



Australian Government



Australian
**Small Business and
Family Enterprise**
Ombudsman

Quarterly report

Q4 [October-December] 2019

Australian Small Business
and Family Enterprise Ombudsman

Message from the Ombudsman



The final quarter of 2019 was filled with a number of significant developments and achievements.

In October we launched our [Insolvency Practices Inquiry](#), which has already revealed the impact insolvency has on small businesses as well as some important lessons for small businesses under financial strain.

We have been inundated with harrowing stories by small businesses and consulted widely with industry professionals. The message is clear. Small businesses experiencing financial difficulties are often leaving it too late to seek help. The sooner small and family businesses get help, the more likely it is they can achieve a turnaround or restructure.

Also in October, we announced a review of [Supply Chain Financing](#) to look at ways in which it can be used by small businesses to manage cash flow and fund growth, while also examining products being used by big business to offset payment times.

A big win for SMEs came in November, as the big four banks backed the Australian Business Growth Fund, with an initial contribution of \$540 million. We also welcomed newly introduced legislation for the fund. This Fund was a recommendation in our [Affordable Capital for SME Growth](#) report.

We also welcomed the federal government's red tape busting changes to the NDIS provider registration and audit process. Our concerns about the regulatory burden on some small business NDIS providers were taken on board and the government implemented our recommendations accordingly.

We delivered our [R&D Tax Incentive](#) review, recommending sweeping changes to the administration of the program. Ultimately the purpose of the R&DTI is to incentivise businesses to invest in research and development. It is critical small businesses are supported in their endeavours to drive innovation and growth.

There's been progress on unfair contract term protections for small business, with my office prepared to continue to champion improvements in this space. Small business has waited long enough for meaningful change, so we are encouraging the government to make this a priority.

Finally, our [My Business Health](#) portal was launched in December. *My Business Health* provides useful tips to help small business owners with some of the issues that go hand-in-hand with running a small or family business. It also provides excellent resources to help support small business owners experiencing psychological distress as a result of concerns about their business.

Mental health is a serious issue for Australia's small business community, with the Productivity Commission finding the cost of absenteeism and presenteeism to the sector is over \$17 billion per year.

Given the traumatic bushfire season we saw over the Christmas and New Year period, I'd urge all small business owners to take a moment to consider their wellbeing in 2020.

Kate Carnell AO
Australian Small Business and Family Enterprise Ombudsman

Key activities

OUTREACH

- Major media appearances: The Drum, ABC News, Channel 7 News, 7.30 Report, SBS TV News, the Australasian College of Health Service Management webcast.
- Key media topics: Insolvency practices, Banking Code of Practice, Director Identification Numbers, collective bargaining, phoenixing, SME lending, MYEFO.
- Events: the Ombudsman and senior staff participated in 27 events as keynote, panellist or special guest, including the National Small Business Cyber Summit, Global Thought Leadership Summit, National Franchise Convention, the APEC SME Productivity & Performance Forum and the launch of the *My Business Health* portal.

ADVOCACY

- Launched the *Insolvency Practices Inquiry* in October and released a discussion paper in December, seeking feedback on the development of a best practice framework for small businesses facing insolvency and for practitioners managing external administrations.
- Released the *Review of the Research and Development Tax Incentive*, recommending the incentive be retained and a suite of reforms made to the way the system is administered.
- Commenced a review into the impact of supply chain financing on small and family businesses.
- Worked with the Franchising Taskforce to develop the draft Regulatory Impact Statement and provided detailed feedback upon its release.

ASSISTANCE

- Received 1,865 contacts – 80% about resolving disputes.
- 178 contacts were received under the Franchising Code of Conduct.
- Main issues –contract disputes (28%) and payment issues (26%), including issues such as online digital platforms, expensive office technology solutions, legacy banking matters that do not fall under the AFCA jurisdiction, finance contracts relating to unfit for purpose products and unfair contract terms.
- Work commenced with the Department of Employment, Skills, Small and Family Business to upgrade the CRM, to allow for a more effective case management system and efficient use by all staff.

Outreach: communications and stakeholder engagement

- Representing Australia's small and family businesses, the Ombudsman attended 34 meetings with government and engaged with 38 key external stakeholders.
- The Ombudsman participated in 41 media interviews, which resulted in 486 media mentions across TV, radio, print and online.
- Six opinion pieces and three small business success stories were developed and published on the ASBFEO website.
- The *My Business Health* portal was launched at a Canberra-based small business in December, to provide practical information and resources on the issues that keep small businesses awake at night. It also provides resources to help small business owners experiencing mental health issues as a result of their concerns about their business.



Ombudsman Kate Carnell, Minister Michaelia Cash and small business owner Alan Tse from Altina Drinks at the launch of *My Business Health*.

Traditional and Social Media



32 media releases



2,730 newsletter subscribers



2,716 followers
137 posts



Ombudsman
1,466 followers | 102 tweets
ASBFEO
1,626 followers | 177 tweets



486 mentions



33,330 visits to website



2 videos published
139 subscribers



Ombudsman
10,151 followers | 46 posts
ASBFEO
1,189 followers | 103 posts

Advocacy: a voice on policy and legislation

Review into the Research & Development Tax Incentive

Our comprehensive review of the experiences of small and family businesses that have claimed the Research and Development Tax Incentive (R&DTI) found the incentive is important in encouraging small and family businesses to invest in R&D.



We provided 24 detailed recommendations around the administration of the incentive, including:

- the retrospective nature of compliance activities
- modern compliance approaches developed in consultation with small business
- clearer and consistent guidance material relating to the interpretation of the R&DTI legislation
- more simplified record keeping requirements
- help with identifying professional and responsible R&D consultants.

We engaged broadly with stakeholders, conducting a suite of consultations with representatives from the agencies responsible for the program, the Tax Practitioners Board, businesses that have accessed the program, R&D consultants, industry associations and academics in the field of innovation.

We will continue working with the Department of Industry, Innovation and Science, as well as the Australian Taxation Office to drive the implementation of our recommendations.

Insolvency Practices Inquiry

- The launch of our inquiry into insolvency practices in October led to significant engagement with the small business sector; more than 300 small business owners have shared their experiences of going through the insolvency process.
- Our subsequent discussion paper, released in December, raises 15 questions reflecting issues raised by small business owners and seeks feedback by the end of January 2020.
- This inquiry is supported by an expert Reference Group, chaired by former Senator John Williams and comprising insolvency industry professionals, small business experts and financial counsellors.
- A key learning from the inquiry is that small businesses do not act early enough when they are experiencing financial difficulty. We are now seeking industry feedback before working towards final recommendations which will include how small businesses can be encouraged to seek help early.



Advocacy: a voice on policy and legislation

Supply chain financing

- A review of the developing industry of supply chain financing was launched in October, to examine how small and family businesses can use the product to manage cash flow and fund growth.
- The review also looks at instances where large businesses have offered supply chain finance to their small business suppliers to offset extended payment times.
- The report of the review is expected to be released in March 2020.



Missed opportunity

When the Australian Securities and Investments Commission (ASIC) gave final approval of the Australian Banking Association's (ABA) updated Banking Code of Practice 2019, we were disappointed it retained so many 'get out of jail' clauses for the banks.

The current Code, which comes into effect from 1 March 2020, still dilutes the protections for small businesses. Although we have worked closely with the ABA to encourage fairer outcomes for small business through the Code, it remains unfair.

Red tape reduction

- We have been working closely with the Deregulation Taskforce to identify key areas in which government regulation can be simplified or removed, making it easier to do business in Australia.
- We continue to advocate for a simplification of the workplace relations system as the current system remains highly complex and difficult for small business owners to navigate.
- Our earlier review of the Small Business Fair Dismissal Code provides a suite of steps the government can take to streamline the unfair dismissal system and support small businesses to hire and grow.



Advocacy: a voice on policy and legislation

Major input into policy, inquiries and legislation

- Provided detailed feedback on the difficulties faced by small providers in registering to provide services under the NDIS.
- Provided detailed input into the revision of industry codes of conduct - particularly Franchising and Dairy - including best practice dispute resolution options.
- Made a number of submissions on bureaucratic red tape and the need to reduce the administrative burden for small businesses.
- Provided feedback on the potential impacts on small businesses of the *Currency (Restriction of the Use of Cash) Bill 2019*.
- Provided feedback on economic development opportunities for traditional Owners with Indigenous Land Use Agreements in Northern Australia.
- Provided feedback on regulatory processes to combat illegal phoenixing.
- Made a number of submissions relating to employment, skills development and access to skills and labour, including barriers for small businesses in accessing skilled migrants and access to workers in regional areas.
- Made a submission detailing the challenges and opportunities presented to small businesses under Australia's *2020 Cyber Security Strategy*.
- Made a number of submissions regarding small business access to State and Commonwealth Government procurement processes.
- Provided input into the development of a framework to record payment times to small businesses by large businesses.
- Made a number of submissions regarding energy prices for small businesses.
- Provided input on fostering female entrepreneurship and increasing women's economic participation.

Submissions

Australian Competition & Consumer Commission	2	Department of Employment, Skills, Small & Family Business	6	Therapeutic Goods Administration	1
Australian Taxation Office	3	Department of Environment & Energy	1	Treasury	2
Attorney-General's Department	1	Department of Health	1	Senate Select Committee on Financial Technology & Regulatory Technology	1
Australian Communications & Media Authority	1	Department of Home Affairs	1	Parliamentary Joint Standing Committee on Migration	1
Australian Energy Regulator	1	Department of Industry, Innovation & Science	2	Senate Economics Legislation Committee	2
Australian Health Practitioner Regulation Agency	1	Department of Justice-Tasmania	1	Joint Standing Committee on Northern Australia	1
Department of Industry, Innovation & Science	1	Department of Social Services	1	Senate Economics References Committee	2
COAG Energy Council	1	NSW Fair Trading	2	Senate Select Committee into Jobs for the future in regional areas	1
Department of Agriculture	2	Office of the Australian Information Commissioner	1	TOTAL	41
		Productivity Commission	1		

Assistance: supporting SMEs

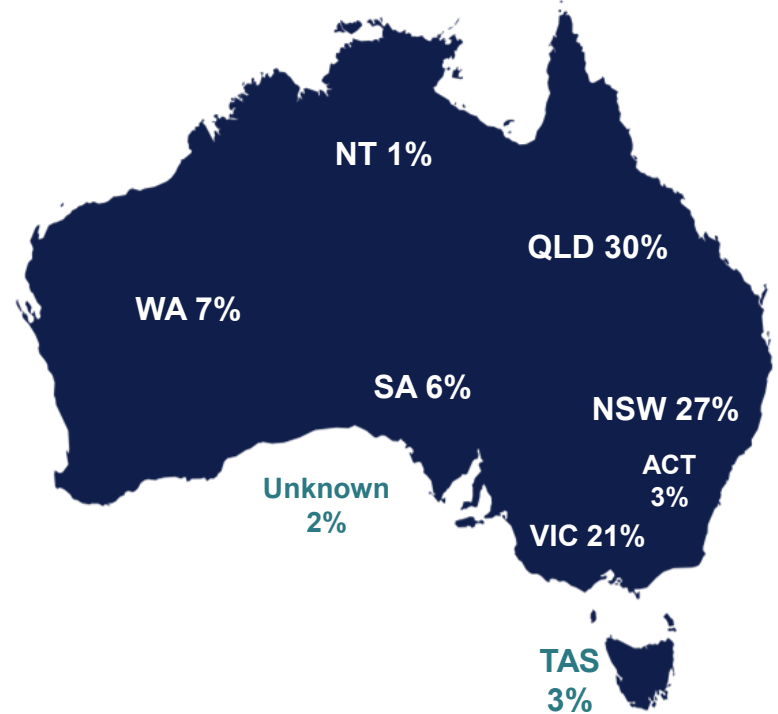
1,865 contacts received via phone, email, web inquiry.
The majority of the direct contacts were business to business disputes.

86% of disputes were business to business

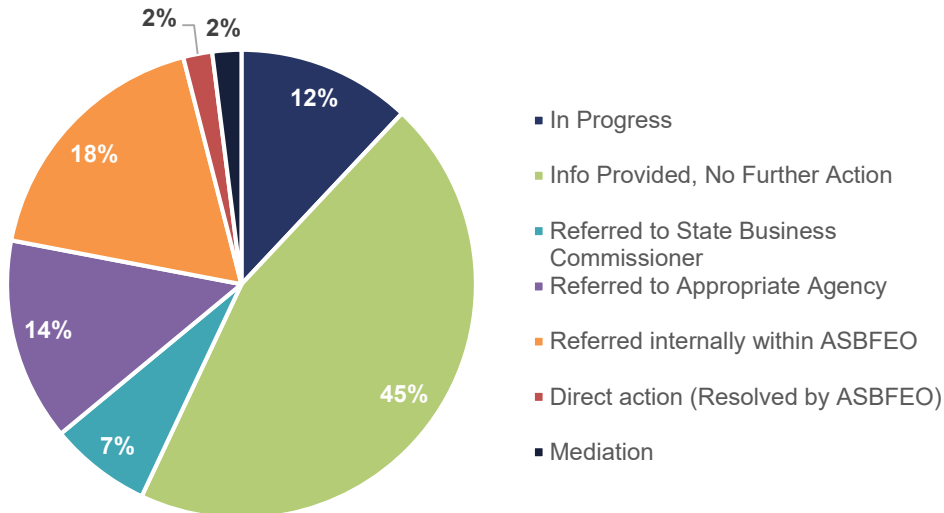
5% of disputes were business to government

88% of contacts came from small and family business owners

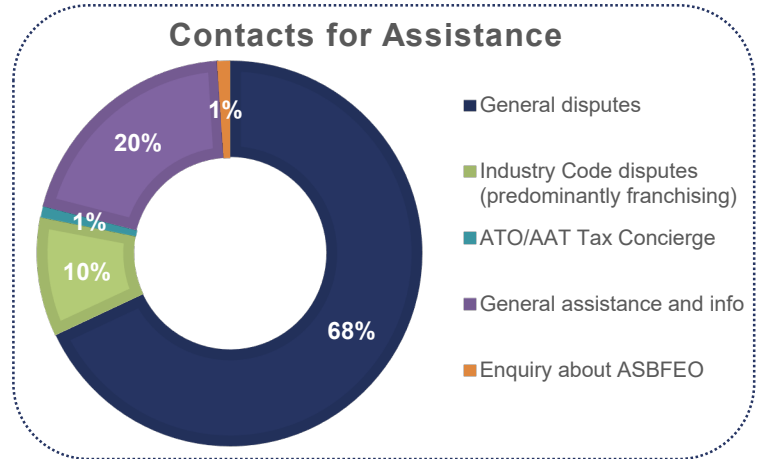
Contacts by state/territory



Resolution Pathways



Contacts for Assistance



Assistance: supporting SMEs

Industry Codes | Franchising–Horticulture–Oil

- In our role assisting with disputes that fall under the Franchising, Horticultural and Oil codes of conduct, our Case Managers have:
 - answered 180 enquiries under the Franchising Code
 - acted on 74 cases related to the Franchising Code, of which 69 were franchisee initiated and 5 were franchisor initiated.

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



71%
resolved at
mediation



96%
of parties acted
in good faith



\$2,741
average cost
of mediation

Small Business Tax Concierge Service

- Since 1 March 2019, our Small Business Concierge Service has assisted 27 small businesses owners address their tax disputes through the Administrative Appeals Tribunal (AAT) process, and provided information on costs and timelines.

Bushfire support preparation

As the bushfire crisis worsened, we began to develop an approach to small and family business viability following a natural disaster.

The role of the Ombudsman in respect to natural disasters is to provide government with timely advice and help small businesses remain viable.

A key focus in this bushfire crisis is to support existing businesses that have been severely financially impacted to consider and use all relevant options to continue operating and, where businesses have been completely lost, provide assistance regarding insurance providers.

Learnings from our current Insolvency Inquiry demonstrates a need for businesses to act early, to give them the best chance to survive.

Next steps

OUTREACH

- Implement a campaign to promote the new *My Business Health* portal.
- Work with the Advocacy team to update, publish and re-launch of the *Business Funding Guide* and *FitsME* guide.
- Promote our additional dispute assistance role under the Dairy Code of Conduct and publicise our new Small Business Compensation Assistance Service as it relates to the ATO.
- Publicise the release of the Access to Justice Inquiry report, the Insolvency Practices Inquiry report and the supply chain financing review.

ADVOCACY

- Engage with Treasury on the Regulatory Impact Statement on Enhancements to Unfair Contract Term (UCT) Protections and provide feedback on strengthening the UCT regime to ensure protection for small businesses.
- Analyse feedback from the Insolvency Inquiry discussion paper and work with the expert Reference Group and industry on final recommendations.
- Work with the Treasurer and the Minister for Industry, Science and Technology to implement the recommendations of the *Review into the Research and Development Tax Incentive*.
- Following our feedback on the Franchising Regulatory Impact Statement, we will continue to work with the interdepartmental taskforce to deliver the recommendations of the Joint Parliamentary Inquiry into Franchising.

ASSISTANCE

- Provide support for bushfire affected small and family businesses and create easy to understand, relevant information to help small and family businesses to navigate relevant assistance and remain operational.
- Establish and promote our service, to help small businesses navigate defective administration as it relates to the ATO.
- Provide assistance with disputes that fall within the new Dairy Code of Conduct (relates to contracts entered into/or amended on or after 1 January 2020), to ensure Australian dairy farmers can negotiate a fair price for their product.
- Establish the Small Business Compensation Assistance Service to help small businesses navigate the Compensation for Detriment caused by Defective Administration (CDDA) scheme as it relates to the Australian Taxation Office.

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