The Hon Louise Asher MP  
Minister for Innovation, Services and Small Business  
Level 36  
121 Exhibition Street  
MELBOURNE VIC 3000

Dear Minister

Annual Report 2010-11

I am pleased to present to you the eighth Annual Report on the operations of the Small Business Commissioner, covering the period 1 July 2010 to 30 June 2011.

The Report is provided to you under s14(1) of the Small Business Commissioner Act 2003 (the Act), in order for you to cause the Report to be laid before each House of Parliament as required under s14(2) of the Act.

Yours sincerely

Peter Lisle  
Acting Small Business Commissioner
## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Highlights of the Year</td>
<td>05</td>
</tr>
<tr>
<td>Performance 2010-11</td>
<td>11</td>
</tr>
<tr>
<td>The Role of the Office</td>
<td>15</td>
</tr>
<tr>
<td>How Disputes are Managed</td>
<td>17</td>
</tr>
<tr>
<td>Information and Education</td>
<td>19</td>
</tr>
<tr>
<td>Reporting on Statutory and Administrative Functions</td>
<td>23</td>
</tr>
<tr>
<td>Organisation</td>
<td>25</td>
</tr>
<tr>
<td>Financial Statement</td>
<td>27</td>
</tr>
<tr>
<td><strong>APPENDIX A - Strategy &amp; Objectives</strong></td>
<td>28</td>
</tr>
<tr>
<td>Review at a Glance</td>
<td>30</td>
</tr>
<tr>
<td><strong>Seven Essential Behaviours for Successful Business Relationships</strong></td>
<td>34</td>
</tr>
</tbody>
</table>
Highlights of the Year

Peter Lisle
Acting Small Business Commissioner

The credibility of the Office of the Small Business Commissioner continued to increase through its outstanding achievements in resolving disputes and assisting small business operators throughout Victoria.

In 2010-11 the Office utilised the knowledge it had gathered from its core business of dispute resolution to further enhance its value to the small business community.

These “learnings” resulted in a number of initiatives.

In particular, the support of many business groups and professional bodies of the Office’s role, functions and commitment to improving the operating environment for small business enabled the Office to reach a much wider audience.

This emphasis on stakeholder engagement based on the experiences and lessons from dispute resolution was an important proactive and cost effective means of increasing our reach into the small business sector.

Specifically in 2010-11 the Office broadened the dimensions of its relationship with the Law Institute of Victoria (LIV) and the Real Estate Institute of Victoria (REIV).

Members of both institutes have been involved with the Office for many years as representatives or agents for parties to retail leases disputes - which are around 75 per cent of our dispute resolution activities.

The year saw the development of a much closer relationship with the executive of both institutes and the identification of a number of opportunities for the Office to assist individual members, many of whom are small business operators, with their own business development.

As part of this closer relationship and to further benefit members, I was pleased to facilitate strong links between these institutes and Small Business Victoria and I acknowledge the support of the presidents and chief executive officers of both the LIV and REIV for this initiative.
Office of the Victorian Small Business Commissioner

Annual Report 2010-11

Contact details:

Office of the Victorian Small Business Commissioner

PO Box 5408
Melbourne VIC 8004

Telephone: 132 275

ASSESSING SMALL BUSINESS DISPUTES

The Victorian Small Business Commissioner was established eight years ago to offer timely, low-cost dispute resolution to small businesses. The alternative dispute resolution service has successfully resolved most of the 6600 small business disputes handled and调解 happening in disputes.

It is essential to remain aware and alert if you want your business to be successful. Mistakes are easy to make and can cost thousands of dollars, especially in the area of contracts, leases, agreements and other legal documents.
Process Improvement - Pallets

As a result of an approach to this Office by the Victorian Transport Association (VTA), a collaborative process to address issues of concern over the pallet hire system was undertaken.

The Office conducted meetings with key stakeholders in the pallet supply chain (the transport industry, food and beverage manufacturers and other supplier companies, supermarkets and pallet manufacturers/hirers) to review the efficiency of the pallet system and consider possible improvements.

The initial meeting of stakeholders agreed on a number of key project aims, including to:

• assist in improving the pallet hire system; and
• encourage industry-led change without the need for government intervention.

All stakeholders were offered the opportunity to provide input.

During a series of meetings there was active discussion about the content of a proposed code of practice. The meetings demonstrated a genuine concern to generate improvements to the system for the benefit of all participants in the supply chain.

Other Jurisdictions

I noted in the 2009-10 Annual Report that considerable interest had been shown by a number of other states in the Small Business Commissioner model. This gathered momentum in the current reporting year with the appointment of a Commissioner in New South Wales, the drafting of legislation for comment in South Australia, the introduction of legislation in Western Australia and the release by the Australian Government of an options paper on the resolution of small business disputes.

Farm Debt Mediation

In May 2011 the Victorian Government announced a proposed Farm Debt Mediation Scheme to encourage financial institutions to undertake a mediation process with farmers before initiating debt recovery proceedings. The mediation process would be facilitated through the Office of the Small Business Commissioner.

This Office has been working with the Department of Primary Industries on the development of procedures and protocols to ensure effective implementation of the Scheme.
"As the national regulator of competition and consumer laws, and as an agency with extensive involvement in small business matters, we very much value the role of the SBC. We look forward to continuing our work with the SBC, and to helping small business across Victoria in the future."
Australian Competition and Consumer Commission

The Office continued its close cooperation with the Australian Competition and Consumer Commission (ACCC) in a number of areas, including involvement through the Small Business and Franchising Consultative Committees. During the year representatives of the Office and ACCC jointly appeared at a number of events in support of small business. I am pleased to acknowledge the great support provided to the Office by the Commission, particularly through deputy chair (Small Business) Dr Michael Schaper.

Business Plan

The past year also resulted in the development of a comprehensive Business Plan which established priorities and actions for the Office in 2010-11 and forms the foundation on which strategies and initiatives will be developed to further assist small business in Victoria over the next three years.

Should I sign it?

This is a question every small business owner should ask himself or herself repeatedly. The vast majority of disputes that come across my desk arise because one or other of the parties was not fully aware of the implications of the contract, agreement, lease or other formal arrangement they had entered into.

To address this problem the Office introduced its “Should You Sign It?” initiative through which small business owners are encouraged to “read, research and review” such documents carefully before signing them.

This initiative has been a feature of many of the 37 presentations made by the Office during the year and constantly highlighted at the 90 meetings attended by the Office.

The Office distributed more than 5,000 brochures containing this most important message as part of our information and education function. I have been greatly encouraged by how it has resonated with small business operators and will continue to push this message with great enthusiasm.

Refreshing the brand

I referred earlier to the Office utilising the learnings gained over eight years to enhance its value to the small business community.

In tandem with this has been a commitment to “refresh the brand”. This has been reflected through a number of initiatives, including:

- our enhanced Stakeholder Engagement Strategy
- our collaboration with Small Business Victoria to assist in addressing issues concerning small business operators which fall outside the scope of the Office’s immediate statutory responsibilities
- updating our printed image, particularly through the use of the colour grey, to convey the message that many issues affecting small businesses are not clearly “black and white” and the Office is keen to help them through the vast and indeterminate “grey areas”. This approach generated rewarding and positive feedback.

Evaluation

International consulting house KPMG was commissioned in 2010 to undertake a major evaluation of the activities of the Office during the previous four years.

This involved a review of surveys, interviews and extensive analysis of both quantitative and qualitative data to provide an evidence-based evaluation report on the relevance, effectiveness, efficiency and overall impact of the Office of the Small Business Commissioner.

Key findings of the evaluation were that the Office is:

- operating more efficiently with each year of operation;
- effective in delivering against its objectives; and
- delivering time and cost savings to participant businesses.

Following the evaluation the Office has been allocated funding for a further four years totalling $10 million.

The results achieved by this Office during the year could not have been achieved without the dedicated and professional efforts of the Small Business Commissioner team.

I conclude my introduction to this 2010-11 report by emphasising my appreciation of my colleagues in the Office of the Small Business Commissioner for their continued support of small business in Victoria.

Peter Lisle
Acting Small Business Commissioner
Small businesses need a competitive and fair business environment to grow and prosper.

The Small Business Commissioner’s office assists businesses by providing an informal, low-cost, timely and effective dispute resolution service.

What remedies are available if a dispute cannot be resolved at mediation?

If mediation involving the Retail Leases Act 2003 and the Owner Drivers and Forestry Contractors Act 2005 is unsuccessful, the parties may refer the matter to Victorian Civil and Administrative Tribunal (VCAT) to make a determination.

In other disputes where mediation is unsuccessful, the parties may pursue the matter through the traditional court or tribunal processes.
Performance 2010-11

Applications Received

In 2010-11, the number of matters referred to the Office for dispute resolution continued to grow with 1,553 applications received, an increase of 12 per cent over the previous year.

Figure 1 shows the annual growth in applications received by the SBC since its establishment in 2003.

![Graph showing annual growth in applications received by SBC 2003-11](image)

There was again a large increase in the number of applications referred under the Small Business Commissioner Act 2003 (general business-to-business disputes) with these comprising 29.5 per cent of all matters handled in 2010-11.

Applications under the Retail Leases Act 2003 also increased and represented just fewer than 70 per cent of applications. There was a decrease in applications received under the Owner Drivers and Forestry Contractors Act 2005.
“The Law Institute of Victoria looks forward to a continuing relationship with the Office to the benefit of Institute members and their corporate and small business clients.”
Dispute Resolution Success Rates

The Small Business Commissioner continued to enjoy a high success rate in resolving disputes. The number of disputes resolved prior to mediation rose to 503 (or 35.2 per cent). Of the disputes referred to mediation, 78.6 per cent were successfully resolved, maintaining the historically high success rate.

Client Satisfaction

The Office conducted a client satisfaction survey during the year in which parties involved in mediation were asked to rate the services provided. The overall mediation service achieved a client satisfaction rating of 92.8 per cent.

Table 1 - Dispute Application Outcomes

<table>
<thead>
<tr>
<th></th>
<th>2009-10</th>
<th>2010-11</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total completed disputes</td>
<td>1,219</td>
<td>1,427</td>
</tr>
<tr>
<td>Disputes completed before mediation</td>
<td>631</td>
<td>890</td>
</tr>
<tr>
<td>Settled prior to mediation</td>
<td>416</td>
<td>503</td>
</tr>
<tr>
<td>No mediation</td>
<td>215</td>
<td>387</td>
</tr>
<tr>
<td>Disputes completed through mediation</td>
<td>588</td>
<td>537</td>
</tr>
<tr>
<td>Successful mediation</td>
<td>455</td>
<td>422</td>
</tr>
<tr>
<td>Unsuccessful mediation</td>
<td>133</td>
<td>115</td>
</tr>
</tbody>
</table>
Fraudsters, shysters, con artists, scammers and swindlers

Victoria’s 505,000 small business operators lose around $700 million a year to fraud – common scams include:

**Beware of Scams**

They’re after your money!

**What are scams?**

Scams normally trick you into giving away your personal details or paying for services or goods you have never received or never will receive.

Scams target small business by mail, email, telephone, over the internet or even door-to-door.

The most popular and successful scams are:

- False billing for a directory listing or advertisement that may not exist or was not ordered.
- Being invoiced for office supplies that were never ordered, never delivered or were not part of a legitimate order.
- Receiving a false renewal notice for a website domain name or an invoice for a domain name that is very similar to your own.
- Being encouraged to participate in a simple business opportunity that promises certain success. Usually, it is only the promoter that will make any money.

**Warning!**

Be extremely careful when operating online. Sensitive information such as usernames, passwords and credit card details are constantly targeted by scammers using fake websites.

If a cheque has been pre-endorsed ask for it to be re-endorsed so that you can check the signature.

Be aware that a business trading online is responsible for recouping any losses generated by credit card fraud – not the bank.
Purpose
The Office was established by the Small Business Commissioner Act 2003 to enhance a competitive and fair operating environment for small business in Victoria. It has responsibilities under that Act, the Retail Leases Act 2003 and the Owner Drivers and Forestry Contractors Act 2005.

Services
In addressing its statutory responsibilities the Office provides the following services:

• **Information and education** to promote informed decision-making by small businesses and help minimise disputes with other businesses. This involves development and dissemination of information through channels such as:
  - stakeholder engagement;
  - telephone information;
  - office publications; and
  - the Office website – www.sbc.vic.gov.au

• **Preliminary assistance** by Office staff to help resolve a dispute. This involves:
  - initial telephone contact with parties to work out a solution;
  - providing information to the parties regarding their responsibilities; and
  - discussions with the parties to possibly resolve the dispute without formal mediation.

• **Mediation and dispute resolution** – the timely, low-cost resolution of disputes through facilitated agreement between the parties, promoting the maintenance of the existing business relationships and ensuring clarity, fairness and certainty in the interactions between businesses.

• **Industry wide initiatives** – activities to address industry-wide issues, with a view to developing education, information or support to minimise or successfully resolve disputes.

• **Ongoing review of activities to facilitate more effective relationships between government agencies and their small business clients and customers.**

The Office also has a range of specific administrative functions under the Retail Leases Act 2003 and Owner Drivers and Forestry Contractors Act 2005.

The Office enjoys a positive relationship with the Victorian business community and its dispute resolution service is well utilised. Its success is widely recognised and the Office has been adopted as a model for the establishment of small business commissioners in a number of other states.

Over the past year, the Office has continued to successfully mediate disputes to the clear satisfaction of small business participants. Since inception a total of 8,831 disputes have been handled with a success rate for mediations and a client satisfaction rate of around 80 per cent.

The Office has continued to:

• increase early provision of information to assist in the resolution of disputes prior to formal mediation;

• increase its acceptance by the broader business community; and

• work closely with Small Business Victoria, particularly in the design and implementation of a number of collaborative initiatives involving industry associations and private sector groups.

Future Approach
A major evaluation of the Office was conducted by KPMG in 2010 to examine the rationale for its activities, effectiveness and efficiency of operations and opportunities for improvement.

As a result the Small Business Commissioner was allocated $10 million funding for a further four years.

The KPMG evaluation found that demand for the services of the Office will continue to grow in the coming years. Factors that may influence this demand include:

• growth in the number of Victorian small businesses;

• the economic climate;

• small business concerns regarding cost and availability of finance and impacts on cash flow; and

• continued growth in franchised businesses.

In expectation of continued demand for its core services, the Office is regularly reviewing its operations to ensure it continues to meet the needs of small business.
“The REIV believes that the Small Business Commissioner is a very important resource for all small business and one that contributes positively to the operation of the Victorian economy.”
How Disputes are Managed

Preliminary Assistance – Information and Education

A significant element of the role of the Office involves responding to telephone enquiries from small business operators. The number of these preliminary assistance contacts rose by 14.1 per cent in 2010-11.

Table 2 - Preliminary Assistance - Phone Enquiries

<table>
<thead>
<tr>
<th>Month</th>
<th>2009-10</th>
<th>2010-11</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>July</td>
<td>717</td>
<td>702</td>
<td>-2.1%</td>
</tr>
<tr>
<td>August</td>
<td>696</td>
<td>693</td>
<td>-0.4%</td>
</tr>
<tr>
<td>September</td>
<td>628</td>
<td>773</td>
<td>23.1%</td>
</tr>
<tr>
<td>October</td>
<td>560</td>
<td>789</td>
<td>40.9%</td>
</tr>
<tr>
<td>November</td>
<td>539</td>
<td>617</td>
<td>14.5%</td>
</tr>
<tr>
<td>December</td>
<td>371</td>
<td>569</td>
<td>53.4%</td>
</tr>
<tr>
<td>January</td>
<td>313</td>
<td>514</td>
<td>64.2%</td>
</tr>
<tr>
<td>February</td>
<td>621</td>
<td>752</td>
<td>21.1%</td>
</tr>
<tr>
<td>March</td>
<td>699</td>
<td>822</td>
<td>17.6%</td>
</tr>
<tr>
<td>April</td>
<td>510</td>
<td>383</td>
<td>-24.9%</td>
</tr>
<tr>
<td>May</td>
<td>617</td>
<td>613</td>
<td>-0.6%</td>
</tr>
<tr>
<td>June</td>
<td>660</td>
<td>681</td>
<td>3.2%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>6,931</td>
<td>7,908</td>
<td>14.1%</td>
</tr>
</tbody>
</table>

Information and assistance provided by the Office at the initial point of contact results in many matters being resolved prior to becoming a dispute. In these cases, the information provided can be used by the parties to resolve the matter between them, avoiding the need for a formal dispute application to the Small Business Commissioner.

In other cases, where the parties have attempted to resolve the matter but have been unsuccessful, the Office will explain the dispute resolution process and provide application information.

Preliminary Assistance - Dispute Resolution

When an application is received the Small Business Commissioner assigns the matter to an investigations officer who assesses the matter and contacts the parties to see if a resolution of the dispute can be facilitated without proceeding to mediation.

An increasing number of matters are being resolved by the Office in this manner. During the year 1,427 matters were finalised by the Small Business Commissioner - 503 (35.2 per cent) settled prior to mediation.

The KPMG evaluation found preliminary assistance to be a huge, but to date largely overlooked, benefit of real value.

Mediation

When all parties agree to mediation the Commissioner appoints a mediator and the date, time and venue are arranged. The mediation can be in regional Victoria if it is more convenient for the parties.

During the year 12.2 per cent of mediations were held in regional Victoria.

Mediators engaged by the Office of the Small Business Commissioner are paid $900 per mediation session (inc. GST). Under both the Small Business Commissioner Act 2003 and Retail Leases Act 2003, parties to the mediation are charged $195 per session.

Parties to mediation under the Owner Drivers and Forestry Contractors Act 2005 are charged $95 per session. The SBC contributes the remainder of the daily fee paid to mediators.

The mediation is confidential to the parties. Any settlement agreement reached during mediation may be taken by the parties to the Victorian Civil and Administrative Tribunal (VCAT) or an appropriate Court for enforcement if necessary.

If mediation involving the Retail Leases Act 2003 and the Owner Drivers and Forestry Contractors Act 2005 is unsuccessful, the parties may request a certificate from the SBC to enable them to take the matter to VCAT for a determination. The matter cannot proceed to VCAT without this certificate. No such certificate is required under the Small Business Commissioner Act 2003 to take a matter to VCAT.
“Tatts promotes the use of the Small Business Commissioner services and rooms to facilitate dispute resolution and mediation.

To date Tatts has successfully resolved 99% of disputes via this service.”
Information and Education

Preliminary Assistance – Telephone Enquiries

One of the functions of the Office is to promote informed decision making by small business in order to minimise disputes with other businesses.

As a result, a significant element of the work of the Office involves taking calls from small business and providing assistance on a range of issues.

This results in many matters being resolved prior to becoming a dispute.

Officer often highlight the legislative responsibilities of the parties, which in many cases avoids the need for formal dispute mediation.

During 2010-11, the Office provided an initial point of contact for landlords, tenants and business operators seeking guidance on retail tenancy, small business and owner-driver and forestry contractor issues.

Many calls are made directly to the Office while others are referrals from government agencies and industry bodies.

The majority concern retail leasing matters.

While some are from “repeat callers”, most are from small business operators contacting the Office for the first time. The management of calls is an important avenue in providing relevant information to all stakeholders including landlords, tenants, agents and the legal profession.

With retail tenancy queries this assistance helps callers understand their rights and obligations under retail tenancy legislation and assists in avoiding many disputes.

When disputes cannot be settled between the parties information is provided on the alternative methods of resolution including Small Business Commissioner arranged mediation, proceeding to VCAT, or other appropriate jurisdictions.

Small businesses also call to discuss commercial and contractual disputes. If the call raises an “unfair market practice” issue, the Office ascertains the circumstances and assists with the appropriate course of action. This may involve formal referral of the matter to the Small Business Commissioner under the Small Business Commissioner Act 2003 or referring the caller to another appropriate body (e.g. the ACCC).

The SBC also assists contractors and hirers under the Owner Drivers and Forestry Contractors Act 2005. In addition to the alternative dispute resolution service for owner drivers, forestry contractors, haulage contractors and their hirers, the Office provides preliminary assistance to the parties to ensure they are fully aware of their rights and obligations.

Examples of areas dealt with by SBC under its preliminary assistance function include:

- informing small businesses of their rights and avenues of redress in cases of disputed contracts or contract terms;
- informing landlords of the procedure and obligations in preparing leases and disclosure statements;
- informing tenants as to their right to appropriate notices at the end of a lease or before they exercise an option to renew their lease;
- informing parties about the Commissioner’s power to appoint a Specialist Retail Valuer to determine rental disputes;
- informing landlords and tenants about their obligations to repair and maintain the premises;
- advising contractors and hirers about their rights and obligations; and
- assisting small business deal with government departments, agencies and local councils.

In 2010-11, there were 7908 preliminary assistance calls, an increase of 14.1% over the previous year. The total number of preliminary assistance calls handled by the Office since its inception was 52,781 at 30 June 2011.
“The relationship is also proactive in that we are exploring collaborative opportunities to address small business needs of our members...”
Stakeholder Engagement

In 2010-2011 the Office refreshed its Stakeholder Engagement Strategy to maintain the contemporary relevance of the Office.

The Strategy presents an integrated communications and marketing plan to raise awareness of the services and resources of the Office and reinforce their value to small business.

Activities incorporated in the Stakeholder Engagement Strategy include:

• engaging directly with small businesses and industry associations to understand their issues and concerns;
• utilising internal data analysis to develop ideas and themes for communication and education/information activities;
• aligning themes to issues and develop messages and information/education strategies to assist small businesses develop skills and improve business performance and conduct – thereby minimising disputes; and
• fully utilising the channels available for communication and stakeholder engagement, including:
  - Small Business Victoria;
  - industry associations;
  - local community events;
  - print and broadcast media and publishing; and

A key program of the Stakeholder Engagement Strategy is developing and maintaining effective relationships with business and industry groups. The relationships are critical in fulfilling the information and education function of the Office.

During 2010-11, the Small Business Commissioner made 37 presentations to 29 representative groups including 12 presentations in regional areas.

The Small Business Commissioner participated in 90 meetings with industry, professional and government bodies.

Brochures

The Small Business Commissioner produces a range of brochures to inform and educate the small business community about its services.

In 2010-11, a new brochure, Should You Sign It? was developed. The brochure outlines the steps – read, research, review - a small business should take before signing any agreement or contract.

SBC also refreshed its existing brochures:

• Speaking up for Small Business
• Beware of Scams

All SBC brochures are available in hard copy and on the SBC website.

Website

The SBC website (www.sbc.vic.gov.au) continues to provide information to assist businesses, retail landlords and tenants, lawyers, real estate agents, and owner drivers, forestry contractors and hirers, government agencies and other interested parties.

The website contains the forms required for referring disputes and complaints to the Small Business Commissioner, as well as legislative information and responsibilities of the Office under the Small Business Commissioner Act 2003, Retail Leases Act 2003 and Owner Drivers and Forestry Contractors Act 2005.
The API has also worked with the SBC in developing the “Guidelines to the Retail Leases Act 2003 – Current Market Rent and Engaging Specialist Retail Valuers” and we have appreciated the input and support by the SBC in the development and subsequent implementation of the API’s Professional Certificate course entitled “Specialist Retail Valuer” which to date, has resulted in excess of 15 API valuer members being accredited as an “API Accredited Specialist Retail Valuer”.
Reporting on Other Statutory and Administrative Functions
Retail Leases Act Reporting

Ministerial Determinations
Under Section 5 of the Retail Leases Act 2003 (the Act), the Minister may make determinations excluding the application of the Act in respect to certain retail premises leases. As at 30 June 2011, there have been five Ministerial Determinations made and published in the Victoria Government Gazette. They are:

- to exclude some commercial premises in multi-level buildings from the coverage of the Act;
- to exclude Barristers’ Chambers Limited leases from coverage of the Act;
- determination regarding 15 year leases;
- determination regarding the Melbourne Market Authority and the Act; and
- to exclude local council premises that are leased for certain community purposes from the coverage of the Act.

No Ministerial determinations were made in this reporting year.


Two of these Ministerial Determinations require certificates to be obtained from the Office of the Small Business Commissioner as evidence that the lease is excluded from coverage of the Act.

Section 21 Certificates
Section 21 of the Retail Leases Act 2003 provides that the term of a retail premises lease must be at least five years and any initial lease entered into for a period of less than five years is extended by the Act to a five year term. A tenant may waive its right to a five year term by applying for a certificate from the Small Business Commissioner.

During 2010-2011, the total number of requests received increased to 1013 and 925 certificates were issued. The remaining requests did not require certificates to be issued or were withdrawn.

Section 25 Notifications
Section 25 of the Retail Leases Act 2003 requires that, within 14 days of the signing by all parties of a retail premises lease or renewal, the landlord must notify the Small Business Commissioner of the address of the premises, the names and addresses of the landlord and tenant and the date when the lease was signed by all parties or renewed.

A total of 13,792 notifications were lodged with the Small Business Commissioner during the year.

Specialist Retail Valuers
The Office has responsibility under the Retail Leases Act 2003 for appointing a specialist retail valuer where a landlord and tenant are unable to agree on the rent to apply as a result of certain circumstances (usually following the application of a rent review provision of the lease), and the landlord and the tenant are unable to agree between themselves on appointment of a specialist retail valuer.

A total of 114 requests for the appointment of a specialist retail valuer were received by the Office during the year.
New Disclosure Statement

A new disclosure statement came into effect on 1 January 2011 as part of the Retail Leases Amendment Regulations 2010. These regulations amend the prescribed form for the landlord’s disclosure statement required under the Retail Leases Act 2003.

A copy of the new disclosure statement can be downloaded from the Small Business Commissioner’s website.

Industry Codes

Under the Small Business Commissioner Act 2003, one of the functions of the Office concerns industry codes of practice and includes improving the regulatory environment for small business and providing a mediation service for the resolution of disputes between parties in affected industries.

The Office has a role under three industry codes:

- the Packaged Liquor Licensees Code of Conduct (made under the Liquor Control Reform Act 1998);
- the Code relating to the sale and supply of memorialisation goods and services by cemetery trusts and other alternative suppliers in Victorian public cemeteries; and
- the Owner Drivers and Forestry Contractors Code of Practice (made under the Owner Drivers and Forestry Contractors Regulations 2006).

Small Business Service Charters

Under the Small Business Commissioner Act 2003, one of the functions of the SBC is to encourage the development and implementation of small business service charters within government to ensure small businesses receive high quality service. Charters are consistent with the government’s commitment to improving the quality and consistency of service to its small business clients and customers. The Department of Business and Innovation (DBI) has its own charter.

Owners Drivers and Forestry Contractors Act 2005 – Waiver Certificates

Under the Act, if a contractor wishes to waive the requirement to give notice, the legislation provides that the contractor may request a certificate from the Small Business Commissioner. During 2010-11 the Office granted 13 certificates.

Table 3 – Retail Leases Act 2003 Reporting

<table>
<thead>
<tr>
<th></th>
<th>2009-10</th>
<th>2010-11</th>
<th>% Increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 21 Certificate Requests</td>
<td>884</td>
<td>1,013</td>
<td>14.6</td>
</tr>
<tr>
<td>Section 25 Notifications</td>
<td>14,045</td>
<td>13,792</td>
<td>-1.8</td>
</tr>
<tr>
<td>Specialist Retail Valuer Requests</td>
<td>93</td>
<td>114</td>
<td>22.6</td>
</tr>
</tbody>
</table>
Organisation

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

Staff of the Office are employed by the Department of Business and Innovation (DBI) under Part 3 of the Public Administration Act 2004.

DBI provides corporate support services to the Office and staff participate in DBI corporate training, performance management and HR activities and conform to DBI financial and other policies.

Systems
Financial, IT and records management services are provided to the Office by the DBI corporate services division. Specific database applications for use by the SBC have been developed in the areas of:

- dispute management
- preliminary enquiries
- lease notifications
- section 21 certificates.

Freedom of Information
One Freedom of Information request was directed to the activities of the SBC during 2010-11.

Whistleblowers Procedures
The Office operates in accordance with the DBI Whistleblowers Protection Procedures as set out on the DBI website (www.dbi.vic.gov.au).

As at 30 June 2011, the SBC had not received any disclosures made under the Whistleblowers Protection Act, nor had the Ombudsman referred any disclosures made under the Whistleblowers Protection Act to the Small Business Commissioner for investigation.

Major Contracts
The SBC did not enter into any contracts over $10 million in the period 1 July 2010 to 30 June 2011.

Consultancies
The SBC did not enter into any consultancy contract over $100,000 in the period 1 July 2010 to 30 June 2011.
“The Officers of the VSBC and the Commissioner himself have always been available to us to discuss and advise on issues we were having.”
The Office of the Victorian Small Business Commissioner operates on an accrual output management framework, in accordance with guidelines issued by the Department of Treasury and Finance. Financial accounting is undertaken for the Office by DBI.

Table 4 – Financial Statement 1 July 2010 – 30 June 2011

<table>
<thead>
<tr>
<th></th>
<th>1/7/2010 - 30/6/2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Funding</td>
<td></td>
</tr>
<tr>
<td>Appropriation</td>
<td>2,423,000</td>
</tr>
<tr>
<td>Carryover from 2009-10</td>
<td>214,306</td>
</tr>
<tr>
<td>Farm Debt Mediation Scheme</td>
<td>350,000</td>
</tr>
<tr>
<td>Total</td>
<td>2,987,306</td>
</tr>
<tr>
<td>Expenditure</td>
<td></td>
</tr>
<tr>
<td>Employee Costs</td>
<td>1,827,834</td>
</tr>
<tr>
<td>Operating Costs</td>
<td>859,845</td>
</tr>
<tr>
<td>Total</td>
<td>2,687,679</td>
</tr>
</tbody>
</table>

Operating costs included provision of rooms and facilities for the conduct of mediations, and a net contribution to the overall cost of mediation.
Appendix A
- Strategy and Objectives

The establishment of the Small Business Commissioner in 2003 recognised the vital contribution that small businesses make to the Victorian economy.

The aim of the Small Business Commissioner is to enhance a competitive and fair operating environment for small business in Victoria.

The powers and functions of the Small Business Commissioner arise from provisions in a number of Acts:

• Small Business Commissioner Act 2003
• Retail Leases Act 2003
• Retail Tenancies Reform Act 1998
• Retail Tenancies Act 1986
• Liquor Control Reform Act 1998
• Victorian Civil and Administrative Tribunal Act 1998
• Owner Drivers and Forestry Contractors Act 2005

**Small Business Commissioner Act 2003**

Under the Small Business Commissioner Act 2003 the functions of the Small Business Commissioner are to:

• facilitate and encourage the fair treatment of small businesses in their commercial dealings with other businesses in the marketplace;
• promote informed decision-making by small businesses in order to minimise disputes with other businesses;
• receive and investigate complaints by small businesses regarding unfair market practices and mediate between the parties involved in the complaint;
• make representations to an appropriate person or body on behalf of a small business that has made a complaint regarding unfair market practices;
• monitor and report to the Minister on any emerging trends in market practices that have an adverse effect on small businesses;
• encourage the development and implementation of small business service charters within government to ensure small businesses receive high quality service;
• monitor the operation and effectiveness of those small business service charters;
• as required by the Minister, monitor and report to the Minister on the impact that legislation in Victoria, government procedures and administration have on small businesses;
• as required by the Minister, assist other branches and agencies of government to develop legislation, government procedures and administration that provide alternative ways in which small businesses can comply with the requirements of the legislation, procedures and administration;
• investigate compliance with industry codes;
• advise the Minister on matters for which the Commissioner is responsible; and
• advise the Minister on the operation of the Act.
Retail Leases Act 2003

Under the Retail Leases Act 2003 (RLA) the functions of the Small Business Commissioner are to:

• facilitate the resolution by mediation, or other form of alternative dispute resolution, of retail tenancy disputes;
• take proceedings for an offence against the RLA;
• endorse a form of standard lease;
• confirm whether a certificate has been given under s 21(5) of the RLA;
• prepare and publish an information booklet or guidelines about retail leases that may be purchased on demand by members of the public;
• join a person as a party to a mediation of a retail tenancy dispute; and
• create and maintain a register of the information provided under s 25 in the course of performing functions under the Act.

Following from these functions, the Small Business Commissioner has the responsibilities of:

• issuing certificates under s 21 of the Act, enabling the tenant to enter into a lease for less than five years;
• receiving and recording notifications of leases made by landlords under s 25 of the Act;
• appointing a specialist retail valuer under s 34, s 35 or s 37 of the Act;
• appointing an independent quantity surveyor under s 30 or s 55 of the RLA; and
• making arrangements pursuant to s 84 or s 85 of the Act for the resolution by mediation or other alternative dispute resolution process of retail tenancy disputes.

Retail Tenancies Reform Act 1998

Under the Retail Tenancies Reform Act 1998, the Small Business Commissioner was provided with the responsibility of appointing a specialist retail valuer under ss 12 or 13 of the Act.

Retail Tenancies Act 1986

Under the Retail Tenancies Act 1986, the Small Business Commissioner was provided with the responsibility of appointing a specialist retail valuer under ss 10 or 11 of the Act.

Liquor Control Reform Act 1998

Under s 11 (8) of the Liquor Control Reform Act 1998, the Small Business Commissioner has the power to investigate compliance by licensees of packaged liquor licences with a code of conduct established under s 11 (5) of that Act.

The Packaged Liquor Code of Conduct was determined by the then Minister for Consumer Affairs in October 2006.

Victorian Civil and Administrative Tribunal Act 1998

Section 73 (2A) of the Victorian Civil and Administrative Tribunal Act 1998 provides that the Small Business Commissioner may intervene at any stage in proceedings before the Tribunal concerning a retail tenancy dispute or proceedings under s 8A of the Fair Trading Act 1999.

Owner Drivers and Forestry Contractors Act 2005

The Owner Drivers and Forestry Contractors Act 2005 generally commenced in August 2005. Under the Owner Drivers and Forestry Contractors Act 2005, the Small Business Commissioner has an alternative dispute resolution function.

The SBC also has responsibility for issuing a certificate where a contractor wishes to waive the requirement to give notice.
Review at a Glance

2010-11 Client Satisfaction Survey

Overall, how satisfied are you with the mediation/facilitation services provided by the Office of the Victorian Small Business Commissioner?

Roles of the Parties in the Mediation

Client Satisfaction

<table>
<thead>
<tr>
<th>Role</th>
<th>Satisfaction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>92.8%</td>
</tr>
<tr>
<td>Applicant</td>
<td>93.3%</td>
</tr>
<tr>
<td>Applicant’s Representative</td>
<td>89.8%</td>
</tr>
<tr>
<td>Respondent</td>
<td>93.0%</td>
</tr>
<tr>
<td>Respondent’s Representative</td>
<td>91.9%</td>
</tr>
<tr>
<td>Other</td>
<td>70.0%</td>
</tr>
</tbody>
</table>
### As a result of using this mediation service, have you: Saved time?

<table>
<thead>
<tr>
<th></th>
<th>Responses</th>
<th>Yes</th>
<th>No</th>
<th>Not Sure</th>
<th>No response</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Saved time?</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>553</td>
<td>400</td>
<td>82</td>
<td>71</td>
<td>81</td>
</tr>
<tr>
<td></td>
<td>100.0%</td>
<td>72.3%</td>
<td>14.8%</td>
<td>12.8%</td>
<td></td>
</tr>
</tbody>
</table>

### As a result of using this mediation service, have you: Saved money?

<table>
<thead>
<tr>
<th></th>
<th>Responses</th>
<th>Yes</th>
<th>No</th>
<th>Not Sure</th>
<th>No response</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Saved money?</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>537</td>
<td>346</td>
<td>90</td>
<td>101</td>
<td>97</td>
</tr>
<tr>
<td></td>
<td>100.0%</td>
<td>64.4%</td>
<td>16.8%</td>
<td>18.8%</td>
<td></td>
</tr>
</tbody>
</table>
Dispute resolution process

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total completed disputes</td>
<td>44</td>
<td>376</td>
<td>614</td>
<td>599</td>
<td>588</td>
<td>1,001</td>
<td>1,110</td>
<td>1,219</td>
<td>1,427</td>
<td>6,978</td>
</tr>
<tr>
<td>Disputes completed before mediation</td>
<td>24</td>
<td>146</td>
<td>235</td>
<td>235</td>
<td>231</td>
<td>506</td>
<td>572</td>
<td>631</td>
<td>890</td>
<td>3,470</td>
</tr>
<tr>
<td>Settled prior to mediation</td>
<td>12</td>
<td>99</td>
<td>175</td>
<td>173</td>
<td>151</td>
<td>355</td>
<td>372</td>
<td>416</td>
<td>503</td>
<td>2,256</td>
</tr>
<tr>
<td>No mediation</td>
<td>12</td>
<td>47</td>
<td>60</td>
<td>62</td>
<td>80</td>
<td>151</td>
<td>200</td>
<td>215</td>
<td>387</td>
<td>1,214</td>
</tr>
<tr>
<td>Disputes completed through mediation</td>
<td>20</td>
<td>230</td>
<td>379</td>
<td>364</td>
<td>357</td>
<td>495</td>
<td>538</td>
<td>588</td>
<td>537</td>
<td>3,508</td>
</tr>
<tr>
<td>Successful mediation</td>
<td>11</td>
<td>168</td>
<td>310</td>
<td>293</td>
<td>286</td>
<td>400</td>
<td>433</td>
<td>455</td>
<td>422</td>
<td>2,778</td>
</tr>
<tr>
<td>Unsuccessful mediation</td>
<td>9</td>
<td>62</td>
<td>69</td>
<td>71</td>
<td>71</td>
<td>95</td>
<td>105</td>
<td>133</td>
<td>115</td>
<td>730</td>
</tr>
</tbody>
</table>

Dispute resolution process 2003–11

- 49.7% Disputes completed through mediation
- 50.3% Disputes completed before mediation
- 35.0% Settled prior to mediation
- 20.8% No mediation
- 79.2% Successful mediation
- 65.0% Unsuccessful mediation
### Dispute resolution success rate

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total completed disputes</strong></td>
<td>44</td>
<td>376</td>
<td>614</td>
<td>599</td>
<td>588</td>
<td>1,001</td>
<td>1,110</td>
<td>1,219</td>
<td>1,427</td>
<td>6,978</td>
</tr>
<tr>
<td><strong>Successful outcome</strong></td>
<td>23</td>
<td>267</td>
<td>485</td>
<td>466</td>
<td>437</td>
<td>755</td>
<td>805</td>
<td>871</td>
<td>925</td>
<td>5,034</td>
</tr>
<tr>
<td><strong>Settled prior to mediation</strong></td>
<td>12</td>
<td>99</td>
<td>175</td>
<td>173</td>
<td>151</td>
<td>355</td>
<td>372</td>
<td>416</td>
<td>503</td>
<td>2,256</td>
</tr>
<tr>
<td><strong>Successful mediation</strong></td>
<td>11</td>
<td>168</td>
<td>310</td>
<td>293</td>
<td>286</td>
<td>400</td>
<td>433</td>
<td>455</td>
<td>422</td>
<td>2,778</td>
</tr>
<tr>
<td><strong>Unsuccessful outcome</strong></td>
<td>21</td>
<td>109</td>
<td>129</td>
<td>133</td>
<td>151</td>
<td>246</td>
<td>305</td>
<td>348</td>
<td>502</td>
<td>1,944</td>
</tr>
<tr>
<td><strong>No mediation</strong></td>
<td>12</td>
<td>47</td>
<td>60</td>
<td>62</td>
<td>80</td>
<td>151</td>
<td>200</td>
<td>215</td>
<td>387</td>
<td>1,214</td>
</tr>
<tr>
<td><strong>Unsuccessful mediation</strong></td>
<td>9</td>
<td>62</td>
<td>69</td>
<td>71</td>
<td>95</td>
<td>105</td>
<td>133</td>
<td>115</td>
<td>730</td>
<td>730</td>
</tr>
<tr>
<td><strong>Total completed disputes</strong></td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td><strong>Successful outcome</strong></td>
<td>52.3%</td>
<td>71.0%</td>
<td>79.0%</td>
<td>77.8%</td>
<td>74.3%</td>
<td>75.4%</td>
<td>72.5%</td>
<td>71.5%</td>
<td>64.8%</td>
<td>72.1%</td>
</tr>
<tr>
<td><strong>Settled prior to mediation</strong></td>
<td>27.3%</td>
<td>26.3%</td>
<td>28.5%</td>
<td>28.9%</td>
<td>25.7%</td>
<td>35.5%</td>
<td>33.5%</td>
<td>34.1%</td>
<td>35.2%</td>
<td>32.3%</td>
</tr>
<tr>
<td><strong>Successful mediation</strong></td>
<td>25.0%</td>
<td>44.7%</td>
<td>50.5%</td>
<td>48.9%</td>
<td>48.6%</td>
<td>40.0%</td>
<td>39.0%</td>
<td>37.3%</td>
<td>29.6%</td>
<td>39.8%</td>
</tr>
<tr>
<td><strong>Unsuccessful outcome</strong></td>
<td>47.7%</td>
<td>29.0%</td>
<td>21.0%</td>
<td>22.2%</td>
<td>25.7%</td>
<td>24.6%</td>
<td>27.5%</td>
<td>28.5%</td>
<td>35.2%</td>
<td>27.9%</td>
</tr>
<tr>
<td><strong>No mediation</strong></td>
<td>27.3%</td>
<td>12.5%</td>
<td>9.8%</td>
<td>10.4%</td>
<td>13.6%</td>
<td>15.1%</td>
<td>18.0%</td>
<td>17.6%</td>
<td>27.1%</td>
<td>17.4%</td>
</tr>
<tr>
<td><strong>Unsuccessful mediation</strong></td>
<td>20.5%</td>
<td>16.5%</td>
<td>11.2%</td>
<td>11.9%</td>
<td>12.1%</td>
<td>9.5%</td>
<td>9.5%</td>
<td>10.9%</td>
<td>8.1%</td>
<td>10.5%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Total disputes completed through mediation</th>
<th>20</th>
<th>230</th>
<th>379</th>
<th>364</th>
<th>357</th>
<th>495</th>
<th>538</th>
<th>588</th>
<th>537</th>
<th>3,508</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Successful mediation</strong></td>
<td>11</td>
<td>168</td>
<td>310</td>
<td>293</td>
<td>286</td>
<td>400</td>
<td>433</td>
<td>455</td>
<td>422</td>
<td>2,778</td>
</tr>
<tr>
<td><strong>Unsuccessful mediation</strong></td>
<td>9</td>
<td>62</td>
<td>69</td>
<td>71</td>
<td>95</td>
<td>105</td>
<td>133</td>
<td>115</td>
<td>730</td>
<td>730</td>
</tr>
<tr>
<td><strong>Total disputes completed through mediation</strong></td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td><strong>Successful mediation</strong></td>
<td>55.0%</td>
<td>73.0%</td>
<td>81.8%</td>
<td>80.5%</td>
<td>80.1%</td>
<td>80.8%</td>
<td>80.5%</td>
<td>77.4%</td>
<td>78.6%</td>
<td>79.2%</td>
</tr>
<tr>
<td><strong>Unsuccessful mediation</strong></td>
<td>45.0%</td>
<td>27.0%</td>
<td>18.2%</td>
<td>19.5%</td>
<td>19.9%</td>
<td>19.2%</td>
<td>19.5%</td>
<td>22.6%</td>
<td>21.4%</td>
<td>20.8%</td>
</tr>
</tbody>
</table>

*May - June 2003
Seven Essential Behaviours for Successful Business Relationships

A major study of Australian business leaders on behalf of the Victorian Small Business Commissioner revealed that the most successful companies - big and small - acknowledge that an integral part of success is their relationships with other businesses.

The research highlighted seven main characteristics for successful business relationships. Each is integral to a long term, mutually beneficial and sustainable relationship.

ALIGNMENT is critical because a business should enter and maintain relationships with other businesses that demonstrate a commitment to a similar set of values to its own.

COMMITMENT is necessary to build a long-term business relationship as it provides a solid basis for trust between the parties. Successful relationships are built and flourish by an investment in effort.

MUTUAL INTERESTS ensures that business relationships work towards a common goal of achieving a profitable and sustainable outcome.

COMMUNICATION must be clear, transparent and frequent to ensure that everyone fully understands the others position, obligations are met and any issues or problems are raised quickly.

ACCOUNTABILITY AND RESPONSIBILITY are essential factors in the success of a business relationship as all parties need to agree to their obligations and responsibilities and be accountable to them at all times.

PROFESSIONAL CONDUCT is vital in all interactions between businesses and should be a prerequisite for any B2B relationship. A professional attitude can be the difference between a successful relationship and another not getting off the ground.

PRE-AGREED DISPUTE RESOLUTION procedures ensure that there is rapid and satisfactory resolution of any issues. It is essential that all parties agree on resolution procedures at the start of the relationship so that any disputes can be dealt with quickly and cost effectively and enable the relationship to continue with minimum disruption.

(From the report - Forming and Maintaining Winning Business Relationships - published by the Victorian Small Business Commissioner in 2007. The full report is available on the Office website www.sbc.vic.gov.au. The Office continues to endorse these principles.)
Paper made from recycled material