

# Supporting small businesses in NSW

Annual Report 2020



Small  
Business  
Commissioner



### **Acknowledgement of Country**

The NSW Small Business Commission acknowledges that Aboriginal and Torres Strait Islander peoples are the First Peoples and Traditional Custodians of Australia, and recognises their continued custodianship of Country – land, seas and skies. We acknowledge the diversity of First Nations cultures, histories and peoples, recognise their enduring connection to our State, and we pay our deepest respects to Elders past, present and emerging.



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# Minister's Message

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**The Hon. Damien Tudehope,  
MLC. Minister for Finance  
and Small Business**

**Each and every business plays a critical role in the social fabric of a community, providing everything from sponsorship to local sporting teams to supplying goods and critical services to families in all corners of the State.**

Small businesses are the heart and soul of the NSW economy. The past year has highlighted their importance in supporting economic activity and strengthening local communities during a period of unprecedented uncertainty. It has also shone a light on the resilience and adaptability of small businesses, from bakery owners to beauticians, retailers and local accountants.

There are 800,000 small businesses across NSW, making up 98 per cent of all businesses. Small business contributes nearly \$370 billion to annual sales and service income and employs around 1.6 million people (41 per cent of the State's private sector workforce).

But – and this is something I say to anyone who will listen – it's more than just the numbers when it comes to small businesses. Each and every business plays a critical role in the social fabric of a community, providing everything from sponsorship to local sporting teams to supplying goods and critical services to families in all corners of the State.

The challenges faced by small businesses during the last 12 months have been unprecedented, testing their resilience, courage and entrepreneurial spirit. A severe drought was closely followed by the devastating summer bushfires and the COVID-19 pandemic. These events have been challenging, but small businesses have adapted and responded quickly when opportunities have arisen.

And we have acted to provide support as we have navigated this global health pandemic. Whether it's payroll tax cuts, direct support grants, access to business advice, rolling out the Dine & Discover NSW program, the waiving of government fees and charges and so much more, the NSW

Government is focused on creating jobs, getting people back to work and setting up our State for a prosperous, post pandemic economy.

There is no doubt that small businesses will be instrumental in this economic recovery, and I cannot thank the NSW Small Business Commissioner and the excellent staff at the Commission enough for their tireless work to help so many small business owners get through one of the most challenging periods in our history. Whether it's commercial lease mediation, advocacy, business advice or a helpful steer in the right direction, small businesses around NSW have been well served by the Commission in 2020.

There is more work to be done when it comes to our economic recovery but our focus is on ensuring that NSW is the best place to live, work, raise a family and start a business.

# Small Business at a Glance



Small businesses employ about

**1.6 million people**

which represents 41 per cent of the NSW private sector workforce<sup>1</sup>



NSW small businesses contribute nearly

**\$370 billion**

to annual sales and services income<sup>1</sup>



The NSW small business sector pays more than

**\$53 billion**

in annual wages and salaries to employees every year<sup>1</sup>



There are

**800,000**

small businesses in NSW<sup>2</sup>



Small businesses represent about

**98%**

of all NSW businesses<sup>2</sup>



More than **1/3**

of all NSW small business operators were born overseas<sup>3</sup>

1. Estimated from Australian Bureau of Statistics (ABS), 2017, 8150 Australian Industry, 2018-19

2. ABS, 2020, 8165.0 Counts of Australian Businesses, including entries and exits, June 2016 to June 2020.

3. ABS, 2016, 2016 Census—Employment, Income and Education.

# Commissioner's Message

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**Chris Lamont, NSW Small Business Commissioner**

**Small businesspeople are entrepreneurial and resilient. They are passionate and back themselves and their business each day without having all the answers or the certainty of knowing what's around the corner. This year presented challenges that could not have been predicted by even the most pessimistic futurists.**

The last 12 months tested our State's small businesses to an extent greater than any of us could have imagined. Their success and achievements during this period, despite the odds, have been exceptional.

Throughout 2020 the NSW Small Business Commission has supported NSW small businesses, advocating for their interests and assisting them in solving problems and disputes.

Given the number and magnitude of issues faced by small businesses, the Commission saw unprecedented demand for the advice and assistance it provides.

The number of visitors to the Commission's website more than tripled in 2020 and we assisted tens of thousands of small businesses through our call centre. Applications for mediation to help solve business disputes, most of them COVID-19 related, surged to almost three times 2019 levels.

Some of these small businesses were already dealing with the aftermath of the 2019 bushfires, drought and the Northern NSW floods.

The Commission quickly implemented a plan to respond to this surge in need and expanded our customer-facing and mediation teams and deployed an enhanced portal for web-based enquiries.

Our *Small Business COVID-19 Survey*, launched in April 2020, regularly took the pulse of small businesses across the State to determine the impacts the pandemic was having on individual businesses, their confidence and how they were adapting to the challenges they faced.

Using this information, we also engaged closely with the NSW Government and our industry stakeholders to recommend appropriate support measures.

Providing a dispute resolution service for lease disputes was a key focus for the Commission in 2020. During the months of lockdowns many small businesses suffered 80 per cent or more declines in their turnover. These were, and may continue to be, good and profitable businesses but during COVID-19 they faced a barrage of unexpected and often severe challenges.

To support the COVID leasing regulations, the Commission's panel of mediation case managers was increased to meet demand as lessees, but also some lessors, sought our assistance to negotiate a rent reduction or other adjustments to a lease that both parties could accept. The Commission managed more than 2,500 applications for mediation during the year, with most mediations taking place via video conference due to COVID restrictions.

As one of our mediators reflects on page 29 of this report, mediation can be far more effective than legal action in resolving issues and far less costly. It helps the parties understand the issues, from both perspectives, and focus on finding a durable solution. During COVID-19 it has helped share the burden of the economic downturn more evenly between lessors and lessees, as the legislation intended, which supports businesses and jobs.

An important goal of the Commission's work is to help small businesses be better prepared for



# The Commission's Focus in 2021

This year we are focused on the following areas to help small business:



**Helping to consolidate the small business recovery:** 2021 will continue to be challenging but it's pleasing to see stronger economic activity and a bounce back in trade for many businesses. The Commission is focused on helping small businesses get through this next important stage



**Broadening our engagement with small business:** There is more for the Commission and its partners to do in reaching out to a broader audience and ensuring that as many businesses as possible are aware of the support, information and advice that is available



**Helping small and regional businesses supply to the NSW Government:** The Commission has embarked on a \$5 million project to help smaller businesses in tendering for government contracts



**Helping solve small business problems and disputes:** We expect there to continue to be an elevated number of business disputes and other small business problems that the Commission is well placed to help resolve, both at the individual business and industry level

adversity when it strikes and avert it altogether if possible. In 2020 we launched an updated *NSW Retail Tenancy Guide* and a new guide, *Prepare for the Unexpected – Build a Business Continuity Plan*, to help business owners better manage common risks. These two guides are an ongoing benefit to businesses but are also very timely in the context of the challenges faced in 2020 and what we expect in 2021.

I continue to be impressed by the resourcefulness and ingenuity of small businesses, both in the cities and the regions. Despite restrictions, I was able to meet with many business owners through the year, from those impacted by the floods in the Northern Rivers to drought-impacted towns in western NSW. I heard many inspiring stories and met inspirational businesspeople and community leaders.

I want to thank the many good people and groups we worked with during the year to support small businesses, including local councils, community groups, local business chambers and industry organisations. Your expertise, experience and commitment to small business were invaluable in helping us advocate for the sector and reach out to businesses across the State.

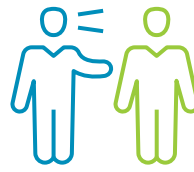
# 2020 Highlights



**32,500**



**calls and website queries managed**



**2,517**



**applications for mediation managed**



**37,000**



individual **businesses assisted**



**11,000**



**bond transactions** processed,  
worth \$70 million



**238%**



increase in **website visitors**



**10**



COVID-19 **Small Business Surveys**  
conducted

## New guides for small business

- Build a Business Continuity Plan
- NSW Retail Tenancy Guide 2020

## Made submissions to these government reviews

- Payment Times Reporting Rules
- Building and Construction Security of Payment Regulation
- ICT/Digital Sovereign Procurement Taskforce
- Statutory Review of the Motor Dealers and Repairers Act
- Joint Standing Committee on the NBN
- Corporate Insolvency Reforms
- City of Sydney - Night-Time Economy Planning Changes
- Review of the Education SEPP 2017
- Enhancements to Unfair Contract Terms Protections





# Responding to COVID-19

Helping NSW small businesses survive the economic impacts of the COVID-19 global outbreak required an unprecedented effort to scale up the Commission's frontline resources, collaborate with key stakeholders and find new ways of getting information and support to those who needed it most.

## The Commission's role

The NSW Small Business Commission has had a central role in the coordinated effort by government and industry bodies to help the small business sector face the threat posed by COVID-19.

The Commission has been a vital source of information, advice and dispute resolution for small businesses, many of whom have faced having to close their doors or saw their sources of revenue severely reduced.

During the height of the pandemic, demand for the Commission's services increased up to four times 2019 levels.

As part of the NSW Government's response to the pandemic, the Commission was given a funding boost of \$10 million in 2020. The funding was used to employ an additional 15 mediation officers and 12 call centre operators to handle the increased demand and deliver new services, including an enhanced web portal.

The Commissioner's staff were on the frontline for phone calls and emails from small businesses seeking advice on issues ranging from how to negotiate a rent reduction to keep their business afloat to how to access emergency financial assistance. The Commission helped many small businesses tap grants, relief and other financial assistance that had been made available by the State and Commonwealth Governments.

The Commission, which speaks with and surveys tens of thousands of individual small businesses every year, has been a key source of information

for governments and their agencies, helping them understand the type and level of support that is needed by the sector and who is in greatest need.

The number of visitors to the Commission's website surged 238 per cent to more than 400,000 in 2020, mostly in relation to COVID-19, but also from the continuing need for assistance from businesses impacted by the 2019-20 bushfires. The customer experience team managed 32,500 enquiries during 2020 and the number of applications for mediation jumped 174 per cent.

## Case Study

### Helping negotiate a COVID-related rent reduction

A Sydney CBD accountancy practice sought advice from the Commission on how to negotiate a rent reduction under the new COVID leasing regulations, which suspended evictions and encouraged lessees and lessors to negotiate a solution when disputes arose. They had considered formal mediation with their landlord but wanted to see first if they could negotiate a solution directly.

The Commission helped the practice understand the regulations, what their rights were and assisted with the template for a letter they could send to their landlord inviting a negotiation.

The practice was successful in negotiating a rent reduction and advised us that the assistance we provided on the land tax reduction available to eligible landlords was key to getting the other party to agree.

The practice said about the Commission: "Your service was absolutely fantastic and so helpful. We also appreciated you following up with us to see how we made out and whether we needed any more help. If we ever have any issues with our business like this, we will definitely be calling you again."





COVID-19 drove a big increase in demand for the Commission's services in 2020



**32,500**

customer enquiries answered

**238%** increase in website visitors to more than 400,000

**174%** increase in mediation applications

### Commercial lease support

With the the Commonwealth Government's JobKeeper program helping small businesses keep their staff in employment, the challenge of paying their lease stood out as the biggest worry for many businesses, particularly those in the hospitality sector.

In April 2020 the NSW Government enacted the *Retail and Other Commercial Leases (COVID-19) Regulation 2020*, protecting tenants from eviction for failure to pay rent and extending the requirement that disputes be submitted to mediation before going to the NSW Civil and Administrative Tribunal.

The Commission worked with the NSW Government to promote knowledge and understanding of the new regulations and promote the goal of equitably spreading the impact of COVID-19 across tenants and landlords through voluntarily negotiated arrangements for rent reduction or deferral.

The Commission developed a suite of information on its website to help retail tenants and landlords understand their rights and obligations and the mediation team helped parties on both sides negotiate equitable lease arrangements in the face of dramatically changed economic and regulatory conditions.

## Faster payments helped businesses survive

Managing cashflow has always been one of the most critical issues for small business, never more so than during the pandemic. One third of small businesses say late payments have affected their personal finances and their ability to cover basic expenses like rent, wages and utilities.

The Commission continued to champion and promote awareness of the NSW Government's Faster Payment Terms policy, which is getting cash to businesses that provide goods and services to the NSW Government faster, enabling them to pay their employees and suppliers with confidence. From January 2020, payment times for registered small business suppliers were reduced from 20 days to 5 business days.

Small businesses register their interest in the scheme with the Commission, which issues a list of registered small businesses to NSW Government agencies each month. These agencies are also required to submit data quarterly to assist with the Faster Payment Terms performance reporting.

As of December 2020, approximately 10,000 NSW small businesses had signed up to Faster Payment Terms.

## Financial support for COVID-hit small businesses

The Commission worked closely with the NSW Government and industry groups to design and target appropriate financial assistance for small businesses to help them through the economic and business downturn caused by the pandemic.

COVID-related grants included the Small Business Recovery Grant, the Southern Border Support Grant and the Dine & Discover NSW voucher scheme. The Commission also continued to promote grants specific to supporting businesses dealing with the ongoing impacts of the 2019-20 bushfires.

Where assistance needed to be better targeted or promoted to get support to where it was needed most, the Commission advocated effectively for change. After visiting the southern NSW border region in September and speaking with many small businesspeople about how they were affected by the closure of the Victoria-NSW border, the Commission advocated for the creation of the Southern Border Support Grant. We also successfully advocated for eligibility for the Small Business COVID-19 Recovery Grants

Below: The Commissioner on the streets of Albury with local business leaders



## Case Study

### Getting COVID grants to where they were needed

The Hire and Rental Industry Association, on behalf of a NSW-based event hire company, contacted the Commission as they had not been included in the list of eligible industries regarded as “highly impacted” in the Small Business COVID-19 Recovery Grant guidelines. The Commission advocated strongly to the NSW Government that the industry had in fact been hit hard by the pandemic and in response the Government announced changes to the guidelines. These included both a time extension for the grant and the addition of two new industry eligibility categories that resulted in event hire businesses no longer being excluded.

to be expanded to cover additional industries hit hard by COVID-19.

The data that the Commission collected on small businesses from telephone and website enquiries, as well as our *Small Business COVID-19 Survey*, was crucial to gaining the intelligence necessary to put a compelling case to government for the various support initiatives.

## Supporting business owners' mental health

Small businesspeople are used to dealing with risk and uncertainty, but for many the pandemic created a degree of pressure they probably never expected to face.

The Commissioner's *Small Business COVID-19 Survey* found that mental health was one of their top concerns during 2020.

We're committed to supporting the mental health of small business owners to help them remain resilient. We partner with other industry, government and professional organisations to ensure mental health is a national priority and small business owners have access to the support they need in times of stress.

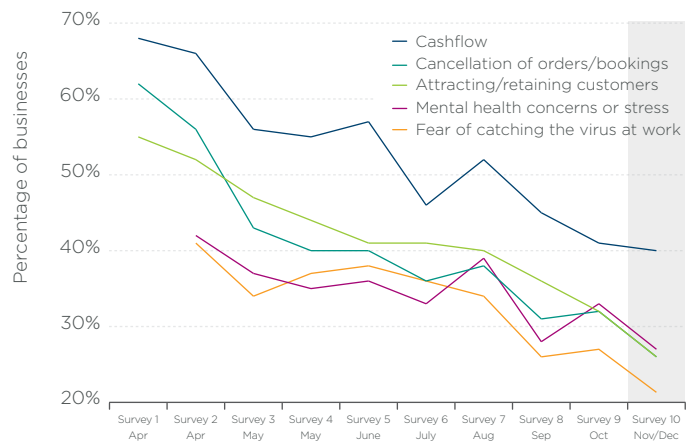
In 2020, the Commission worked with government agencies and industry groups to promote mental health resources to small business owners, such as the NSW Government's Mentally Healthy Workplaces Alliance and the Mental Health At Work website.

## Helping businesses meet COVID-19 regulations

The pandemic prompted an unprecedented effort to stop the spread of the virus and save lives, which required tough new regulations that both individuals and businesses had to follow at short notice. Despite the severity and suddenness of many of these measures, NSW small businesses and their staff responded impressively, and facemasks, COVID check-ins and customer limits became a routine part of our daily lives.

## Cashflow was the chief concern for small businesses throughout 2020

### TOP CHALLENGES FOR SMALL BUSINESS



Source: NSW SBC Small Business COVID-19 Survey

**“I run a small clothing business in Liverpool and had been locked out of my shop. I called the NSW Small Business Commission and the people I spoke to understood my situation and helped me with practical guidance on how to resolve the situation quickly. I followed their advice and it's now sorted and going well – so thank you so much for all the assistance, and the support you provided.”**

— Naleem Singh, Owner, Nazrana

The Commission worked closely with businesses and the NSW Government to develop clear guidelines for meeting the cleaning standards after a positive COVID-19 case when it became aware that many businesses did not understand what they needed to do. The Commission also helped develop solutions to enable small businesses that did not have reliable internet access to comply with the COVID check-in requirements.

# Engaging with Small Business

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**Effective engagement and communication with NSW small businesses and their supporters was crucial to the Commission's response to the pandemic. The enhancements and new connections that were made will be of ongoing benefit to the sector and ensure the voice of small business is heard by key decision makers.**

## The Commission's role

Engagement with small businesses in cities, towns and the regions is key to the Commission's understanding of the issues facing the sector and ensuring that they are aware of and can access the support and information that is available to them.

The Commissioner and his team meet frequently with small business owners and local councils, industry groups and local business chambers to exchange ideas and information and show support for small business, particularly those in areas hit by natural disasters and other extraordinary circumstances.

Regional businesses and business chambers, in particular, appreciate speaking with the Commissioner in person to share their views and experiences, express their concerns and hear about the support the Commission can provide local business operators.

The Commission's customer facing team also speaks to tens of thousands of small businesses each year who contact us directly for help and advice.

## Checking the pulse of small business

With COVID-19 causing a sharp economic downturn and also restricting the opportunities to meet businesses face to face, it was particularly important for the Commission to find new ways of listening to small businesses.

The Commission conducted the first *Small Business COVID-19 Survey* in April 2020 as the first lockdowns hit the sector and they were repeated twice a month until June, then changed to monthly. The survey of 500 small businesses tracked metrics including business performance, confidence, expectations, awareness of government support and related issues such as the mental health of business owners.

The data from these surveys was shared with key small business groups and used to inform recommendations to government on how best to support businesses during the pandemic.

Despite the profound challenge of a global pandemic and unprecedented lockdowns, the resilience of small businesses and their ability to adapt to changing circumstances stood out. For example, one in five of the small businesses the Commission surveyed reported they moved online or grew their online presence in the 9 months to December 2020. The Commissioner noted that if reflected across the State then more than 140,000 small businesses moved to mitigate the impacts of COVID-19 through increased online sales.



## The resilience of small businesses and their ability to adapt to changing circumstances stood out

### TOP 5 CHANGES TO BUSINESS MODELS / NEW OPPORTUNITIES



Source: Small Business COVID-19 Survey no.10

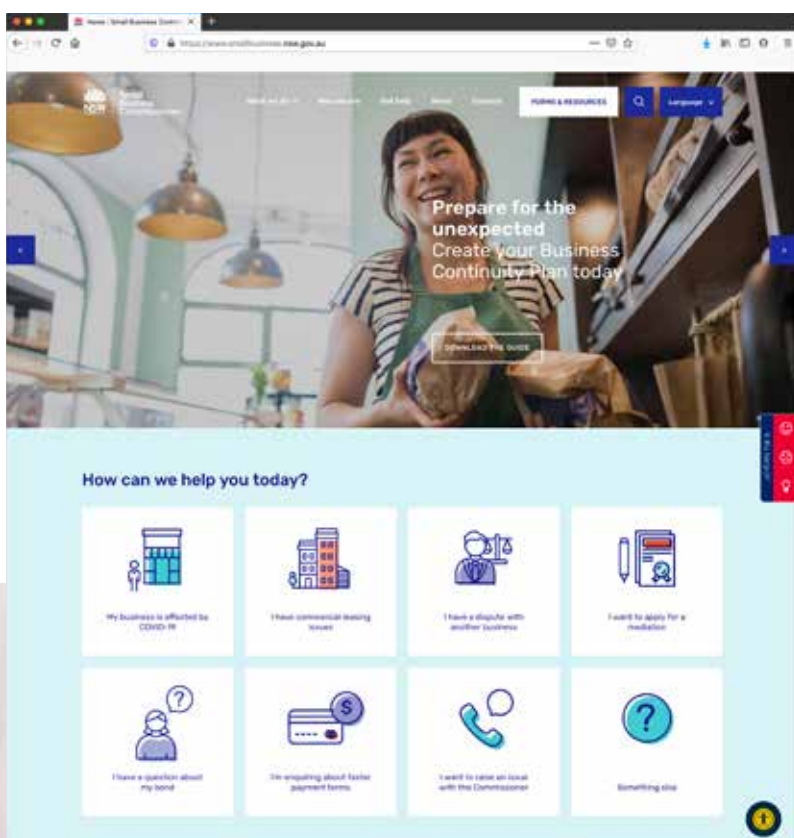
**With COVID-19 causing a sharp economic downturn and also restricting the opportunities for meeting businesses face to face, it was particularly important for the Commission to find new ways of listening to small businesses.**



## Helping businesses get the answers they need, quickly

The Commission's customer experience team managed 32,500 calls and website queries during 2020 as small businesses owners rushed for information and advice on COVID-19, as well as help with the continuing impacts of the drought and bushfires and a range of other issues.

To assist small business owners get the answers they needed quickly and help us manage the volume of calls effectively, we undertook a major upgrade of the NSW Small Business Commission website to make it more interactive and user-friendly. The rebuild helped users find answers to common questions and allowed the customer team to spend more time helping businesses solve more complex problems.



### Most read help articles on the Commission's website

- 1 Coronavirus information for small business owners
- 2 Commercial leases and COVID-19 frequently asked questions
- 3 Circumstances for rent reductions
- 4 National code of conduct for commercial tenancies
- 5 Bonds: tenants and landlords
- 6 Getting approval for a home business
- 7 Retail lease disclosure statements
- 8 Support for small businesses affected by bushfires
- 9 Security bonds for leases

**... we undertook a major upgrade of the NSW Small Business Commission website to make it more interactive and user-friendly.**



## Regional visits

Meeting small business owners, particularly in regional and rural areas, aids the Commission's understanding of the local business environment they face, where the challenges are and how to provide the most effective support. While opportunities for face-to-face meetings were more limited during 2020 because of COVID lockdowns the Commissioner and his staff still spent valuable time with business owners and local organisations.

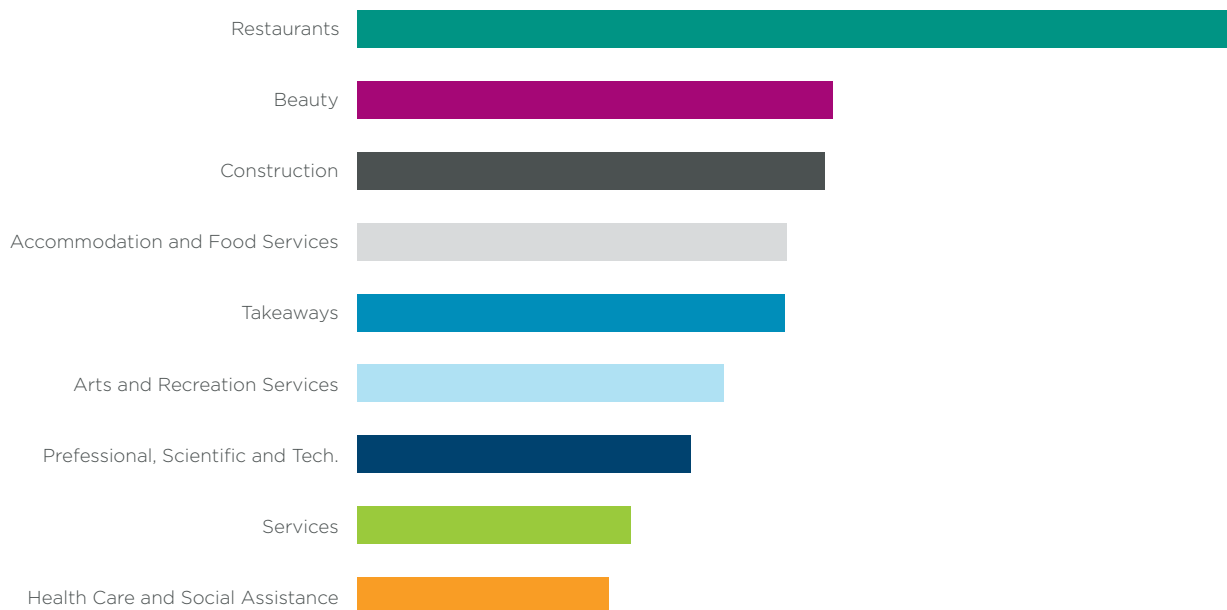


Visiting Cawarra Cosmetics at Billinudgel on the NSW North Coast in September



Inspecting a new construction project on the Central Coast in December with Finance and Small Business Minister Damien Tudehope

### TOP SMALL BUSINESS SECTORS THE COMMISSION ENGAGED WITH IN 2020



## Supporting local councils to support local businesses

Local councils are valuable partners in the work of the NSW Small Business Commission. We developed the Small Business Friendly Councils program to provide them with information, initiatives and resources to help local businesses emerge and grow. Councils are also a valuable source of information on the businesses in their communities, helping us identify new issues and barriers for small businesses.

The Commission collaborates with councils on a range of initiatives, including:

- The Making Business Easier Program, a partnership with Service NSW to deliver free, personalised support to small business owners looking to start or grow a café, restaurant, small bar, or housing construction business
- Assistance in developing conferences, webinars and workshops where small businesses can receive practical advice from industry experts

In 2020, the Commission also published a series of case studies to inspire local councils, showcasing successful council initiatives from across the State that support and promote small businesses. We also published a guide for local councils on engaging with culturally and linguistically diverse (CALD) businesses and communities and a quick reference guide to business support tools and services.

**“COSBOA has been working with the NSW Small Business Commissioner extensively over the past year – firstly managing the adverse impacts of the 2019-20 summer bushfires, followed almost immediately by the COVID-19 economic downturn. Throughout, COSBOA has learned to value the outstanding efforts of the NSW Small Business Commissioner. We have jointly worked to champion the interests of NSW small businesses during one of the most challenging economic periods in more than a generation.”**

— Mark McKenzie, Chair of the Council of Small Business Organisations Australia



# Case Study

## Gilgandra's 12 Days of Christmas

This council project involved more than 50 businesses from Gilgandra Shire, in the central west of NSW, co-locating in a large space in the centre of town left vacant by the previous retail tenant.

The initiative gave new businesses, local makers and artists the opportunity to reach the community with their goods and services in a central location while also boosting the vibrancy of the Gilgandra CBD.

Participating businesses had to set up their own displays, but were not charged a fee to use the space. Promotion for the event included social media, media releases, radio, email marketing and general word of mouth.

The initiative was delivered using existing council resources. Council staff worked with participants in stocking their items for display, sourcing display pieces and setting up the building, branding and promotion, processing customer payments and reconciling sales and inventory lists.

Close to \$20,000 in sales were made during the 12-day event and over 20 per cent of sales were made to customers from outside Gilgandra Shire.

The event was staffed and delivered with existing council resources and featured a visual merchandising workshop for participating businesses, provided by the NSW Government.



# Making it Easier to do Business

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While COVID-19 dominated the concerns of small business in 2020, business owners have to solve many small and large problems throughout any given year just to keep their business running and take advantage of new opportunities. The Commission talks to small businesses every day and understands the common issues they face and how to make doing business easier.

## The Commission's role

The Commission works to help small businesses solve their day-to-day problems, prepare for new challenges and open avenues for them to grow their business.

The Commissioner's experienced team can answer many business-related questions on the spot, but if not, we are part of a network enabling us to refer you to the right place for assistance.

The Commission can provide general advice and information on many small business issues, such as:

- Resolving business disputes
- Understanding laws and regulations relating to small business
- Doing business with government
- Telecommunications and internet issues
- Setting up a home business or buying a franchise
- Making an insurance claim

The Commission works with government and other agencies to help businesses get the information and advice they need including Service NSW, Business Connect, the Australian Tax Office, LawAccess, icare, SafeWork NSW and the Australian Small Business and Family Enterprise Ombudsman.

The Commission regularly gathers data on the thousands of interactions it has with small businesses to identify common problems and trends. This information is used to help address issues before they become a widespread problem.

## Helping businesses prepare for disruption

Business continuity planning is an essential requirement for growing and sustaining a good business.

The Commission's surveys reveal that business planning was a top priority in 2020, particularly as small businesses looked to minimise disruption and better manage the ongoing impacts of COVID-19.

In December, the Commission released a free business continuity planning tool to assist small businesses.

*Prepare for the Unexpected - Build a Business Continuity Plan* is a step-by-step guide to help small businesses create a bespoke plan to get back on their feet sooner when disruptions (including pandemics and bushfires) occur.

The guide covers a range of topics, from ensuring businesses can access their records and operate from an alternative location to putting together an evacuation plan for floods, storms and bushfires. It provides easy-to-use templates and checklists that can be tailored as necessary, giving business owners a comprehensive business continuity plan unique to their needs.

The guide is part of a suite of resources the Commission has developed to help small businesses build resilience, in partnership with Resilience NSW, Fire and Rescue NSW, NSW State Emergency Service, NSW Rural Fire Service and NSW Treasury.



## Helping small businesses do business with the NSW Government

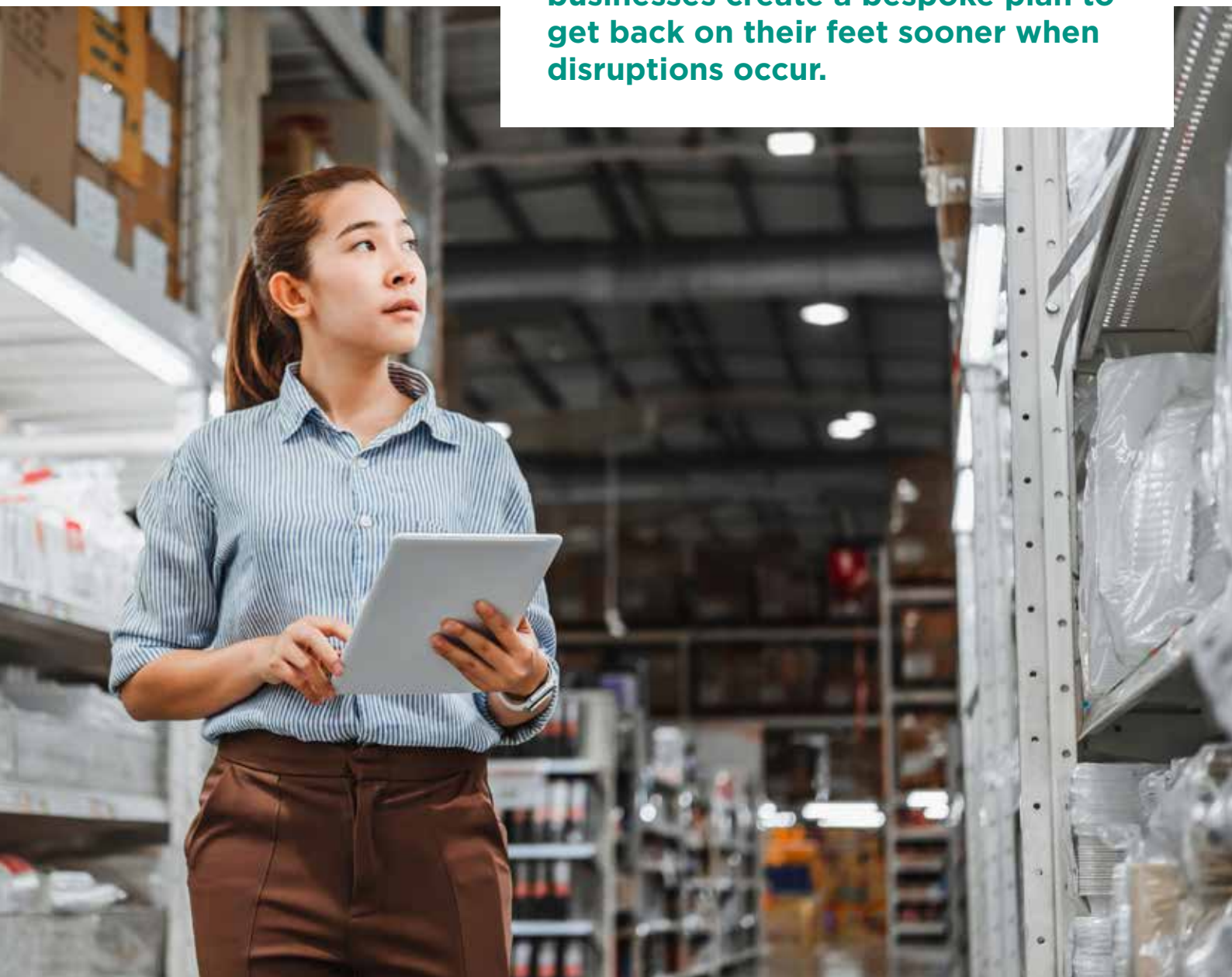
The Commission was allocated \$5 million in the November 2020 NSW Budget for a tendering support program to help small businesses access procurement opportunities.

The program reflects the NSW Government's commitment to improving the sector's share of the annual NSW Government spend on goods and services.

The first stage of the project will engage small businesses and their representatives to understand the challenges experienced by businesses when tendering and doing business with government and their ideas for improvement.

Based on this feedback, the Commission will develop resources and training to support small businesses and work with other agencies to streamline tendering processes and requirements to make it easier for small businesses to supply goods and services to the NSW Government.

***Prepare for the Unexpected - Build a Business Continuity Plan is a step-by-step guide to help small businesses create a bespoke plan to get back on their feet sooner when disruptions occur.***



## Helping to avoid or solve retail lease disputes

Retail leases were already the leading source of business disputes the Commission dealt with before COVID-19. The subsequent lockdowns of homes and businesses to protect the health of the community helped drive the number of these disputes to an unprecedented level.

In December, the Commission published its updated *NSW Retail Tenancy Guide*, to help lessees and lessors (landlords) be better informed about their rights and responsibilities under a retail lease and what to do when things go wrong.

The guide, developed in consultation with industry associations, provides advice for each stage of a tenancy agreement – from understanding the rights and obligations of the parties and asking the right questions before the lease is signed, to the costs of leasing, how to resolve disputes and dealing with end of lease issues.

The NSW Small Business Commission administers the *Retail Leases Act 1994*. Parties to a dispute under that Act must apply to the Commission for mediation and have a mediator appointed by the Registrar of Retail Tenancy Disputes before they can have their matter determined in a court or tribunal. Mediation run by the Commission is a quick and cost-effective way to resolve most disputes that cannot be resolved privately between the parties.

**Our experience with the NSW Small Business Commissioner and his team has been nothing but positive and effective. The Commissioner and his office genuinely care and the attention given to our members' needs is refreshing to say the least, and makes our role advocating on our members' behalf enjoyable. Thank you."**

– Carrick Gill-Vallance, General Manager, Albury Business Connect



## Empowering subcontractors in the construction industry

Subcontractors or “subbies” are a vital part of the economically important construction industry – the largest industry in NSW.

In 2019, the Commission partnered with Roads and Maritime Services (RMS) and conducted a pilot program with subcontractors working on RMS projects to address their business challenges and knowledge gaps. Workshops were held to strengthen the onboarding processes for small subcontractors, improve their skills in contract and project management and boost their financial literacy.

A survey by the Commission found that key pain points for small businesses in the construction industry were cashflow, late/non-payments, finding new contracts and managing expenses, overheads and staff.

The survey also highlighted most subcontractors were not aware of the State’s *Building and Construction Industry Security of Payment Act 1999* – legislation which exists to ensure they get paid what they’re owed. These businesses also lack awareness of when to enact their rights or where to report issues.

In 2020, the Commission used the insights from the survey to develop five training videos which provide handy tips to subcontractors and help them navigate through these typical challenges:

- Security of Payment Act (SOPA)
- Contract management
- Insolvency protection
- Managing your cashflow
- Where to find help

**Watch the videos at** [smallbusiness.nsw.gov.au/construction-industry-videos](https://smallbusiness.nsw.gov.au/construction-industry-videos)



## Top 10 tips to avoid business disputes

1. Have a written agreement at the outset
2. Always read written contracts before signing them
3. Where possible have both parties sign the agreement
4. Ensure that all terms, including payment terms, are included in the agreement prior to providing goods or services
5. If you are providing services that are to be charged on a time basis, provide an estimate of the likely cost and maintain detailed work sheets
6. Properly identify the person with whom you are dealing
7. Ensure your employees are aware of the scope of their authority to enter into contracts on your behalf
8. Check the person you are dealing with has authority to bind the company or the business proprietor
9. Understand what rights or penalties apply if you have to end a service agreement early
10. Attempt to settle a dispute through communication. Taking a claim to court should be a last resort

## Making insurance easier

In 2020, the NSW Small Business Commission collaborated on the *Small Business Insurance Toolkit* to help businesses navigate the complexities of workers compensation insurance. Download it from [icare.nsw.gov.au](https://icare.nsw.gov.au)

# Advocating for Small Business

## The Commission's role

The NSW Small Business Commissioner speaks with a strong voice for the interests of the 800,000 small business owners in this State, recognising it is sometimes challenging for those businesses to have their needs recognised and understood.

We advocate for solutions and policies to address systemic issues and make it easier to do business. In doing so, the Commission is able to support the NSW Government in developing timely responses to emerging challenges, including during times of natural disaster or disruptions such as COVID-19.

The Commission will also work with individual businesses who have a specific problem in circumstances where we can provide practical assistance or advocate on their behalf.

The Commissioner leads a professional team, passionate about helping small businesses, that understands how government and the legislative process works and how to advocate for and achieve meaningful change.

## Promoting small business-friendly policies and projects

The Commissioner is an influential voice in the development of government policies, projects and regulations which impact small businesses.

We bring expert knowledge and experience to the policy development process, ensuring small business needs are considered.

The Commission makes formal submissions to inquiries, liaises with government agencies, and represents small business on government committees and working groups.

Bodies the Commission was represented on in 2020 include:

- ABN data integrity Working Group (ATO)
- Cross Agency COVID-19 Working Group
- Central West Orana Drought Task Group
- Nominal Insurer Advisory Committee
- Industry & Social Partners Working Group (SafeWork NSW)
- Small Business Reference Group (SIRA)
- Small Business and Franchising Consultative Committee (ACCC)
- Small Business Infrastructure Program Committee
- NSW ICT Sovereign Procurement Taskforce
- Agritourism Working Group
- Business and Communities Working Group
- Food Regulation Forum
- Australian Scams Awareness Network - COVID-19 scams prevention
- Alfresco Dining Taskforce
- Recreational Fishing and Hunting COVID Working Group
- Business Registry Strategic Advisory Council



The Commission is seeking better NBN services for small businesses, which are increasingly reliant on the internet for sales

## Under the *NSW Small Business Commissioner Act*, the Commissioner has the power to:

- Investigate allegations of unfair treatment or unfair contracts
- Compel local councils, NSW Government bodies and businesses to provide information or answer questions when a complaint is made
- Require parties to attend mediation before starting more expensive and time-consuming court battles, whether those parties are businesses (small and large) or government departments
- Report directly to Parliament where there is an issue of major importance to small businesses





**We advocate for solutions and policies to address systemic issues and make it easier to do business.**

In 2020, the Commission contributed to policy development and sought improvements to new or amended laws and regulations, including these initiatives:

- Enhancements to federal unfair contract terms protections
- New Commonwealth laws to track payment performance by big businesses to small businesses
- New NSW legislation to ensure faster payments and stronger protections for subcontractors in the construction sector
- Supporting small businesses in the hospitality sector with their responses to planning applications and operating arrangements
- Advocating for improved NBN services for regional small businesses before the Joint Standing Committee on the National Broadband Network
- Helping deliver an improved COVID-19 deep clean standard for small businesses
- Advocating for improvements to childcare planning arrangements in the review of the Education State Environmental Planning Policy
- Supporting the extension of the *Retail and Other Commercial Leases (COVID-19) Regulations* for retail businesses
- Supporting the NSW Government's Alfresco Outdoor Dining Pilot to make it easier for councils to approve outdoor dining for existing small bars, pubs, cafes and restaurants.
- Recommending improvements to insolvency and franchising legislation
- Successfully seeking the inclusion of online retailing in the definition of "home business" and "home industry" in local environmental planning regulations

# Case Study

## Parramatta Light Rail

The Commission first began working with small businesses in the area impacted by the Parramatta Light Rail project in 2019.

When complete, the light rail will have 16 stops along its 12km route, connecting the Parramatta CBD to the Westmead Health Precinct, the Rosehill Gardens Racecourse and three Western Sydney University campuses at Westmead, Parramatta and Rydalmere.

In February 2020, Parramatta's Church Street permanently closed to general traffic between Market and Macquarie Streets, including the "Eat Street" strip, to allow for works to begin.

Major construction in this area started in early June 2020 and is on track for completion in mid-2021. The full project is expected to be completed in 2023.

The Commission has continued to engage closely with affected businesses and Transport for NSW to identify pain points, mitigate impacts and ensure businesses are aware of the available support.

The Commission participates in the Parramatta Light Rail Reference Group, which gives local

businesses, community members and other stakeholders the opportunity to share advice and collaborate on initiatives to support affected businesses.

Parramatta Business Chamber President Schon Condon said the Commission's involvement had ensured that the Chamber and Parramatta businesses were properly heard across all levels of government and by the community at large.

"It's regrettable that there has been this disruption to businesses but with the Commission's help the Chamber is doing everything it can to ensure it ends as quickly as possible," he said.

### Long term benefits for Parramatta businesses

Mr Condon said once completed the Parramatta Light Rail would provide long term benefits to local businesses by bringing more people into the city.

"An increase in visitors will bring about increased opportunities for businesses to sell their wares and thus improve the city's profitability and economic sustainability," Mr Condon said.

"But the real future value of the project will come with the further expansion of the light rail route in the years to come."





## Supporting small businesses impacted by infrastructure disruption

The NSW Government is delivering a \$107 billion infrastructure pipeline to improve the State's transport infrastructure, local amenity and the productive capacity of the economy.

As we have seen, however, some of these projects will cause short-term disruptions to businesses located around construction sites.

The Commission has taken a lead role in representing small businesses impacted by these projects and has been working with government, industry groups and local councils to minimise disruptions and provide direct support to businesses.

The Commission chairs the Government's Small Business Infrastructure Program Committee, which was established to develop an action plan to:

- improve support and information for small businesses impacted by infrastructure projects
- improve consultation between government agencies and small business
- ensure government continues to consider mitigation strategies to minimise disruption early in the planning process

**“The southern NSW border region went through an unprecedented business downturn and disruption during the 2020 border closures. Accessibility to and responsiveness from the Small Business Commissioner and (Finance and Small Business) Minister Tudehope were greatly appreciated by the business community, paving the way for a timely and effective response in supporting jobs and our regional economy.”**

— Andrew Cottrill, Regional Manager, Business NSW – Riverina Murray

# Mediation and Retail Bonds

## The Commission's role

The Commission offers a cost-effective mediation service to help businesses solve disputes without the high cost and delays inherent in going to court. Moreover, of all the mediation matters filed with us, about 90 per cent are resolved before the need for a court or tribunal to decide the matter.

The Commission's panel of mediation officers are independent and highly experienced in mediating on issues including retail lease disputes and other business contract disputes.

While the mediation officers provide case management to clients, their role is not merely administrative; mediation officers take an active role in engaging parties throughout the process to offer them every available opportunity to resolve their matter even before formal mediation begins.

The Commission was a finalist in the Australian Disputes Centre's Ombudsmen & Commissions ADR Group of the Year award.

We are also a member of the Mediator Standards Board, which was established to support and promote high standards among mediators and to enhance the quality of mediation services in Australia.

The Commission also manages the NSW Retail Lease Security Bond Scheme. The Commission holds retail and commercial property cash bonds as a neutral party. Bonds are paid out once a claim is agreed to by both the landlord and tenant, or otherwise directed by a court. If there is a dispute over the bond, the mediation team can work with both parties to find a timely and cost-effective resolution.

The NSW Government holds over \$215 million across 44,000 retail lease security bonds, administered by the Commission. In 2020 there were more than 11,000 bond transactions processed, worth over \$70 million.

**Mediation run by the Commission is a quick and cost-effective way to resolve any dispute that cannot be resolved privately between the parties.**



**I am thrilled to report that our dispute with our landlord has now finally been resolved.**

**It was comforting to know that we were being looked after and that there was someone who was happy to listen and offer ideas and suggestions for both sides of the dispute.**

**At all times you acted with the utmost professionalism and you were an absolute pleasure to work with.”**

— Bev Barnfather, Owner, Ladybird Gifts



## A mediator's view

"I'm a solicitor, a sole practitioner, and have been working in mediation since 1991, including the last four years with the NSW Small Business Commission on its external mediation panel. I think it's a great service that the Commission offers to the public - it's cheap and it's efficient.

I've been extremely busy in the past year. In November, I did 14 mediations in just 20 business days, all COVID-related lease disputes.

I became a mediator because I had seen how useful it was in disputes when I was acting for clients in the construction industry. I also think the money that's spent on litigation is often wasted money because what it does is keep the parties apart as opposed to bringing them together in an environment where they can have a bare bones talk about the issues. If you have spent a lot of money on legal fees it can be a disincentive to settlement. If the parties in a dispute are only communicating by sending letters through their lawyers it can also just dig them further into their positions.

In a mediation, I try and get the parties actually talking directly to one another rather than through their lawyers (most people still bring one, though it's not compulsory). When you talk to the parties you actually find out what's really important to them. Often people will tell the other side things about their situation which might be nothing to do with the law or the strict application of the regulations, but those things can have a real impact on how a landlord looks at their tenant.

At the end of the day, it's the two people in dispute that have to decide to settle, not their lawyers."

- Daniel Massey, Mediator for the NSW Small Business Commission

## MEDIATION SERVICES, KEY STATISTICS

# 2,517

applications

for mediation were filed in 2020, up from 920 applications filed in 2019



# 616

mediations

were initiated in 2020, a 200 per cent increase on 2019



# 15

more case managers

employed in the mediation service in 2020 to meet the increased demand



# 90%

of matters expected to settle before the need for a court or tribunal to decide them



## Helping tenants and landlords through COVID-19

The Commission saw a big rise in demand for mediation over retail tenancy and other commercial lease disputes in 2020. The *Retail Leases Act 1994* has required any dispute between a lessor and lessee of a retail shop lease to be referred to the Registrar of Retail Tenancy Disputes (a role held by the NSW Small Business Commissioner). The introduction of the *Retail and Other Commercial Leases (COVID-19) Regulation 2020*, in response to the COVID-19 economic downturn, meant that any dispute involving a commercial lease of any kind had to also be referred to the Commissioner for mediation prior to a matter being determined in a court. This placed us in a unique position to help all commercial lessors and lessees who had been impacted by the pandemic.

The regulation is intended to equitably share the economic impact of COVID-19 across lessors and lessees, and to maximise the number of businesses that can resume normal operation once the crisis passes. To this end, the mediation services team has:

- Used its specialist expertise to help clients better understand their rights and obligations under the COVID regulations
- Helped parties negotiate practical and workable lease arrangements

## Case Study



### A Sydney gym negotiates a rent reduction

Andrew\* was forced to shut down his Sydney gym when COVID-19 first hit in March 2020 and was unable to meet the terms of his lease. He was worried that, as gym memberships were being frozen during the lockdown period, he could have a 100 per cent reduction in turnover and

would have to let many of his trainers and other staff go. To mitigate this, Andrew quickly reassessed his business model and switched to an online fitness offering. But even with a rapid uptake, Andrew was still unable to meet the terms of the lease.

Andrew suffered an 80 per cent downturn in turnover and sought to negotiate a rent reduction with the lessor (landlord), a small property owner who had substantial debts. The lessor was reluctant to provide relief as he had not received any mortgage relief but understood that both parties had to share the financial risk and cashflow impact of COVID-19, and therefore initially provided a three-month rent waiver.

After a three-month forced closure, Andrew was able to reopen, but at reduced capacity. After several months of restricted trading, the business was also required to absorb the cost of having a dedicated hygiene marshal on duty at all times.

In July, Andrew approached the lessor for further relief but the lessor declined. Both parties agreed to mediation, understanding that it was compulsory for them to undertake mediation before pursuing claims in the civil courts.

When the mediation day came, both parties were nervous as they did not think it would be effective. The mediator gave them both the opportunity to discuss the matter and air their grievances. At first, both parties refused to budge. The tenant wanted a waiver of their rent. The landlord was hesitant as he doubted the accuracy of Andrew's financial statements. After two hours, the mediator adjourned the mediation for two weeks to give Andrew the opportunity to obtain further evidence of his decline in turnover.

During the second mediation session the mediator was able to help both parties understand each other's financial position and assist in identifying options that suited them and would not have been available under the regulated guidelines. By the end of the mediation process, both parties were relieved to have resolved the dispute and have a degree of financial certainty.

\*Name has been changed



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