



Victorian
**Small Business
Commissioner**

ANNUAL REPORT 2015-16



VICTORIAN SMALL BUSINESS COMMISSIONER
September 2016
Annual Report 2015-16

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AUTHORISED BY THE VICTORIAN SMALL BUSINESS
COMMISSIONER

Level 2
121 Exhibition Street
Melbourne Victoria 3000

Telephone: 13 87 22
Toll Free: 1800 136 034
Facsimile: 03 9651 9943
Email: enquiries@vsbc.vic.gov.au
Website: www.vsbcc.vic.gov.au

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Victorian Small Business Commissioner

The Hon Philip Dalidakis
Minister for Small Business, Innovation and Trade
Level 16
121 Exhibition Street
Melbourne VIC 3000

Dear Minister

Annual Report 2015-16

I am pleased to present to you the Annual Report on the operations of the Victorian Small Business Commissioner, covering the period 1 July 2015 to 30 June 2016.

The Report is provided to you under section 14(1) of the *Small Business Commissioner Act 2003* (the Act), in order for you to cause the Report to be laid before each House of Parliament as required under section 14(2) of the Act.

Yours sincerely

Geoff Browne

Victorian Small Business Commissioner

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CHAPTER 1

OVERVIEW OF 2015-16

GEOFF BROWNE VICTORIAN SMALL BUSINESS COMMISSIONER

Total application volumes grew 3.9 per cent in the year to 1,912, mainly due to a substantial increase in the number of applications for the appointment of a Specialist Retail Valuer under the *Retail Leases Act 2003* (RL Act). The total number of applications relating to a commercial dispute fell by 1.8 per cent to 1,628.

The resolution of disputes before formal mediation increased to 30.6 per cent, while the settlement rate at mediation was 81.8 per cent. Satisfaction ratings by mediation participants exceeded 95 per cent for the first time – for both applicant businesses and respondent businesses.

We continued to expand our efforts to communicate with businesses and their advisors, with 85 face to face presentations, 31 webinars, attendance at 20 business expos or conferences, and four e-newsletters issued during the year.

The Future Businesses and Advisors Program targets business, law and accounting students in tertiary institutions. Guest lecture and other workshop opportunities are identified with faculty heads, and included in course planning. We also hosted a fifth year law student from Melbourne University for four weeks as part of the practical experience required for the law course, and other internships with a number of universities are scheduled for 2016-17.

At the request of the Minister, I wrote to all Departmental Secretaries seeking information on compliance with the Fair Payments Policy. The Policy requires payment of invoices for contracts up to \$3 million within 30 days of receipt of invoice where there is no dispute over the goods or services provided. Penalty interest can be claimed for late payments. Chapter 5 provides the results of this review.

During the year I completed inquiries into the impact of the Melbourne Water Carlton Sewer Upgrade on local businesses, and the Australia Post Mail Contractor Agreement. In both instances, positive responses were received and changes made as a result of the initial inquiries. Chapter 5 provides details.

As this is the last year of my five year term as Commissioner, I have reviewed the strategic goals I set for the Office in 2011-12 in Chapter 10. These goals have been substantially achieved. In summary, over the past five years we have:

- > doubled the number of dispute applications received under the *Small Business Commissioner Act 2003* (SBC Act) (these disputes are not statutorily required to be referred to this Office)
- > reduced by two thirds the incidence of businesses refusing to engage with the VSBC under the SBC Act
- > stopped the long term upward trend in RL Act disputes
- > doubled the engagement with small businesses and advisers.

These measures, together with website user data and sources of information about the VSBC, point to an increased awareness of the VSBC by small and medium businesses.

Our two primary KPIs – mediation settlement rate and customer satisfaction rate – have exceeded minimum target levels over the five years, notwithstanding a 27 per cent increase in application volumes since 2011-12.

We also successfully implemented the *Farm Debt Mediation Act 2011*, and substantially repositioned the VSBC brand and message following a detailed review.

These results could not have been achieved without the skills, professionalism and commitment of VSBC staff and mediators, who provide an excellent service for Victorian small businesses.

CHAPTER 2

OUR SERVICES

PURPOSE

The Victorian Small Business Commissioner (VSBC) was established by the *Small Business Commissioner Act 2003* (SBC Act) to enhance a competitive and fair operating environment for small business in Victoria. The VSBC has a range of functions under that Act, including dispute prevention and dispute resolution.

The VSBC also has statutory dispute resolution and prevention functions under the *Retail Leases Act 2003* (RL Act), the *Owner Drivers and Forestry Contractors Act 2005* (ODFC Act), the *Farm Debt Mediation Act 2011* (FDM Act) and the *Transport (Compliance and Miscellaneous) Act 1983* (Transport Act).

The predominant activity of the VSBC is providing a quick, low cost and effective dispute resolution service for business-to-business disputes. The VSBC also deals with disputes between business and local or state government, or with not-for-profit entities.

There is no statutory definition of 'small business' in any legislation administered by the VSBC.

DISPUTE RESOLUTION SERVICES

There are three main elements:

INFORMATION AND EDUCATION

The VSBC provides information to businesses on their rights and obligations under relevant legislation to assist them to prevent and resolve disputes. Information is provided by phone, email, online, printed materials, webinars, face to face presentations and workshops. In addition, the VSBC and staff regularly meet with stakeholder groups and business advisers to inform them of the services available through the Office. These services are available at no cost to the parties.

PRELIMINARY ASSISTANCE AND RESOLUTION

When an application for assistance with a dispute under the RL Act, the SBC Act or the ODFC Act is received by the VSBC, staff will initially engage with both parties to see if the dispute can be resolved before proceeding to mediation. Staff expertise in legislative provisions and dispute resolution can often assist in bringing the parties to a pragmatic resolution. If the dispute cannot be resolved at this stage, staff will explain the benefits of mediation to the parties and encourage them to participate, avoiding the emotion, delay, cost and distraction of litigation.

The same process does not apply for disputes under the FDM Act or the Transport Act, where the VSBC role is limited to arranging and conducting mediation.

During 2015-16, the VSBC piloted *Case Management Meetings* as an alternative form of dispute resolution for certain matters where the amount in dispute is too small to warrant formal mediation, but face to face involvement may assist in resolving the dispute.

The Dispute Management Officer handling the dispute invites the parties to a meeting with the Officer to try to settle the dispute.

These services are available at no cost to the parties.

MEDIATION

The timely, low cost resolution of a dispute through mediation can maintain a business relationship and let the parties quickly get back to business. A binding Terms of Settlement between the parties brings clarity and control to resolution of the dispute. Each party to mediation contributes \$195 (\$95 for mediations under the ODFC Act and the Transport Act) toward the cost of the mediation, which is otherwise subsidised by the VSBC. Mediations are held in locations to meet the needs of the parties.

The VSBC cannot offer mediation under the Transport Act (for disputes between contracted drivers and taxi operators) unless the Taxi Services Commission issues a certificate to a disputing party referring the matter to VSBC mediation.

OTHER FORMS OF ALTERNATIVE DISPUTE RESOLUTION

The SBC Act enables the VSBC to determine what form of alternative dispute resolution is most appropriate to use in dealing with a dispute. Occasionally the VSBC will invite parties to attend a 'facilitated meeting' rather than a 'mediation'. This can be helpful where there is a need for improved communications between the parties managed by an independent third party so the alternative points of view can be expressed and understood. A facilitated meeting may also be more palatable for some parties – for example, participation at a mediation may have to be reported to an offshore Board, whereas attending a facilitated meeting may not. Facilitated meetings may still lead to agreed settlement terms.

INVESTIGATIONS

The VSBC can undertake investigations under the SBC Act. There are three broad circumstances which may lead to an investigation being initiated:

- > where multiple disputes arise involving the same entity, issue, or conduct
- > where an issue is brought to the VSBC's attention, not as a dispute but which could lead to disputes
- > where an individual dispute highlights an underlying issue of concern beyond that particular dispute.

The VSBC undertakes investigations infrequently as most matters are appropriately addressed through individual dispute resolution.

OTHER ADMINISTRATIVE FUNCTIONS

The VSBC has a range of administrative and certificate functions under each Act:

RL Act:

- > appointment of Specialist Retail Valuers
- > certificates enabling a tenant to waive its statutory right to a minimum five year lease term
- > certificates that mediation is unlikely to resolve the dispute or that mediation failed to resolve the dispute, enabling a party to progress the dispute to the Victorian Civil and Administrative Tribunal (VCAT).

SBC Act:

- > certificates that mediation is unlikely to resolve the dispute, or that mediation failed to resolve the dispute
- > certificates that a party has unreasonably refused to engage in alternative dispute resolution with the VSBC.

FDM Act:

- > An Exemption Certificate specifies that the FDM Act no longer applies, and enforcement action can be taken by a party (the creditor) to pursue its security interests.
- > A Prohibition Certificate prevents enforcement action from being undertaken for six months, or until satisfactory mediation has occurred, whichever occurs first.

ODFC Act:

- > certificates on application by a contractor seeking to waive its obligation to provide a minimum period of notice of termination to the hirer
- > certificates that mediation is unlikely to resolve the dispute or that mediation failed to resolve the dispute, enabling a party to progress the dispute to VCAT.

Transport Act:

- > certificates that mediation is unlikely to resolve the dispute or that mediation failed to resolve the dispute, enabling a party to progress the dispute to VCAT.

CHAPTER 3

PERFORMANCE 2015-16

NUMBER OF APPLICATIONS

The total number of applications in 2015-16 grew 3.9 per cent compared to the previous financial year. The Office received 1,912 applications in 2015-16 compared to 1,841 applications in 2014-15.

The number of retail lease applications grew 11 per cent in the year to 1,195, exceeding the 5.9 per cent growth the previous year. Retail lease applications comprised 62.5 per cent of total applications received and 59.6 per cent of all dispute applications received.

The number of general commercial disputes lodged under the *Small Business Commissioner Act 2003* (SBC Act) increased by less than 1 per cent, following the 41.4 per cent growth the previous year. The total number of these applications was 564, the highest annual volume on record.

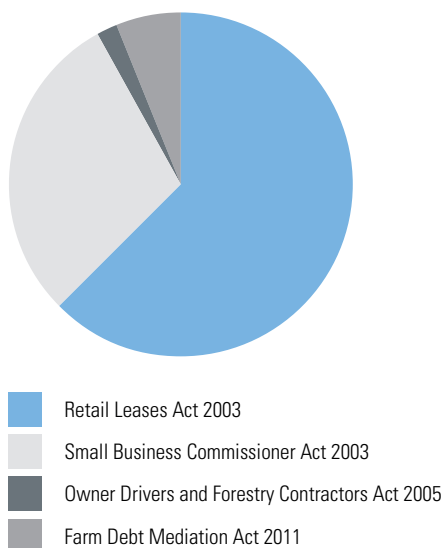
The number of owner driver disputes grew 8.6 per cent to 38 applications, and the number of applications received under the *Farm Debt Mediation Act 2011* (FDM Act) fell 31.5 per cent to 115.

There were no taxi dispute applications received under the *Transport (Compliance and Miscellaneous) Act 1983* during the year.

TABLE 3.1
APPLICATIONS RECEIVED 2015-16

	2015-16	2014-15	% + / (-)
Total	1912	1841	3.9
Retail Leases Act 2003	1195	1077	11.0
Small Business Commissioner Act 2003	564	560	0.7
Owner Drivers and Forestry Contractors Act 2005	38	35	8.6
Farm Debt Mediation Act 2011	115	168	(31.5)
Transport (Compliance and Miscellaneous) Act 1983	NA	1	NA

FIGURE 3.1
APPLICATIONS RECEIVED IN 2015-16 BY LEGISLATION



PROFILE OF APPLICANTS

VSBC application forms ask applicants to indicate the number of employees in their business. Not all applicants provide this information. In 2015-16, 1,200 responses were provided.

The data shows little change from 2014-15, as shown in Table 3.2.

No data is collected on the number of employees in the respondent's business.

TABLE 3.2
PROFILE OF APPLICANT BY NUMBER OF EMPLOYEES

	2015-16 n = 1,200 responses	2014-15 n = 830 responses
0 employees	19.7%	22.2%
1-4 employees	50.5%	51.2%
5-19 employees	23.8%	20.0%
20+ employees	6.1%	6.7%

AMOUNT IN DISPUTE

Application forms enable the applicant to specify the amount in dispute, although such information is not mandatory, and sometimes the dispute is not related to an amount of money.

The profile of disputes by amount claimed and legislation is shown in Figure 3.2. The average and median amounts claimed are shown in Table 3.3.

FIGURE 3.2
PROFILE OF DISPUTE AMOUNTS BY LEGISLATION 2015-16

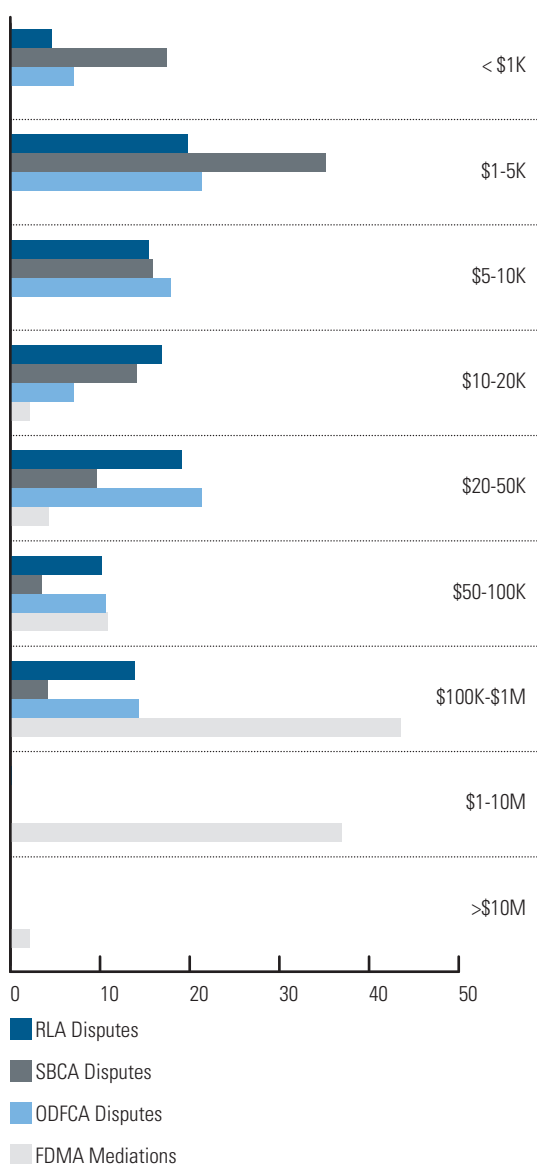


TABLE 3.3
MEDIAN AND AVERAGE AMOUNTS CLAIMED BY LEGISLATION

	Median \$	Average \$
RLA Disputes	14,674	55,429
SBCA Disputes	4,420	19,190
ODFCA Disputes	18,365	35,739
FDMA Disputes	795,055	1,546,880

DISPUTE RESOLUTION SUCCESS RATES

Between 1 July 2015 and 30 June 2016, 1,392 matters were completed through the VSBC's dispute resolution process. A number of matters still in process were incomplete as at 30 June 2016.

The table below outlines the outcomes for completed matters. Completed matters include those where resolution is not achieved and the file is closed. Pre-mediation dispute resolution remains a focus of the Office, with 30.6 per cent of matters resolved in this way.

TABLE 3.4
DISPUTE APPLICATION OUTCOMES

	2015-16	%	2014-15	%
Total completed disputes	1,392	100	1,203	100
Disputes completed before mediation	808	58	499	41.5
Settled prior to mediation	426	30.6	292	24.3
No mediation / refusals	382	27.4	207	17.2
Disputes completed through mediation	584	42	704	58.5
Successful mediation	478	34.3	575	47.8
Unsuccessful mediation	106	7.6	129	10.7

Of the disputes which were referred to mediation, 81.8 per cent were successfully resolved. The settlement rate varies from 79.8 per cent to 96.4 per cent across jurisdictions. Of the total number of conducted mediations, 13.6 per cent were held in regional Victoria.

TABLE 3.5
MEDIATION OUTCOMES BY VENUE AND LEGISLATION

	Venue					Mediations				ADJOURNED @ 30/6/16
	VSBC	OTHER METRO	REGIONAL	TOTAL	SUCCESSFUL	UNSUCCESSFUL	SUCCESS RATE			
Mediations held									%	
	%	100.0	85.4	0.9	13.6	90.4	74.0	16.4		9.6
Total	100.0	646	552	6	88	584	478	106	81.8	62
RLA	67.5	436	388	5	43	397	317	80	79.8	39
SBCA	20.1	130	117		13	117	94	23	80.3	13
FDMA	9.4	61	29	1	31	55	53	2	96.4	6
ODFCA	2.9	19	18		1	15	14	1	93.3	4

RLA RETAIL LEASE ACT 2003
SBCA SMALL BUSINESS COMMISSIONER ACT 2003
FDMA FARM DEBT MEDIATION ACT 2011
ODFCA OWNER DRIVERS AND FORESTRY CONTRACTORS ACT 2005

NO MEDIATION

The category 'No mediation' comprises three elements:

- > The respondent refuses to engage with the VSBC.
- > The VSBC is unable to find or make contact with the respondent.
- > The matter does not settle prior to mediation, but the matter does not proceed to mediation.

Amendments to the SBC Act in May 2014 enabled the VSBC to name a party in the Annual Report if the party 'unreasonably refused' to engage in alternative dispute resolution with the VSBC. This has led to a reduction in the refusal rate from 14.9 per cent in 2013-14 to 5.2 per cent in 2014-15 and 3.7 per cent in 2015-16. Not all refusals are determined to be 'unreasonable'. Further comments on 'unreasonable refusal' and the names of parties issued 'unreasonable refusal' certificates during the year are provided in Chapter 5.

TABLE 3.6
NO MEDIATION OUTCOMES – SBC ACT

As a % of completed dispute applications			
	2015-16	2014-15	2013-14
	%	%	%
Refusal	3.7	5.2	14.9
Unable to contact	6.5	4.9	9.4
Not settled and no mediation	29.2	15.2	27.4

A significant proportion of 'not settled and no mediation' matters are disputes of small amounts and the cost of conducting a formal mediation cannot be justified. Other matters in this category can be matters where concessions have been made by parties but resolution has not been achieved and no further concessions are likely, the issue in dispute leaves no room for negotiation (for example, the interpretation of a legislative provision or contractual term), or the positions taken by the parties provides little prospect of a negotiated outcome.

PRELIMINARY ASSISTANCE – PHONE ENQUIRIES

A significant element of the VSBC work involves taking calls from small businesses and advisers and providing assistance on issues. The majority of queries relate to rights and obligations under retail leases, with a further significant proportion involving disputes which arise between businesses more generally.

The Victorian Government Contact Centre was once again the first point of contact for preliminary phone enquiries, with a lesser number of calls requiring higher level of expertise transferred to the VSBC's dispute management officers.

TABLE 3.7

PRELIMINARY ASSISTANCE – PHONE ENQUIRIES

	2015-16	2014-15	% change
Total	10,989	10,980	0.1

CHAPTER 4

INFORMING VICTORIAN BUSINESSES

A key role of the VSBC is to inform and educate small and medium business on ways to avoid commercial disputes arising, and about the alternative dispute resolution services available through the VSBC when disputes do arise.

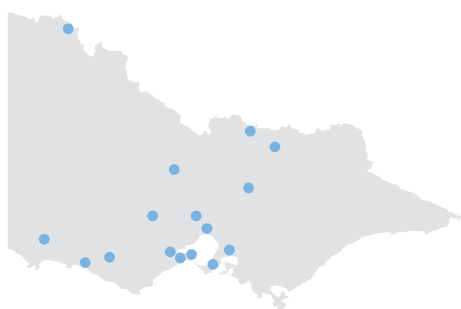
The VSBC relies heavily on stakeholders including industry associations, advisers (lawyers, accountants), local council economic development units, Small Business Victoria, and other key intermediaries to assist in communicating its messages to members and clients.

During the year, online channels were used more extensively, new stakeholder relationships were established, and face to face presentations continued to play an important role in the VSBC's communication activities.

PRESENTATIONS, WORKSHOPS AND REPRESENTATIONS

Eighty-five face to face presentations occurred in 2015-16, up from 77 the previous year. These were held across Victoria, as shown in Figure 4.1.

FIGURE 4.1
FACE TO FACE PRESENTATIONS IN REGIONAL VICTORIA,
2015-16



Audiences included: groups of businesses brought together through local council economic development units or other hosting bodies; groups of tenants; industry association conferences, events and committees; continuing professional development sessions for lawyers and accountants; monthly meetings of local accountants; business networks; business awards nights; alternative dispute resolution practitioners; migrant business groups; university law and business students; and franchise group meetings.

The VSBC also had representation at 20 business or other expos or conferences during the year.

FUTURE BUSINESSES AND ADVISERS PROGRAM

This program targeted the tertiary education sector, particular the law and business faculties, with the objective of introducing students – future lawyers, accountants, advisers, and businesses – to mediation broadly, and the role and functions of the VSBC specifically.

Following a guest lecture the previous year at Deakin University, a guest lecture on the *Farm Debt Mediation Act 2011*, mediation and alternative dispute resolution was given to fifth year law students at Melbourne University. Swinburne, Monash, RMIT, Federation, Deakin, Victoria and La Trobe Universities have all also agreed to build VSBC guest lectures into relevant second semester 2016 subjects and in future years, and/or offer other opportunities for the VSBC to talk to business and law students.

As part of the Program, the VSBC commenced an internship program initially with Melbourne, Monash and Swinburne Universities. A Melbourne University law student worked with the VSBC for four weeks during the year, and arrangements are in place for further placements in the first half of 2016-17 and beyond. The placements include sitting in a number of mediations as an observer. The Melbourne University law student intern in 2016 commented that she had read about mediation in text books, but only appreciated its value having observed mediations with the VSBC. These interns quickly become 'champions' for alternative dispute resolution, and spread the word amongst other students and carry the awareness with them in their future careers.

WEBINARS

Following its successful pilot in 2014-15, the VSBC webinar program was expanded in 2015-16, with at least two webinars in every month other than January. May was the busiest webinar month with six webinars held in association with Law Week. A total of 31 webinars were held over the year with 658 participants registering.

Topics covered retail leasing, general information about commercial disputes and the VSBC services, franchising, unfair contract terms, building winning business relationships, and working from home. The working from home webinar in May was the most popular webinar in the year, attracting 104 registrations.

The 30 minute webinars are free, held at different times and days of the week to provide greater flexibility for small businesses, and easily accessed. Forthcoming webinars are regularly notified to stakeholders and promoted on the VSBC website.

E-NEWSLETTER

Our e-newsletter series continued in 2015-16, with four issues during the year. Each issue is based on a theme, and we engage with relevant agencies and bodies to assist in re-broadcasting the e-newsletter to their constituents, reaching business that otherwise may not be aware of VSBC services.

The themes of the 2015-16 e-newsletters were:

Aug 2015 – Franchising

Oct 2015 – The Changing Face of Retail

Feb 2016 – Social Enterprise

May 2016 – Creative Industries

The May issue, focused on the creative industries, was developed in conjunction with and with the support of Creative Victoria, Regional Arts Victoria, Auspicious Arts and Arts Law Australia. As a result of the e-newsletter, a major presentation by the VSBC to key stakeholders of Creative Victoria was to be held at the Australian Centre for the Moving Image (ACMI) in July 2016.

LINKEDIN

The Office established a presence on LinkedIn during the year.

WEBSITE AND ONLINE CONTENT

Online content was updated as required during the year, particularly to reflect key decisions of VCAT or the Supreme Court relating to the *Retail Leases Act 2003*.

Changes were also made to encourage parties considering applying for a mediation to ensure that they had first made reasonable attempts to resolve the dispute themselves, with links to useful templates and documents.

The number of unique visits to the website during the year averaged 4,515 per month, and the percentage of visits by new visitors was 62.3 per cent.

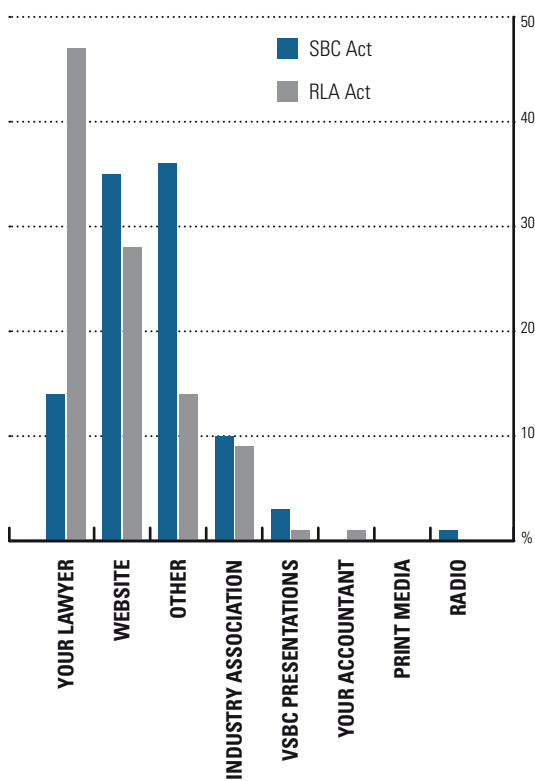
How applicants have heard about the VSBC also provides insight into the increasing awareness of the VSBC, particularly for disputes under the *Small Business Commissioner Act 2003*. In aggregate, lawyers (34 per cent) were the primary source of information about the VSBC for applicants, with the website (31 per cent) and 'other' (23 per cent) also strong sources. 'Other' mainly consists of referrals from the ACCC, Consumer Affairs Victoria, friends and colleagues.

However, a breakdown of these sources by type of dispute shows a significant difference in the source of information about the VSBC.

As shown in Figure 4.2, lawyers are the primary source of information for retail lease disputes. This is consistent with the statutory requirement for these disputes to be lodged with the VSBC, RL Act disputes being the majority of disputes handled by the VSBC, and a general understanding by lawyers of this role. The website remains a strong second source of information about the VSBC in regard to retail lease disputes.

In comparison, for general commercial disputes under the SBC Act, businesses are far less likely to seek legal advice and instead find the VSBC through other means – predominantly the website and 'other' sources.

FIGURE 4.2
HOW DID YOU HEAR ABOUT THE VSBC?



CHAPTER 5

SMALL BUSINESS COMMISSIONER ACT 2003

14

TYPES OF DISPUTES

Disputes handled under the *Small Business Commissioner Act 2003* (SBC Act) are those commercial disputes which do not fall within the ambit of statutory dispute resolution functions under the *Retail Leases Act 2003*, *Owner Drivers and Forestry Contractors Act 2005*, *Farm Debt Mediation Act 2011* and the *Transport Legislation Amendment (Foundation Taxi and Hire Car Reforms) Act 2013*.

This includes disputes relating to franchising, supply chain, buying a business, non-retail leases, payment disputes, distribution agreements, and general commercial contracts for the provision of goods or services.

The SBC Act makes clear that the VSBC has express jurisdiction to deal with a broad range of commercial disputes as well as unfair market practices.

Commercial disputes may be between businesses and other businesses, local or state government bodies, or not-for-profit entities.

The very strong growth in the volume of these disputes experienced over the past three years slowed to a modest 1.3 per cent growth in 2015-16.

During 2015-16, the VSBC received 564 applications under the SBC Act compared with 557 in the previous year.

Thirty-eight per cent of matters lodged with the VSBC were settled without the need for mediation, similar to the 40 per cent achieved last year.

The settlement rate for mediated disputes was 80.3 per cent.

During the year, the VSBC trialled Case Management Meetings for certain types of SBC Act disputes where a face to face meeting with the Dispute Management Officer may assist in breaking the deadlock preventing resolution of the matter. These are typically matters of low dollar amount, where the cost of formal mediation cannot be justified, but the parties each want to resolve the matter.

CASE STUDY CASE MANAGEMENT MEETING

The Applicant was a web designer who had been engaged by the Respondent business to update its websites and Facebook pages. The Applicant had terminated the contract because payments were always late, and claimed a final amount of \$500 for unpaid invoices. The Applicant was holding the passwords to the website and Facebook pages until payment was made.

The Respondent did not deny owing the money but would not pay until the passwords were provided. Both parties wanted resolution, but due to a mutual lack of trust neither party was willing to move first to break the stalemate.

Given the low amount in dispute, the matter was not amendable to formal mediation. A Case Management Meeting was proposed to facilitate the hand-over of the money in exchange for the passwords. No fee was charged.

Prior to the meeting, a strict format for the meeting had been agreed, in writing. The parties agreed they would only discuss the matter at hand; the passwords were to be provided in a specified format for the meeting, and form of payment of the \$500 was to be in cash. They agreed that the meeting would be closed if these arrangements were not adhered to.

The parties did not want to meet face to face, so the meeting was conducted in separate rooms with the VSBC Dispute Management Officer taking possession of both the \$500 cash and the passwords in writing.

The Respondent in a separate room trialled all the passwords and once proved to be correct, the cash was handed to the Applicant.

A simple agreement that the money and passwords had been exchanged and that no further action would transpire between the parties was signed by the parties.

Both parties were greatly relieved that the matter was finally resolved, which both had said could not have been done had the VSBC not provided the opportunity for an impartial and simple transaction.

PROFILE OF MATTERS LODGED WITH THE VSBC

The top five categories of SBC Act disputes lodged with the VSBC in 2015-16 related to:

- > contractual rights and responsibilities (25 per cent)
- > unpaid monies (22 per cent)
- > unfair trading (16 per cent)
- > quality of goods or services (14 per cent)
- > undelivered goods or services (8 per cent).

UNREASONABLE REFUSAL

The rate at which respondents refused to engage with the VSBC was 3.7 per cent, compared with 5.2 per cent last year. This rate has declined significantly since amendments to the SBC Act in May 2014 introduced a certificate function, and the ability to name a party in the Annual Report if the refusal is determined to be 'unreasonable'.

Section 14(3) of the SBC Act provides the power to provide details in the Annual Report of certificates issued, certifying that a party to a dispute has unreasonably refused to participate in alternative dispute resolution with the VSBC, provided that statutory procedural fairness steps have been followed.

Not all refusals are determined to be 'unreasonable'. Each case is considered on its merits. To assist parties, the VSBC has developed *Operational Guidelines*, which are available at www.vsbcb.vic.gov.au, and are included with letters sent to respondent parties to disputes.

UNREASONABLE REFUSAL CERTIFICATES ISSUED

The VSBC makes every effort to engage with respondent parties, explaining the benefits of resolving disputes through alternative dispute resolution, and explaining the consequences if their refusal is determined to be unreasonable.

During 2015-16, the VSBC issued twelve 'unreasonable refusal' certificates to ten businesses. Following responses received from some of these businesses on the intent to publish details of the certificates in the Annual Report and a review of the circumstances of each respondent, details of nine certificates are listed in Table 5.1.

TABLE 5.1
CERTIFICATES ISSUED TO A PARTY TO A DISPUTE UNREASONABLY REFUSING TO PARTICIPATE IN ALTERNATIVE DISPUTE RESOLUTION.

Certificate Date	Party
7 July 2015	Taxi E Pay Pty Ltd
7 July 2015	Pro-struct Property Group Pty Ltd
6 August 2015	Local Blue Pages Pty Ltd
6 August 2015	Local Blue Pages Pty Ltd
26 October 2015	Local Blue Pages Pty Ltd
25 January 2016	ATM Complete Pty Ltd
28 April 2016	Albion Sports Pty Ltd
25 May 2016	Australian Property Management Solutions
21 June 2016	Fibopost Pty Ltd

INVESTIGATIONS

The Community Network

In 2014-15 the VSBC initiated an investigation into The Community Network, which proceeded through 2015-16. The VSBC referred details of complaints received from businesses about The Community Network to the Australian Competition and Consumer Commission (ACCC).

On 1 December 2015 the ACCC advised that it had issued proceedings in the Federal Court against Multimedia International Services Pty Ltd, trading as The Community Network, for allegedly engaging in unconscionable conduct, making false or misleading representations and wrongly accepting payments from small businesses.

The Court subsequently issued a significant penalty against the business, and the business agreed to implement a substantial compliance program. Details of the Federal Court outcome, and the way in which the VSBC is leveraging the Court decision to assist in resolving disputes, are provided in Chapter 6.

Melbourne Water Corporation

In response to trader concerns about the impact of traffic and other disruptions on their businesses due to works required for the Carlton Sewer Upgrade, the VSBC made enquiries of Melbourne Water and Yarra City Council of the processes undertaken to mitigate adverse effects on local traders. Both bodies cooperated fully with the VSBC, and as a consequence of these enquiries, Melbourne Water, in consultation with the Department of Environment Land Water and Planning, Small Business Victoria, local government and other relevant agencies undertook to develop best practice guidelines for future infrastructure projects. These guidelines are anticipated to be completed in early 2016-17.

The VSBC welcomes this positive development.

Consistent with section 14 (7) of the SBC Act, Melbourne Water Corporation is not the subject of any adverse comment or opinion by way of the above information.

CASE STUDY

The Applicant small business made gourmet products, including mustards and other prepared goods. The Applicant bought herbs and spices and related ingredients from the Respondent business.

The Applicant claimed two products supplied by the Respondent were deficient and impacted on the production of the Applicant's gourmet foods. The Respondent claimed it was the Applicant's own practices that caused the problem.

The parties had sought to resolve the dispute between themselves, with assistance from the Respondent's technical department. Notwithstanding this, the dispute remained unresolved, however, the Respondent was happy to attend mediation.

The parties reached a commercial agreement at mediation.

The Respondent provided the Applicant with \$5,000 credit to purchase new ingredients, with a 10% discount on purchases for 12 months. Importantly, the parties agreed to maintain an ongoing business relationship.

State Government Fair Payments Policy

In response to a request from the Minister for Small Business, Innovation and Trade, the VSBC undertook a review of compliance with the State Government's Fair Payments Policy (FPP) in consultation with Small Business Victoria. The objective was to examine the extent to which government agencies are paying invoices from small and medium sized businesses within a 30 day period.

The FPP, introduced in 2004, requires certain State Government departments and agencies to pay invoices for contracts of up to \$3 million within 30 days of receipt of invoice, where there are no disputes relating to the goods or services provided. Penalty interest rates can be claimed by businesses for late payment.

The VSBC wrote to all seven Departmental Secretaries, requesting key data on invoice payments in 2015-16 from each department, and from the five largest agencies (by expenditure) within each portfolio area.

At time of writing, responses had been received from four Departments and 21 agencies (collectively, the respondents).

Respondents reported a total of 29,230 contracts overseen during the year, of which 95 per cent (27,769) were of less than \$3 million. During the year 873,919 invoices relating to contracts under \$3 million were paid by respondents. Table 6.2 shows the average number of days reported to take to pay an invoice, and the proportion of these invoices reported as paid within 30 days.

Clearer guidelines are required on the coverage of the Fair Payments Policy across government bodies and on the determination of time taken to pay invoices.

Business complaints about late payment (or non-payment) of invoices by businesses or government bodies can be lodged as a dispute with the VSBC under the SBC Act. During 2015-16, no such complaints against State Government bodies were received by the VSBC. In comparison, 21.5 per cent of complaints received under the SBC Act were complaints of late or non-payment of invoices by other businesses.

TABLE 6.2
REPORTED PAYMENT OF INVOICES FOR CONTRACTS LESS THAN \$3 MILLION, 2015-16

	RESPONDENTS	CONTRACTS <\$3M	INVOICES FOR CONTRACTS <\$3M.	INVOICES PAID WITHIN 30 DAYS	INVOICES PAID AFTER 30 DAYS	AVERAGE DAYS TAKEN TO PAY INVOICE	COMPLIANCE RATE – PAYMENT WITHIN 30 DAYS
Agencies Surveyed							%
Departments*	4	10,322	304,581	286,434	18,147	13.8	94
Portfolio agencies	17	17,447	569,338	470,922	98,416	29.6	83
All Respondents	21	27,769	873,919	757,356	116,563	24.1	87

* ONE DEPARTMENT PROVIDED CONSOLIDATED DATA ACROSS IT AND ITS AGENCIES. THIS DATA IS INCLUDED IN THE 'DEPARTMENTS' CATEGORY IN THIS TABLE.

Overall, a compliance rate of 87 per cent was reported, with an average payment period of 24.1 days.

Reasons provided for non-payment within 30 days included disputation over goods/services provided; administrative error; invoice payments only occurring on one day of the week; and late provision of the invoice to the finance area.

Penalty interest was not paid on any late payments by any department or agency. Creditors are required to issue an invoice for late payment penalty interest.

Australia Post Mail Contractor Agreement

During the course of the year, a copy of Australia Post's Mail Contractor Agreement came to the attention of the VSBC. The Agreement includes dispute resolution provisions requiring the parties to proceed to arbitration if they are unable to resolve the dispute themselves. If a party is not satisfied with the arbitrated outcome, it may take the dispute (in accordance with the *Commercial Arbitration Act 2011*) to the Supreme Court. The Agreement made no reference to the dispute resolution provisions, including mediation through the VSBC, provided under the *Owner Drivers and Forestry Contractors Act 2005*.

The VSBC raised its concerns with Australia Post.

While Australia Post's response stated:

"Your office and Australia Post hold differing opinions regarding the sufficiency of the dispute resolution provisions in the Mail Contractor Agreement"

it is pleasing that Australia Post noted that it had initiated a number of amendments to the Agreement including the addition of the following sub-clause:

"31.8 Application of State/Territory Legislation
If the Owner Drivers and Forestry Contractors Act (Vic) 2005 applies to this Agreement, clause 31.5 [the dispute resolution clause] is deleted and the parties must follow the dispute resolution procedures set out in Part 5 of the Owner Drivers and Forestry Contractors Act (Vic) 2005."

Australia Post advises that the amended version of the Agreement will apply to all new Agreements commencing from 1 July 2016.

The VSBC welcomes this positive development.

Consistent with section 14 (7) of the SBC Act, Australia Post is not the subject of any adverse comment or opinion by way of the above information.

CASE STUDY

The parties entered a Rental Agreement for the supply of office equipment in 2004. The Agreement was for three years, however, it automatically renewed at its expiry, for a further 12 months, unless terminated by giving three months' notice. The Applicant claims it was unaware it had entered into a 'rolling' contract.

Following the initial three year Agreement, in 2007, the equipment was destroyed by fire. As the Applicant was responsible for the insurance of the equipment, it received a financial payout on the goods. The Applicant claimed it paid out the cost of the equipment to the Respondent. However, the Respondent claimed this was money owing on other equipment.

Relying on the 'rolling' nature of the Agreement, the Respondent continued to bill the Applicant for the rent of the equipment. This continued until 2015, when the Applicant discovered it had been paying rent for the destroyed goods for some years. During this time, the Applicant continued to rent other, like, equipment from the Respondent.

The Applicant claimed the Respondent should refund the money it had deducted for years for the destroyed equipment. The Applicant had been unable to resolve this issue directly with the Respondent. The Applicant lodged an application with the VSBC. The VSBC wrote to the Chief Executive Officer of the Respondent.

Following the VSBC representation, the Respondent agreed to refund the monies paid by the Applicant since the equipment had been destroyed by fire in 2007, less the payout amount it claimed the Applicant had never paid.

The Responded agreed to repay the Applicant almost \$50,000.

CHAPTER 6

'UNFAIR' CONTRACT TERMS

In November 2015, the Commonwealth Government passed legislation to amend the Australian Consumer Law by extending consumer protections against 'unfair' contract terms to small businesses. The changes take effect from 12 November 2016.

The VSBC received many applications for assistance with commercial disputes in 2015-16 from businesses that had entered into contracts with terms which, if in standard form consumer contracts, would likely be considered unfair and therefore void. However, such terms are not 'unfair' in business contracts entered into before 12 November 2016. These disputes are handled by the VSBC under the *Small Business Commissioner Act 2003*.

Examples of such terms include:

- > The Supplier is able to vary the terms and/or price of the contract at any time, and the Purchaser cannot terminate the contract without paying out the remaining term of the contract.
- > The inability of the Purchaser to terminate until the contract has run its full term, while the Supplier can terminate by providing notice.
- > The contract 'rolls over' for another period (often two or three years) unless the Purchaser notifies the Supplier in writing (often by registered mail) many months before the term ends of its intent not to extend the contract.

The VSBC has received complaints from businesses against such terms in contracts in a wide range of industry sectors, including:

- > online and print advertising
- > in-store advertising
- > web hosting
- > search engine optimisation
- > security monitoring
- > waste management services

- > facilities leasing
- > HR / IR advisory services
- > subscriptions.

While business contracts currently do not have the protections against 'unfair' terms as do consumer contracts, the Australian Consumer Law does provide protections against misleading and deceptive conduct, misrepresentations, and unconscionable conduct.

During 2015-16, following referrals from the VSBC and other Small Business Commissioners, the Australian Competition and Consumer Commission (ACCC) successfully took Federal Court action against Multimedia International Services Pty Ltd, trading as The Community Network, claiming that certain terms in its business contracts and certain business conduct breached thresholds of misrepresentation and unconscionability. The ACCC media release following the Court decision stated that:

"The Court declared that The Community Network engaged in unconscionable conduct in its dealings with one small business, including by refusing to release it from its contract for advertising services when The Community Network was not providing those advertising services, then pursuing it for non-payment, threatening legal action and engaging debt collectors. The Court also declared that The Community Network made false or misleading representations to two other small businesses and wrongly accepted payments from them."

"The ACCC would like to acknowledge the State and Federal Small Business Commissioners, which assisted the ACCC in identifying the impact of this conduct on small businesses."

“The ACCC brought these proceedings because it had received numerous complaints from small businesses that The Community Network was requiring payments to be continued under its contracts, despite not providing the digital advertising services promised. Some small businesses had also complained that they were misled by the failure to clearly disclose the effect of an automatic renewal term.”

The Court handed down a penalty of \$230,000 and Multimedia International Services Pty Ltd agreed to implement an Australian Consumer Law compliance program.

In accordance with section 14(6) of the *Small Business Commissioner Act 2003*, the VSBC provided the above text to Multimedia International Services Pty Ltd for any response. It noted it has in place a number of measures including the appointment of a Compliance Officer and Compliance Adviser, compliance policy and reporting, induction and staff training, and a complaints handling system.

The detailed Federal Court decision identifies contract terms and conduct which the VSBC has referred to, with positive effect, in resolving disputes with other businesses where similar terms or conduct are allegedly present. The VSBC has also been alerting respondent businesses to the forthcoming changes to unfair contract term protections to small businesses.

In one such instance, a provider of employee relations and related professional services agreed to resolve the extant dispute, and while denying that its business practices were similar to those outlined in the Multimedia International Services Pty Ltd Federal Court case, stated that:

“... we took the opportunity to review our simple contract terms with assistance from our legal representatives, and have made the following changes:

Notice periods for termination of contracts have been reduced to 1 month for a 12 month contract, and 3 months for all longer contracts ...

We commit to providing written notice to all clients one month before the notice period is due to expire as a reminder of the upcoming auto-renewal ...

There is a 14 day cooling off period for all contracts provided there has been no use of the services.”

Prior to these changes, the contracts had an automatic roll-over of 12 months, inability of the customer to terminate during the term without paying out the full contract, notification by the customer of non-renewal of the contract required at least six months prior to the end of the 12 month term, no notification to the customer as to when its six month notice period was due to expire, and no cooling-off period.

CHAPTER 7

RETAIL LEASES ACT 2003

During 2015-16, a total of 1,195 applications were received under the *Retail Leases Act 2003* (RL Act) compared with 1,077 applications in 2014-15 – an 11 per cent increase.

However, the number of applications relating to disputes fell 0.7 per cent to 970, while the number of applications for the appointment of a Specialist Retail Valuer rose 130 per cent, from 98 to 225. This increase was largely a result of two instances of multiple applications by the one tenant, where the tenant managed multiple serviced apartments or offices owned by many landlords.

RL Act disputes remain the core business of the VSBC, comprising 59.6 per cent of all dispute applications received during the year.

Two-thirds of dispute applications were lodged by tenants.

Not all applications include an estimate of the amount in dispute. For those where such an estimate was provided, the average amount in dispute for RL Act disputes was \$55,429 and the median \$14,674.

Twenty-four per cent of disputes had a claimed value in excess of \$50,000.

Twenty-seven per cent of retail lease disputes were settled by VSBC staff prior to mediation and the settlement rate for those matters progressing to mediation was 80 per cent.

During 2015-16, the top eight causes of retail lease disputes related to:

- > tenant owing money (34 per cent)
- > security deposits (14 per cent)
- > repairs and maintenance (13 per cent)
- > the value of outgoings, expenses, rent (11 per cent)
- > premature termination of lease (5 per cent)
- > transfer / assignment of lease (5 per cent)
- > options and renewals (4 per cent)

- > make good on lease end (3 per cent)

A comparison of the major causes of disputes with previous years is shown in Chapter 10.

SECURITY DEPOSIT DISPUTES

The increased incidence of security deposit disputes from seven per cent in 2011-12 to 14 per cent in 2015-16 occurred without a corresponding increase in arguments over 'making good' the premises at lease end. Instead, the growth in security deposit disputes was mainly associated with changes to the ownership of the business (through purchase and lease assignment), changes to the ownership of the premises, or in some cases with changes to the managing agent. In the case of assignment of a lease and purchase of a leasehold business, often the sale of business document doesn't specify if the previous tenant's security deposit becomes the new tenant's deposit, or should be paid to the old tenant. With sale of premises, a landlord may forget or fail to transfer the deposit to the new landlord. In other cases, there was no documentation supporting a deposit claimed to be paid many years earlier.

In response to the increased incidence of security deposit disputes, the VSBC approached the Real Estate Institute of Victoria (REIV) during the year, proposing the development of joint best practice guidelines for documentation and handling of security deposits with the REIV leases committee and business broking committee.

INFORMATION PROVISION

Guidelines and information sheets were produced or updated during the year to inform tenants and landlords of their rights and obligations under the RL Act. These included:

- > Guidelines on *What are Retail Premises?* were revised following a VCAT decision [*Luchio Nominees Pty Ltd v Epping Fresh Food Market Pty Ltd* [2016] VCAT 937] relating to the interpretation of the Ministerial Determination exempting certain leases with minimum 15 year terms from the RL Act.
- > The *Current Market Rent and Engaging Specialist Retail Valuers* Guidelines were updated to reflect the decision of the Victorian Supreme Court of Appeal in *Serene Hotels Pty Ltd v Epping Hotels Pty Ltd* [2015] VSCA 228.
- > An Information Sheet on Security Deposits was published, following an increased incidence of disputes relating to deposits.
- > The Outgoings Information Sheet was updated to reflect the VCAT Advisory Opinion on Essential Safety Measures.

While retail lease issues are usually mentioned in all presentations provided by the VSBC, some presentations are specifically focused on retail leases. During the year this included 12 webinars, presentations at seminars for solicitors and real estate agents in support of continuing professional development, and specific meetings with groups of tenants.

CASE STUDY

A tenant had been renting a retail premises for three years when there was a severe water leak from a wall-mounted air conditioning vent. The tenant did not call a plumber or attempt to stop the leaking themselves but left a message on the landlord's phone the day the water started leaking. The landlord was overseas and did not receive the message until three days later.

In this time, the water caused damage to the carpets, part of the wall and some of the tenant's furniture. When the landlord received the message, they arranged for the leak to be fixed as quickly as possible. However, it was a very unusual leak that took three further days to fix. At this point the water damage had reached such a level that the business had to be closed for a week.

The landlord was apologetic for not having received the message earlier but felt he had done all he could in the circumstances. The tenant was frustrated that the problem took so long to fix and thought that it was all the landlord's fault.

The landlord filed an application with the VSBC office because the tenant had not paid rent for two months following this incident - though the tenant's business was running as normal on the premises during this time.

As a result of mediation, a compromise was reached where the landlord provided rent abatement for some of this period and agreed to replace the affected carpets and furniture on the premises. The tenant paid some of the rental arrears and agreed to pay for the painting of the walls so long as they were able to choose the colour.

SECTION 21 CERTIFICATES

Section 21 of the RL Act provides that the term of a retail lease (including options) must be at least five years, and any initial lease (including options) of less than five years is extended by the RL Act to a five year term. A tenant may waive its right to a five year term by applying to the VSBC for a certificate and giving a copy of that certificate to the landlord.

During 2015-16, the total number of requests received increased 11.9 per cent to 1,255, with 1,146 certificates issued. The remaining requests did not require certificates to be issued or were withdrawn.

APPOINTMENT OF SPECIALIST RETAIL VALUERS

The VSBC is responsible under the RL Act for appointing a Specialist Retail Valuer where a landlord and tenant are unable to agree on the rent to apply as a result of certain circumstances (usually following the application of a market rent review provision of the lease), and the landlord and tenant are unable to agree on the appointment of a valuer.

A total of 225 applications were received in 2015-16.

To appoint a Specialist Retail Valuer, the VSBC seeks a nomination from either the Australian Property Institute (API) or the Real Estate Institute of Victoria (REIV). Both bodies seek two competitive quotes from appropriately experienced valuers, and in all but exceptional circumstances recommend the valuer with the lower priced quote to the VSBC for appointment.

CHAPTER 8

FARM DEBT MEDIATION ACT 2011

The *Farm Debt Mediation Act 2011* (FDM Act) requires creditors to offer mediation to farmers before commencing debt recovery proceedings under a farm mortgage.

The FDM Act is jointly administered by the Department of Economic Development, Jobs, Transport and Resources (the Department) and the VSBC. The Department provides initial information and assistance to farmers and creditors and refers farm debt disputes to the VSBC to arrange mediation. The VSBC also has a responsibility to issue certificates under the FDM Act.

During 2015-16, a total of 115 applications were received (56 requests for mediation and 59 requests for certificates), a 37.8 per cent decline on the total number of applications received in 2014-15. The number of applications under the FDM Act in the four and a half years since inception has varied quite considerably, as shown in Figure 8.1

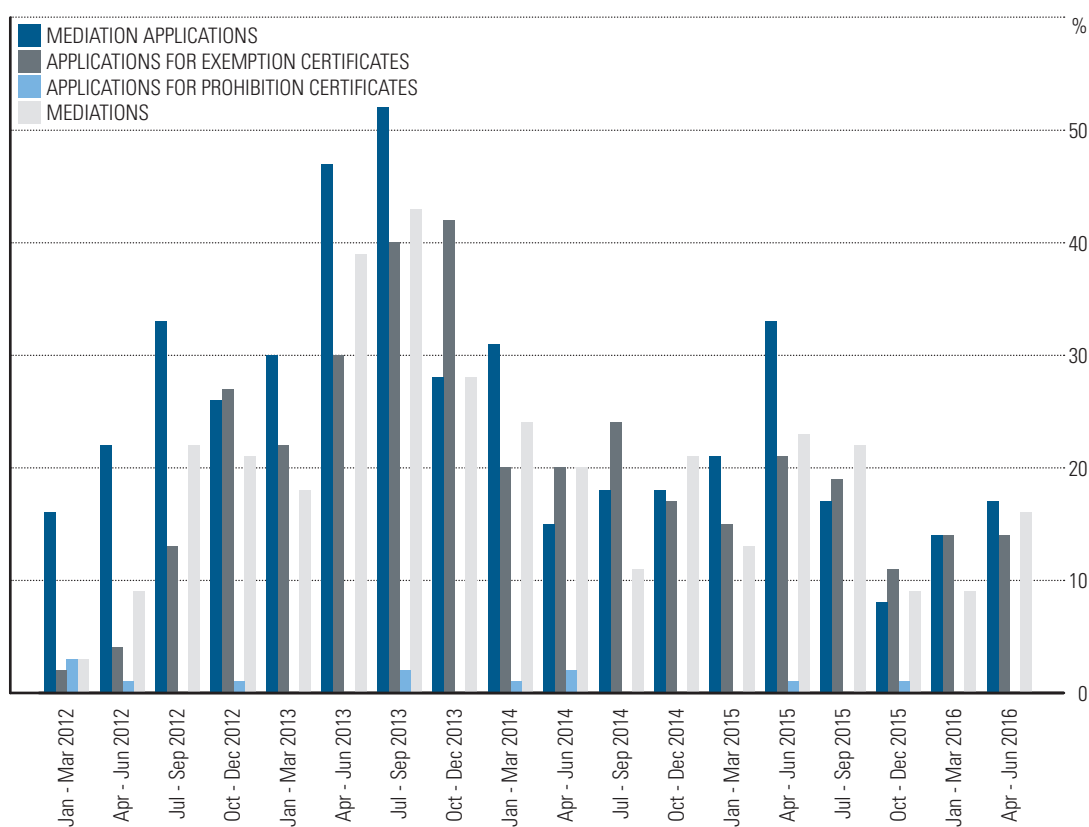
Applications for mediation under the FDM Act may be initiated by the creditor or the farmer. Of the 56 mediation applications received in 2015-16, 53 were creditor initiated and three were farmer initiated.

For mediations completed in the year (a number are scheduled but yet to be held, or have been adjourned), a settlement rate of 96.4 per cent was achieved.

Farm debt mediations are held in both the VSBC Melbourne offices and across regional Victoria, having regard to the needs of farmers and creditors. During 2015-16, 51 per cent of farm debt mediations were held in regional Victoria.

The other main function for the VSBC under the FDM Act concerns the issuing of exemption and prohibition certificates. Before a creditor may take enforcement action against a farmer, it requires an exemption certificate from the VSBC. Conversely, a farmer may seek a prohibition certificate from the VSBC, which prevents a creditor taking enforcement action until satisfactory mediation has occurred.

FIGURE 8.1
FDM ACT APPLICATIONS BY QUARTER SINCE COMMENCEMENT



During 2015-16 the VSBC handled:

- > 68 exemption certificate requests (58 new requests and 10 which were pending from the previous year). Of these, the VSBC issued 46 certificates, six requests were withdrawn, four were refused and 12 remain to be completed in 2016-17.
- > one prohibition certificate request, and one prohibition certificate was issued.

In most cases, a creditor will seek an exemption certificate immediately following satisfactory mediation attaching terms of settlement (if any) between the parties. The VSBC must determine if mediation has been 'satisfactory', which may apply even if no terms of settlement are executed. If an exemption certificate is issued, the Act no longer applies and a creditor *may* commence enforcement action under a farm mortgage.

However, where mediation *Terms of Settlement* are in force, although a creditor is still entitled to apply for an exemption certificate it should not proceed with enforcement action where *Terms of Settlement* are being met.

A prohibition certificate prevents a creditor from taking enforcement action for six months or until the day on which mediation is entered into, whichever occurs earlier.

There is no discretion for the VSBC in issuing certificates where statutory criteria are satisfied.

The VSBC continues to recognise the important role of the Rural Financial Counselling Service in assisting farmers during the mediation process. Forty-one per cent of mediation sessions held during 2015-16 had a Rural Financial Counsellor (RFC) supporting the farmer. The RFCs provide assistance to the farmer through emotional support, financial guidance and document preparation in what is often a highly stressful and emotional time for farmers.

CHAPTER 9

OWNER DRIVERS AND FORESTRY CONTRACTORS ACT 2005

26

Under the *Owner Drivers and Forestry Contractors Act 2005*, (ODFC Act) the VSBC provides a dispute resolution service for contractors and hirers in the transport and forestry industries. The VSBC resolves these disputes through preliminary assistance and mediation.

Other related instruments include the *Owner Drivers and Forestry Contractors Regulations 2006*, information booklets, rates and costs schedules and model contracts.

The legislation prescribes certain minimum conditions for contractors and hirers. Otherwise, it encourages commercial negotiations between parties to regulated contracts. To facilitate bargaining, the legislation enables the appointment of negotiating agents and provides a dispute resolution mechanism via the VSBC.

In 2015-16, the VSBC received 38 disputes, 9 per cent more than in 2014-15. The mediation settlement rate for these disputes was 93.3 per cent.

Not all applications include an estimate of the amount in dispute. For those where such an estimate was provided, the average amount in dispute for ODFC Act disputes was \$35,739 and the median \$18,365. Twenty-five per cent of disputes had a claimed value in excess of \$50,000.

In addition to resolving disputes, the VSBC provides information and education, advising parties about their respective rights and obligations.

Consistent with previous years, disputes generally concern contractual or termination matters.

Contractual disputes, involving one or more contractors, concern the terms and conditions of regulated contracts. This occurs in the context of either pre-existing written contracts, or no contracts at all. The legislation stipulates that regulated contracts must be in writing.

Most of the disputes that come before the VSBC concern termination of engagement. These disputes involve termination of the contractor by the hirer with monies allegedly owed to the contractor. Some of these disputes concern a lack of awareness about the minimum notice requirements under the Act. Other disputes relate to termination of the contractor on the ground of "serious and wilful misconduct".

If mediation is unsuccessful, or a respondent refuses to attend mediation, the VSBC can issue a certificate under the legislation. This certificate enables the dispute to proceed to VCAT for determination.

SECTION 21 CERTIFICATES

The VSBC can issue a section 21 certificate on application by a contractor seeking to waive the contractor's obligation to provide a minimum period of notice of termination to the hirer. During the year, one certificate was issued.

CASE STUDY

An owner driver lodged a dispute with the VSBC under the ODFC Act.

The driver had worked for the hirer for many years and had an unsigned contract. One of the terms of the contract was a fortnightly 15 per cent administration fee deduction. When the driver eventually asked what this fee was for, it was advised it was for marine insurance. The driver subsequently obtained its own marine insurance, for a lesser cost than the hirer was deducting from its remuneration.

In its application, the driver sought to recover the monetary difference between what the hirer had been deducting from the commencement of the engagement until the time the driver purchased its own marine policy. This was a period of some six years.

Section 23 of the ODFC Act relates to costs of insurance. Under this provision, a hirer may not deduct any money from a driver's remuneration in respect of insurance unless:

- > an actual insurance policy is in force; and
- > the hirer has given the driver a copy of the policy.

In this case, while a policy was in force, it had not been physically given to the driver. The hirer alleged the driver could always obtain a copy of the insurance from the hirer.

At mediation, the driver and hirer reached a commercial settlement in respect of monies owed to the driver.

The case reinforces the importance of having a signed contract, so both parties understand their respective rights and obligations. Also, a hirer must not make any insurance deductions from a driver unless an actual insurance policy is in force. Further, such policy must be provided to the driver. This ensures insurance deductions are properly deducted. Also, drivers can make their own informed decisions about the cost of insurance.

AUSTRALIA POST MAIL CONTRACTOR AGREEMENT

During the year, the terms of the Australia Post Mail Contractor Agreement came to the attention of the VSBC. Many of the Victorian Mail Contractors engaged by Australian Post would be owner drivers under the ODFC Act. Details of the issues of concern and the positive response from Australia Post are provided in Chapter 5.

CHAPTER 10

A FIVE YEAR REVIEW

The VSBC 2012-13 Business Plan identified five-year strategic goals to provide a focus for subsequent years' operations and activities. The four quantitative goals were:

An increase in the number and proportion of general commercial disputes under the *Small Business Commissioner Act 2003* (SBC Act) handled by the VSBC

RATIONALE:

The rationale for this goal was that disputes handled under the SBC Act do not have to be brought to the VSBC, unlike disputes under the RL Act, the ODFC Act and the FDM Act. This goal reflected the strategic intent of promoting more effectively the VSBC's role in handling these types of disputes, whereas the VSBC was most known for its handling of RL Act disputes.

OUTCOME:

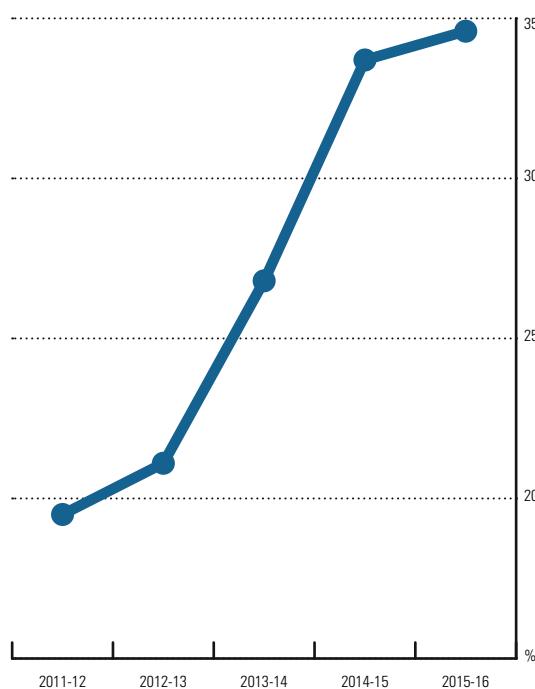
As shown in Table 10.1 and Figure 10.1 the objective was achieved for both the number of disputes and the proportion of disputes arising under the SBC Act.

TABLE 10.1
NUMBER OF SBC ACT DISPUTE APPLICATIONS LODGED WITH VSBC

	2011/2	2012/3	2013/4	2014/5	2015/6
SBC Act dispute applications	269	309	396	560	564
Total *	1379	1465	1477	1663	1628

* NUMBERS EXCLUDE APPLICATIONS FOR APPOINTMENT OF SPECIALIST RETAIL VALUERS AND FOR CERTIFICATES

FIGURE 10.1
SBC ACT APPLICATIONS AS A PER CENT OF TOTAL DISPUTE APPLICATIONS



A significant change in the top five causes of retail lease disputes through effective preventative measures

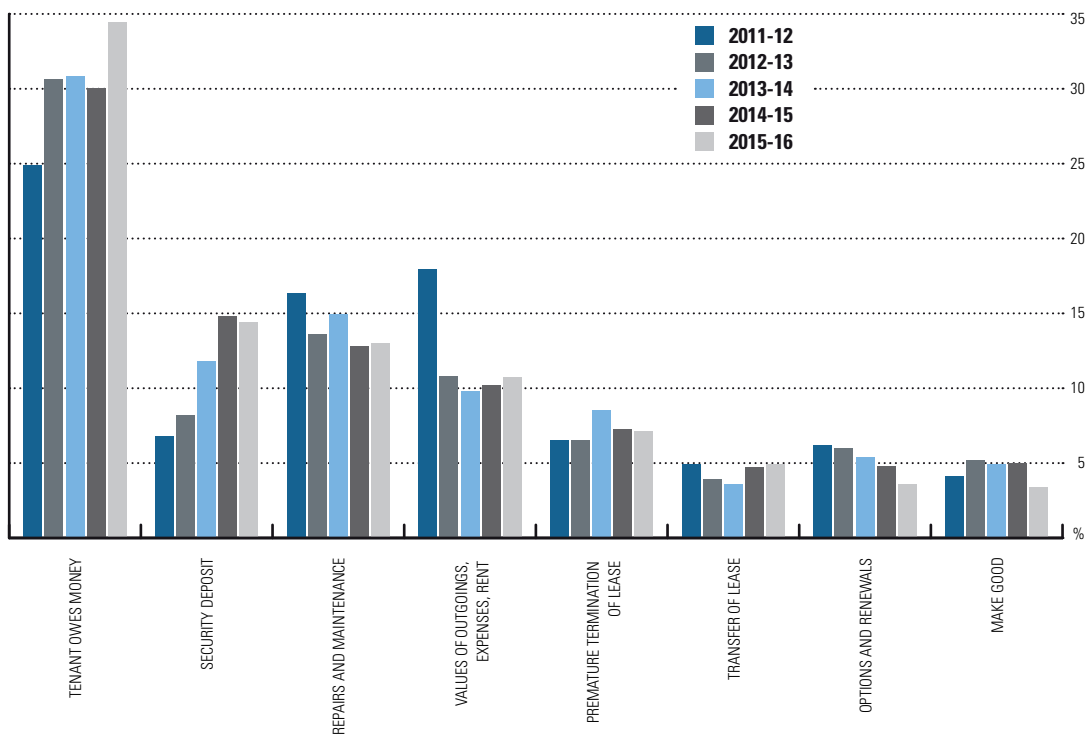
RATIONALE:

The rationale for this goal was to focus VSBC preventative efforts on the top causes of RL Act disputes, thereby reducing the number of RL Act disputes overall.

OUTCOME:

Figure 10.2 shows the top causes of RL Act disputes lodged with the VSBC over the past five years. There has been some reordering of the top five causes: disputes over repairs and maintenance and outgoings and expenses have declined, while the incidence of security deposit related disputes, and tenants owing money have increased. Preventative measures taken by the VSBC, in addition to many presentations to a wide range of audiences on these causes and how to avoid disputes, include published Information Sheets and Guidelines.

FIGURE 10.2
PRIMARY CAUSES OF RL ACT DISPUTES 2011-12 TO 2015-16



These top causes of RL Act disputes also need to be seen against the aggregate number of RL Act disputes lodged with the VSBC. As shown in Figure 10.3 and Table 10.2 the number of RL Act disputes lodged with the VSBC since 2011-12 has been relatively stable or slightly declined, compared with the upward trend to 2011-12. Annual average rate of growth to 2011-12 was 10.4 per cent from 2003-04, and 5.3 per cent from 2004-05.

While there is no definitive data on the number of new or total retail leases in Victoria, it would be expected that the volume would increase in accordance with broader measures of economic growth and activity, suggesting that in the past five years, the incidence of RL Act disputes has declined as a proportion of leases in existence. To some extent this may reflect the range of preventative measures pursued by the VSBC over the past five years.

FIGURE 10.3
RL ACT DISPUTE APPLICATIONS

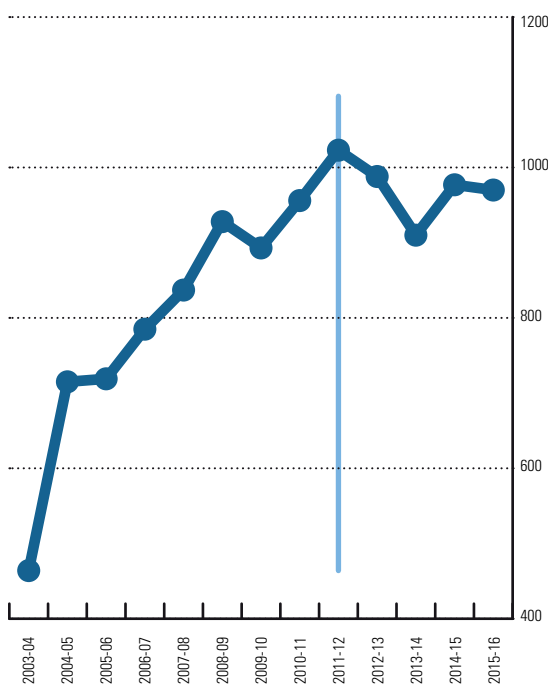


TABLE 10.2
RL ACT DISPUTE APPLICATIONS RECEIVED BY VSBC

	2011/2	2012/3	2013/4	2014/5	2015/6
RL Act disputes	1023	988	910	977	970

A decline in the refusal rate

In 2011-12, 29 per cent of dispute applications lodged with the VSBC did not settle prior to mediation and did not proceed to mediation. There are four main reasons for this:

- > The respondent party could not be located.
- > The respondent party refused to engage with the VSBC.
- > The amount in dispute was too small to justify the cost of formal mediation.
- > The matter was unlikely to resolve at mediation.

Significantly, this rate for disputes lodged under the SBC Act was 53 per cent in 2011-12, compared with 22 per cent for disputes under the RL Act. In large part this distinction was due to the lack of any consequence of refusing to engage with the VSBC for a dispute under the SBC Act, whereas there could be cost or other consequences under the other Acts.

Amendments to the SBC Act in 2014 included a certificate function for disputes under the SBC Act, and importantly, the power for the VSBC to name a party 'unreasonably refusing' to engage with the VSBC in its Annual Report. This amendment has significantly reduced the refusal rate for disputes under the SBC Act as shown in Table 10.3

TABLE 10.3
REFUSAL RATES AS A PERCENTAGE OF DISPUTES BY ACT

	2011/2	2012/3	2013/4	2014/5	2015/6
Refusal as a % of RL Act Disputes	*	*	7.1	5.1	6.3
Refusal as a % of SBC Act Disputes	*	*	14.9	5.2	3.7

* DATA NOT AVAILABLE FOR EARLIER YEARS.

An increased awareness of VSBC services

This goal is not readily measured in the absence of consistent surveys of businesses, although there are proxy indicators which point to increasing awareness of the VSBC over the five year period.

Over the past five years, significant changes to VSBC communications activities have occurred:

- > a clearly defined key message of 'resolving business disputes', and consolidated brand and logo leveraging the VSBC acronym in all communications, including website URL and telephone number 13 VSBC (13 8722)
- > a major redevelopment of www.vsbv.vic.gov.au based on user segmentation;
- > increased numbers of presentations across Victoria
- > increased use of digital channels, including e-newsletter, webinars, and LinkedIn
- > increased engagement with intermediary and advisory bodies dealing with small businesses, such as lawyers, accountants, local councils, industry associations, trader associations, business networks and government agencies
- > increased representation at business expos.

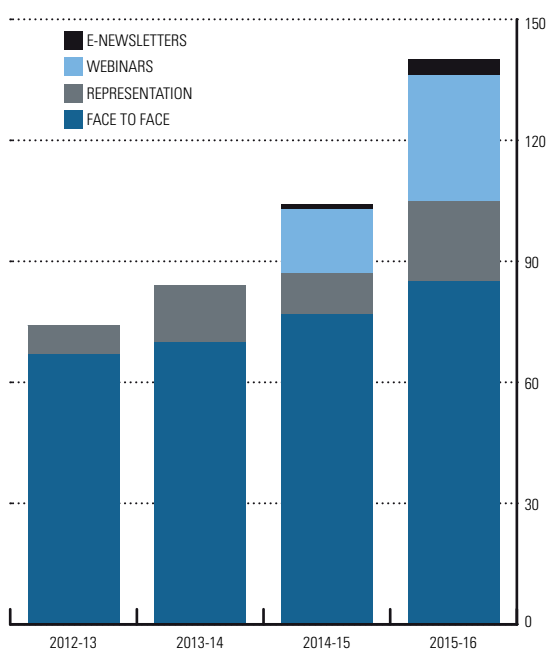
Table 10.4 and Figure 10.4 show a doubling of communication activities to businesses and business advisers over the past four years.

TABLE 10.4
VSBC COMMUNICATIONS ACTIVITIES

	2011/2	2012/3	2013/4	2014/5	2015/6
Face to face presentations	N/A	67	70	77	85
Webinars	-	-	-	16	31
Expo representation	N/A	7	14	10	20
e-newsletters	-	-	-	1	4

N/A: NOT AVAILABLE

FIGURE 10.4
COMMUNICATION ACTIVITIES 2012-13 TO 2015-16



NOTE: NO DATA IS AVAILABLE FOR 2011-12.

The number of unique visitors to vsbc.vic.gov.au has increased from a monthly average of 2,850 in 2011-12 to 4,515 in 2015-16. The percentage of new visitors has remained above 60 per cent in the past three years.

The doubling in the volume of SBC Act disputes is one indicator of the increased awareness of the VSBC.

The increased awareness of the VSBC is also shown by the high percentage of dispute applicants with commercial disputes under the SBC Act hearing about the VSBC via the website, industry associations or 'other' sources (mainly referrals from the ACCC, Consumer Affairs Victoria, friends and colleagues). This compares with lawyers being the dominant source of information for the mandatory referral of disputes under the RL Act, as shown in Figure 4.2.

CHAPTER 11

STATEMENT OF EXPECTATIONS

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The Statement of Expectations (SOE) of the Office of the Victorian Small Business Commissioner (VSBC) sets out the Minister's expectations of the VSBC's contribution to the Government's program to reduce red tape affecting businesses and other entities. The SOE sets out key governance and performance objectives and targets aimed at improving the administration and enforcement of regulation.

The current SOE applicable to the VSBC was issued by the then Minister for Small Business, in July 2014.

Reporting on the progress to achieve SOE performance targets is required to be undertaken as part of the annual reporting process.

The four SOE objectives, and activities undertaken to address them, which commenced in 2014-15 and continued in 2015-16 are:

Develop a monitoring regime to ensure optimal efficiency in implementation of reform processes (arising from the 1 May 2014 amendments) under the *Small Business Commissioner Act 2003*

Activities undertaken:

- > A process flow and business rules were developed for handling applications consistently.
- > Guidelines on 'unreasonable refusal' were developed with input from the Victorian Government Solicitors Office, published on the VSBC website, and a copy provided to all respondent parties to dispute applications under the SBC Act.
- > All decisions on whether refusal is 'unreasonable' or not are documented to facilitate consistent approaches over time, and for review.
- > Decisions on 'unreasonable refusal' are not delegated by the Commissioner, to assist in ensuring consistent approaches.

- > Improvements to processes were effected to ensure respondent parties received notification regarding intent to issue certificates, and intent to publish details of such certificates. These included use of registered mail (with receipt), and conducting company and business name searches to ensure the appropriate entity, and appropriate public officers of the entity, are notified.
- > All files relating to 'unreasonable refusal' certificates are reviewed in detail prior to finalising details to be included in the Annual Report.

Review existing guidance materials and develop new collateral focussing on reforms (from 1 May 2014) under the *Small Business Commissioner Act 2003*

Activities undertaken:

- > All brochures, information sheets, and web pages were reviewed and updated/ modified as required to reflect the broadened jurisdiction of the VSBC and the 'unreasonable refusal' certificate and naming functions, where appropriate.
- > Guidelines for 'unreasonable refusal' were developed, and were reviewed at the end of 2014-15 to ensure continuing relevance and accuracy.
- > Presentations were updated to reflect the amendments to the SBC Act enabling 'unreasonable refusal' certificates and naming.
- > A review of questions asked of telephone callers relating to 'unreasonable refusal' did not identify any systemic issues or concerns warranting further development of information sheets, updated online content or FAQs.

Review the appointment process for Specialist Retail Valuers under the *Retail Leases Act 2003*.

Activities undertaken:

A review was undertaken and a number of changes were made to VSBC processes including:

- > Improvements to the Application for Appointment of a Specialist Retail Valuer form were identified and implemented.
- > A process for referring complaints concerning the appointment of valuers was concluded.
- > Pro forma correspondence was amended to better reflect the appointment procedure.
- > Pro forma correspondence was amended to include information about services that can assist with language barriers.

Additionally, a Rent Review information sheet was published to assist landlords and tenants in understanding the process to resolve rent disputes.

Include a question seeking improvements to content or process on all major forms.

Activities included:

- > Two additional (non-mandatory) questions were added to Application forms relating to ease of locating the forms on the website, and ease of completing the forms. Chapter 14 provides the results of these questions.
- > In addition, feedback forms provided by mediation participants enable free form text comments. These comments are reviewed to identify areas for improvement.

New Statement of Expectations

An updated Statement of Expectations will be developed in 2016-17. In addition to the regulatory and administrative reform focus of the current Statement, it will also accommodate governance elements consistent with the Department of Economic Development, Jobs, Transport and Resources' portfolio governance framework, and will reflect the Government's commitment to establish a Small Business Commission.

CHAPTER 12

NATIONAL ISSUES

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UNFAIR CONTRACT TERMS

Amendments to the Australian Consumer Law by the Commonwealth Government during the year will see protections against 'unfair' contract terms extended to small businesses for certain new or renewed contracts entered into from 12 November 2016.

For a contract to be covered by the protections, three criteria need to be satisfied:

- > The contract needs to be a standard form (i.e. a 'take it or leave it') contract.
- > Either party needs to be a 'small business', defined as having an employee head count of less than 20.
- > The contract amount must be less than \$300,000 for a contract of less than 12 months, or less than \$1 million for longer term contracts.

The VSBC handles many contract disputes which relate to terms which, in contracts entered into from 12 November 2016, are likely to be considered 'unfair' and void. Further details are provided in Chapter 6.

AUSTRALIAN SMALL BUSINESS AND FAMILY ENTERPRISE OMBUDSMAN (ASBFEO)

Kate Carnell was appointed by the Commonwealth Government as the inaugural ASBFEO in March 2016, a transition from the previous Australian Small Business Commissioner. State Small Business Commissioners continue to meet quarterly with the ASBFEO as they did with the Australian Small Business Commissioner prior to March 2016.

The ASBFEO primarily has a referral role in regard to commercial disputes. The VSBC has received a number of referrals from the ASBFEO since commencement. One significant matter successfully resolved at VSBC mediation involved a multi-million dollar claim against a Northern Territory health care provider.

CHAPTER 13

MEDIATION POLICIES AND PRACTICES

THE BENEFITS OF MEDIATION

Mediation is a process where the parties in a dispute come together to discuss their dispute with the assistance of an independent mediator. It is a process of confidential negotiation which assists the parties to identify and explore options for the resolution of their dispute.

Mediators are appointed on a case by case basis by the VSBC.

Two key benefits of a mediated outcome are:

- > creative outcomes: the mediator can often identify elements of a settlement that had not occurred to the parties, but assist in forging a successful settlement
- > ongoing business relationship: a quick, mediated outcome can often enable the parties to the dispute to successfully continue to do business with each other.

APPOINTMENT OF MEDIATORS

The VSBC has been offering mediation since its commencement in 2003. It primarily uses an external list of mediators, but also has one in-house mediator.

A formal policy on the VSBC's approach to mediator appointment is published on the VSBC website at vsbc.vic.gov.au.

A key driver behind the appointment of mediators to mediations by the VSBC is the requirement, set in Budget Papers, to achieve at least a 75 per cent settlement rate across all mediations conducted. In appointing mediators to mediations, the VSBC considers the past mediation success rates of mediators, the circumstances of the dispute, feedback received from previous mediation participants, the expertise of the mediator, their flexibility (e.g. willingness to travel; willingness to accept a mediation at short notice), their compliance with VSBC administrative requirements, and the need to ensure a continuing pool of mediators with high success rates.

MEDIATIONS IN 2015-16

Between 1 July 2015 and 30 June 2016, 742 mediations were scheduled, of which 646 were conducted. Conducted mediations decreased 18 per cent compared with the previous year.

Interpreter services to assist parties from different cultural backgrounds were arranged for 9 mediation sessions during this period. (8 Mandarin and 1 Filipino).

TABLE 13.1
MEDIATIONS SCHEDULED AND CONDUCTED

	2015-16	2014-15	% decrease
Scheduled mediations	742	935	(20.6)
Conducted mediations	646 (87.1%)	789 (76.9%)	(18.1)

The reduction in mediation numbers reflects a number of factors including: an increase in the proportion of disputes settled prior to mediation; a reduction in the volume of disputes with higher conversion rates to mediation (FDM Act, RL Act); and an increase in the proportion of disputes which were determined unlikely to be resolved at mediation; or where the amount in dispute was too small to warrant the cost of mediation.

The difference between mediations scheduled and conducted occurs when:

- > parties request a change to the mediation date, notwithstanding they have initially agreed to the proposed date and time
- > the dispute settles prior to mediation
- > parties change their mind and decline to attend
- > a party does not show up on the day.

The Figures below profile customer satisfaction results on a range of variables. Client satisfaction of the service and the mediator was consistently high across:

- > different parties
- > parties' representatives
- > whether the mediation outcome was full agreement, partial agreement or no agreement
- > alternative locations of the mediation.

TABLE 13.2

MEDIATIONS CONDUCTED IN VSBC OFFICES, OTHER METROPOLITAN AND REGIONAL VENUES

		Venue		
		VSBC	Other metropolitan	Regional
Total	646	552	6	88
%	100.0	85.4	0.9	13.6

Mediation success rates, for those mediations that were completed in 2015-16 (some are adjourned) was 81.8 per cent. The highest success rate was achieved in mediations conducted under the *Farm Debt Mediation Act 2011* – 96.4 per cent, followed by 93.3 per cent for owner driver mediations, 80.3 per cent for general business disputes, and 79.8 per cent for retail tenancy mediations.

CLIENT SATISFACTION WITH MEDIATION

The VSBC seeks feedback from parties and their representatives attending mediations. In 2015-16, 827 feedback forms were received. A customer satisfaction index is calculated based on answers to seven questions, each rated on a 1-5 scale.

The overall satisfaction rate with the mediation services provided by the Office was 95.4 per cent, compared with 94.7 per cent in 2014-15.

Feedback is also sought on the overall performance of the mediator, against a number of criteria.

FIGURE 13.1
CLIENT SATISFACTION WITH THE MEDIATION SERVICE IN RELATION TO THE ROLE OF THE PARTY IN MEDIATION

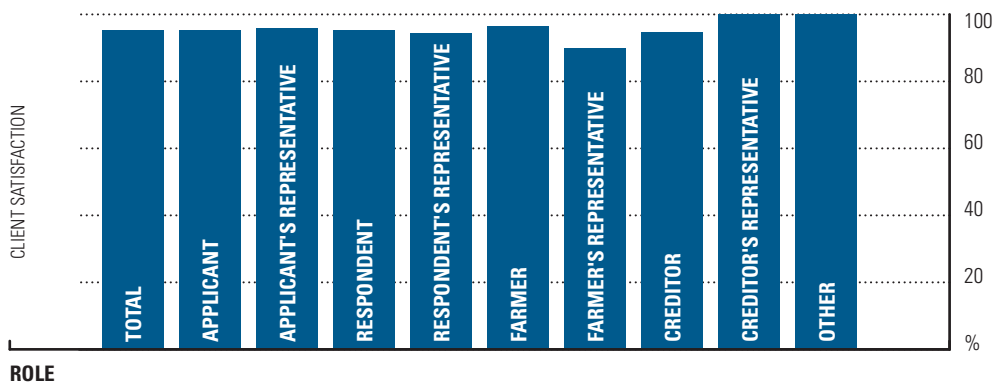


FIGURE 13.2
CLIENT SATISFACTION WITH THE MEDIATION SERVICE IN RELATION TO THE MEDIATION OUTCOME

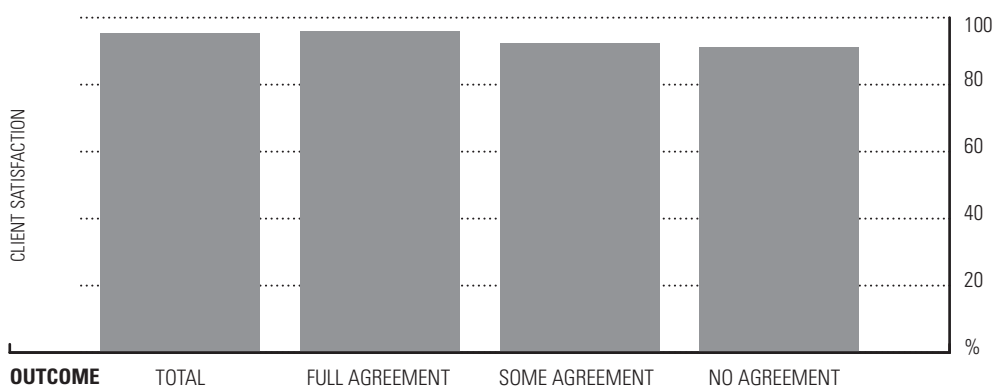


FIGURE 13.3
CLIENT SATISFACTION WITH THE MEDIATION SERVICE IN RELATION TO THE MEDIATION VENUE

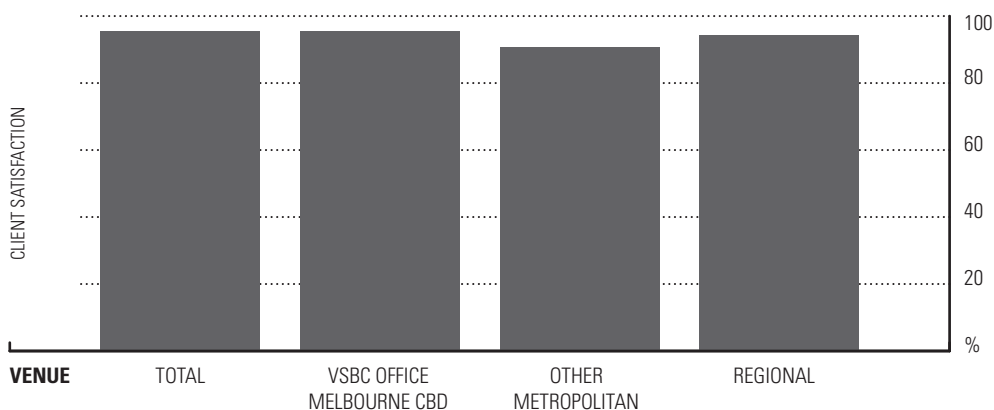


FIGURE 13.4

CLIENT SATISFACTION WITH THE MEDIATOR IN RELATION TO THE ROLE OF THE PARTY IN MEDIATION

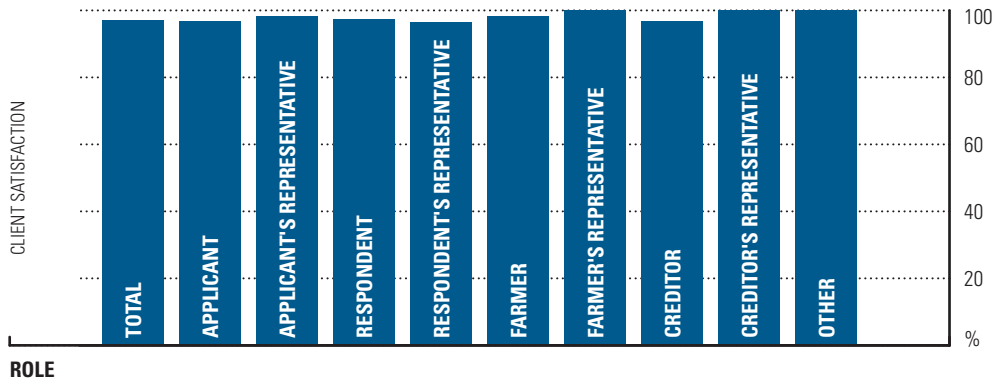


FIGURE 13.5

CLIENT SATISFACTION WITH THE MEDIATOR IN RELATION TO THE MEDIATION OUTCOME

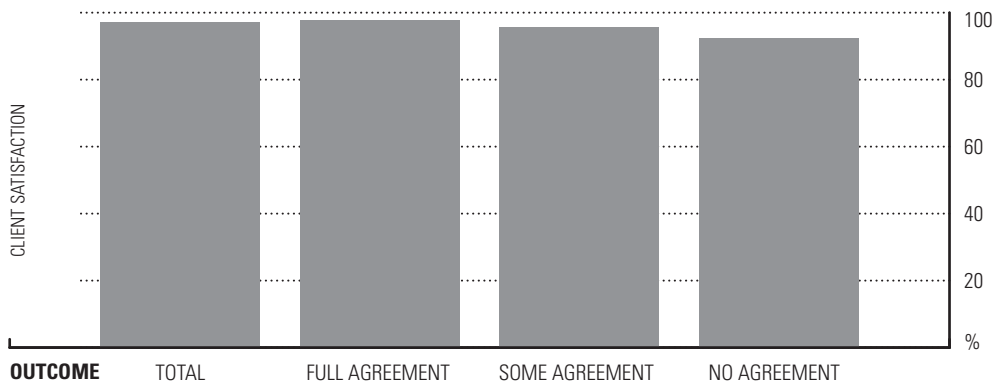


FIGURE 13.6

CLIENT SATISFACTION WITH THE MEDIATOR IN RELATION TO THE MEDIATION VENUE

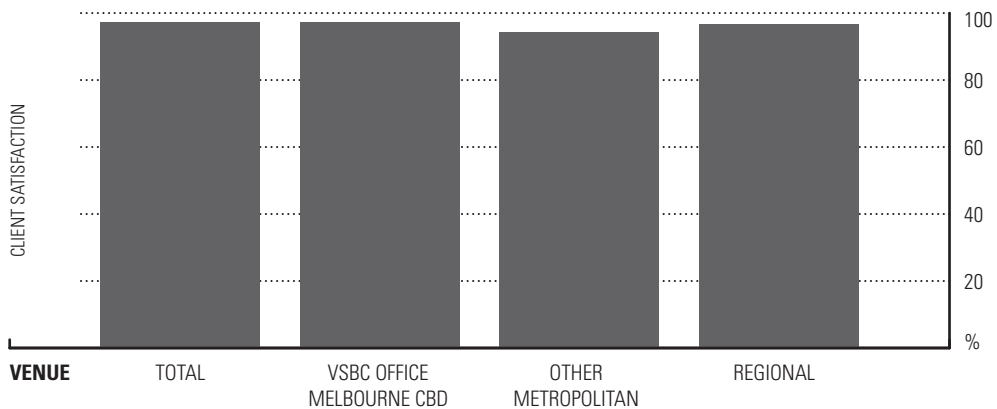
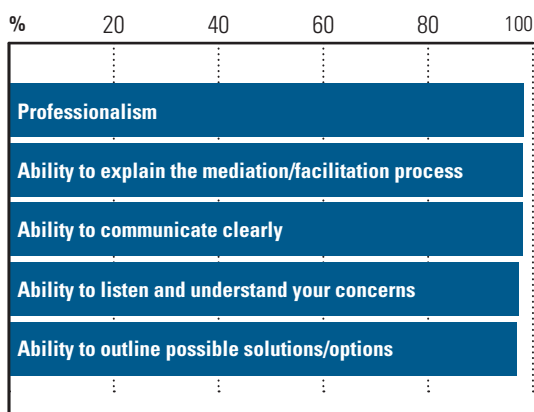


FIGURE 13.7
PERFORMANCE OF MEDIATOR



BENEFITS OF MEDIATION

All parties were asked whether the mediation service had saved them time or money compared with the alternative of litigation. Nearly 90 per cent of those who answered this question indicated it had saved time and 81.4 per cent saved money. These responses need to be interpreted against parties' expectations prior to mediation and the outcome of the mediation. A party may expect significant financial benefit, but end up with a lower, compromise outcome. Alternatively, a party may expect to incur no cost arising from the mediated settlement, only to enter a settlement where they agree to some outlay. Further, the parties may not be able to estimate likely cost and time if the matter had proceeded to litigation.

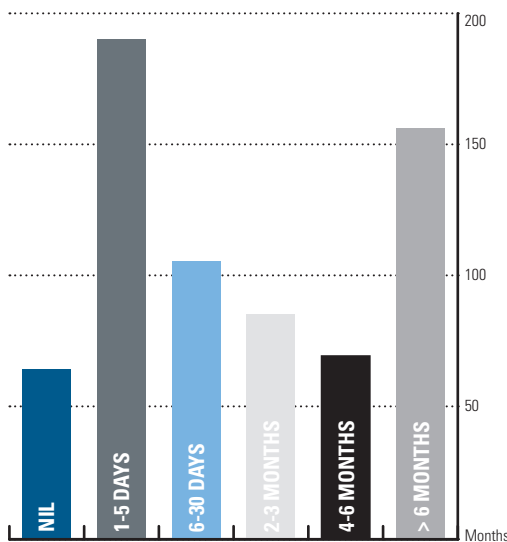
TIME SAVED BY MEDIATION

Survey participants were asked to estimate the average time saved as a result of using the VSBC's mediation service and avoiding tribunal or judicial proceedings:

TABLE 13.3
TIME SAVED BY MEDIATION

How much time have you saved?		
		%
Survey forms returned	827	
# of responses	675	100.0%
Nil	65	9.6%
1-5 days	191	28.3%
6-30 days	106	15.7%
2-3 months	86	12.7%
4-6 months	70	10.4%
More than 6 months	157	23.3%
No response	152	

FIGURE 13.8
TIME SAVED BY MEDIATION



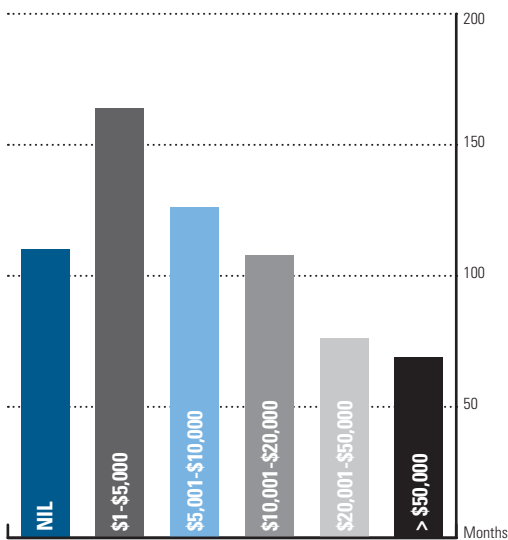
MONEY SAVED BY MEDIATION

Survey participants were also asked to provide an estimate of the amount saved as a result of using the VSBC’s mediation service and avoiding tribunal or judicial proceedings:

TABLE 13.4 MONEY SAVED BY MEDIATION

How much money have you saved?		
		%
Survey forms returned	827	
# of responses	653	100.0%
Nil	110	16.8%
\$1 – \$5,000	164	25.1%
\$5,001 – \$10,000	126	19.3%
\$10,001 – \$20,000	108	16.5%
\$20,001 – \$50,000	76	11.6%
More than \$50,000	69	10.6%
No response	174	

FIGURE 13.9 MONEY SAVED BY MEDIATION



OTHER COMMENTS ON THE BENEFIT OF MEDIATION

Hundreds of feedback forms provided positive comments on the mediator and the mediation process, in addition to the ratings provided and estimates of time and money saved.

Some comments focused on the mediator:

“The mediator was fantastic, decisive, involved and helpful.”

“The mediator’s professionalism was very appreciated, as was her warmth and level of emotional intelligence.”

Some comments focused on the process:

“Excellent service, well run, good mix of formal/informal dialogue.”

“Found the process to be easy and happy that such a low-cost process exists for small business to resolve disputes without court costs and timeframes.”

Some comments were positive despite the outcome not being as expected:

“It was not quite what I wanted, but I am happy with the negotiated outcome. I did not think that a settlement was possible.”

“Would rather have not paid any monies – but better to have paid \$15,000 than \$42,000. Glad it’s over.”

Some comments highlighted the stress that a commercial dispute can entail:

“I’m hoping that this mediation outcome will free me from a verbally and psychologically abusive relationship”.

“Money lost but life regained”

“This mediation has stopped further stress and worry”

And some comments reflect the benefits of mediation even when settlement does not occur:

“Although no resolution, the parties saw each other’s position and a reasonable level of communication opened up”.

CHAPTER 14

IMPROVING OUR SERVICES

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The VSBC seeks to continuously improve its operational efficiency and effectiveness. A number of initiatives were undertaken during the year:

TEMPLATE TERMS OF SETTLEMENT

Following consultation with mediators, the VSBC finalised template Terms of Settlement for all mediators to use, rather than each mediator using their own template. This also ensured consistency between the terms of settlement parties may sign, and the Mediation Agreement signed by the parties prior to a mediation.

MEDIATION CHECKLIST

To better prepare parties participating in mediation, a simple one page Checklist was developed in consultation with mediators. The Checklist prompts parties to identify and bring relevant documents with them to mediation, consider representation or seeking professional advice before mediation, and reinforces practical tips such as finding parking (if driving) which allows sufficient time for the mediation process. It also encourages the parties to consider the strengths and weaknesses of their position, what they think the other party is likely to want, and to approach the mediation in good faith with the intention of resolving the dispute.

GUIDANCE IN ATTEMPTING TO RESOLVE A DISPUTE PRIOR TO LODGING AN APPLICATION WITH VSBC

Following a number of dispute applications where the respondent party was unaware that there was a problem, the VSBC website was amended to encourage businesses to try to resolve the dispute themselves in the first instance, and inform the VSBC of such efforts and responses as part of the application for assistance with the dispute. Links to template letters of demand and other advice were included.

DISPUTE APPLICATION FORMS

We ask applicants to rate the ease of locating application forms on the website, and the ease of completing the forms.

TABLE 14.1
EASE OF LOCATING APPLICATION FORMS

	2015-16	2014-15
	%	%
'Easy' or 'Very easy'	88	87
'Difficult' or 'Very difficult'	1	3

TABLE 14.2
EASE OF COMPLETING APPLICATION FORMS

	2015-16	2014-15
	%	%
'Easy' or 'Very easy'	86	82
'Difficult' or 'Very difficult'	2	3

The website and the application forms are reviewed for potential improvements when specific comment on finding or completing the forms is provided.

INFORMATION SESSIONS

The VSBC continued to hold half-yearly information sessions for staff and mediators on topics of interest and relevance. The July 2015 session focused on 'Interpreting Body Language', a skill of particular assistance and benefit to mediators. The December 2015 session explored the complexities when family disputation is involved in a business dispute, and included a presentation by a representative of Family Business Australia.

CASE MANAGEMENT MEETINGS

The VSBC piloted Case Management Meetings as a 'lite' form of mediation, involving a meeting between the parties and the Dispute Management Officer. These are targeted at low amount disputes which do not warrant the cost of a formal mediation, are relatively straightforward issues, have not settled through telephone or email engagement, but both parties indicate a genuine desire for the dispute to be settled. The meetings are typically arranged for one hour with the Dispute Management Officer handling the case. A case study is provided in Chapter 5.

FEEDBACK ON PRELIMINARY ASSISTANCE

To supplement the feedback obtained from parties at mediation, the VSBC seeks feedback from businesses involved in disputes which are resolved prior to mediation through preliminary assistance. A link to an online survey is emailed to both applicant and respondent business once a matter has been resolved through preliminary engagement with the parties.

During the year, 93 responses were received from 237 surveys sent. Seventy per cent of responses came from the applicant business. Using a 5 point scale (1: Very Poor - 5: Very Good) responses rated the preliminary assistance role at 4.87 or 97.4 per cent, an improvement on the 95 per cent satisfaction rating in 2014-15.

CHAPTER 15

ORGANISATIONAL ARRANGEMENTS

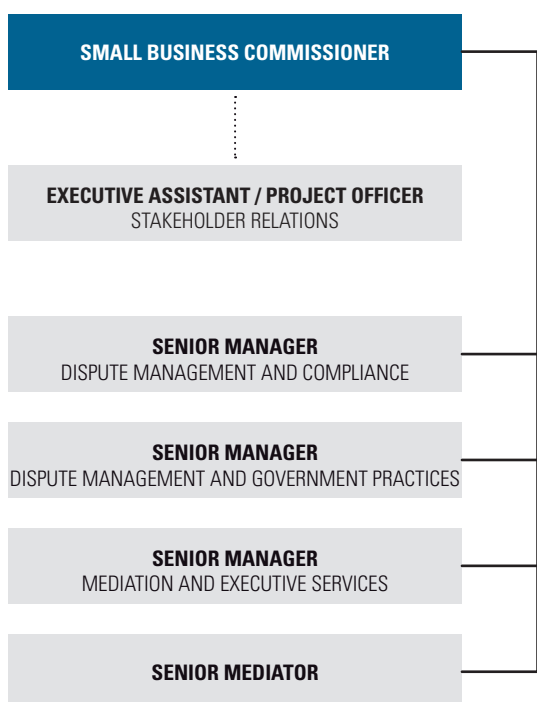
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OVERVIEW

The position of Small Business Commissioner is established under the *Small Business Commissioner Act 2003* and is a statutory appointment by the Governor in Council.

VSBC staff are employed by the Department of Economic Development, Jobs, Transport and Resources (Department) under Part 3 of the *Public Administration Act 2004*. They participate in Departmental training, performance management and human resources activities and conform to Departmental financial and other policies and codes of conduct.

ORGANISATIONAL STRUCTURE



OCCUPATIONAL HEALTH AND SAFETY

VSBC is committed to providing a work environment that is, as far as it is reasonably practical, free from risks to the safety, health and well-being of staff (including VPS employees, agency on hire staff, contractors, trainees) and visitors.

In 2015-16, no issues arose in relation to occupational health and safety.

ENVIRONMENT

VSBC is committed to sustainable practices through waste minimisation, energy efficiency, paper reduction, recycling and integrating environmental sustainability within Department's corporate governance, planning and procedures.

SYSTEMS

Corporate support services (financial, information technology and records management) are provided by the Department.

Specific database applications have been developed for:

- > dispute management and reporting
- > preliminary enquiries
- > *Retail Leases Act 2003* section 21 Certificate applications
- > survey reporting - client satisfaction with mediation services and preliminary assistance.

FREEDOM OF INFORMATION

There were no Freedom of Information requests directed to the activities of the Office of the Victorian Small Business Commissioner during 2015-16.

PROTECTED DISCLOSURE PROCEDURES

The VSBC operates in accordance with the Department's Whistleblowers Protection Procedures.

As at 30 June 2016, the VSBC had not received any disclosures made under the *Protected Disclosure Act 2012*, nor had the Ombudsman referred any such disclosures to the Office for investigation.

MAJOR CONTRACTS

The Office did not enter into any contracts over \$10 million in the period 1 July 2015 to 30 June 2016.

CONSULTANCIES

In 2015-16, there were no consultancies where the total fees payable to the consultants were \$10,000 or greater.

In 2015-16, the Office engaged in 2 consultancies where the total fees payable to the consultants were less than \$10,000, with a total expenditure of \$3,669.40 (excl. GST).

CHAPTER 16

FINANCIAL STATEMENT

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FINANCIAL STATEMENT 1 JULY 2015– 30 JUNE 2016

1 July 2015 – 30 June 2016	
\$	
Funding	
Small Business Commissioner	2,585,000
Farm Debt Mediation	813,000
Total Funding	3,398,000
Expenditure	
Employee Related Expenses	2,519,632
Other Operating	496,914
Total Expenditure	3,016,546

Note:

The total funding includes \$113,000 carryover from 2014-15