 key external stakeholders.
- The Ombudsman was guest speaker at the NFF Horticulture Council meeting in December, to raise awareness about ASBFEO's role in providing assistance to growers and traders in disputes that arise under the Horticulture Code. This coincided with a national media and marketing campaign regarding the office's role in providing assistance to those in dispute under the Horticulture, Dairy, Oil and Franchising Codes of Conducts. The social media campaign attracted over 50,000 views and resulted in more than 1,600 clicks for more information.
- The Ombudsman participated in 66 media interviews, which resulted in 836 media mentions across TV, radio, print and online.
- Four opinion pieces, four Indigenous success stories and two 'Summer series' success stories were developed and published on the ASBFEO website and by Kochie's Business Builders. Seven videos were recorded.
- Appeared in ABC's The Drum, RN Breakfast, RN Drive, ABC Breakfast, Money News with Brooke Corte, 3AW, Triple J's Hack, Sky News with Ticky Fullerton, ABC Weekend Breakfast, SBS News, Channel 7 News, ABC24 News and LinkedIn Live with Natalie MacDonald.
- Continued the My Business Health campaign. During this reporting period there were 8,758 visits to the portal.



Ombudsman Kate Carnell at the Western Sydney Women Awards

Traditional and Social Media



29 media releases



3,032 newsletter subscribers



5,158 followers
79 posts



Ombudsman
1,977 followers | 82 tweets

ASBFEO
1,962 followers | 80 tweets



225 followers
12 posts



836 mentions



70,462 visits to website



7 videos published
402 subscribers



Ombudsman
16,020 followers | 74 posts

ASBFEO
2,446 followers | 48 posts

Advocacy: a voice on policy and legislation

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Access to Justice

- The Ombudsman's Access to Justice Phase II report was released on 1 December 2020, and called for an overhaul of the dispute resolution framework for small businesses.
- The report showed that trying to resolve disputes through the court system is not a viable option for small businesses, due to the financial and time costs.
- The report provides a number of recommendations, grouped under five areas requiring attention: strengthening Unfair Contract Terms protections; promoting alternative dispute resolution; providing access to voluntary, binding arbitration; greater access to tribunal and court determinations for disputes; and supporting the wellbeing of small business owners through permanent funding of the Beyond Blue NewAccess for Small Business program.
- The recommendations are focused on ensuring small business owners are able to maintain key relationships with critical stakeholders through a dispute.
- The report follows the 2019 Phase I report which showed that when escalated through a formal process, half of small business owners considered the amount of time and effort required to resolve a dispute was unreasonable.

Advocacy: a voice on policy and legislation

Review of Government Procurement Launched

- A review of government procurement and how it affects small business was launched in December 2020.
- The Ombudsman's COVID-19 Recovery Plan provided recommendations designed to ensure that government procurement was used to best effect to support small business and family enterprise, while ensuring the best possible value for money for government.
- The review will examine ways in which government procurement processes impact small businesses, and propose ways in which they could be amended to ensure the best outcome for both Australian small businesses and the government.
- The review is expected to report in February 2021.



COVID-19 Recovery

- The Ombudsman continued to work with various government departments and small businesses to ensure that government support for COVID-affected businesses is delivered fairly.
- Extensive stakeholder feedback was gathered in relation to travel agents, and their needs to enable them to continue operating while they are processing a significant volume of refunds for consumers.
- The Ombudsman has been working with the relevant Minister's office, the peak body, and individual travel agents to shape the government's support package to deliver much needed support to small to medium travel agents.

What does a good tax system look like?

- The Ombudsman's report on what a good tax system looks like for small businesses is in the final stages of consultation and is scheduled to be released in early 2021.
- Key recommendations address improvements that can be made to the administration of the system, to allow smoother engagement with the system by small business owners.
- Small changes have also been suggested to the structure of the tax system are also recommended.

Advocacy: a voice on policy and legislation

Major input into policy, inquiries and legislation

- Provided feedback on regulatory relief for Australia Post.
- Engaged with a number of competition issues and applications for determinations with the ACCC.
- Provided input into multiple consultations by the Treasury, including on proposed amendments to the insolvency system to support small business, consumer credit reforms, and the JobMaker Hiring Credit rules.
- Provided expert advice on changes to the Franchising Code of Conduct.



Submissions

Australian Competition and Consumer Commission	3	Department of Prime Minister and Cabinet	1
Clean Energy Regulator	1	Digital Transformation Agency	
Department of Defence	1	National Transport Commission	1
Department of Health	3	Senate Education and Employment Committee	1
Department of Industry, Science, Energy and Resources	2	Senate Select Committee	1
Department of Infrastructure, Transport, Regional Development and Communications	1	Treasury	7

Assistance: supporting SMEs

1,727 contacts received via phone, email, web inquiry.

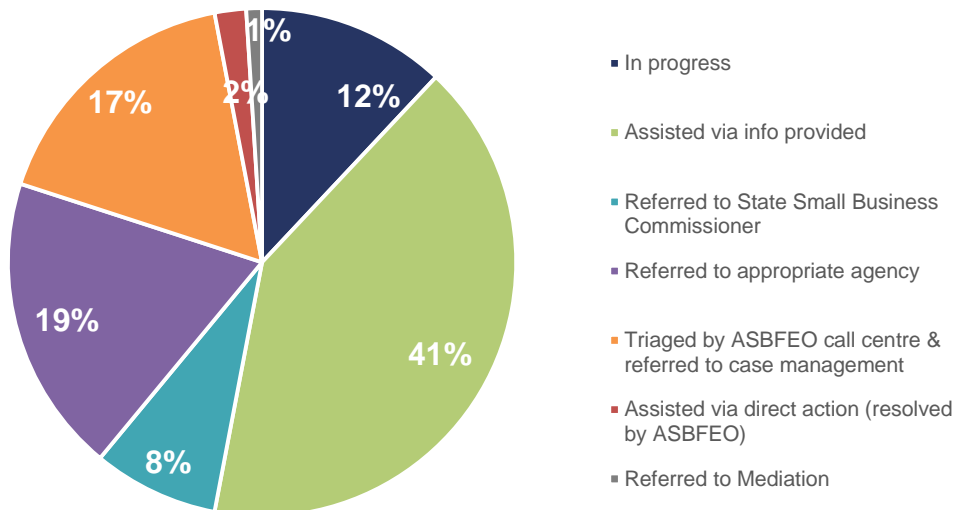
The majority of the direct contacts were business to business disputes.

64%
of disputes
were
business
to business

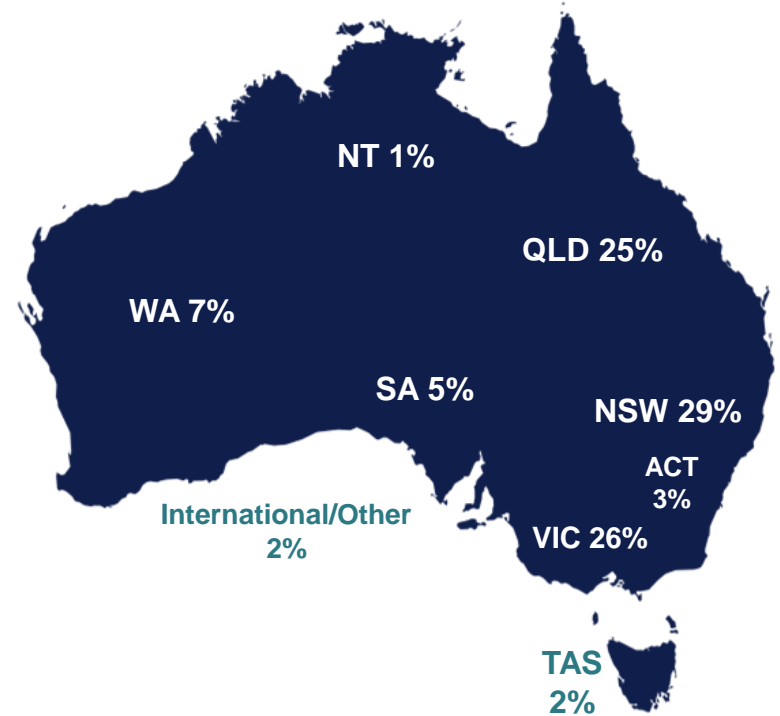
21%
of disputes
were business
to government

85%
of contacts came
from small and
family business
owners

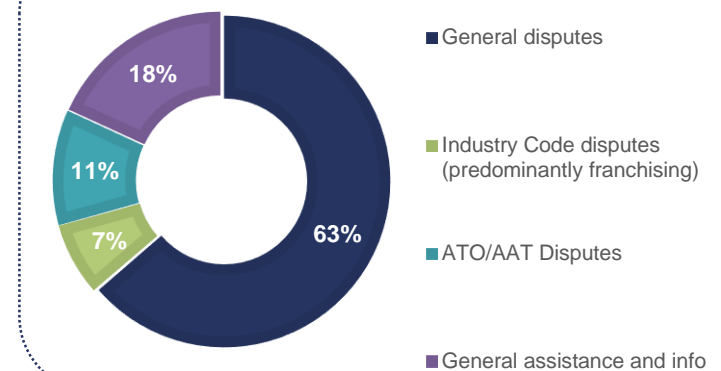
Resolution Pathway



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 111 enquiries under the Franchising Code, and no enquiries under the Dairy, Horticulture and Oil Codes of Conduct.
 - acted on 53 cases related to the Franchising Code, of which 43 were franchisee initiated and 10 were franchisor initiated.
- We use qualitative and quantitative mechanisms to assess the mediation process. To date, key findings include:



58%
resolved at
mediation



97%
of parties acted
in good faith



\$2,891
average cost
of mediation

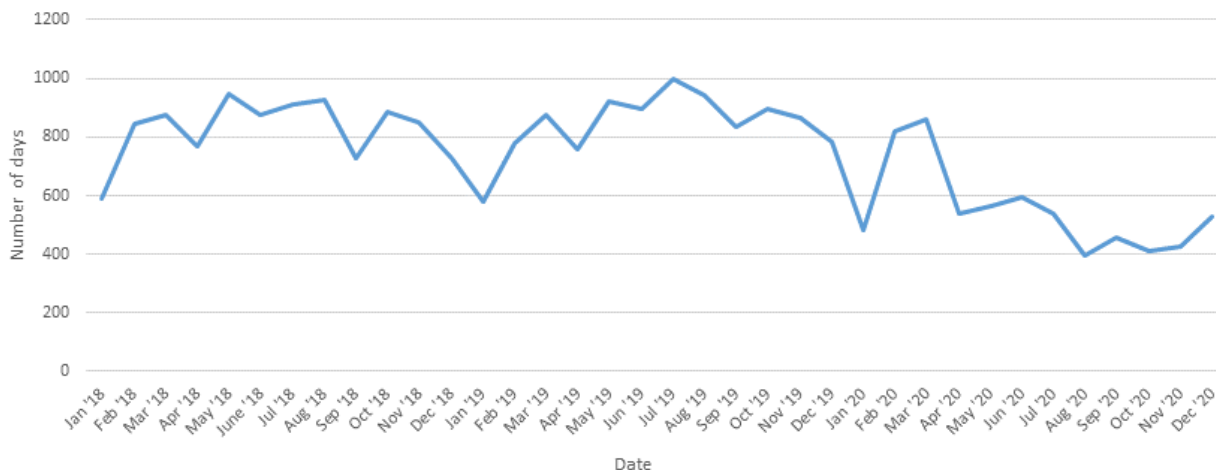
Small Business Tax Concierge Service

- 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 459 enquiries with 200 of these received in the last quarter.
- Reasons for ineligibility range from new business, change of business structure, business sale and lack of previous tax compliance.



Stats Snapshot

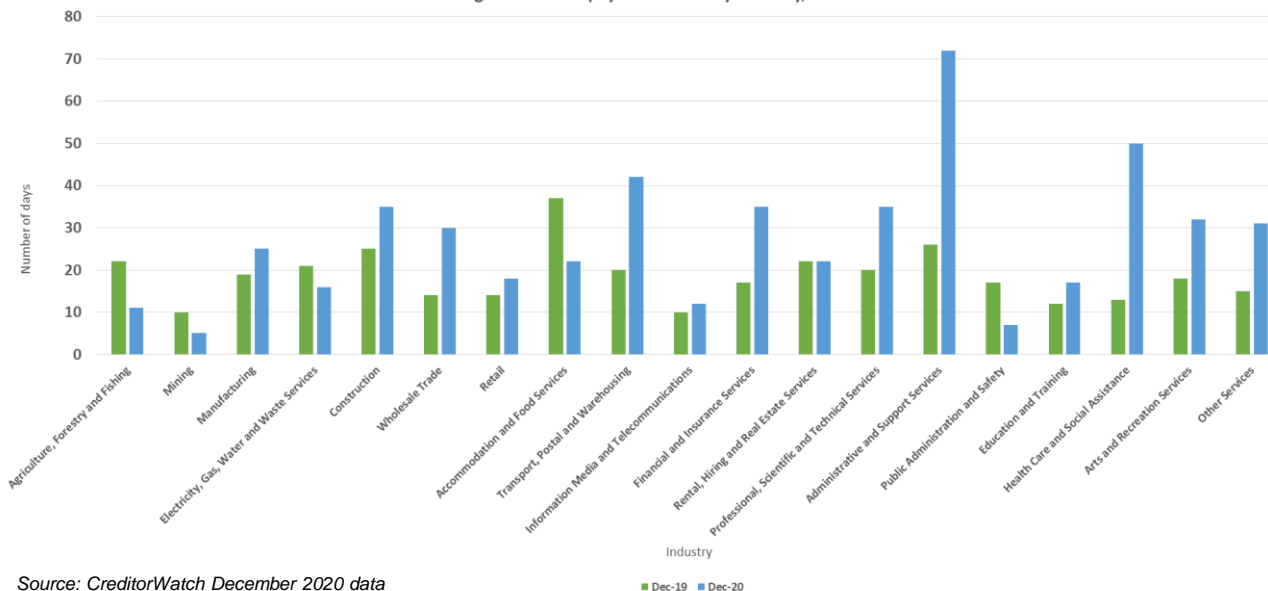
Businesses entering external voluntary administration in Australia



Source: CreditorWatch calculations of ASIC data December 2020

The latest ASIC data shows external administrator appointments were up by 23% in December 2020 and economists are predicting the number of businesses entering voluntary administration to rise this year.

Change in overdue payment times by industry, Dec 2019 - Dec 2020



Source: CreditorWatch December 2020 data

Payment times have increased on average by 8.6 days between December 2019 and December 2020. The industry with the biggest increase in payment times is the 'Administrative and Support Services' industry, with an increase of 46 days in payment times for the same period.

Next steps

OUTREACH

- Publicise the release of the *Introductory Guide to Business Succession Planning*. Done in cooperation with Family Business Australia.
- Provide marketing support to the PPSR Review.
- Refresh the My Business Health portal and promote 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.
- Continue to promote awareness about the Horticulture, Dairy, Oil and Franchising Codes of Conduct.

ADVOCACY

- Finalise and release the report into what a good tax system looks like for small business.
- Release the PPSR Review report.
- Finalise the review of government procurement.
- Continue to advocate for the recommendations made in the COVID-19 Recovery Plan, the Insurance Inquiry, and the Access to Justice Report.

ASSISTANCE

- Further improve the ADR system relating to the mediation and other processes including feedback to help improve the effectiveness of ADR.
- Work closely with the Advocacy team to identify emerging trends and systemic issues for small businesses 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 under the relevant Codes.

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