

Changes to the *Small Business Commissioner Act 2003*

The Victorian Small Business Commissioner (VSBC) is an independent statutory role providing a quick, effective, no or low cost dispute resolution service for Victorian small businesses. The VSBC is not constrained by any legislated definition of 'small business'.

Amendments to the *Small Business Commissioner Act 2003* came into effect on 1 May 2014.

What are the key changes?

1. Clarifying the broad scope of commercial disputes

The amendments make explicit that the VSBC can deal with commercial disputes between small businesses and government bodies and instrumentalities as well as another business. Disputes no longer need to relate to 'unfair market practices' but can relate to any form of commercial dealings between the parties.

2. VSBC to determine how to deal with a complaint

The VSBC can determine the most appropriate form of Alternative Dispute Resolution (ADR) to deal with a complaint. This includes the mediation of complaints. The VSBC also has the capacity to refuse to deal with a complaint.

3. VSBC can issue certificates and publish details if a party unreasonably refuses to engage in ADR

The VSBC can issue certificates confirming that ADR has been attempted by the parties but the dispute has not settled; that the matter is unlikely to be resolved by ADR; or that a party has *unreasonably refused* to engage in ADR. Such certificates can be used as evidence in proceedings before a Court or the Victorian Civil and Administrative Tribunal (VCAT).

Where a party has unreasonably refused to engage in ADR, the VSBC can publish details of that fact in its Annual Report. The VSBC Annual Report is tabled in State Parliament.

The refusing party must be provided with 21 days to make any comments before the VSBC determines to publish details. *Guidelines* on 'unreasonable refusal' are available on the VSBC website.

This amendment is designed to encourage parties to participate in ADR and try to resolve commercial disputes without the matter having to escalate to litigation.

4. Other changes

Other amendments enable the VSBC to seek an Advisory Opinion from VCAT if in the public interest to do so; to assist with the development of industry codes that promote ADR services; and provide immunity for the ADR function provided by the VSBC.

Further information

For further information about the VSBC: Ring: 13 VSBC (13 8722)
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