

Victorian
**Small Business
Commission**

ANNUAL REPORT 2017-18

ENGAGE
ADVOCATE
RESOLVE
MONITOR

VICTORIAN SMALL BUSINESS COMMISSION

September 2018

Annual Report 2017-18

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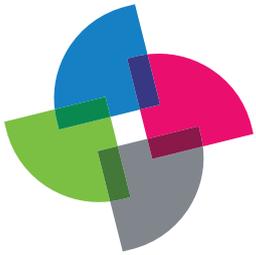
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Victorian Small Business Commission

The Hon Philip Dalidakis
Minister for Small Business
Level 16
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Melbourne Victoria 3000

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Dear Minister

Annual Report 2017-18

I am pleased to present to you the Annual Report on the operations of the Victorian Small Business Commission, covering the period 1 July 2017 to 30 June 2018.

The Report is provided to you under section 16(2) of the *Small Business Commission Act 2017* (the Act), in order for you to cause the Report to be laid before each House of Parliament as required under section 16(3) of the Act.

Yours sincerely

Judy O'Connell

Victorian Small Business Commissioner

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CHAPTER 1

COMMISSIONER'S MESSAGE

Our first year as the Victorian Small Business Commission has come to a close and we are proud of how we have adapted to best meet the needs of the Victorian small business community. Preparing this report has given us a chance to reflect on the achievements we have made during a time of change, whilst maintaining the quality of our core services.

The year has seen continued demand for our dispute resolution services as we also worked to establish our other key strategic priorities of engaging with small businesses, monitoring the small business environment and providing advocacy on issues affecting the sector.

Our engagement function developed strongly over the year. In addition to our regular program of presentations, webinars and stakeholder engagements, we achieved a significant increase in our interaction with small businesses through an enhanced presence on social media platforms.

Last year I reported on a small business round table that I convened in the Latrobe Valley, which identified the importance of business networks in supporting local small businesses. This round table led to the successful implementation by the VSBC of the Grow Your Business, Together initiative. The initiative provided support to Latrobe Valley small business networks and included a free small business breakfast in nine towns in a bid to boost membership of these organisations.

In line with our newly developed advocacy function, we worked to prepare generic small business engagements guidelines for government agencies and other bodies to apply to upcoming infrastructure projects. The guidelines provide direction for these agencies in assessing the impact of projects, communicating with small businesses and providing appropriate business support measures to minimise business disruption during projects.

We continued our focus on helping small business owners protect their mental health, with the VSBC's Mental Health Strategic Plan template being launched in October 2017 on World Mental Health Day.

It was pleasing to see the Victorian Government sign-up to the Australian Supplier Payment Code and I will continue to encourage larger Victorian businesses to commit to paying their small business suppliers within 30 days, to address the serious of late payments and associated cash flow impacts.

We continue to seek improvements in the timeliness and quality of our dispute resolution services. Following a review of our end-to-end dispute handling process, the VSBC has moved to a 'paperless' office in which applications will be handled electronically.

Of the 1,708 disputes referred to us, 34 percent were resolved before going to mediation, at no cost to the small business owner. The mediation success rate over the year was 78 per cent for the 533 completed mediations, with a high customer satisfaction of 95 per cent.

I would again like to thank the Minister for Small Business, the Hon Philip Dalidakis for his support for the VSBC during the year and acknowledge the ongoing assistance provided by the Department of Economic Development, Jobs, Transport and Resources.



Judy O'Connell
Victorian Small Business Commissioner

CHAPTER 2

2017-2018 OVERVIEW

KEY STATISTICS

11,985 phone enquiries



1,708 dispute applications



34 per cent of matters resolved prior to mediation



78.2 per cent resolution for 533 completed mediations



95 per cent satisfaction with mediation services



4,055 attendees at events



118,157 visitors to our website



ICONS FROM WWW.FLATICON.COM

WHAT ELSE DID WE DO?

Grow Your Business, Together

A series of breakfasts and pop-up events in the Latrobe Valley connecting small business owners with key government agencies and trader networks.

DETAILS > PAGE:

8

Victorian Small Business Engagement Guidelines

We are preparing guidelines for project managers to use when undertaking disruptive infrastructure projects.

DETAILS > PAGE:

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Mental Health Strategic Plan

We developed a strategy for small business owners to incorporate into their business development plans.

DETAILS > PAGE:

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Landmark retail lease decision

We worked to educate tenants, landlords, real estate agents and lawyers about the impact that the MCC Group (Australia) Pty Ltd v CB Cold Storage Pty Ltd may have on their lease agreements.

DETAILS > PAGE:

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Streamlined our services

We introduced a new online process to significantly improve a tenant's experience in obtaining a certificate to waive their rights to a five-year lease term. We also became a paperless office.

DETAILS > PAGE:

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CHAPTER 3

ABOUT US

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PURPOSE AND FUNCTIONS

The Victorian Small Business Commission (VSBC) came into effect on 1 July 2017, with the commencement of the *Small Business Commission Act 2017* (the Act). The Act repealed and re-enacted with amendments the *Small Business Commissioner Act 2003*, which the office had operated under since its commencement in 2003.

The Act establishes the VSBC with the purpose to enhance a competitive and fair operating environment for small business in Victoria. The VSBC has a range of functions under the Act, including dispute prevention and dispute resolution.

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

THREE-YEAR STRATEGIC PLAN

The VSBC is currently operating under a three-year strategic plan for the years 2017-20 with a focus on four priority areas:

Advocacy

Advocating on issues affecting small businesses and their operating environment

Engagement

Connecting with the small business community to promote VSBC services and encourage informed decision making

Monitoring

Monitoring the impact of market trends, legislation and government policies on small business

Dispute resolution

Continuing to provide an efficient and low cost small business dispute resolution service

VSBC REVIEW

To align the available resources and deliver on the priorities for the next three years, the VSBC undertook a review of the current processes and capabilities to develop a fit for purpose model on the key functions. The resulting new model was implemented in December 2017.

CHAPTER 4

ENGAGEMENT

OVERVIEW

During the year, the VSBC's stakeholder engagement strategy continued to focus on enhancing awareness of its services through:

- > communications
- > stakeholder engagement
- > regional visits
- > major events.

The VSBC undertook a review of its current range of electronic and paper-based information products and plans to streamline and update communications materials in 2018-19. This will form part of the rollout of a targeted, comprehensive communications program.

STAKEHOLDER ENGAGEMENT

We continued to meet with a range of business networks, chambers of commerce, trader associations and industry and professional bodies to create opportunities to collaborate and educate Victorians about the services we offer. We also participated in 12 roundtables to discuss issues of concern to small businesses.

Local councils

Local councils are an important stakeholder for the VSBC as they play a key role in supporting small businesses in their municipalities. The Commissioner met with the following councils during 2017-18:

- > Mildura Rural City Council
- > Ballarat City Council
- > City of Melbourne
- > Moreland City Council
- > City of Greater Dandenong
- > Bayside City Council
- > Wellington Shire Council
- > Latrobe City Council
- > Baw Baw Shire Council
- > Maribyrnong City Council
- > Ararat Rural City Council
- > Northern Grampians Shire
- > Horsham Rural City Council
- > Hindmarsh City Council
- > West Wimmera Shire Council
- > Hume City Council
- > Wodonga City Council.

Working with other government agencies

The VSBC continued to work with a range of local, state and federal government agencies and members of the Government Business Education Network to provide small business forums, resources, assistance and programs.

Ministerial councils

The Small Business Commissioner attended both the Small Business Ministerial Council and the Multicultural Business Ministerial Council meetings during the year. The Commissioner will continue to attend the Councils' meetings as a standing member.

COMMUNICATIONS

Speaking engagements

The Small Business Commissioner and VSBC staff delivered 77 presentations during 2017-18. Many were held in regional areas including Bendigo, Horsham, Ballarat, Geelong, Mildura, Wonthaggi, Phillip Island, Inverloch, Traralgon, Lorne, Warragul, Traflagar, Moe, Morwell, Maffra, Yarram and Sale.

Media

The VSBC prepared 23 media releases for the year and generated strong media coverage across Victoria. The VSBC was mentioned in over 30 media stories.

Social media

The VSBC enhanced its social media presence through increased focus on social media platforms. The strongest growth was seen on the Instagram platform with many small businesses following VSBC's account.



Judy O'Connell
@judyovsbc

Follow

That's a wrap! Thank you #Gippsland for all your support and being apart of the #GrowYourBusinessTogether initiative @wellingtonshire @LatrobeValleyAu @BawBawCouncil



eNewsletter

The VSBC released four editions of the e-newsletter and grew the number of subscribers to over 1,600 (compared to 1,395 in 2016-17).

REGIONAL VISITS

The Victoria Small Business Commissioner visited a range of regional centres throughout Victoria during 2017-18 to talk about the work of the Commission and to assist to resolve disputes. In many of these towns the Commissioner engaged with local councils, business networks and local, state and government agencies to discuss local issues.

ENGAGEMENT CASE STUDY GROW YOUR BUSINESS, TOGETHER

The Grow Your Business, Together (GYBT) initiative involved a series of free breakfast events across nine Gippsland towns between March and May 2018.

The purpose of these events was to encourage business engagement in local networks and promote the range of support available for local businesses from government and private providers.

The initiative arose from the Latrobe Valley Small Business Round Table, convened in 2017 by Regional Development Victoria and the Victorian Small Business Commission (VSBC), to address the potential impact on small business of the closure of large local employers.

The Round Table identified that local small business networks play a key role in disseminating information, networking and building business capability. They can also advise and guide small business owners on relevant government funding, programs and support tools to assist them.

The Round Table proposed measures, including support for networking functions, to assist local business networks to help resolve some of the issues faced by local small businesses.

Funding from the Latrobe Valley Authority allowed the VSBC to provide a series of free events for small businesses.

Under the GYBT initiative, nine breakfast events were planned to assist business networks in each of the towns to engage with local business to promote their services and increase their membership numbers.

"In some ways it is too early to fully measure the success of the event, however, of the 87 people registered for the event, 43 were small business people who were not current members who we will continue to liaise with, with a view to them becoming members."

Over 730 people attended the nine small business breakfasts in Warragul, Traralgon, Morwell, Trafalgar, Moe, Drouin, Yarram, Maffra and Sale. Each breakfast was hosted by the respective business network group in that town and involved a short presentation by the Victorian Small Business Commissioner and a guest speaker on a topic of interest to the community.

“Our social media (Instagram and Facebook) also saw a higher number of followers and engagements.”

The events in five towns were also supported by a pop-up information session, held later in the day in the town centre, to promote the range of support available to small businesses from local, state and federal government agencies.

Funding of up to \$5,000 (excluding GST) was also provided to assist seven small business networks in the Latrobe Valley to develop a new website. A website enhancement workshop was held in February 2018 for small business networks to identify the possible enhancements to their existing website and to develop the scope of work for their application.

“The new features that have been added to our website:

- > *A new membership sign-up page so potential members can sign up and make payment.*
- > *A survey feature added to the membership sign up page to garner an initial profile of the new member and their business.*
- > *Modernising the site to reflect our new branding.*

Thank you for Victorian Small Business Commission and Latrobe Valley Authority in supporting this initiative for business groups across Gippsland.”

The high numbers of attendees at events together with feedback received from participating business networks indicate that the events were successful in achieving the purpose of the initiative. It is proposed to extend the initiative to other priority regions in Victoria.

“There has been a lot more talk about the chamber since the event.”

“This was a great start to promoting our chamber, we have now started a business breakfast once every 2 months with a guest speaker.”

MAJOR EVENTS

Small Business Festival

The VSBC continued to educate small businesses to develop good business practices by participating in the Victorian Small Business Festival in August 2017.

Throughout the festival, VSBC conducted a series of workshops and webinars. A workshop on being ‘mentally healthy’ was conducted in the Melbourne CBD Festival Hub and others across Victoria in Bendigo, Horsham, Ballarat and Malvern.

Five webinars were also held during the month on topics related to retail leases, reading the fine print, being mentally healthy and franchising.

Law Week

Once again, the VBSC participated in the annual Law Week program in May 2018. Webinars were run on the topics of:

- > franchising tips and traps: things to know before you sign
- > read the fine print: good business practices and contracts
- > retail leases: your rights and responsibilities as tenant or landlord
- > benefits gained through using dispute resolution and mediation processes.

Twenty people attended a tour of the mediation rooms, led by the Victorian Small Business Commissioner and a mediator, who demystified how mediations work.

CHAPTER 5

ADVOCACY AND MONITORING

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OVERVIEW

The advocacy and monitoring functions have been established as part of the VSBC's new three-year strategy. The two functions complement each other – by closely monitoring the impact of market trends, legislation and government policies on small business, the VSBC are in a stronger position to advocate on their behalf.

Work has been undertaken to establish the function and to identify the issues that will be focussed on in 2018-19. To inform understanding of what Victorian small business require from our advocacy function, the VSBC created an online survey that was open to all Victorian businesses and promoted using our social media networks and those of Business Victoria.

The survey asked businesses to discuss the key issues affecting their business and the scale of the impact these have on operations. At the time of writing the survey remained open and it is anticipated that the results will inform the VSBC's advocacy agenda for 2018-19.

In 2017-18, our advocacy projects helped address key areas of concern to small businesses as identified through monitoring of the small business environment.

SMALL BUSINESS ENGAGEMENT GUIDELINES

Many issues referred to the VSBC for dispute resolution involve disruption caused to traders by an infrastructure project. These projects could be any one of a range of temporary construction works, such as the reformation of a streetscape, roadworks or upgrading utilities, which impact the day to day operations of small businesses in the area.

The VSBC is in the process of creating guidelines to be used by organisations who are undertaking these potentially disruptive infrastructure projects. The Victorian Small Business Engagement Guidelines will outline how project managers can work with small businesses to develop strategies to mitigate the negative impacts that construction works can have on trade.

The guidelines will include tools to assist parties to create an impact assessment, a communications strategy and a disruption mitigation plan which are to be developed in partnership with small businesses affected by projects. They are being modelled on those developed by Melbourne Water, and we are incorporating feedback from key stakeholders about what initiatives were working on the ground.

The guidelines will be completed in early 2018-19 and will be distributed and promoted to relevant stakeholders, such as local councils, in the second half of 2018.

The VSBC continues to work with relevant government agencies on addressing small business impacts arising from infrastructure projects.

BALLARAT CBD DEVELOPMENTS

The VSBC convened a meeting in Ballarat in February 2018 to discuss the impact on small business of upcoming infrastructure projects. More than a quarter of a billion dollars in construction works are to be delivered in the Ballarat CBD over the next three years.

A group of key stakeholders, including Regional Development Victoria, VicRoads, PowerCor, Commerce Ballarat, Central Highlands Water, City of Ballarat and the Department of Justice and Regulation met to explore ways to minimise disruption, particularly to small business and CBD traders.

Key topics considered at the meeting included:

- > identifying opportunities to support small businesses and CBD traders
- > development of a parking strategy to ensure continued access to CBD businesses
- > development of a coordinated communication strategy to keep businesses informed.

MENTAL HEALTH STRATEGIC PLAN

The VSBC launched a Mental Health Strategic Plan on 10 October 2017 – World Mental Health Day.

A template mentally healthy plan has been created for businesses to make sure they think of their own health and welfare as part of their business plan. In completing the plan, businesses were asked to identify likely business stressors, ways to identify mental health ‘red flags’, action steps to reduce stress, people and resources to call on, a plan if a small business owner is unable to return to work, and a return to work plan.

If small business owners have contingency plans in place, and later become unwell or need extended time away from their business, these strategies will help ensure the continuing success of their operations.

ENERGY COSTS

To address small business concerns with recent rises in energy bills, the VSBC developed an information sheet, entitled *Reducing your energy costs as a small business*. The information, developed in conjunction with Sustainability Victoria and Energy Compare Victoria, provides some simple steps which small businesses can investigate to attempt to reduce their energy usage and obtain a better deal from their retail energy providers.

The VSBC was consulted by ACCC regarding its Retail Electricity Pricing Inquiry and issues experienced by small business owners.

AUSTRALIAN SUPPLIER PAYMENTS CODE

Small businesses continue to report issues with being paid on time and the impact this has on the cash flow and viability of their business. To demonstrate its commitment to prompt payments for small business, the Victorian Government has recently become a signatory to the Australia Supplier Payment Code (the Code).

Businesses signing up to the Code commit to paying their small business suppliers within 30 days of receiving a tax invoice, working with suppliers to improve invoicing practices and developing processes for resolving payment disputes. Signatories have 18 months from the signing date to reach full compliance.

Around 80 businesses and government bodies have signed up to the Code so far and the VSBC will continue to encourage larger businesses to commit to the Code and ensure quicker payments for small business.

LANDMARK RETAIL LEASE DECISION *IMCC GROUP (AUSTRALIA) PTY LTD V CB COLD STORAGE PTY LTD*

On 15 December 2017 the High Court of Australia refused special leave to appeal the decision of the Victorian Court of Appeal in *IMCC Group (Australia) Pty Ltd v CB Cold Storage Pty Ltd*. The Cold Storage decision held that premises used for supplying commercial services to other businesses are retail premises and therefore covered by the *Retail Leases Act 2003*.

Following the decision, the VSBC engaged in education and consultation concerning its effect as it confirms that the *Retail Leases Act 2003* extends to premises used for the provision of commercial services and it is likely the decision also applies to the sale of goods to an 'end user' which can be another business.

The decision has clarified that commercial activity between one business and another business can actually be a retail sale of goods or services and therefore be covered by the *Retail Leases Act 2003*

MARK SCHRAMM, SENIOR MANAGER VSBC IN A YOUTUBE VIDEO CREATED BY THE VSBC TO INFORM STAKEHOLDERS ABOUT THE DECISION

NATIONAL COMMISSIONERS' MEETINGS

State Small Business Commissioners continue to meet bi-monthly with the Australian Small Business and Family Enterprise Ombudsman to discuss priority national issues and share information on their activities and initiatives.

MONITORING GOVERNMENT FAIR PAYMENTS

The VSBC has again undertaken a review of compliance with the State Government's Fair Payments Policy (FPP) in consultation with Small Business Victoria.

The FPP, introduced in 2004, requires certain State Government departments and agencies to pay invoices 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 2017-18 from each department, and from the five largest agencies (by expenditure) within each portfolio area.

Respondents reported that 1,156,990 invoices relating to contracts under \$3 million were paid. Table 5.1 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.

TABLE 5.1
PAYMENT OF INVOICES FOR CONTRACTS LESS THAN \$3 MILLION 2017-18

	Invoices	Average days taken to pay invoice	Invoices paid after 30 days	Paid within 30 days
Departmental core	544,764	20.78	74,325	86%
Agencies	612,226	18.77	86,698	86%
Total	1,156,990	19.72	161,023	86%

Overall, a compliance rate of 86 per cent was reported, the same as in the previous year. The VSBC will continue to work with departments and key agencies to encourage reduced payments time for small businesses.

Reasons provided for non-payment within 30 days included disputes over goods or services provided, invoicing errors 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.

NBN ROLLOUT TO BUSINESS

VSBC is working with NBN Co regarding issues small businesses are experiencing with the NBN rollout. Areas of concern include business transition and disconnection information, and business disruption due to planned outages. VSBC is working with NBN to develop guidance material for small business to help them understand the process and options for transitioning to the NBN.

SUBMISSIONS AND REVIEWS

The VSBC's monitoring function involves identifying and reviewing relevant new legislation and policies which impact on small business. In line with this function, the VSBC contributed to several state and national reviews and prepared submissions where appropriate.

Parliamentary Inquiry into the Franchising Code of Conduct

On 22 March 2018, the Senate announced a parliamentary inquiry into the franchising sector. The inquiry considered the operation and effectiveness of the Franchising Code of Conduct. The VSBC made a submission providing data and commentary on issues raised in franchising disputes received by the office over the last two years, and the Acting Commissioner appeared as a witness at a public hearing of the inquiry in June 2018.

Review of the *Farm Debt Mediation Act 2011*

The VSBC participated in a review of the *Farm Debt Mediation Act 2011*, which was managed by Agriculture Victoria (AV). The VSBC worked with AV to finalise the response to the recommendations from the review and will be implementing these in 2018-19.

Review of the *Estate Agents (General, Accounts and Audit) Regulations*

The VSBC made a submission to Consumer Affairs Victoria with regard to the remake of the *Estate Agents (General, Accounts and Audit) Regulations*. Although the VSBC was not aware of any particular concerns, it was suggested that consideration be given to including a reference in the Vendor Statement to provision of a Disclosure Statement where the premises are under the *Retail Leases Act 2003* (i.e. where the sale of business includes a transfer of lease).

Small business collective bargaining guidelines consultation

The VSBC provided a submission regarding the Australian Competition and Consumer Commission's Guideline for Collective Bargaining and Boycotts. The submission sought guidance on how the VSBC could handle matters where businesses seek to mediate as a group, and whether these would situations could constitute collective bargaining.

Review of the *Owner Drivers and Forestry Contractors Act 2005 (Vic)*

Industrial Relations Victoria (IRV) reviewed the *Owner Drivers and Forestry Contractors Act 2005 (Vic)* (the Act). The Minister for Industrial Relations is responsible for this legislation. Under the Act, the VSBC has an alternative dispute resolution role (ADR) and the VSBC submitted that its ADR role under the Act include a determination service, similar to smash repairer disputes.

The VSBC also worked with IRV to develop a code of practice and model rates and costs schedule for tip truck drivers in the excavation industry. The VSBC appointed a mediator to assist in developing a model rates and costs schedule. This process is ongoing.

Small Business Regulation Review

The review program consists of three reviews focusing on regulatory issues for small businesses within specific sectors. Reviews have been completed for the retail sector and the visitor economy sector, with action statements released in June 2018

The third review targets the way regulators interact with small businesses, with a focus on the construction sector. Consultation is underway, with reforms expected later in 2018.

The VSBC is on the Steering Committee for the Review program, and also has responsibility for implementing recommendations from the retail sector review which relate to retail leasing.

Cross Border Commissioner

The VSBC made a submission supporting the establishment of a Victorian Cross Border Commissioner to address regulatory and other issues in border areas, including those impacting on small business such as mutual recognition of licences.

CHAPTER 6

DISPUTE RESOLUTION

OVERVIEW

The VSBC provides dispute resolution services for general commercial small business disputes under the *Small Business Commission Act 2017* (SBC Act), as well as disputes 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).

While the VSBC's mediation service is the principal method of dispute resolution, in 2017-18 there was a greater focus on increasing the number of disputes resolved by staff prior to mediation. The VSBC is committed to making alternative dispute resolution as accessible and effective as possible and we continued to explore new forms of dispute resolution in the recent financial year – these are discussed in further detail below.

DEVELOPMENTS IN ALTERNATIVE DISPUTE RESOLUTION

Process improvements

The VSBC has moved to a 'paperless' office in which applications for mediation will be handled entirely via email and managed using an electronic database. The move to electronic file handling is coupled with improvements to the dispute resolution process – both address quality and time improvement goals identified in the VSBC's Statement of Expectations and three-year strategic plan.

In October 2017, the VSBC introduced a new fully automated process for tenants to obtain a certificate to waive their right to a minimum five-year term. The process enables tenants to receive an explanation of section 21 of the RL Act, apply and automatically receive a waiver certificate online. It should take tenants a maximum 15 minutes to do so. The new process will replace the former, more time consuming, procedure, where some businesses also engaged professional assistance (lawyers, accountants) which added to their costs.

Mediator panel

As part of the changes associated with the commencement of the SBC Act, the VSBC created a formal panel of mediators to conduct mediations under its respective legislative jurisdictions. Following an assessment of applications in line with government probity practice to ensure an accountable, transparent and efficient service, 25 mediation professionals were chosen to work in Melbourne, and 15 to work in regional areas. The appointments to the panel are for a period of two years from 1 December 2017.

As part of the VSBC's review of its dispute resolution processes, feedback was sought from the panel mediators on possible improvements. This feedback was incorporated in the implementation of the streamlined dispute resolution and mediation process.

The VSBC continued to hold half-yearly information sessions for staff and mediators with a focus on increasing alternative dispute resolution subject knowledge and skills. Topics covered at information sessions during the year included alternative disputes resolution processes at VCAT, farm debt mediation and a panel discussion on mediation styles.

Smash repair determination

The VSBC received its first application for a Determination of a dispute under the voluntary Motor Vehicle Insurance & Repair Industry Code of Conduct which commenced operation on 1 May 2017. The VSBC is an approved mediation and determination provider under the Code where mediation has failed to resolve a smash repair dispute.

DISPUTE RESOLUTION SERVICES

The VSBC works with parties to resolve disputes at each stage of the process, from information and education through to mediation.

Information and education

The VSBC works to provide small businesses with the tools to avoid disputes. It does this through information provided on the website, engagement activities and through direct contact with businesses via email and phone.

The VSBC handled 11,985 phone enquiries during the year. The majority of queries related to rights and obligations under retail leases, with a further significant proportion involving disputes which arise between businesses more generally.

Applications received by the VSBC

The total number of disputes applications in 2017-18 increased by 0.3 per cent to 1,708 when compared with the previous financial year.

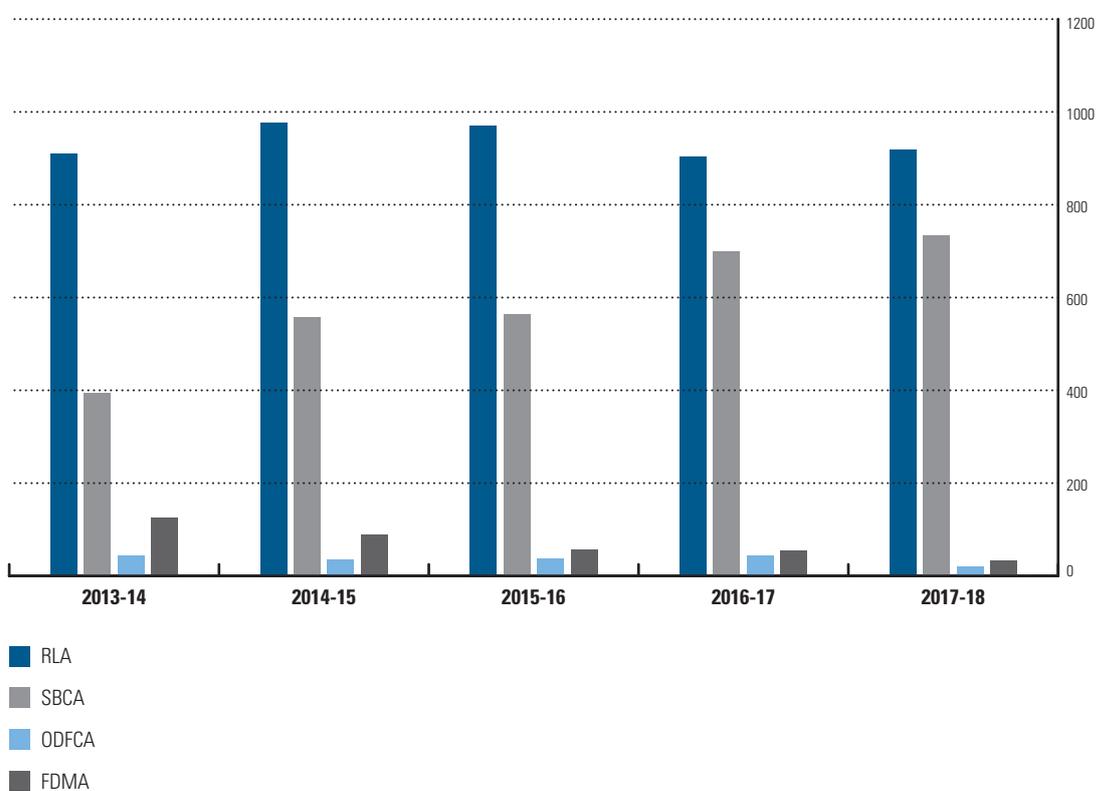
Applications for disputes under the *Retail Leases Act 2003* grew by 1.7 per cent, while those under the *Small Business Commission Act 2017* increased by 4.9 per cent. Conversely, the number of disputes received under the *Farm Debt Mediation Act 2011* decreased by 37 per cent with application numbers dropping from 54 in the 2016-17 financial year to 34 in 2017-18. Applications for disputes under the *Owner Drivers and Forestry Contractors Act 2005* also decreased by 54 per cent.

Full comparisons are outlined in the table over the page:

TABLE 6.1
APPLICATIONS RECEIVED 2017-18

	2016-17	2017-18	% + / (-)
Retail Leases Act 2003	904	919	1.7
Small Business Commission Act 2017	700	734	4.9
Owner Drivers and Forestry Contractors Act 2005	44	20	(54)
Farm Debt Mediation Act 2011	54	34	(37)
Transport (Compliance and Miscellaneous) Act 1983	1	1	0.0
Total disputes	1,703	1,708	0.3
Advocacy – investigations	1	0	(100)
Advocacy – inquiries	0	8	n.a.
Total advocacy	1	8	700.0
Specialist Retail Valuers	133	117	(12)
Small Business Commission Act 2017 determination	0	1	n.a.
Farm Debt Mediation Act 2011 certificates	42	34	(19)
Total applications	1,879	1,868	(0.6)

FIGURE 6.1
DISPUTE APPLICATIONS BY LEGISLATION 2013-14 TO 2017-18



Preliminary assistance and resolution

When an application for assistance with a dispute 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 with 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 Dispute Resolution Officer was calm, consistent and professional throughout the process and had an excellent understanding of commercial tenancy. We were extremely thankful that they helped navigate a successful result, whilst remaining impartial and providing fair advice.

PRELIMINARY ASSISTANCE FEEDBACK

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.

The VSBC remain committed to our preliminary assistance services and there was a significant increase in matters resolved by our Dispute Resolution Officers prior to mediation in 2017-18, with 34 per cent of matters resolved in this way compared to 31 per cent in the previous year.

While speaking to the VSBC officer, the enormous stress I had felt lifted a little. There was a process. The VSBC would make sure the right thing was done. That is all I wanted.

The debt collection agency put the matter on hold pending completion of the dispute resolution process. I didn't need to speak, write or answer to the company directly. VSBC communicated with them via emails to which I was cc'd in, keeping me 'in the loop'.

With VSBC in control, I felt in safe hands. My anxiety lowered and I began to sleep better again.

The outcome for the mediator was good because the dispute was resolved and both parties were satisfied.

FEEDBACK: SALLY-ANNE WATSON KANE OF ON TIME TYPING

Mediation

Bringing parties together to discuss their dispute with a mediator enables businesses to resolve the issue on their own terms and can help preserve the commercial relationship. As mediations held by our office are subsidised, the cost to the parties is manageable when compared to litigation – \$195 per party, or \$95 if the dispute falls under the ODFC Act or Transport Act.

The mediations are also held in locations that suit the needs of the parties, and while the majority occur in our CBD offices, approximately one in ten were conducted in regional locations in the 2017-18 financial year. Of the 533 matters completed at mediation in the recent financial year, 78.2 per cent were resolved successfully. The settlement rate at mediation varied from 65.1 per cent to 87.2 per cent across jurisdictions.

The mediation session was well facilitated and professionally conducted. Without the mediation, we doubt that such conversations would have been constructive.

MEDIATION FEEDBACK

TABLE 6.2
MEDIATION OUTCOMES BY LEGISLATION

		Total	Successful	Unsuccessful	Success rate	Adjourned
Retail Leases Act 2003	70.3%	371	276	95	74.4%	67
Small Business Commission Act 2017	23.6%	127	109	18	85.8%	20
Owner Drivers and Forestry Contractors Act 2005	2.1%	13	11	2	84.6%	0
Farm Debt Mediation Act 2011	4.0%	22	21	1	95.5%	3
Transport (Compliance and Miscellaneous) Act 1983	0.0%	0	0	0	0.0%	0
Total	100.0%	533	417	116	78.2%	90

TABLE 6.3
MEDIATION VENUES

	Venue			
	Held	CBD	Other Metro	Regional
Retail Leases Act 2003	438	405	4	29
Small Business Commission Act 2017	147	133	1	13
Owner Drivers and Forestry Contractors Act 2005	13	13	0	0
Farm Debt Mediation Act 2011	25	7	0	18
Transport (Compliance and Miscellaneous) Act 1983	0	0	0	0
Total	623	558	5	60

Of the total mediations, 9.6 per cent were held in regional Victoria.

Left in a different frame of mind than when I entered the process.

MEDIATION FEEDBACK

Unreasonable refusal

The rate at which respondents refused to engage with the VSBC was 3.1 per cent as opposed to 4.4 per cent in the previous financial 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 16(4) 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 *Unreasonable Refusal Guidelines*, which are available at www.vsbv.vic.gov.au, and are included with letters sent to respondent parties to disputes.

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 2017-18, the VSBC issued two 'unreasonable refusal' certificates, the details of which are listed in Table 6.4.

TABLE 6.4
**CERTIFICATES ISSUED TO A PARTY TO A DISPUTE
 UNREASONABLY REFUSING TO PARTICIPATE IN
 ALTERNATIVE DISPUTE RESOLUTION.**

Certificate Date	Party
23 January 2018	Couriers Please Pty Ltd
1 May 2018	The party with the registered business name HG Limos

Dispute categories

The top categories of SBC Act disputes lodged with the VSBC in 2017-18 relate to:

- 1 contractual disputes – 25.3 per cent
- 2 unpaid monies – 25.2 per cent
- 3 quality of goods or services – 12.9 per cent
- 4 undelivered goods or services – 10.5 per cent
- 5 unfair trading – 5.1 per cent

CASE STUDY

CONTRACTUAL RIGHTS AND RESPONSIBILITIES

A small business purchased a glass fronted single door commercial freezer for its new kitchen. Two years later, it was noticed that the freezer was not working to its capacity and a refrigeration mechanic was contacted and attended the site. It was found that the compressor had failed. The refrigeration mechanic supplied a report that stated that there was no physical reason (dust/environment) for the compressor to fail. The cost to replace and repair was estimated to be \$1500. The business purchased the commercial freezer on the advice that it was heavy duty and above the specifications needed by the business.

The cost of the freezer was over \$2500 at the time and there was an expectation that it would last substantially longer than 2 years.

The small business contacted both the manufacturer and the supplier, and while the supplier committed to contacting the manufacturer, there was no further contact.

Following the initial correspondence sent by the VSBC dispute resolution officer (DRO), the respondents indicated that, as the unit was well out of warranty, there was not much they could do in terms of sending a technician to troubleshoot the issue at no charge and that the manufacturer and the customer should discuss options for repair at a charge. In response, the DRO suggested that the respondents should consider the ACCC publication in relation to consumer guarantees as they applied in addition to any specific guarantees that the supplier or manufacturer gave with the product. The respondents agreed to consider this and informed the DRO that they would send a technician to inspect the freezer for free. The technician came to the same conclusion as the one initially engaged by the small business. The manufacturer confirmed that they would replace the compressor at no cost.

Under the RLA Act, the key issues causing disputes were as follows:

- 1 money owed by tenants – 26.9 per cent
- 2 responsibility for repairing and maintaining premises – 14.9 per cent
- 3 refund of security deposits – 10.6 per cent
- 4 compensation – 9.3 per cent
- 5 disputes about value of expenses – 5 per cent
- 6 premature termination of a lease – 5 per cent

CASE STUDY COMPENSATION

A dispute occurred between the tenant of a small café in Melbourne CBD and the property management over the usage of the tenancy area. The café was located inside the lobby area of a corporate tower and was partially sectioned off. However, approximately one-third of the seating area belonging to the café was not sectioned off, appearing to be part of the lobby itself. Hence, noncustomers utilized this area as a resting or waiting spot, meaning loss of income for the café business. The tenant came up with many proposals to fix the problem, but found the property management as not very cooperative and decided to refer the dispute to VSBC.

The VSBC dispute resolution officer (DRO) wrote to the property management and was advised that they were continuing to explore options to appoint a design consultant to assist to create the right ambiance for the café area and hoped to have an outcome within three to four weeks. Their response initiated a direct contact between the parties which resulted in an agreement on the configuration of the seating area. The tenant was very happy with the outcome and decided not to pursue any compensation for the loss of income.

Mediation feedback

Client satisfaction with the services provided by the VSBC remained strong in 2017-18, increasing from 94.9 per cent to 95 per cent.

We were very satisfied with the process and happy with the outcome.

MEDIATION FEEDBACK

In surveys completed after the mediation, 88.5 per cent of respondents agreed that mediation had saved them time and 79.4 per cent agreed that mediation had saved them money.

The mediator was magnificent in dealing with a complex commercial arrangement with emotional issues.

MEDIATION FEEDBACK

FIGURE 6.2
TIME SAVED BY MEDIATION

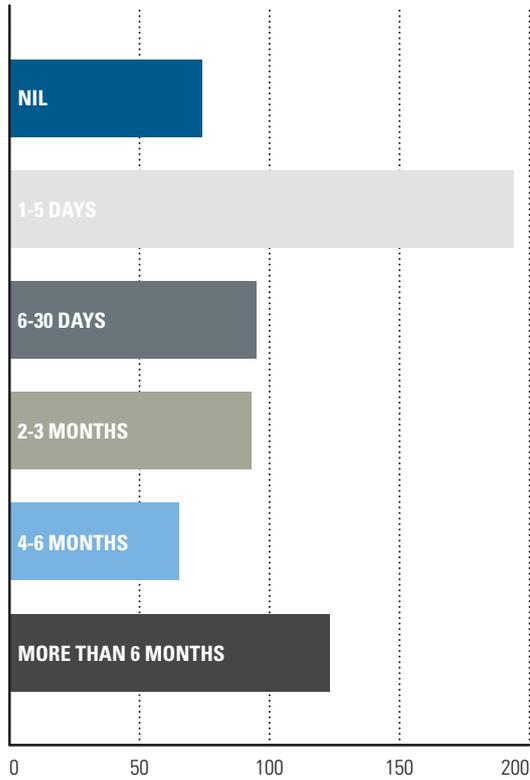


FIGURE 6.3
MONEY SAVED BY MEDIATION

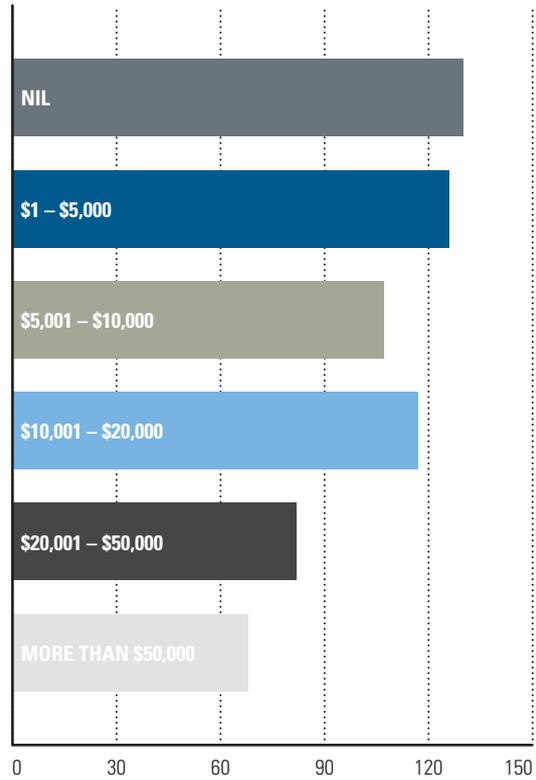


Figure 6.3 shows the response from mediation participants providing an estimate of the amount saved as a result of using the VSBC’s mediation service and avoiding tribunal or judicial proceedings.

Quick process. All happy.
MEDIATION FEEDBACK

The mediator was professional, explained the process clearly and as the Tenant, we felt they had a lot of experience. The mediation service saved us precious time and money.

MEDIATION FEEDBACK

CHAPTER 7

STATEMENT OF EXPECTATIONS

The VSBC was provided with a Statement of Expectations (SOE) by the Hon Philip Dalidakis, the Minister for Small Business.

The SOE applies for the period from 31 December 2017 to 30 June 2019 and the VSBC is required to report on activities to be undertaken to reach the performance targets and improvements (shown in bold) set out in the SOE.

IMPROVED TIMELINESS

Monitor quarterly the number of days between mediation applications and the initial setting of mediation dates and identify process improvements (if necessary)

The VSBC has reviewed the process of organising mediations from date of receiving a dispute application to initial setting of the mediation to develop best practice, this will be monitored on a quarterly basis.

Monitor quarterly the percentage of applications lodged online and identify initiatives to increase online lodgments (if necessary)

The VSBC will develop a strategy to encourage more online dispute applications, the number of online applications will be monitored on a quarterly basis.

COMPLIANCE-RELATED ASSISTANCE AND ADVICE

Monitor quarterly the quality of preliminary assistance and dispute resolution services and identify opportunities for improvement (if necessary)

The VSBC has developed and implemented a quality assurance process to ensure a high-quality dispute resolution service. This will be monitored on a quarterly basis.

Identify opportunities to improve existing information products for Victorian small business and to develop new information products addressing emerging issues and legislative change

The VSBC has reviewed its current range of electronic and paper based information products and has engaged a communications consultant to assist in developing a comprehensive strategy to address issues for small businesses during the first quarter of 2018-19.

VSBC will continue to monitor the small business environment and develop new information products on new and emerging issues.

Assess levels of awareness of VSBC services by small businesses and intermediaries and identify opportunities for promotion (if necessary)

In the first quarter of 2018-19 the VSBC intends to develop a comprehensive communications and marketing campaign with key stakeholders, to increase the awareness of VSBC services. This campaign will include measures of success to monitor awareness levels of VSBC services by small business.

STAKEHOLDER CONSULTATION AND ENGAGEMENT

Evaluate the effectiveness of the new VSBC structure in delivering its regulatory functions twelve months following implementation and identify areas for improvement (if necessary)

The new VSBC structure was implemented on 4 December 2017 and the VSBC is continually monitoring its effectiveness and a post implementation review will be undertaken in twelve months to monitor the effectiveness and efficiency of the new structure.

The outcomes of the review will be used as opportunities for realignment and improvement.

RISK-BASED STRATEGIES

Develop a methodology to assess VSBC applications for the best process for resolution and review its effectiveness twelve months after implementation.

The VSBC will review its methodology for assessing applications to ensure that risk is at the centre of any decision making process. This will involve strengthening the risk assessment process and enhancing intelligence to inform the best outcome for the dispute.

In implementing these measures, the VSBC will consult with relevant stakeholders in industry, the community and other government agencies.

CHAPTER 8

ORGANISATIONAL ARRANGEMENTS

OVERVIEW

The Victorian Small Business Commission (the Commission) was established by the *Small Business Commission Act 2017* (the Act), which came into effect on 1 July 2017 to enhance a competitive and fair operating environment for small business in Victoria.

The Commission is constituted by the Small Business Commissioner, as head of the Commission. The Act also repealed and re-enacted with amendments the *Small Business Commissioner Act 2003*.

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

ORGANISATIONAL STRUCTURE

The Minister for Small Business, Philip Dalidakis MP, issued a Statement of Expectations (SoE) in December 2017. This new Statement builds on the Statement of Expectations (SoE) issued by the DEDJTR Secretary, in December 2016.

The VSBC launched its Three Year Strategic Plan 2017-20 in June 2017. To align the available resources and deliver on the priorities for the next three years, the VSBC undertook a review of the current processes and capabilities to develop a fit for purpose model on the key functions. The resulting new model was implemented in December 2017.

GOVERNANCE FRAMEWORK FOR PORTFOLIO PERFORMANCE

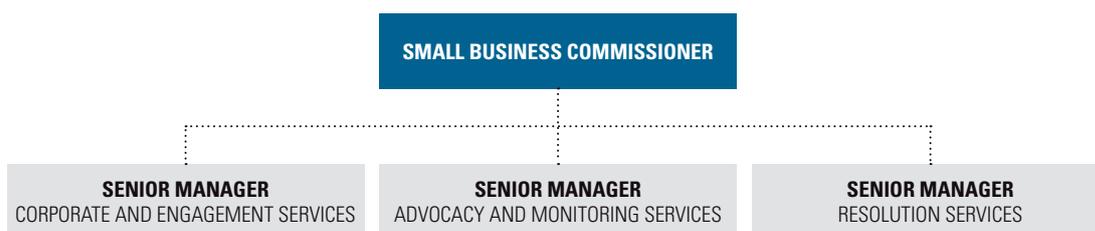
An essential element of good public administration is the existence of a governance framework, which clearly sets out the expectations of the ministers and their departments when agencies exercise their functions and powers. DEDJTR's Governance Framework aims to encourage better alignment of the portfolio's strategic priorities, improve coordination and collaboration to increase performance across the portfolio and effectively identify and resolve risks and issues together.

According to the Health Assessment conducted towards the end of the financial year as part of DEDJTR's Governance Framework, the VSBC has performed very well against its set performance metrics. It has undertaken notable efforts in response to the previous Statement of Expectations and has fully responded to the SoE requirements.

OCCUPATIONAL HEALTH AND SAFETY

The 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 2017-18, no issues arose in relation to occupational health and safety.



ENVIRONMENT

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

SYSTEMS

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

A specific database is used for:

- > dispute management and reporting
- > preliminary enquiries
- > 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 VSBC during 2017-18.

PROTECTED DISCLOSURE PROCEDURES

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

As at 30 June 2018, the VSBC had not received any disclosures made under the *Protected Disclosure Act 2012*, nor had the Ombudsman referred any such disclosures to the VSBC for investigation.

MAJOR CONTRACTS

The VSBC did not enter into any contracts over \$10 million in the period 1 July 2017 to 30 June 2018.

Consultant	Purpose of consultancy	Start date	End date	Total approved project fee (excluding GST)	Expenditure 2017-18 (excluding GST)	Future expenditure (excluding GST)
Victorian Government Solicitor's Office	Legal advice (RLA and SBCA related)	1/7/17	23/2/18	\$16,425	\$16,425	\$0

CHAPTER 9

FINANCIAL STATEMENT

FINANCIAL STATEMENT 1 JULY 2017 TO 30 JUNE 2018

27

	\$
Funding	
Small Business Commissioner	2,585,000
Farm Debt Mediation	600,000
Total appropriation funding	3,185,000
One-off funding for establishment of the Victorian Small Business Commission	700,000
Total 2017-18 funding	3,885,000
Expenditure	
Employee related expenses	2,973,734
Supplies and consumables	713,324
Total expenditure	3,687,058

