

**Senate Select Committee on COVID-19**  
**ANSWERS TO QUESTIONS ON NOTICE**  
Australian Small Business and Family Enterprise Ombudsman

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**TOPIC:** Larger companies that have increased payment times to small business suppliers

**REFERENCE:** Spoken Question (Hansard Page)

**QUESTION DATE:** 24 June 2020

**Senator Patrick asked:**

Senator PATRICK: Is it possible to provide the committee with – you gave a list then – a full list of companies that you are aware of where complaints have been made to you and were subsequently released and are public?

**ANSWER**

We have received complaints and made public statements about the following companies:

1. GFG Alliance
2. GPC Asia Pacific (Brands including Repco and R&E Auto Parts)
3. Just Group (Brands including Just Jeans, Jacqui E, and Peter Alexander)
4. Spotlight Group (Brands including Spotlight and Harris Scarfe)
5. Super Retail Group (Brands including Supercheap Auto, Rebel Sport, BCF, and MacPac)
6. Sussan Group (Brands including Sussan, Suzanne Grae, and Sportsgirl)
7. Flight Centre Travel Group

We have received one additional complaint about a company but have not provided its name in the above list as we have not yet made public comment on it. We are following up with the company concerned.

**TOPIC:** Letters to Government on issues with economic support measures put in place as a response to COVID-19

**REFERENCE:** Spoken Question (Hansard Page)

**QUESTION DATE:** 24 June 2020

**Senator Gallagher asked:**

Ms Carnell: In fact, I think we've probably written about five letters to the Treasurer and others about problems that we see with things that need to be addressed, going forward.

CHAIR: You might want to take it on notice as to whether you can provide those letters to the committee.

**ANSWER**

The relevant letters are provided below, with redacted contact details of non-SES officers at ASBFEO.



Australian Government



Australian  
**Small Business and  
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Ombudsman

16 March 2020

The Hon Scott Morrison MP  
Prime Minister of Australia  
PO Box 6022  
House of Representatives  
Canberra, ACT, 2600

Via email: [scott.morrison.mp@aph.gov.au](mailto:scott.morrison.mp@aph.gov.au)

Dear <sup>Scott</sup> Prime Minister

**Supporting small businesses and sole traders impacted by the COVID-19 Outbreak**

The COVID-19 driven downturn in trade is already having a significant impact on small business. I welcomed the recent announcement of a stimulus package that will support small businesses and maintain employment. There is also a need to support sole traders and independent contractors who do not employ staff. With more than 1.4 million sole traders across Australia, this represents a large cohort of business owners who will face severe negative impacts stemming from the spread of COVID-19.

In particular, the Australian Government should implement programs to support sole traders and independent contractors operating in the tourism, training, events, catering, construction and related industries in the short term. This should include additional support to offset their operating costs and enhance cash flow during this time of constrained trade.

This could include:

- Extending income support to sole traders and independent contractors without requiring an asset or income test;
- Implementing immediate tax rebates including PAYG withheld for personal income drawn from the business and GST for sole traders and independent contractors for all tax withheld in 2020;
- Allowing a one off access to superannuation to draw down a set amount to underpin cash flow for the duration of the downturn in trade;
- Extending concessional loans for those impacted by recent bushfires to sole traders and independent contractors experiencing loss of trade from COVID-19; and
- Commence planning for a national small business recovery program, including accelerating regional infrastructure projects, mandated small business supplier quotas in all Government procurement and payment times legislation requiring small business suppliers to be paid within 30 days.

I would be pleased to meet with you to discuss this matter at your convenience and will ask my Office to contact your office to arrange a suitable time. In the meantime, if you wish to discuss this matter further, please do not hesitate to contact [REDACTED].

Yours sincerely,

[REDACTED]  
**Kate Carnell AO**  
Australian Small Business and Family Enterprise Ombudsman

cc Senator the Hon Michaelia Cash.

T 1300 650 460 E [info@asbfeo.gov.au](mailto:info@asbfeo.gov.au)  
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Office of the Australian Small Business and Family Enterprise Ombudsman  
GPO Box 1701 Canberra City ACT 2601





Australian Government



Australian  
**Small Business and  
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Ombudsman

27 March 2020

The Hon. Scott Morrison MP  
Prime Minister  
PO Box 6022  
House of Representatives  
Parliament House  
Canberra ACT 2600

*via email: [scott.morrison.mp@aph.gov.au](mailto:scott.morrison.mp@aph.gov.au)*

Dear Prime Minister

Thank you for your ongoing support of the small business community during this time of economic upheaval as a result of COVID-19. I am extremely supportive of the measures taken by the government to date, and look forward to continuing working with your government to support this important business sector.

In advance of any further stimulus packages, I would like to raise the following issues my Office has become aware of with the packages provided to date. I hope that these issues may be able to be addressed in a future package.

**For businesses that remain open**

1. Clarity needs to be provided around stand down provisions. Business owners are receiving conflicting legal advice in respect of the application of these provisions, resulting in employers faced with need to stand down staff and unable to secure mutual agreement from their employees, are faced with the choice of making all staff redundant or running the risk of future employee claims for unpaid wages. A blanket ruling must be applied for the duration of this crisis. Application of such a ruling will save jobs into the future.
2. Eligibility for the apprentice wage subsidy is currently unavailable for businesses with more than 20 employees. This excludes Group Training Organisations, which are significant employers of apprentices and are particularly exposed at the moment. Eligibility should be expanded to all businesses with turnover of less than \$50 million per annum, and to Group Training Organisations regardless of their annual turnover.
3. Support for business with ongoing payments and little to no income needs to be considered. I understand that many of these charges do not fall within the Commonwealth's control, however they must be considered in any ongoing package, and a unified approach to addressing these issues is needed. Particular payments include:
  - a. Rent. While there are a number of 'good news stories' about smaller landlords providing rent relief to business tenants, as yet there is not clarity on a unified approach by large shopping centres. Businesses in the hospitality, retail, and travel industries are heavily represented in shopping centres and have been under significant pressure for some time as a result of this crisis.



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- b. Franchise fees. My Office has received a number of calls from franchisees concerned about how they will continue to pay their franchise fees with no income. While many Franchisors are themselves small businesses, it is necessary that the pain felt by this crisis is shared so that small businesses can be retained in the economy.
    - c. Body corporate fees. Again, my Office has received a number of calls in relation to ongoing body corporate fees. It may be appropriate for government to support commercial tenancies that have large body corporate fees to pay.
  4. Following the application lodged with the Fair Work Commission to amend the Clerks – Private Sector Award 2010 to allow a range of flexibility measures, government should facilitate the same changes to all awards. These changes allow:
    - a. Employees and employers to agree to change ordinary hours of work whilst an employee is working at home. This will allow employees options to manage their jobs around child care and home schooling responsibilities without employers facing additional costs for work being conducted out of usual business hours.
    - b. A business to direct an employee to take annual leave with one weeks' notice, if it decides to close down operations.
    - c. Staff to work more flexibly across classifications, provided it is safe to do so and the employee has the necessary qualifications.
    - d. Increased flexibility in leave taking, such as double leave at half pay, where agreed by both employees and employers.
    - e. Employers to engage casual and part-time employees for shorter shifts.
    - f. Employer flexibility to reduce hours for full and part time staff, allowing those staff members to take on another job or ask to engage in training or additional study.
  5. Significant numbers of younger children are being withdrawn from child care services. Currently only services forced to close by health authorities will continue to receive Child Care Subsidy (CCS) payments and are not required to charge parents a gap fee. Services that close temporarily due to decreased enrolments or lack of educators will not be entitled to CCS payments.

Further, CCS currently only covers approximately 60% of costs. CCS should be paid to centres at the rate that was claimed in the week beginning 2 March 2020 for the next six months. This would allow for more staff to be retained, and families working in essential services to continue to have access to services.

#### **For businesses that have closed**

1. A dedicated pathway should be established, separate to Centrelink and Services Australia call centres, for sole traders and small business owners to access income support, separate of jobseeker allowances. Small business owners are often in unique circumstances such as being asset rich and income poor. Jobseeker allowance asset tests are inappropriate for this cohort. Further, the limits on partner incomes should be waived for eligibility. In many instances, this restriction on eligibility has rendered sole traders ineligible for much needed support. Farm support models could be adopted to manage this issue.





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I understand the reasons for delivery of these support services through existing programs, but it is important to note that the end goal is that sole traders will not become job seekers. If the support program is effective, sole traders should be able to continue trading once this time of immediate difficulty has passed.

2. 482 Visa conditions should be relaxed, to allow visa holders to redeploy into other occupational areas, rather than being locked into the occupational classification on their current sponsorship. This would allow people with wide ranging skill sets to support the economy and other businesses if they are stood down or made redundant from their roles.
3. I understand that NEIS recipients are not currently entitled to receive the COVID Payment of an additional \$550 per fortnight. As a large number of these businesses are suffering significant downturn, this should be addressed as a matter of urgency.
4. Training funding should be provided for increased online learning. This is an unprecedented opportunity for the government to invest in skills development through microcredentialling delivered in an online format.

I would be pleased to provide more information on any of the above options at your convenience. As always, please feel free to contact me directly on [REDACTED]

Yours sincerely,  
[REDACTED]

Kate Carnell AO

Australian Small Business and Family Enterprise Ombudsman

1 April 2020

The Hon. Scott Morrison MP  
Prime Minister  
PO Box 6022  
House of Representatives  
Parliament House  
CANBERRA ACT 2600

*via email: scott.morrison.mp@aph.gov.au*

*Scott*

Dear Prime Minister

#### **Key issues for successful small business hibernation**

I commend your announcement of the new 'JobKeeper Payment' to support businesses to maintain the connection with their employees during the current economic and health crisis. This wage subsidy will greatly help small businesses to 'hibernate' so that they can resume normal operations as quickly as possible when the health crisis lifts.

Critical to the success of any business hibernation plan is ensuring that those businesses that 'hibernate' do not accumulate a level of debt over the hibernation period that would impact their ongoing viability. It is vital that businesses do not suffer 'balloon payments' on restarting. There are a range of further issues that require treatment to support effective business hibernation.

#### **1. Encourage leniency and active negotiation of reductions in lease and rental costs**

If landlords do not reduce rents (for businesses operating on a limited basis) or provide 'rent holidays' (for businesses that have been closed), the business community will experience a second round financial crisis on emergence from hibernation.

We have already received evidence of a number of landlords entering into good faith discussions with their tenants and providing rent holidays to small businesses. Unfortunately, we also have evidence that there remains a large number of landlords who are unwilling to negotiate reasonably. In particular, we are seeing instances of landlords requiring business owners to prove that both the business and their personal capital is exhausted, prior to offering any rent relief. This means that business owners who have been forced to close due to the COVID-19 response are effectively being punished for being prudent with their personal income and assets.

I was pleased to see the comments by the Australian Banking Association that their members would support landlords who are providing effective support and relief for their tenants. While this is a fantastic step, for the many landlords who do not have loans, more needs to be done by Government to encourage leniency and to actively enter into rent reduction negotiations.



## 2. Hibernate commercial contracts and ensure access to insurance (and other critical services)

Commercial activity is underpinned by a broad network of contracts that include:

- Equipment rental, hire purchase and lease;
- Utilities including communication, energy and water;
- Insurance policies; and
- Franchises, licence agreements, software and commission.

While some announced government measures address some of these areas and provide support for businesses, there are still many situations where small businesses cannot deliver on the terms of their contracts or alternatively where larger businesses are restricting the services provided to small business (such as insurance contracts). This means that small business owners will be forced to seek professional legal advice to understand their position in respect of their own performance, as well as what was previously promised by larger businesses. However, they simply do not have the resources and clout to match larger businesses when there are disputes.

Therefore, I encourage the Government to implement measures that will:

- a. enable small businesses to be viewed as discharging their contractual obligations with large businesses or governments where they can show that the COVID-19 crisis is the principal cause of non-compliance and where they are not already covered by an act of God or *force majeure* clause in their contract that provides for hibernation. I understand that the doctrine of 'frustration' may provide the basis for this kind of measure but with the contract then recommencing when the COVID-19 crisis ends; and
- b. provide continued access to insurance and other services that need to be maintained during the crisis to ensure successful emergence from hibernation once it is over.

## 3. Implement additional measures to ensure viability of non-bank lenders

Non-bank lenders have stepped into the SME lending market to provide unique product and service offerings that meet the varied needs of SMEs more effectively than banks. These lenders are also typically highly digitised and efficient, meaning they can process loans and distribute funds very quickly. These characteristics make non-bank lenders a valuable ally in getting immediate financial support to small business for their urgent credit and working capital needs.

I understand that the Australian Financial Industry Association continues to work with the Australian Office of Financial Management (as well as Treasury) to explore:

- how smaller lenders can participate in the Government's initiatives, including the Structured Finance Support Fund and the Coronavirus Loan Guarantee Scheme; and
- other ways that larger lenders can work with smaller lenders to more efficiently get funds to cash-strapped small businesses customers, both new and existing.

In addition to these efforts, I believe the Federal Government should provide further assistance to smaller lenders to make sure they have the working capital they need to continue to operate and support their SME customers, as well as to help them match the banks in offering 6 months



forbearance on repayments to their SME loans. This assistance would help support the non-bank lenders as well as the many small businesses that rely on these lenders for the capital they need to start and grow.

**4. Encourage large businesses to maintain (and improve) timely payment of their small business suppliers and customers**

As you know, it is in everybody's interest at this time that all businesses are supported in a way that helps them resume activity after this period of hibernation. This will minimise disruption to supply chains and ensure that the lives and livelihoods of Australians can return to normal as quickly as possible when the crisis ends.

Yet some businesses appear to be putting their short-term self-interest first and are squeezing their small business suppliers by pushing out payment times. I have written to the CEOs of Super Retail Group and GPC Asia Pacific, for example, asking them to reconsider their press to extend payment terms for their small business suppliers.

Encouragingly, some businesses such as Woolworths are actually moving to *improve* payment times to small business suppliers. Some other businesses, such as BHP, are also showing leadership on this issue. But I am concerned that they are the exception, not the rule.

I have also evidence of suppliers trying to shorten their payment times. That is, demanding payment of all existing and unpaid invoices in order to continue receiving stock, or trying to enforce 'cash on delivery' terms rather than 'on account'.

While I will continue to advocate publicly on these issues, I ask that you help deliver the following messages to the business community:

- Large businesses must maintain, if not improve, their payment terms with small business suppliers and customers;
- Large businesses must not use their market power to squeeze small businesses; and
- There is mutual benefit in doing the right thing by each other during this difficult period.

*Should encouragement to do the 'right thing' be unsuccessful, I will call on government to legislate 30 day payment terms for all payments to small businesses.* Of course, the Government is already leading by example in its treatment of small business.

**5. Extend support for apprentices and trainees**

The Government wage subsidy to support small businesses to retain their apprenticeships and trainees is a welcome measure, but it needs to be broadened. I understand that where a significant (30%) drop in revenue has been suffered, businesses are eligible for the JobKeeper Payment. However, my office is hearing from a number of businesses where revenue has fallen by 10 - 20% and they are considering the need to terminate apprentices.

Currently, the subsidy is available to:

- small businesses employing fewer than 20 full-time employees who retain an apprentice or trainee; and
- employers of any size and Group Training Organisations (GTOs) if they re-engage an eligible out-of-trade apprentice or trainee who was in training with a small business as at 1 March 2020.

The requirement for businesses to have fewer than 20 full-time employees should be replaced with a turnover limit of \$50 million, in line with other COVID-19 support measures, to support more of the businesses still operating in the current challenging environment.

Further, the conditionality of support for GTOs should be removed so that all GTOs, which are major employers of apprentices in Australia, are automatically eligible.

I would be pleased to provide more information on any of the above at your convenience. As always, please feel free to contact me directly on [REDACTED]

Yours sincerely

[REDACTED]

Kate Carnell AO

Australian Small Business and Family Enterprise Ombudsman

cc: The Treasurer





7 April 2020

The Hon. Scott Morrison MP  
Prime Minister  
PO Box 6022  
House of Representatives  
Parliament House  
CANBERRA ACT 2600

via email: [scott.morrison.mp@aph.gov.au](mailto:scott.morrison.mp@aph.gov.au)



Dear Prime Minister

**Partnerships and Trusts under JobKeeper Program**

I commend your announcement of the new 'JobKeeper Payment' (Payment) to support businesses to maintain the connection with their employees during the current economic and health crisis. I note and support the policy intent to keep those working connected to the businesses that employ them.

I have been contacted by a number of small businesses, including those operating as partnerships, sole traders, and trusts, confused about eligibility for the Payment. I note that the Treasury Factsheet<sup>1</sup> provides that only one partner in a partnership can be nominated to receive the Payment. This is similar to a Trust, where only one individual receiving distributions (rather than salary for work done) can be nominated to receive the Payment.

Given the policy intent, it is crucial that eligibility is extended to ensure that every person engaged in working with or for a business, be it a partnership, trust, or company, is eligible for one Payment of \$1,500 each.

I would be pleased to discuss this matter at your convenience. As always, please feel free to contact me directly on [REDACTED]

Yours sincerely



**Kate Carnell AO**

Australian Small Business and Family Enterprise Ombudsman

cc: The Treasurer

<sup>1</sup> [https://treasury.gov.au/sites/default/files/2020-04/JobKeeper\\_frequently\\_asked\\_questions.pdf](https://treasury.gov.au/sites/default/files/2020-04/JobKeeper_frequently_asked_questions.pdf)



Australian Government



Australian  
**Small Business and  
Family Enterprise**  
Ombudsman

6 May 2020

The Hon Josh Frydenberg MP  
Treasurer  
PO Box 6022  
House of Representatives  
Parliament House  
Canberra ACT 2600

*By email: [josh.frydenberg.mp@aph.gov.au](mailto:josh.frydenberg.mp@aph.gov.au)*

  
Dear Treasurer

### Implementation issues with economic support measures

I commend you for the significant steps the Government has taken to support small and family businesses, and their employees, during this crisis. As with any economic recovery program, there will be people or business types on the 'edges' that may be inadvertently excluded. I am writing to alert you to some implementation issues raised with me by small businesses in the hope they can be addressed to ensure even more businesses benefit.

#### 1. JobKeeper eligibility

##### Treatment of international sales

I have a number of cases in which a business' BAS statements will show a reduction of more than 30% in turnover *only* if international sales, which have all but stopped, are included in the calculation. One business in particular has retained employees in expectation of receiving JobKeeper but this appears to be a grey area.

It is important that Treasury clarifies the situation as soon as practically possible.

##### Sole traders with permanent part-time jobs

The JobKeeper eligibility for business participants requires that "the individual must not also be a permanent employee of an employer". This creates a situation whereby:

- some sole traders will be able to continue their *casual* jobs as normal *and* receive JobKeeper to compensate them for losses to their sole trader business; yet
- other sole traders will be able to continue their *part-time* jobs as normal but are denied JobKeeper to compensate them for losses to their sole trader business.

This is particularly problematic where a business has been in a growth stage and the business owner has retained a permanent part-time job to provide some income stability. As I understand that the ATO has no discretion on this matter, I ask that you consider changing the eligibility requirements so that only permanent employees either working over a threshold number of hours, or receiving over a threshold dollar amount, per fortnight are deemed ineligible.

##### Eligibility of partners in Partnerships

Under the JobKeeper legislation, there can only be one eligible business participant per entity. This means that, for partnerships, trust, and companies, only one person can receive the payment even



where there are two or more people working in the business. This is a particular problem for partnerships as partners cannot be employed in the businesses even if they work full time in it. I wrote to the Prime Minister about this issue on 7 April asking that the rules be changed. This continues to be a significant problem for the small business sector and requires urgent attention.

## **2. Cash flow boost credits – application of rules for businesses with multiple branches**

The rules for eligible businesses with multiple branches provide that:

- an entity that operates several branches of a business using one ABN is considered a single business for the purposes of the cash flow boost; and
- businesses are not entitled to receive a separate cash flow boost for each branch.

I understand that the ATO is applying these rules so that only a single branch is eligible for the cash flow boost even where this means that the business will receive far less than the maximum amount available to a single business.

I ask that you clarify this issue with the ATO and, if necessary, revise the rules to ensure that all eligible businesses can receive up to the maximum cash flow boost regardless of whether they have one or multiple offices/branches.

## **3. SME Guarantee Scheme loan repayments**

A condition for an eligible loan under the SME Guarantee Scheme is that it must “provide for no payments during the Grace Period”. I am concerned that this means that SMEs in a position to make payments during the grace period have no option but to let interest compound.

Ideally the rules for the SME Guarantee Scheme could be amended to allow for, but not require, payments during the grace period. As an alternative, the government should consider introducing an additional loan product that repayments can be made on.

I would be pleased to discuss these matters at your convenience. If you require further information, please contact [REDACTED].

Yours sincerely,

[REDACTED]

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