

ANNUAL REPORT 2019

We're here for Small Business

^
To make retail leases fairer, we released a simplified information brochure with key information tenants need to know before signing. —p18

Our new *Guide to managing disruption* helps small businesses to understand the likely impacts of an infrastructure project and develop a mitigation plan that works. —p11

v



The Hon Adem Somyurek MP
Minister for Small Business
Level 16, 121 Exhibition Street
MELBOURNE VIC 3000

Dear Minister

Annual Report 2019

I am pleased to present to you the Annual Report 2019 on the operations of the Victorian Small Business Commission, covering the period 1 July 2018 to 30 June 2019.

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

CONTENTS

01	Commissioner's message—p2 Year at a glance—p4 Our role—p5
02	Engaging Victoria's small business community—p6
03	Advocating and monitoring—p10
04	Resolving small business disputes—p18
05	Responding to the Minister's Statement of Expectations—p26
06	Appendices A—Compliance and accountability—p28 B—Operations—p30

01

COMMISSIONER'S
MESSAGE

This past financial year has seen a significant increase in demand for our dispute resolution services alongside our introduction of major initiatives to benefit Victorian small businesses.

This is the first year we have helped over 2,000 people to resolve their small business disputes. Our resolution rates remained high, with our team resolving 33.9 per cent of matters before reaching mediation. For matters that progressed to mediation, over 81 per cent were settled successfully. These figures reflect the specialised skills, commitment and dedication of the Victorian Small Business Commission (VSBC) staff and mediation panels.

Our team's engagement with the small business sector grew significantly as we began implementing a new communications strategy, which has a particular focus on building our social media presence. This, alongside our delivery of over 80 presentations, webinars and other stakeholder engagements, has raised awareness of who we are and what we do, contributing to our record number of requests for support from people in small business. In June 2019 we launched our redeveloped website, offering a wealth of easy to access and easy to understand information tailored to reflect the specific needs of small business owners and operators.

During the year we continued our efforts in monitoring the small business environment and advocating on issues affecting the sector. We launched the *Victorian small business engagement guidelines* for project managers, with the aim of supporting constructive engagement between local small businesses and agencies undertaking disruptive infrastructure projects. The guidelines provide support for these agencies in assessing the impact of projects, communicating with small businesses and implementing measures to minimise business disruption. In response to feedback we received while rolling out these guidelines, we created a complementary tool for people in small business to help them plan for and manage the impacts of disruption.

In addressing key factors affecting the small business environment, we developed resources to support small businesses in creating a workplace that supports mental health and wellbeing, transitioning to the National Broadband Network (NBN) and reducing energy costs.

Late in the year we launched our Small Business Friendly Council initiative, which sees us work more closely with regional, rural and metropolitan councils to support small businesses in their areas. We look forward to continuing to roll out this initiative in the coming year and seeing outcomes of the important commitments local councils have made.

Towards the end of the year we completed a review of our new structure and our end-to-end dispute resolution process. In the coming year we will continue our efforts to streamline our processes to meet growing demand.

I thank the Minister for Small Business, the Hon Adem Somyurek MP, and the former Minister, the Hon Philip Dalidakis, for their support throughout the year. I would also like to acknowledge the ongoing assistance provided by the Department of Jobs, Precincts and Regions.

Judy O'Connell
Victorian Small Business Commissioner



YEAR AT A GLANCE



OUR ROLE

Our 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 our office had operated under since its commencement in 2003.

The Act establishes the VSBC with the purpose of enhancing a competitive and fair operating environment for small business in Victoria. We have a range of functions under the Act, including dispute prevention and dispute resolution. We also have 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 *Commercial Passenger Vehicle Industry Act 2017*.

Our three-year strategic plan

Our three-year strategic plan for 2017–20 focuses our efforts on four priority areas:

Engagement

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

Advocacy

Advocating on issues affecting small businesses and their operating environment

Monitoring

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

Dispute resolution

Providing an efficient and low-cost small business dispute resolution service

Undertaking a review

In accordance with our three-year strategic plan, in December 2017 we implemented a structure modelled on our key functions.

In line with the Ministerial 2017–19 Statement of Expectations for the VSBC, we undertook a review 12 months in to evaluate the effectiveness of this structure in delivering our regulatory functions. The review was finalised in September 2019. The recommendations will be considered for implementation in the coming year.

02

ENGAGING
VICTORIA'S
SMALL BUSINESS
COMMUNITY

In 2018–19 we developed and implemented a targeted and comprehensive communications strategy to raise awareness of the VSBC, our activities and services among people in small business and other key stakeholders. The strategy also seeks to raise awareness among small businesses about their rights and responsibilities under legislation we cover and about business practices to promote informed decision making and in turn minimise disputes.

The outcome of our efforts was an increased awareness of the VSBC and our services. This was demonstrated by an increase in social media engagement, media coverage and applications for support in resolving disputes.

Our key achievements

Our key achievements include:

- **redeveloping our website** to support navigation, improve functionality and ensure the content and architecture better reflect the needs of people in small business
- **creating a visual identity** for our brand and developing streamlined communications materials that reflect our identity
- **increasing our reach and the value of our engagement through the strategic use of social media** and adopting a more effective and targeted approach to our work with the media
- **beginning work on our culturally and linguistically diverse communications and engagement strategy**, including expanding our suite of translated materials, further increasing the VSBC's accessibility
- **thought leadership through starting a Commissioner's blog** exploring topics such as our new role in resolving land access disputes
- **working collaboratively** with a range of peak bodies, industry associations and trusted small business advisors to create shared content and events
- **campaigns to promote initiatives** such as our updated retail leases information brochure for tenants, our engagement guidelines for project managers undertaking infrastructure works and our initiative for supporting councils in becoming small business friendly
- **helping small businesses to have a better understanding of how to connect to the NBN**
- **engaging with our 1,521 news subscribers** by issuing 10 editions of VSBC eNews.

Redeveloping our website

The VSBC website is our key communications tool. In 2018–19 there were 127,232 visits to our website, which is an 8 per cent increase on 2017–18.

At the end of June 2019 we launched our redeveloped website. We gave it a fresh, clean and modern feel and made sure the content lets small businesses know we are here for them. Our website is now a lot easier to use and understand. It also offers even more information and resources tailored for small business.

Working with the media

We gained solid media coverage across metropolitan and rural and regional Victoria with 88 media mentions, which is a significant increase on 2017–18 (30 mentions).

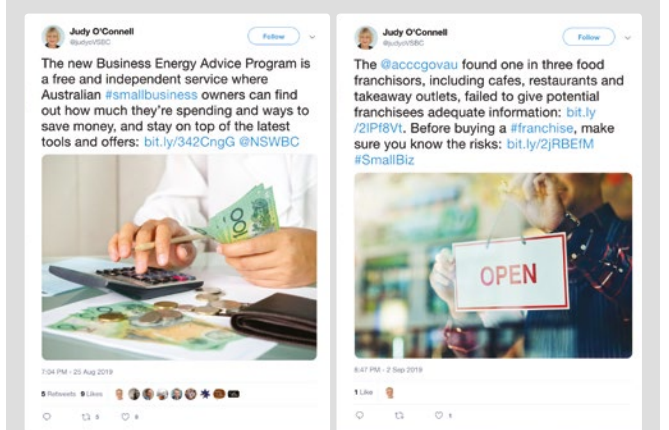
Visiting regional and rural areas of Victoria

In 2018–19 the Commissioner visited a range of regional and rural areas in Victoria to hear about the issues small business are encountering and how we can help, and to provide guidance in ways to avoid and resolve disputes. The Commissioner also engaged with local councils, rural financial counsellors, business networks and local, state and federal authorities about local issues affecting small businesses.

Engaging via social media

We increased the value of our engagement through the strategic use of social media. By 30 June 2019 we had gained a following of 1,466 across our social media sites.

We gained 2,386 impressions by tweeting highlights from the June edition of VSBC eNews. We also generated a reach of 2,316 through our Facebook post on the Commissioner's visit to Wangaratta, which aimed to equip local businesses with the knowledge and tools to stay ahead.



'If you are a business owner in Victoria you should be following @judyoVSBC. Actually anyone who values community (especially local government people) should be hanging off every one of @judyoVSBC's tweet words.'

— Council of Small Business Organisations Australia,
4 June 2019

ENGAGING VICTORIA'S SMALL BUSINESS COMMUNITY CONTINUED

Engaging with our stakeholders

In strengthening our stakeholder engagement, we met with a range of business networks, local councils, chambers of commerce and industry associations including:

- Law Institute of Victoria
- Property Council of Australia
- Worksafe Victoria
- Council of Small Business Organisations Australia
- Real Estate Institute of Victoria
- Shopping Centre Council Australia
- Pharmacy Guild Australia
- Victorian Transport Association
- Australian Retailers Association
- Victorian Automobile Chamber of Commerce
- Victorian Chamber of Commerce and Industry
- Master Grocers Association
- Beyond Blue
- Municipal Association of Victoria.

The Commissioner also attended meetings with the:

- Small Business Ministerial Council
- Multicultural Business Ministerial Council
- national small business commissioners.

In 2018–19 VSBC staff delivered 81 presentations, 45 of which were delivered by the Commissioner, across a range of industries in metropolitan and rural and regional Victoria.

We continued our involvement in Law Week, held annually in May, by delivering webinars on retail leasing, franchising and contracts. We also delivered a presentation and a series of webinars in support of Retail Week.

International Council for Small Business Conference

The Commissioner spoke at the International Council for Small Business Conference in Cairo, Egypt about why our state really is a place for small business to thrive. The Commissioner discussed Victoria's uninterrupted growth of new small businesses. She provided an update on the Victorian Government's Department of Economic Development, Jobs, Transport and Resources 2016 ten-year plan, three years in. The plan encourages a small to medium enterprise environment that is fair and prosperous, liveable and vibrant, competitive, innovative and globally connected. The Commissioner also gained insights into international initiatives, including ways to open students' mindsets to the idea of starting their own business or becoming an entrepreneur.

Developing information products

We produced a variety of new information products in response to emerging issues and legislative change, in line with the Minister's 2017–19 Statement of Expectations for the VSBC. We also produced various blogs and social media posts about a range of topics such as big businesses paying small businesses on time, cybercrime, scammers and how to stay safe, and ways to maintain good mental health during mediation.

New VSBC products

- Fact sheet with tips for reducing costs as a small business owner
- Information brochure with important information for tenants
- Fact sheet on ways to build stronger small business networks
- *Guide to managing disruption*
- *Victorian small business engagement guidelines and a promotional video*
- Guidelines on the *Retail Leases Act 2003*
- Video explaining the implications of the CB Cold Storage VCAT decision
- Video promoting the Australian Supplier Payment Code
- Animation promoting the Small Business Friendly Council initiative and a video promoting the launch event
- Video providing guidance on switching your business to the NBN
- Redeveloped VSBC website

03

ADVOCATING
AND MONITORING

2018–19 saw the first full year of operation for the VSBC's advocacy and monitoring functions, which were established in 2018 as part of our three-year strategy. The two functions complement each other. By closely monitoring the impact of market trends, legislation and government policies on small business, we are in a much stronger position to advocate on their behalf.

In 2018–19 our advocacy projects helped address key areas of concern to small businesses. They were identified through monitoring the small business environment and understanding the systemic issues causing disputes. Major areas of work included a new initiative to partner with councils to support small business and new resources to address the disruption to small business caused by infrastructure works.

Developing guidelines for small business disruption

Major infrastructure works are being carried out across Victoria to support our growing population, with roads being built, level crossings removed and public transport infrastructure growing. However, the disruption these projects cause can also put a significant strain on small business owners and operators.

In response, we created the *Victorian small business engagement guidelines* for agencies undertaking potentially disruptive infrastructure projects. The guidelines outline best practice behaviours for project managers in working with small businesses to develop strategies to mitigate the negative impacts that construction works can have on trade.

The guidelines include tools to assist project managers in creating an impact assessment, communications strategy and disruption mitigation plan, in partnership with the small businesses affected by the projects.

Since launching in September 2018 we have promoted the guidelines to key stakeholders, including Victorian Government agencies undertaking major works and local councils. Some agencies such as VicRoads and Melbourne Water have endorsed to the guidelines and several councils are committed to using and promoting them through their participation in the Small Business Friendly Council initiative. We will continue to work with key stakeholders on ways to address small business impacts arising from infrastructure projects.

To complement the guidelines, we also developed the *Guide to managing disruption* for business to support them in managing the impacts of disruptive infrastructure projects.

The guide helps small businesses to:

- understand the scale of the project and the likely impacts on their business
- plan communication with the project manager, customers and other local businesses
- manage the impacts and develop a disruption mitigation plan that works.



Download your copies of the *Victorian small business engagement guidelines* and *Guide to managing disruption* at www.vsbcb.vic.gov.au

ADVOCATING AND MONITORING CONTINUED

Small Business Friendly Council initiative

The Small Business Friendly Council initiative was formally launched on 21 May 2019. The initiative is a commitment between the VSBC and local councils to work together to support small businesses to get started and to grow.

Councils that sign up to the initiative are committing to partner with us to:

- help small business to manage disruptions caused by infrastructure projects
- support the creation and growth of small business networks
- work towards faster permit approvals for people looking to start a small business
- promote prompt payment to small businesses
- develop easy to read, easy to understand information for small businesses
- open channels of communication between councils and the VSBC.

As at 30 June 2019, twelve councils had signed up to the initiative:

- City of Yarra
- Northern Grampians Shire
- City of Glen Eira
- Baw Baw Shire
- City of Kingston
- Mount Alexander Shire Council
- City of Wodonga
- Gannawarra Shire Council
- Latrobe City Council
- Corangamite Shire
- Wyndham City Council
- Yarra Ranges Shire

Building stronger networks

As part of the initiative, we are asking councils to strengthen and support local small business networks. To support this work, we created a fact sheet on building stronger networks with tips for getting started and for encouraging growth. Our new resource draws on advice from successful industry associations and the Small Business Mentoring Service. We provided this resource to all councils in Victoria and made it available via our website.

“Associations bring respect and legitimacy to a group or region. As a result there are sometimes opportunities for the association to seek local funding support, run awards, advocate on local issues and be more than just the voice for the membership.”

—David Gregory, CEO, Small Business Mentoring Service

“I believe that industry associated memberships are an integral part of a successful small business. They help businesses grow and stay on top of their game.”

—Sue Abbott, President, Committee for Moe

Opening channels of communication

The VSBC values the integral role that local councils play in supporting their local small business communities. To ensure our advocacy work is well informed and representative, we need to work closely with economic development teams in each region to understand the issues small businesses face. Connecting with local councils through the initiative provides us with another way to reach small businesses and raise awareness about our services.

Guide to managing disruption

In 2018–19 we created this new resource for small businesses to help them manage disruptions caused by infrastructure projects. The resource was created as a direct response to feedback we received from economic development teams at local councils following the launch of the *Victorian small business engagement guidelines*. As part of the Small Business Friendly Council initiative, we are asking local councils to provide this resource to small businesses affected by infrastructure projects being carried out in the local area.



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City of Yarra Mayor Cr Danae Bosler being the first to sign the Small Business Friendly Council Charter with Minister for Small Business the Hon Adem Somyurek MP and Commissioner Judy O'Connell at our launch event at Maker Coffee in Richmond

ADVOCATING AND MONITORING CONTINUED

Supporting the mental health and wellbeing of people in small business

In 2018–19 the Commissioner was invited to participate in the Small Business Mental Health Roundtable chaired by the Federal Minister for Small and Family Business, Skills and Employment Senator the Hon Michaelia Cash. The roundtable brought together experts from across small business and mental health to develop strategies to support the mental health and wellbeing of Australian small business owners.

We have continued to promote our Mental Health Strategic Plan, which is a template plan for small businesses to help make sure they consider their own health and wellbeing as part of their business plan.

The Australian Supplier Payment 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.

Businesses signing up to the Australia Supplier Payment 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.

In 2018–19 an independent review of the code was carried out. The review was led by Professor Graeme Samuel and a panel that included the Commissioner.

Specific recommendations, contained in 16 actions, include:

- measures to increase uptake of the code among large businesses
- continued promotion of e-invoicing to reduce invoicing errors and allow faster payments
- establishment of a small business register to enable businesses to more easily identify their small business suppliers
- strengthened oversight and reporting on the code including a greater role for the Australian Small Business and Family Enterprise Ombudsman and state small business commissioners to identify and report compliance issues and address complaints through dispute resolution processes.

Over 100 businesses and government bodies, including the Victorian Government, have signed up to the code so far. We will continue to encourage larger businesses to commit to the code to ensure quicker payments for small business.

As part of our Small Business Friendly Council initiative, we have asked local councils to initiate processes to ensure invoices from small businesses are paid promptly, or to commit to signing up to the Australian Supplier Payment Code to pay small businesses within 30 days.

National commissioners' meetings

The Commissioner continued to meet bi-monthly with state small business commissioners and the Australian Small Business and Family Enterprise Ombudsman. These meetings are an opportunity to discuss national issues that are a priority and share information on their activities and initiatives.

Monitoring government fair payments

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

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

In 2018–19 we wrote to all eight departmental secretaries to request key data on invoice payments from each department, and from the five largest agencies (by expenditure) within each portfolio area.

Respondents reported that 1,023,199 invoices relating to contracts under \$3 million were paid. Figure 1 shows the reported average number of days that were taken to pay an invoice and the proportion of these invoices reported as having been paid within 30 days.

An overall compliance rate of 86 per cent was reported, which is the same as was reported in 2017–18. Reasons provided for non-payment within 30 days included disputes over goods or services provided, invoicing errors and late provision of the invoice. Penalty interest was not paid on any late payments by any department or agency. We will continue to work with departments and key agencies to encourage reduced payment time for small businesses.

Figure 1—Payment of invoices for contracts less than \$3 million 2018–19

	Invoices (<\$3 million)	Average days taken to pay invoice	Invoices paid after 30 days	Invoices paid within 30 days
Departmental core	624,794	21.97	73,285	88%
Agencies	398,405	24.6	69,734	82%
Total	1,023,199	24.4	143,019	86%

ADVOCATING AND MONITORING CONTINUED

Helping small business to get NBN ready

We are working with NBN Co to raise awareness among small businesses about the national broadband network (NBN) rollout. Through this partnership, the VSBC and NBN Co have started developing practical and easy to understand tips for small businesses transitioning to the NBN. We have promoted this guidance through presentations to small business and via our social media sites, e-newsletter, blog and website.

To support this work, we developed a video with NBN Co that provided small businesses with information about which regional areas were scheduled for disconnection from March, April and May 2019.

Our submissions and reviews

Our monitoring function involves reviewing relevant new legislation that may impact on small business if requested by the Minister. In line with this function, we contributed to several state and national reviews and prepared submissions.

Small Business Regulation Review program

The Small Business Regulation Review program is part of the Victorian Government's commitment to making it easier to establish and grow a small business in Victoria. The review looks through the eyes of small businesses at the regulations and processes they need to deal with to start and grow a business and finds practical reforms to save businesses time and money.

The program consists of three reviews focusing on regulatory issues for small businesses within specific sectors. The VSBC was on the Steering Committee for this program. We also have a responsibility to implement recommendations from the retail sector review that focus on retail leasing tenant issues.

Reviews have been completed for the retail sector and the visitor economy sector, with action statements released in June 2018. The third review developed reforms for construction regulators' engagement with small businesses and was released in 2019.

Unfair contract terms

The VSBC provided a submission to the Federal Government's Review of Unfair Contract Term Protections for Small Business. The submission provided data on our experience in resolving disputes relating to unfair contract terms since the laws extending the protection to small business came into effect in 2016.

Gift card expiry dates

We made a submission to the public consultation on the Federal Government's proposed amendment to the Australian Consumer Law. The proposed amendment was to mandate a minimum of three years for gift card expiry dates. Our submission supported clear drafting of definitions of exempt categories in the regulations and, if introduced, the delivery of an education program that explains the amendments to small businesses in accessible language.

Protecting Indigenous knowledge

In response to the consultation paper from IP Australia on Protecting Indigenous Knowledge, the VSBC made a submission. Our submission outlined stakeholder concerns regarding the costs associated with defending intellectual property. We proposed facilitating alternative dispute resolution services in disputes concerning the misuse of Indigenous knowledge, where appropriate.

On-demand workforce

The VSBC made a submission to the Inquiry into the Victorian On-Demand Workforce. Our submission was informed by data from disputes we dealt with that were between on-demand platforms and workers.

Small business collective bargaining guidelines consultation

The ACCC undertook preliminary consultation on a proposal to implement a class exemption that would allow small businesses to collectively negotiate with their suppliers. The VSBC made a submission to the consultation that included examples of where groups of small business could apply to us to handle matters that may benefit from exemption from collective bargaining.

Inquiry into mental health

We made a submission to the Productivity Commission Inquiry into Mental Health. Our submission focussed on our work in supporting small businesses to help ensure their workplaces support mental health and wellbeing.

Other consultations

We have also had input into:

- an independent review of the Scheme for Compensation for Detriment caused by Defective Administration in relation to the Australian Taxation Office and small businesses
- the new Business Payments Reporting Framework that will require large businesses with over \$100 million in turnover to publish payment information on how they engage with small businesses.

04

RESOLVING
SMALL BUSINESS
DISPUTES

We provide 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 *Commercial Passenger Vehicle Industry Act 2017 (CPVI Act)*.

While the VSBC's mediation service is the principal method of dispute resolution, we maintain a focus on increasing the number of disputes resolved by our dispute resolution officers before reaching mediation. In line with our commitment to making alternative dispute resolution as accessible and effective as possible, we continued to explore new forms of dispute resolution in 2018–19.

Developments in alternative dispute resolution

Upgrading our mediation rooms

Our mediation rooms at 121 Exhibition Street are being renovated and upgraded. The purpose is to provide added security and privacy and to allow for use of the latest technology to make it easier for small businesses to participate in alternative dispute resolution. The works are expected to be completed by the end of August 2019.

Mediation services have continued as usual during this time with mediation rooms being made available at temporary locations.

Video conferencing

In 2018–19 we launched our new video conferencing facilities. The first mediation held via video conference took place in January 2019, with one of the parties located in Brisbane and the mediator, legal representative and applicant located in a VSBC conference room in Melbourne. By making these facilities available, we are providing all Victorian small businesses with greater access to dispute resolution services.

Our new role in resolving land access disputes

Under a new Commercial Consent Agreement for Access to Private Land in Victoria, we will provide mediation services to landowners and explorers. The agreement is a new model agreement that landholders can use to provide consent to explorers to access and start exploration activities on privately owned land. Under the agreement, a landholder or explorer can refer a dispute to either the VSBC (where the landholder is a small business owner or farmer) or the Mining Warden. The Victorian Government will soon be piloting the agreement in Western Victoria.

Applying the *Retail Leases Act 2003* to farm leases

We gained advice confirming that a farm lease may be covered by the RL Act where the sale of goods from that farm can be categorised as a sale to an end user and is therefore a retail sale. We will engage in education and consultation with farming stakeholders about the implications of this advice.

Our retail leases information brochure

To make retail leases fairer and easier to understand, we released a simplified information brochure with important information for prospective tenants about retail leases. This initiative arose from the first Small Business Regulation Review targeting the retail sector.

The information brochure includes an easy to read checklist to guide tenants through what they need to be aware of when entering a lease, what to look out for and what they need to understand before they sign.

Under the RL Act, landlords or their agents must provide tenants with our retail leases information brochure and a copy of the proposed lease at the start of negotiations. The VSBC will be monitoring compliance with this obligation, with fines of up to \$8,000 applying to those who do not provide the brochure.

As part of the Small Business Friendly Council initiative, we are partnering with councils to raise awareness of this important resource.

The VSBC mediator panels

Formal panels of mediators conduct mediations under our respective legislative jurisdictions. The metropolitan panel consists of 25 mediation professionals who work in Melbourne and the regional and rural panel consists of 15 who work in regional and rural Victoria. Appointments to the panels are for a period of two years. The VSBC will soon start a process to refresh the panels.

In 2018–19 we continued to hold half-yearly information sessions for VSBC staff and mediators with a focus on increasing alternative dispute resolution knowledge and skills.

Mediator Reference Group

We established a Mediator Reference Group consisting of staff representatives and five mediators. The quarterly meetings, chaired by the Commissioner, were an opportunity to discuss improvements to our mediation services and to encourage a closer working relationship with our mediators.

Since the first meeting in February 2019, these meetings have provided a platform to discuss a wide range of issues affecting mediations. Topics that have been explored include procedures for ensuring the gaining of proper authorisation from parties before mediation, client satisfaction survey results, allegations of fraud or illegal conduct between parties, adjourned mediations and security.

Smash repair determination

We completed our first determination of a dispute under the voluntary Motor Vehicle Insurance and Repair Industry Code of Conduct, which started operation on 1 May 2017. The VSBC is an approved mediation and determination provider under this code in instances where mediation has failed to resolve a smash repair dispute. This is a new function for our office under the SBC Act.

Anh's experience

Dispute over unpaid monies

Sub-contractor Anh was hired to complete a painting job at a building site. Once the job was complete, Anh submitted the builder's invoice to the builder for payment. The builder, however, refused to pay.

After being contacted by our office, the builder eventually advised Anh that they were not happy with the completed work and that touch-ups were needed.

Anh agreed to come back to the building site and complete the touch-ups as requested. Once the work was complete, the builder paid the invoice in full.

Please note: names and some details have been omitted or changed to protect the identity of those involved.

"We wish to thank the VSBC for their great work, professionalism and calm approach. We are glad regarding the outcome and avoided a lengthy dispute at VCAT. Our mediator was fantastic and so highly skilled. Thank you."

—Mediation feedback

"I thought the mediator was outstanding and tried to create a viable outcome for both parties. A great process and well worth the effort."

—Mediation feedback

"Thank you for providing the space to safely discuss this dispute and come to an understanding."

—Mediation feedback

RESOLVING SMALL BUSINESS DISPUTES
CONTINUED

Our dispute resolution services

We work with parties to resolve disputes at each stage of the process, from information and education through to mediation.

Information and education

The VSBC provides small businesses with the tools they need to avoid disputes. We do this by providing information via our website, undertaking engagement activities and making direct contact with businesses via email and phone.

In 2018-19 our team handled 9,572 phone enquiries.

The majority of queries related to rights and obligations under retail leases, with a further significant proportion involving disputes that arose between businesses more generally.

Applications we received

In 2018-19 we received 1,882 dispute applications, which is a 10.2 per cent increase on 2017-18.

Applications for disputes under the RL Act grew by 13.2 per cent, while those under the SBC Act grew by 6.9 per cent. We received 34 disputes under the FDM Act, which was the same as in 2017-18. Applications for disputes under the ODFC Act increased by 15 per cent from 20 to 23 (see Figures 2 and 3).

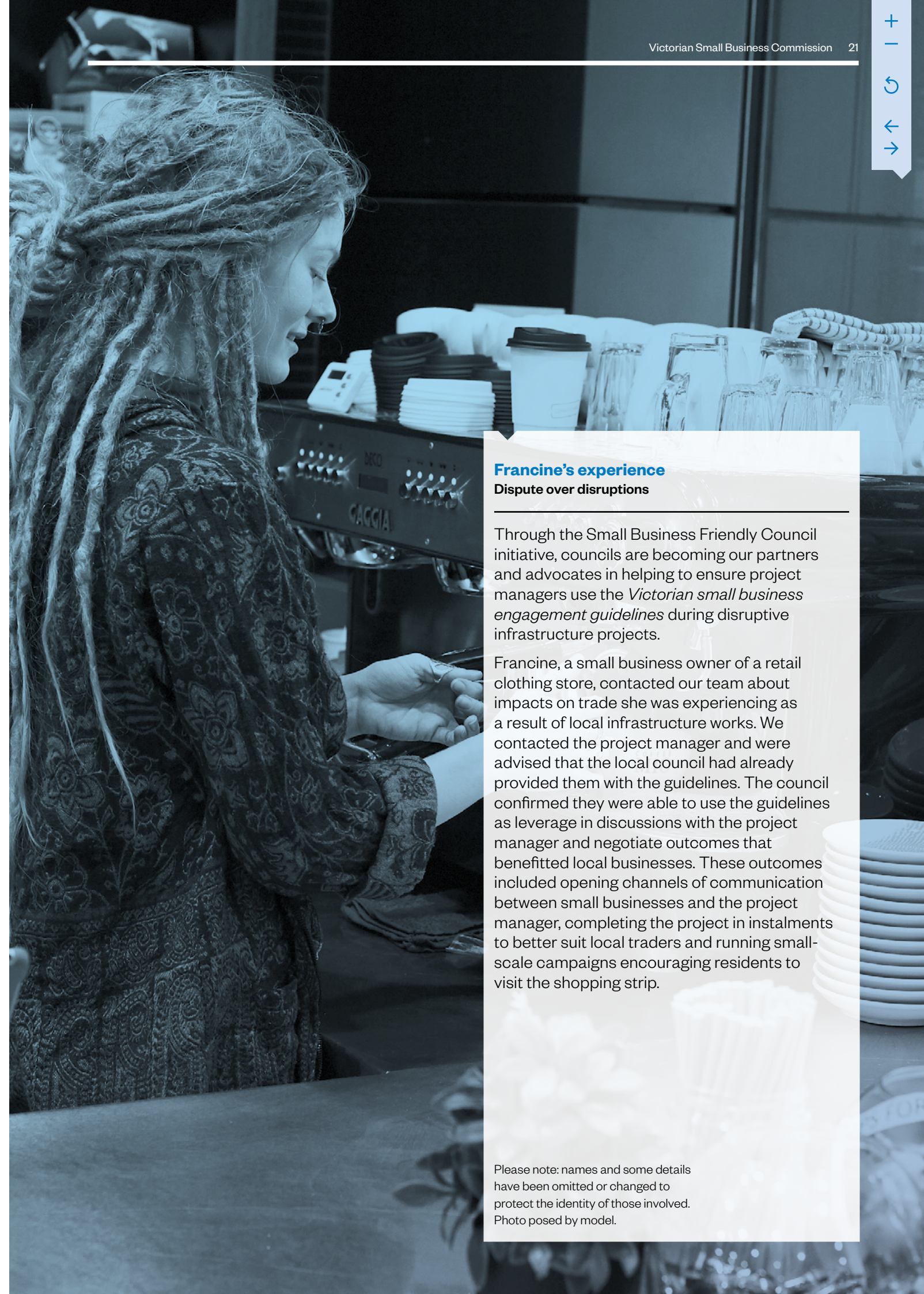
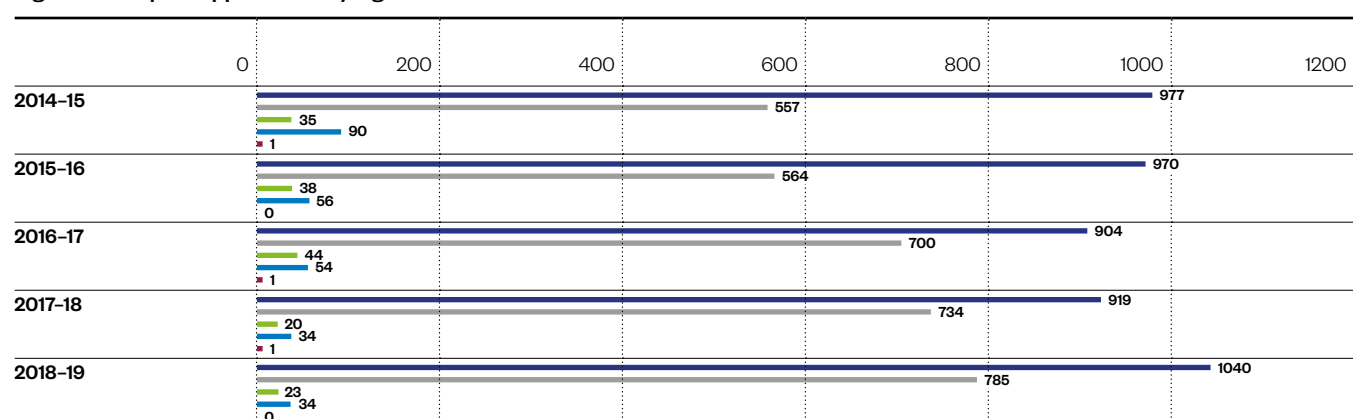
There was also a significant increase in applications treated as advocacy matters. These matters arise where an application raises broader systemic issues and is dealt with outside the normal dispute resolution process (see Francine's experience on page 21).

Figure 2—Applications received in 2018-19

	2017-18	2018-19	% +/- (-)
<i>Retail Leases Act 2003</i>	919	1040	13.2
<i>Small Business Commission Act 2017</i>	734	785	6.9
<i>Owner Drivers and Forestry Contractors Act 2005</i>	20	23	15
<i>Farm Debt Mediation Act 2011</i>	34	34	0
<i>Commercial Passenger Vehicle Industry Act 2017</i>	1	0	N/A
Total disputes	1,708	1,882	10.2
Advocacy matters	8	27	237.5
Specialist Retail Valuers*	117	132	12.8
<i>Farm Debt Mediation Act 2011</i> certificates	35	33	(5.7)
Total applications	1,868	2,074	11

*The VSBC has a role to appoint Specialist Retail Valuers to determine rent disputes between retail landlords and tenants.

Figure 3—Dispute applications by legislation from 2014-15 to 2018-19



Francine's experience
Dispute over disruptions

Through the Small Business Friendly Council initiative, councils are becoming our partners and advocates in helping to ensure project managers use the *Victorian small business engagement guidelines* during disruptive infrastructure projects.

Francine, a small business owner of a retail clothing store, contacted our team about impacts on trade she was experiencing as a result of local infrastructure works. We contacted the project manager and were advised that the local council had already provided them with the guidelines. The council confirmed they were able to use the guidelines as leverage in discussions with the project manager and negotiate outcomes that benefitted local businesses. These outcomes included opening channels of communication between small businesses and the project manager, completing the project in instalments to better suit local traders and running small-scale campaigns encouraging residents to visit the shopping strip.

Please note: names and some details have been omitted or changed to protect the identity of those involved. Photo posed by model.

RESOLVING SMALL BUSINESS DISPUTES CONTINUED

Preliminary assistance and early resolution

When we receive an application for assistance in resolving a dispute, we first engage with both parties to see if the dispute can be resolved early before proceeding to mediation. Staff with expertise in legislative provisions and dispute resolution can often help in bringing the parties to a pragmatic resolution. If the dispute cannot be resolved at this stage, we explain the benefits of mediation to the parties, for example, to avoid the emotional strain, delay, cost and distraction of litigation, and encourage them to participate.

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

The number of matters resolved by our team before reaching mediation remained high in 2018–19, with 33.9 per cent of matters resolved in this way.

I found your service to be fantastic. There is no way I was going to get any response directly and we received our money back with minimal fuss.

—Preliminary assistance feedback

I feel without the assistance that was given by the VSBC, I would have had no positive outcome at all. The importance of the VSBC cannot be underestimated, for the benefit of the Victorian people. I hope this system is supported and continued indefinitely.

—Mediation feedback

Franka's experience Dispute over contractual rights and responsibilities

Franka, a small business owner, was concerned about an increase in the amount charged by an email and domain name registration provider and the way the provider gave information about these charges. Franka said that the right to change fees was hidden in the contract's 'fine print'.

Before asking for our support, Franka had tried on many occasions to get a refund from the provider but couldn't make headway. She couldn't seem to get through to a person who could progress the case and deal with her concerns. At one point it seemed as if the provider considered the matter to be resolved and closed the file.

We sent an email to the provider within 48 hours of receiving Franka's request for help. The next day the provider replied, saying they had reviewed Franka's account and that they would be organising a refund to her within five days.

While the amount claimed by the owner was less than \$500, we appreciate the importance of cash flow and other payments to small businesses. Modest sums are often just as vital to a small business' viability as larger ones.

Please note: names and some details have been omitted or changed to protect the identity of those involved.

Mediation

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

Where possible, mediations are held at locations that suit the needs of the parties. While the majority took place at our CBD offices, 7.8 per cent were conducted at regional and rural locations in 2018–19 (see Figure 4).

Of the 507 matters completed at mediation in 2018–19, 81.7 per cent were resolved successfully. The settlement rate at mediation varied from 79.0 per cent to 95.8 per cent across jurisdictions (see Figure 5).

In 2018–19 the overall satisfaction with our mediation services remained strong at 92.8 per cent, down slightly from 95 per cent in the previous year. While our mediation facilities were refurbished, mediations were held off site, which contributed to the lower satisfaction rate.

I'm extremely pleased that I chose [the Victorian] Small Business Commission mediation process and I would strongly recommend other small business people to do the same before choosing any other costly legal means.

—Mediation feedback

Figure 4—Mediation venues

Legislation	Venue			
	Held	CBD	Other metro	Regional and rural
<i>Retail Leases Act 2003</i>	425	397	5	23
<i>Small Business Commission Act 2017</i>	105	99	1	5
<i>Owner Drivers and Forestry Contractors Act 2005</i>	7	7	0	0
<i>Farm Debt Mediation Act 2011</i>	28	11	1	16
Total	565	514	7	44

Figure 5—Mediation outcomes by legislation

Legislation	Completed mediations	Successful	Unsuccessful	Success rate	Adjourned
<i>Retail Leases Act 2003</i>	381	301	80	79.0%	44
<i>Small Business Commission Act 2017</i>	95	84	11	88.4%	10
<i>Owner Drivers and Forestry Contractors Act 2005</i>	7	6	1	85.7%	0
<i>Farm Debt Mediation Act 2011</i>	24	23	1	95.8%	4
Total	507	414	93	81.7%	58



Aaron's experience
Retail leasing dispute over the security deposit

Aaron's lease had expired and the landlord's agent refused to refund the security deposit. The reason provided by the landlord was that Aaron, the tenant, had failed to return the premises to its original condition. The agent told Aaron that repairs were needed and provided him with a list of the required works.

After reviewing the agent's list of repairs, Aaron didn't agree that all the works were necessary. He said many of the repairs were from expected wear and tear. At mediation, Aaron and the landlord agreed to split the repair costs, with Aaron being refunded half of the original security deposit.

Please note: names and some details have been omitted or changed to protect the identity of those involved. Photo posed by model.



RESOLVING SMALL BUSINESS DISPUTES
CONTINUED

Five-year waiver certificates

Section 21 of the RL Act provides that a tenant may waive its right to a minimum five-year term by applying to the VSBC for a certificate and giving a copy of that certificate to the landlord.

In 2017 the VSBC introduced a new fully automated process that enables tenants to receive an explanation of section 21 of the RL Act and apply for and automatically receive a waiver certificate online. In 2018-19, 2,595 certificates were issued.

Unreasonable refusal

Section 16(4) of the SBC Act provides the VSBC with the power to publish details in the VSBC's 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.

We make 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.

In 2018-19 the VSBC issued three 'unreasonable refusal' certificates, the details of which are shown in Figure 6.

Figure 6—Certificates issued to a party to a dispute unreasonably refusing to participate in alternative dispute resolution

Certificate date	Party
22/11/2018	The party with the registered business name AWN Australia
15/03/2019	The party with the registered business name Professional Heating & Air Conditioning Services
14/06/2019	The party with the registered business name Shout Web Strategy



05

RESPONDING TO THE MINISTER'S STATEMENT OF EXPECTATIONS

In 2017 the VSBC was provided with a Statement of Expectations by the then Minister for Small Business the Hon Philip Dalidakis MP. The statement applied to the period 31 December 2017 to 30 June 2019. We were required to report on activities to be undertaken to reach the performance targets and improvements set out in this statement, as detailed below.

Improved timeliness

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

We have reviewed our process for organising mediations from the date of receiving a dispute application to the initial setting of the mediation date to develop best practice, which is monitored on a quarterly basis.

For mediations scheduled between 1 July 2018 and 30 June 2019 the average time from receiving an application to the initial setting of the date was 73 calendar days. For the previous year the average time was 49 days.

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

For dispute applications submitted between 1 July 2018 and 30 June 2019, 58.5 per cent were submitted online, an increase of 16.5 per cent on the previous year.

For dispute applications submitted between 1 July 2018 and 30 June 2019, 83.3 per cent of applicants provided feedback that their experience in completing the application form was 'very easy' or 'easy'.

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.

The pre-mediation success rate end for 2018–19 was 33.9 per cent.

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

The VSBC website has been restructured and content re-written to better reflect the needs of small businesses.

Other information products developed include the following:

- Retail leases information brochure
- *Victorian small business engagement guidelines*
- *Guide to managing disruption* for business
- Building stronger networks fact sheet
- Animated video on the Small Business Friendly Council initiative
- Video providing guidance in switching your business to the NBN

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

We are working with Small Business Victoria to assess levels of awareness of the VSBC's services.

The VSBC has developed and implemented a targeted and comprehensive communications strategy to raise awareness of its activities and services among people in small business and other key stakeholders.

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

A post-implementation review has been undertaken to assess the effectiveness and efficiency of the new structure. Initial findings of the review indicate that the current structure is aligned to the VSBC's strategy and identify further opportunities for improvement relating to people, systems, data and process to better support the achievement of our strategic priorities.

Risk-based strategies

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

We have reviewed our methodology for assessing VSBC applications to ensure that risk is at the centre of any decision-making process. This involved strengthening the risk assessment process and enhancing intelligence to inform the best outcome for the dispute.

A post-implementation review has been undertaken to assess the effectiveness of the VSBC's dispute resolution service. Initial findings of the review identified a number of pain points in the dispute resolution process and noted that increased process efficiency through the use of automation, technology and more streamlined processes will be key to enabling us to meet growing demand into the future.

06

APPENDIX—A COMPLIANCE AND ACCOUNTABILITY

Our team

The VSBC is constituted by the Victorian Small Business Commissioner and other Victorian Public Sector (VPS) staff, including senior managers in the areas of corporate and engagement, advocacy and monitoring and dispute resolution services.

VSBC staff are employed by the Department of Jobs, Precincts and Regions (the department) under Part 3 of the *Public Administration Act 2004*. Our staff take part in the department's training, performance management and HR activities and conform to the department's financial and other policies and codes of conduct.

Assessing our performance

The department's governance framework aims to encourage better alignment of the portfolio's strategic priorities and improve coordination and collaboration in order to increase performance across the portfolio and effectively identify and resolve risks and issues together.

According to the department's health assessment conducted in 2018–19 (as part of the governance framework), the VSBC has performed very well against its set performance metrics. We have undertaken notable efforts in response to the previous Ministerial Statement of Expectations and have fully responded to the statement's requirements.

Occupational health and safety

We endeavour to provide a work environment that is free from risks to the safety, health and wellbeing of staff (including VPS employees, agency on hire staff, contractors and trainees) and our visitors.

In 2018–19 no issues arose in relation to occupational health and safety.

Environmentally sustainable practices

The VSBC is committed to sustainable practices through waste minimisation, energy efficiency, paper reduction, recycling and the integration of environmental sustainability within our governance, planning and procedures.

Systems

Corporate support services, including financial, information technology and records management support, are provided by the department.

We have a specialised VSBC database that we use for:

- dispute management and reporting
- preliminary enquiries
- survey reporting (client satisfaction with mediation services and preliminary support).

Protected disclosure procedures

The VSBC operates in accordance with the department's protected disclosure procedures. As at 30 June 2019 we had not received any disclosures made under the *Protected Disclosure Act 2012*, nor had the Ombudsman referred any such disclosures to us for investigation.

Major contracts

The VSBC did not enter into any contracts over \$10 million in the period 1 July 2018 to 30 June 2019.

Complaints

We have established a complaints procedure and included a complaint referral form on our website. We received two complaints in 2018–19, which were investigated and resolved internally.

Freedom of Information

In 2018–19 one Freedom of Information request directed to the activities of the VSBC was completed.

Figure 7—Consultancies

Consultant	Purpose of consultancy	Start date	End date	Total approved project fee (excluding GST)	Expenditure 2018–19 (excluding GST)	Future expenditure (excluding GST)
KPMG	Professional services	24/04/19	30/06/19	\$50,560	\$35,138	\$15,422
Context (agency)	Professional services	01/07/18	30/09/18	\$14,700	\$14,700	\$0

APPENDIX-B OPERATIONS

Financial statement 1 July 2018 – 30 June 2019

Funding

Appropriation

Victorian Small Business Commission	\$2,585,000
Farm debt mediation	\$600,000
Small business advocacy	\$400,000

Capital

Refurbishment of the Victorian Small Business Commission	\$500,000
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Total 2018–19 funding	\$4,085,000
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Expenditure

Employee-related expenses	\$2,523,631
Supplies and consumables	\$1,046,110
Mediation rooms fit-out works	\$698,406

Total 2018–19 expenditure	\$4,268,147
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