



Victorian
Small Business
Commission

VICTORIAN SMALL BUSINESS COMMISSION

ANNUAL REPORT 2022



Victorian Small Business Commission
September 2022
Annual Report 2022

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**Victorian
Small Business
Commission**

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

Dear Minister

Annual Report 2022

I am pleased to present to you the Annual Report 2022 on the operations of the Victorian Small Business Commission, covering the period 1 July 2021 to 30 June 2022.

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

Lynda McAlary-Smith
Victorian Small Business Commissioner



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01

Commissioner's Message

2021–22 was another difficult year for Victorian small businesses.

COVID-19 and the accompanying public health measures continued to impact the ability of businesses to trade, and this was exacerbated by acute labour and skills shortages experienced across many industries and throughout Victoria.

The Omicron wave of COVID-19 in late 2021 and early 2022 significantly changed consumer behaviour – from choosing to not travel or see live performances to avoiding cafes, shops and restaurants. Small businesses invariably bore the brunt of this.

We focused our efforts on identifying and responding to their evolving needs, promoting vital information on their rights, obligations and legislative change, and providing access to our free or low-cost dispute resolution services.

The Victorian Government's reintroduction and extension of the Commercial Tenancy Relief Scheme drove significant demand for the Victorian Small Business Commission's (VSBC) services in 2021–22.

We responded to 3,171 Victorians who applied for our specialised help to resolve a dispute, with over 1,530 of these matters relating to rent relief. This is a 68 per cent increase on the total number of applications received before the pandemic struck.

Forty-three per cent of all matters were resolved by the expert team at the VSBC – providing quick and effective dispute resolution without the need for formal mediation. Where matters did progress to mediation, 70 per cent were successfully resolved. These exceptional results demonstrate the immense value of the services that our dedicated, skilled and experienced staff and mediators provide to our small business communities.

In 2022, we reviewed our services and made the commitment to continue to provide virtual mediations on an ongoing basis. This mode of service delivery, originally necessitated in response to COVID-19, has brought with it marked efficiencies, uninterrupted service delivery and a wealth of positive customer feedback.

Since commencing as Commissioner on 30 August 2021, a core priority for me has been increasing the awareness of the VSBC's services within the community and raising the small business voice within government. The introduction of our new VSBC Connect series of stakeholder engagements in 2022 followed the success of monthly Commercial Tenancy Relief Scheme Implementation Workshops, which I implemented and chaired in 2021.

Small business consultation has been strengthened by these efforts and continuing to improve on this will remain a key focus going forward.

The workplace challenges presented by COVID-19, international supply chain disruption and inflationary pressures have also reinforced the importance of safe workplaces within Victoria for all workers – including sole traders. My role representing small businesses on the Occupational Health and Safety Advisory Committee to WorkSafe Victoria is an important avenue to ensure that all workplaces – from the largest to the smallest – are safe.

In 2022 we implemented a new online help portal, helping to achieve our goal of continual improvement and excellence in dispute resolution. We now have a fit for purpose, robust and reliable case management system, giving us increased capability to protect the commercially sensitive and confidential information with which we are entrusted while ensuring that we can consistently deliver our services.

Our portal has enhanced the user interface and streamlined the application process. It will also enable us to resolve disputes more efficiently while providing real time analysis and reporting to provide a strong evidence base to shape and inform our advocacy efforts.

“ *In 2022–23 we will continue to support small business owners working through recovery towards renewal. This is why we have focused — and will continue to focus — on helping to achieve a fair and competitive trading environment in whatever is the ‘new normal’ for those businesses.*

One of my key focuses going forward will be increasing engagement and awareness raising among small businesses in the building and construction industry – a significant cohort of Victoria’s small business sector. The challenges they face are complex. I’m committed to working with the sector and government to explore how we can encourage those who are in business disputes to seek our help in navigating those challenges.

Governments and the community have rightly been focused on the importance of supporting our small businesses during the pandemic and I am committed to ensuring that we sustain and nurture that passion, support and empathy for our small business people.

I thank the Minister for Small Business, the Hon Jaala Pulford MP, for her support of our office throughout the year and acknowledge with appreciation the ongoing assistance provided by the Department of Jobs, Precincts and Regions. Special thanks also to the VSBC staff and panel mediators who have continued to deliver their highly valued services impartially and with passion, purpose and deep compassion for all who they assist.



Lynda McAlary-Smith
Victorian Small Business Commissioner



Year at a glance

3,171

applications for help to resolve a dispute

1,215

mediations held

520,684

visits to our website

19,775

phone and email enquiries

43%

of matters resolved before
reaching mediation

70%

success rate for
completed mediations

88%

client satisfaction rate for
our mediation service

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 businesses in Victoria. We have a range of functions under the Act, including dispute prevention and resolution. We also have statutory dispute resolution functions under the *Retail Leases Act 2003*, *Owner Drivers and Forestry Contractors Act 2005*, *Farm Debt Mediation Act 2011* and *Commercial Passenger Vehicle Industry Act 2017*.

In 2021–22 we continued to provide additional dispute resolution under the Victorian Government's Commercial Tenancy Relief Scheme (the Scheme), which was introduced to help address the financial pressure experienced by commercial tenants as a result of the COVID-19 pandemic. We provided our dispute resolution services for outstanding matters from the initial Scheme under the *COVID-19 Omnibus (Emergency Measures) Act 2020*, which ended on 28 March 2021, and also under the *Commercial Tenancy Relief Scheme Act 2021*, which re-introduced the Scheme on 28 July 2021. Although the Scheme ended on 15 March 2022, we continue to provide impartial mediation to help resolve commercial rent relief disputes in response to the pandemic under our other relevant jurisdictions.

KEY AREAS OF FOCUS

Engagement — connecting with Victoria's small business communities to promote the VSBC's services and encourage informed decision making

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

Advocacy — advocating on issues affecting small business people and their operating environment

Dispute resolution — providing efficient, accessible, impartial and low-cost alternative dispute resolution services for small businesses

02

Engaging with and advocating for Victoria's small business communities

In 2021–22 the continued pressures impacting many small businesses meant that effective engagement with the sector was vital. We worked with small business owners and their representatives to inform them of how to access available information, services and support, and hear from them about the issues that mattered to them the most. To achieve this, we increased our strategic use of targeted communications across multiple platforms and channels to reach Victorians in small business. We also prioritised strengthening our relationships with their trusted representatives and other key stakeholders.

Our investment in communications and engagement contributed to a steady flow of enquiries and applications for our specialised help, growth in the VSBC's social media following, a significant increase in website visits and advocacy work that was responsive to the needs of Victorians in small business.

We continued to monitor the small business environment in order to identify and understand the issues affecting Victorian small business people. We made informed representations in our advocacy for small businesses both within Victoria and nationally.

A key aspect of our stakeholder engagement work was strategically increasing knowledge sharing and connections across stakeholder networks to improve the operating environment for small businesses.

OUR KEY ACHIEVEMENTS

Our key achievements include:

- **planning and implementing targeted communications and advertising activities** to raise awareness of the VSBC's free and impartial dispute resolution services for resolving rent relief disputes in response to the pandemic
- **improving our website** by increasing the accessibility and scope of our frequently asked questions and the user experience of our online form for applying for help to resolve rent relief disputes
- **strengthening key relationships and growing our advocacy efforts** through our new engagement initiative VSBC Connect, and by providing our stakeholders with tailored content to help disseminate important information to small businesses
- **achieving 188 media mentions** across a range of industry and mainstream outlets
- **building our direct engagement with people in small business** through our 4,586 social media followers and 2,990 VSBC News subscribers
- **promoting informed small business decision making** by developing new resources guided by our work in advocacy and highlighting key issues via the Commissioner's blog
- **raising awareness of key legislative changes impacting small business** such as changes to eligibility and requirements for Victoria's reintroduced and then extended Commercial Tenancy Relief Scheme
- **developing new translated materials with our rent relief guidance in twice as many languages as the previous year** and undertaking digital in-language promotions.

ENGAGING WITH OUR STAKEHOLDERS

In 2021–22 we continued to prioritise strengthening our relationships with key stakeholders. We worked in partnership with them to ensure small businesses were aware of how to access support to deal with impacts arising from the COVID-19 pandemic. We maintained regular communication with stakeholders to update them of changes to our supports through targeted emails, editions of VSBC News as well as events, presentations and meetings.

To create new pathways into government for small business representatives, we convened a monthly Commercial Tenancy Relief Scheme (the Scheme) Implementation Workshop. This provided a unique forum for:

- asking questions, providing valued feedback and sharing experiences in relation to the application of the Scheme's regulations
- suggesting practical resources to further assist tenants and landlords in understanding their rights and obligations.

We drew on feedback gained through these workshops, in addition to ABS data, to inform the language choices for our expanded suite of translated guidance on rent relief. We also worked with our workshop attendees to develop and disseminate vital information about the Scheme to directly reach their tenant and landlord networks. The success of these workshops was the impetus for VSBC Connect, our new small business engagement initiative.

VSBC CONNECT

In 2021–22 we launched our new engagement initiative, VSBC Connect.

VSBC Connect provides a forum where we can undertake activities on topics that matter to small business, create opportunities to share resources and learnings, and workshop solutions to key issues. VSBC Connect has two streams – Small Business Friendly Council Connect for Victoria's 79 councils, and VSBC Industry Connect, which we are launching in 2022–23 for small business industry representatives.

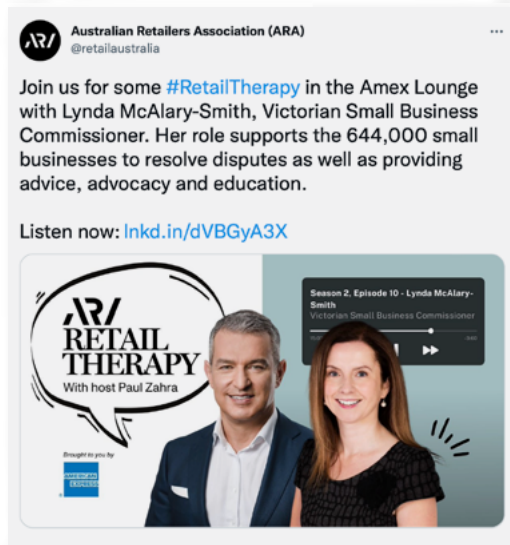
In doing so, we will:

- provide clear pathways into government for small business
- connect small businesses to the information and services they need to perform at their very best
- help inform our advocacy work
- strengthen our ties within Victoria's small business communities.



02 *Engaging with and advocating for Victoria's small business communities*

continued



In 2021-22 we coordinated close to 170 stakeholder meetings, with the Commissioner participating in many more. We met with a range of industry associations, local business networks, chambers of commerce, local councils, government agencies and other small business supporters.

We continued to directly engage landlords, tenants and other small business owners through our presentations and by becoming actively involved in webinars, panel discussions, podcasts and roundtables. In 2021-22 VSBC staff delivered 48 presentations. Of these, many focused on the Scheme's protections and supports and ways we can help, and tips for small business owners on avoiding and resolving disputes.

We valued the ongoing support of all stakeholders in 2021-22 as we continued to work together to help small business people through a challenging and uncertain period for the sector.

ENGAGING WITH REGIONAL VICTORIA'S SMALL BUSINESS COMMUNITIES

In the Commissioner's visits to regional Victoria's north east (Marysville, Alexandra, Mansfield and Benalla) and south west (Port Fairy and Warrnambool), she heard impressive stories of resilience, strength and entrepreneurship. She also learnt more about the local issues challenging small business people and discussed ways these could be addressed.

The Commissioner met with small business owners, network members, staff from local councils, chambers of commerce and rural financial counselling services, and other small business representatives – all of whom are undertaking important work to support their local business communities.

These visits were also an opportunity for the Commissioner to raise awareness of the valuable services that the VSBC provides together with broader supports available to the small business sector.

Areas of discussion included:

- **the export market** including:
 - > how this has been explored by local businesses in Port Fairy
 - > ways Global Victoria can help in taking a strategic approach and understanding the nuances in the countries where businesses choose to export
- **maximising the customer base** – how local businesses in Warrnambool have diversified their services, for example, by starting to promote the value of their offering to local clientele while still benefitting from the visitor economy
- **staffing shortages** including:
 - > how local business owners were able to recruit and retain staff by providing flexibility and training across all elements of their business
 - > ways local government areas are working together to try to align local skilled labour needs with workers arranged via the Designated Area Migration Agreement
 - > how Jobs Victoria can help
- **affordable housing shortages for staff** including:
 - > how local councils are responding, for example, by considering different options to help unlock more accommodation for short term workers
 - > how small businesses are sourcing accommodation for staff
- **business networks** including:
 - > the real need for an active business chamber in Warrnambool that is set up and driven by local businesses
 - > how resilience and ingenuity in Marysville is enabling the local business community to identify emerging opportunities for adventure travel
- **digital connectivity in the regions** including how the inability of digital networks to cope with weekend tourist numbers in the Alpine Shire is impacting small business capacity to trade
- **ways the VSBC can help.**



Top: Mansfield and District Business Association President John Gifford and Executive Officer Wes Mudge with the Commissioner outside the Mansfield Coffee Merchant

Centre: The Commissioner onsite at Port Fairy bluestone manufacturer Bamstone

Bottom: The Commissioner at Brookes Home Timber and Hardware with Moyne Shire Council's Acting Director of Economic Development and Planning Darby Lee and Mayor Cr Ian Smith

02 *Engaging with and advocating for Victoria's small business communities*

continued

BREAKING THE BIAS

International Women's Day (IWD) 2022 was a chance for the VSBC to celebrate the achievements of women in small business and spark new conversations about breaking the bias. The day was also a reminder of how important it is to continue these conversations and work together to address the disproportionate barriers and challenges women encounter.

"When we speak about women's rights, we're talking about human rights. And the change we need to see won't only benefit women – everyone benefits from a world that is free from bias, stereotypes, prejudice and discrimination. IWD brings together voices and perspectives from all over the world to say that inequality is not okay, and the challenge of tackling that is a shared one."

— COMMISSIONER LYNDAL MCALARY-SMITH

Overcoming the likeability bias

In support of IWD, the Commissioner facilitated a panel discussion on small business women and leadership. We explored 'the likeability bias' – the way society is comfortable with men being assertive leaders yet when women lead with confidence, we can like them less.

Anna McRae-Anderson and Duean White, VSBC mediators experienced in commercial dispute resolution, shared tips for overcoming the expectation of likeability in order to have those difficult yet unavoidable conversations. They also looked at the role that being vulnerable can play in resolving conflict:

"It used to be seen that expressing your feelings was a weakness, but if you avoid that and this is the crux of the dispute, then you have done very little to resolve your dispute... The best way forward is to approach conversations with curiosity."

— ANNA MCRAE-ANDERSON

"Once you are conscious of your triggers, you know to take a breath, slow down, and think about how you respond." — DUEAN WHITE

We were also joined by Luz Restrepo of Migrant Women in Business, who shared her story of surviving – and thriving – through adversity and reinventing herself as a leader and social entrepreneur. Luz talked about what it means to have women in business – how this gives them a voice and a place in the community:

"Business is power...To be a business owner is to be a leader." — LUZ RESTREPO

The Commissioner talked about how a key role of the VSBC is to provide an inclusive and accessible dispute resolution service for all Victorians. By providing subsidised mediations, we can remove some of the barriers to accessing justice.

"We need to keep the conversation going about other biases that can impact a party when they are in conflict and work out how we can provide support to help level the playing field."

— COMMISSIONER LYNDAL MCALARY-SMITH

OUR WEBSITE

In 2021–22 we recorded 520,684 visits to the VSBC website, which is a 47 per cent increase on the previous financial year. The rise was largely driven by the need for pandemic-related information about small business supports.

There was strong demand for information about the Commercial Tenancy Relief Scheme's protections and supports following its reintroduction and extension. This included:

- our news updates clarifying changes to eligibility and requirements
- our suite of easy-to-understand and easy-to-search FAQs to assist tenants and landlords in understanding and following the regulations
- clear guidance on how to request rent relief and negotiate an agreement in good faith, and how to access our updated, user-friendly online smart form for applying for our free dispute resolution services.

WORKING WITH THE MEDIA

We achieved 188 VSBC media mentions in industry and mainstream media outlets across Victoria as well as nationally. A significant amount of coverage was on our rent relief supports under the reintroduced Commercial Tenancy Relief Scheme, councils making important commitments to their local small businesses through our Small Business Friendly Council initiative and the Commissioner's visits to regional Victoria.

Highlights include the following:

- **Inside Small Business** reported on the appointment of Lynda McAlary-Smith to the role of Commissioner, and how her key focus will be to provide strong and collaborative leadership to the VSBC team so we can best support small businesses in getting through to the other side of the pandemic.
- The **Herald Sun** reported on more businesses being able to access protections and supports under the reintroduced Scheme, including the VSBC's mediation service for helping to negotiate a fair commercial rent relief agreement.
- **Jeweller Magazine** reported on the extension of the Scheme, and how the VSBC's mediation service can help small business jewellers and landlords who cannot agree on rent relief.
- **The Australian** reported on the VSBC seeing a 97.6 per cent rise in the number of applications for help to resolve commercial disputes in 2020–21, an increase that was largely due to the 3,704 applications we received in relation to rent relief.
- **Mortlake Dispatch** reported on Moyne Shire Council signing the Small Business Friendly Council Charter and pledging to achieve best practice standards in working with local businesses.

“This is the next step in showing our ongoing commitment to small businesses who are the driving force of communities and [this] gives those businesses confidence in working with Moyne...as a council it's important [that] we do everything we can to work with and support our small businesses.”

— **MOYNE SHIRE MAYOR CR IAN SMITH ON SIGNING THE SMALL BUSINESS FRIENDLY COUNCIL CHARTER**

— **SmartCompany** reported on:

- > construction industry challenges that are keeping small businesses from stepping forward for help when they need it, including businesses under fixed price contracts that are struggling due to the costs for materials increasing and extended work delays
- > how the Commissioner is working with key stakeholders to raise awareness of the VSBC's dispute resolution services that can help builders to avoid insolvency or costly and drawn-out litigation.

“We know that culturally, within building and construction, there can sometimes be a reluctance for small contractors to actually call out some of the conduct of not getting paid...I think there's definitely the opportunity to dive into that.”

— **COMMISSIONER LYNDAL MCALARY-SMITH SPEAKING WITH SMARTCOMPANY**

02 *Engaging with and advocating for Victoria's small business communities*

continued

- **ABC South West Victoria's** Breakfast with Jeremy Lee program interviewed the Commissioner during her two-day visit to Port Fairy and Warrnambool, where she spoke of:
 - > local businesses being significant contributors to many aspects of the local economy, from agriculture and tourism through to seafood manufacturing and construction
 - > the challenges that a lot of small businesses are dealing with, from grappling with debt accrued during the pandemic to the continued pressures of staffing and accommodation shortages
 - > how the VSBC can be a conduit for local business owners who are unsure of where to turn, and how our dispute resolution services can help to preserve business relationships and support vibrant communities to thrive.
- **Yea Chronicle** reported on the Commissioner's visit to Marysville, Alexandra, Mansfield and Benalla, where she spoke of:
 - > how growing local business networks and chambers can give small businesses a voice into local, state and federal governments on a range of issues
 - > the value of upskilling existing employees, exploring selling beyond the local region and building on the visitor economy while preserving the true spirit of the community
 - > the VSBC's dispute resolution services, and the importance of local businesses reaching out to their trusted business advisor, accountant, bookkeeper or industry association at a point where their advice can make a difference.

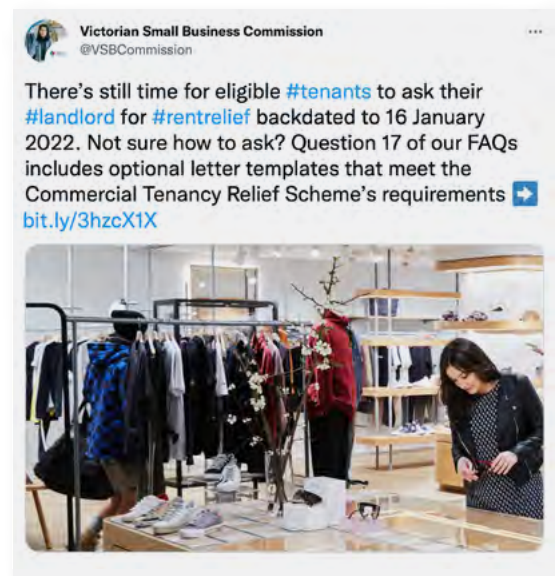
"It's okay to reach out for help...You're not the only one. There are a lot of businesses that are struggling and there is no shame in putting your hand up and saying you need help."

- **COMMISSIONER LYNDAL MCALARY-SMITH SPEAKING WITH YEA CHRONICLE ABOUT THE FREE MENTAL HEALTH SUPPORTS THAT SMALL BUSINESS OWNERS CAN ACCESS THROUGH PARTNERS IN WELLBEING**

ENGAGING VIA SOCIAL MEDIA

By 30 June 2022 our following across the VSBC's Twitter, Facebook, LinkedIn and Instagram profiles had grown to 4,586, which is a 29 per cent increase on the previous financial year.

Our social media platforms provided valuable channels to promote our services, resources and guidance in avoiding and resolving disputes, as well as broader messaging about small business initiatives, programs, grants and Victorian Government COVIDSafe requirements.





COMMUNICATING LEGISLATIVE CHANGES

An important part of the VSBC's communications strategy is to ensure small businesses have accessible and up-to-date information about their rights and responsibilities regarding legislation within the VSBC's jurisdiction.

In 2021–22 our major focus in this area was communicating information about the reintroduction of the Commercial Tenancy Relief Scheme (the Scheme) in July 2021 and subsequent extension in January 2022. We developed and delivered a broad range of awareness-raising initiatives to build understanding, including:

- targeted stakeholder emails, VSBC news updates, fact sheets and social media posts with important updates about the Scheme, including:
 - > the announced reintroduction and subsequent making of regulations
 - > our suite of resources and services to assist
 - > the mandatory reassessment of rent relief and the impact on small business tenants who do not comply
 - > the final date for tenants to request backdated rent relief
 - > the extension of the Scheme
- an updated step-by-step process and scenario showing how tenants and landlords can negotiate a fair rent relief agreement and access free and impartial help to resolve a rent relief dispute
- an updated online smart form for requesting help to resolve a dispute under the Scheme, with additional guidance for parties on the information they now needed to provide to the VSBC
- a new and expanded suite of FAQs explaining the Scheme's regulations with easy-to-navigate tables, plain English guidance and links to more information
- an updated suite of optional letter templates for requesting rent relief, responding to a request and applying for a binding order for rent relief
- a new and expanded suite of web pages with our translated rent relief guidance in Arabic, Dari, Greek, Italian, Simplified Chinese and Vietnamese

- in-language newsletters to directly engage culturally and linguistically diverse business and community leaders and their supporters about our new translations
- a fact sheet for landlords explaining their rights and obligations under the Scheme
- functional advertising to promote our supports, including targeted boosting of Facebook, Twitter and Instagram posts and Google search campaigns.

In the lead up to the extended Scheme ending on 15 March 2022, the VSBC undertook further capability-building activities to increase understanding of:

- the steps we recommend tenants take as soon as possible if they were having difficulty paying rent
- our continued support including guidance in negotiating rent relief and access to free help to resolve a rent relief dispute after 15 March 2022.

We increased our news reach by 27 per cent in 2021–22, with 2,990 subscribers to VSBC News. Our newsletter served as an important tool for communicating messages from the Commissioner on key changes to requirements and supports under the Scheme.

We also maximised opportunities to raise awareness of other legislative changes affecting small business via social media, including:

- changes that will take effect on 1 July 2022 in relation to the National Minimum Wage and award minimum wages, superannuation guarantee contributions and the requirement for Commonwealth government agencies to adopt eInvoicing
- COVIDSafe settings in Victoria
- changes to the Franchising Code that came into effect on 1 July 2021 to improve fairness and transparency, and make sure people entering into agreements are protected.

02 *Engaging with and advocating for Victoria's small business communities*

continued



SMALL BUSINESS FRIENDLY COUNCIL INITIATIVE

We launched Victoria's Small Business Friendly Council (SBFC) initiative in May 2019. Our intent was to form enduring partnerships with local councils so we could work together to identify and respond to the needs of local small businesses and support them to thrive.

Councils that sign our SBFC Charter are committing to work with us to:

- help small business to manage disruptions to trade caused by infrastructure works
- support the growth of local business networks
- work towards faster permit approvals for people looking to start a small business in the area
- promote prompt payment of small business supplier invoices
- develop clear and accessible information for people in small business and promote the VSBC's supports
- open and maintain lines of communication between councils and the VSBC.

In 2021–22 we welcomed the following councils to the SBFC fold, taking the total number of participating councils to 65:

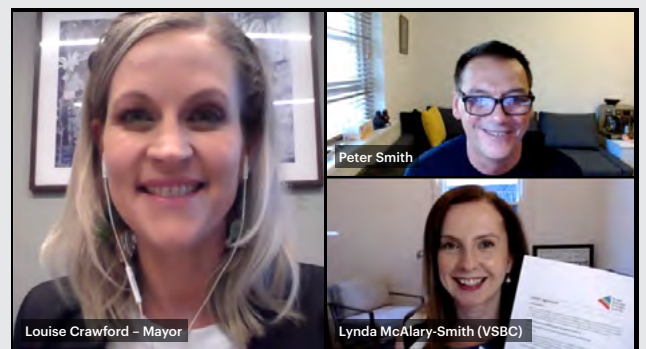
- Campaspe Shire Council
- City of Port Philip
- Wellington Shire Council
- Brimbank City Council
- Moyne Shire

Above right: City of Port Phillip Council CEO Peter Smith and Mayor Cr Louise Crawford joining the Commissioner in committing to support local businesses to thrive

Right: Wellington Shire Council CEO David Morcom and Mayor Cr Garry Stephens meeting with the Commissioner to make the SBFC pledge

The VSBC works closely with councils who have joined our initiative to ensure they are meeting their Charter commitments. We work closely with economic development teams within councils to address any areas of concern. We also communicate regularly with Victoria's councils to ensure that our communications, engagement and advocacy work is driven by the local business needs across the state.

Through our discussions with councils in 2021–22, we were able to gain a more in-depth understanding of the key small business issues. SBFC Connect is part of our response – a forum for workshopping issues with councils and showcasing solutions generated by both local and state government.



Supporting you to support small business wellbeing

With continued pressures across the sector contributing to significant stress among many small business owners, we focused our first SBFC Connect forum on small business wellbeing.

Yarra City Council's Economic Development Coordinator Simon Osborne shared his team's approach to business engagement and wellness throughout the pandemic.

The council partnered with the Department of Jobs, Precincts and Regions, Fair Work Ombudsman and a team of translators to carry out in-person interactions between local businesses and Small Business Ambassadors. The initiative involved:

- completing more than 2,500 COVIDSafe visits
- holding more than 1,400 small business sit-down meetings to connect over coffee and find out which supports were needed
- distributing 9,400 handbooks on who to engage with at the council on a range of small business matters – from planning to parking
- raising awareness of business grants, mental health supports and government services.

Simon discussed the ongoing support that the council is providing and their efforts to maintain connection and community, including:

- an outdoor activation funding program that's codesigned with small businesses, for small businesses
- seed funding that supports businesses in getting their initiatives off the ground
- an online series of peer-to-peer training sessions on topics such as marketing and promotion
- research on the longer-term outlook for small businesses and how the council can best support them through the changes to come.

The team from Partners in Wellbeing spoke about the importance of early referrals. They also discussed their free supports that are tailored for small business people, including access to trained business advisors, financial counsellors and wellbeing coaches during and outside of standard business hours.

Responding to the small business impacts of housing shortages

At our second SBFC Connect forum, we explored the pressing issue of housing shortages for local workers and the crucial role local councils can play in responding.

Moyne Shire Council's Acting Director of Economic Development and Planning, Darby Lee, discussed the council's initiatives in response to the housing shortages impacting small businesses. These responses include taking part in a Regional Workforce Pilot and implementing a Housing Action Plan that includes:

- incentivising short-term rentals to change to long-term
- a summer workforce initiative where the council is making their school camp facility available to meet the accommodation needs of seasonal workers, particularly hospitality workers
- a longer-term measure of incentivising the splitting of larger blocks
- developing temporary accommodation by installing cabins in Koroit and Mortlake.

Director of Economic Recovery and Place-Based Policy at Regional Development Victoria, Douglas Galbraith, spoke more about the Regional Workforce Pilots. These pilots are testing targeted and localised solutions to housing and workforce challenges in areas of high demand, namely Robinvale, the Great South Coast, Ararat and the Alpine Shire.

The work includes an in-depth analysis to better understand the:

- place-based drivers specific to the region – which can include housing, transport, liveability and amenity, and diversity of opportunities
- sector-based drivers – which can include wages and conditions, recruitment and retention, sector accommodation issues and access to overseas labour
- skill-based drivers – which are the workforce skills that are needed for key sectors.

These pilots are now being evaluated for reporting back to government with recommendations.

“We want to see rural and regional Victoria as not just staying static or continuing to be okay but really thriving and driving the Victorian economy forward.”

— DOUGLAS GALBRAITH

“I found the discussion extremely valuable. All of the really effective and positive examples discussed had one thing in common – that local government area ownership of the problem is integral to success.”

— PAULA CRUMMY, ACTING ECONOMIC DEVELOPMENT AND INVESTMENT COORDINATOR, INDIGO SHIRE COUNCIL

Collaborative approach to the creation of new resources for small businesses

Under the Charter, councils agree to advise the VSBC where there is an opportunity to support their local businesses to avoid disputes. With many businesses looking to maximise the use of outdoor space to increase their trading opportunities throughout the pandemic, there was potential for businesses to disagree on the best use of the available space.

Staff at Yarra City Council and Maribyrnong City Council shared with us insights into how small businesses in their area had managed to successfully share space. We were able to combine these practical examples with our knowledge of dispute resolution to create a new resource for councils and businesses on how to negotiate the sharing of outdoor space.

To access our new resource, go to vsbc.vic.gov.au.

Over 95 per cent of councils surveyed in 2021–22 said that they promoted VSBC resources on rent relief among their networks. This enabled us to reach over 50,000 more small businesses, helping to amplify our messaging.

02 *Engaging with and advocating for Victoria's small business communities*

continued

PROMOTING GUIDELINES FOR SMALL BUSINESS DISRUPTION

During the year we continued to advocate on behalf of small businesses with major Victorian Government development agencies, councils and other bodies to address impacts arising from disruptive infrastructure projects.

As many of the public health restrictions in response to the pandemic eased and businesses resumed trading, some small business owners again faced considerable disruption to their operations as a result of infrastructure works.

We continued to promote the use of our *Victorian small business engagement guidelines*, which assists project managers in working with small businesses and other key stakeholders to develop strategies to mitigate the negative impacts that construction works can have on trade.

Councils signing up to our Small Business Friendly Council initiative pledge to support small businesses in managing these negative impacts. This includes using our *Victorian small business engagement guidelines* when planning and undertaking new works and promoting them to other agencies looking to undertake projects in their area. In our work with councils to review how they had met their commitments under the initiative, we were encouraged by the uptake of the guidelines in council-led projects.

The commitment councils make also involves providing affected businesses with our small business owner's *Guide to managing disruption*. Feedback from councils that have distributed our guide indicate that it has been well received by businesses and has helped them to better prepare for and manage impacts on their operations.

With the coming year seeing the continuation of level crossing removals and major roadworks, and the start of early construction activities for the Suburban Rail Loop, supporting people in small business through these projects will increasingly be a priority for the VSBC.

In 2021-22 we also continued to advocate to councils and other relevant stakeholders on individuals issues raised with us by traders whose operations were adversely affected by infrastructure works.



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



A CLOTHING AND ACCESSORIES BOUTIQUE IN REGIONAL VICTORIA

Retailer Kirana's small business was being negatively impacted by infrastructure works being undertaken by her local council. Having heard about the VSBC's services from her tax advisor, Kirana emailed the VSBC with her concerns. She explained that she hadn't been provided with enough notice from the council to prepare and make plans to effectively manage the disruption to trade.

The VSBC's advocacy team member spoke with Kirana, who was frustrated over having lost clear footpath access to her store in the lead up to the local racing carnival – her peak trading period.

The VSBC also spoke with the council's economic development team member to learn more about the situation and to find out why the business hadn't been notified early on or sent any meaningful communications in relation to the work. These are actions that the council is obliged to do since signing our Small Business Friendly Council Charter of commitments.

The economic development team member explained that processes were in place where the council's team that looks after building surveying gave her team sufficient notice of upcoming works so that they could engage with their local business community. In this instance, the process hadn't been followed.

The Charter commitments require cross-disciplinary support within councils. Regular engagement between the VSBC's senior leadership and councils is vital to ensure that these requirements remain a priority.

The Commissioner met with the council CEO to remind the council of their obligations, and to discuss the importance of the CEO generating top-down support for the Charter commitments.

The Commissioner walked the council's new CEO through the Small Business Friendly Council initiative, the Charter, and our guidance in managing disruption that's tailored for project managers and small business owners. In addition, the council met with Kirana and showed her how our small business owner's *Guide to managing disruption* can help her to plan customer communications and develop a disruption mitigation plan. Since these meetings, there have been no further complaints from Kirana or other small business people in the local government area.

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

02 *Engaging with and advocating for Victoria's small business communities*

continued

PROMOTING INFORMED DECISION MAKING

One of our key areas of focus that drives our advocacy efforts is encouraging small businesses to make informed decisions so they can avoid disputes. In 2021–22 we developed a range of resources to educate and inform small businesses and their trusted representatives on relevant issues.

This included a series of blogs from the Commissioner on topics such as:

- how local and state governments are responding to the small business impacts of housing shortages
- ways local councils can support small business wellbeing
- how south west regional Victoria's small business community is responding to key issues impacting the region
- efforts to address the disproportionate barriers encountered by women in small business
- guidance for small businesses in:
 - > accessing free financial counselling, wellbeing coaching, business advice and mentoring
 - > becoming involved in the Go Local First campaign
- how small business owners can attract and retain a rich and diverse workforce and contribute to achieving gender pay equality for their sector
- tips for addressing challenging behaviour when it comes to vaccination checks
- guidance for small business representatives in:
 - > recognising signs that a small business owner might be going through a tough time
 - > having regular, meaningful conversations
 - > encouraging them to access professional supports if needed.

We expanded the scope of information available on our website in response to identified small business needs and the changing environment. This included publishing a wealth of up-to-date guidance on the Commercial Tenancy Relief Scheme and how small business owners can:

- negotiate the sharing of outdoor space with neighbouring businesses as public health restrictions in Victoria eased
- access free expert advice to support them in deciding whether to close their business, including information on new insolvency options
- make the most of their online mediation session
- take proactive steps to help ensure they get paid on time
- access free mental wellness supports under Small Business Victoria's Headway initiative.





SUPPORTING MENTAL HEALTH AND WELLBEING

In 2021–22 we undertook the VSBC Mental Health Project to support the mental wellness of the people who access our services, and build on the knowledge and skills of our staff to provide this support.

The project included:

- developing the VSBC's Policy for Supporting Client Mental Health, which sets out how we will:
 - > offer information about available mental health supports
 - > make changes wherever possible to our dispute resolution processes to help ensure parties, support people and representatives can be actively involved
- developing the VSBC's *Guide to providing mental health support*, in consultation with Beyond Blue, to provide VSBC staff and mediators with information and practical guidance in:
 - > identifying situations where a person may be experiencing mental health challenges
 - > assisting the person to access professional supports that can help
 - > practising self-care
- providing our team with a Beyond Blue information session and Lifeline training to further their understanding of ways to assist in supporting mental wellness.

We will continue consulting with VSBC staff and mediators to identify mental health information and training needs.

We are also a member of the Technical Advisory Group for the Small Business Wellbeing Program, which is chaired by Financial Counselling Victoria. The program supports small business owners impacted by the pandemic with integrated mental health services, financial counselling and business advice. These supports are provided through wellbeing clinicians embedded in industry and regional peak bodies, and the Partners in Wellbeing helpline – a free service that we actively promoted through our communications and engagements during 2021–22.

As a group member, we help to:

- advise on the development of the program's supports to better meet small business needs
- identify systemic challenges confronting small business that require broader advocacy and policy responses
- communicate the program's supports to small businesses
- ensure the program is effective in responding to the diverse needs of small business people, taking into account the sector, location, cultural context and business-family inter-relationship.

NATIONAL SMALL BUSINESS COMMISSIONER MEETINGS

The Commissioner continued to meet bi-monthly with state small business commissioners and the Australian Small Business and Family Enterprise Ombudsman. This forum provides unique opportunities to consider issues impacting small businesses and solutions to local and national issues, and share information on key priorities and initiatives for the benefit of small business.

In 2021–22 the forum provided a valued space for sharing the impacts of the COVID-19 pandemic on small businesses across the country and for supporting each jurisdiction as they responded to the changing nature of the pandemic across the year. The independence and impartiality of the commissioners and Ombudsman was critical to this.

In a year of significant natural disasters across some regions of the country, the ability to share ideas, resources and lessons learned in supporting small businesses and their communities through this time was invaluable.

The VSBC also takes part in national strategy, communications and dispute resolution forums to exchange knowledge and discuss best practice approaches to supporting small businesses.

02 *Engaging with and advocating for Victoria's small business communities*

continued

PROMOTING FASTER PAYMENTS TIMES FOR SMALL BUSINESSES

Payment times and cashflow issues remain a major issue for many small businesses. During the year, these issues were particularly critical as many small businesses struggled to service deferred debts that were becoming payable, including rent and taxation obligations.

We urged larger businesses and local councils to follow the Victorian Government's lead by making a commitment to pay all outstanding supplier invoices within 10 business days. We also published updated guidance on our website, including practical tips on:

- what small businesses can communicate to their customers to increase the likelihood of their invoices getting paid on time, with links to more information from the Australian Taxation Office
- how to follow up an invoice that hasn't been paid with the help of Small Business Victoria's resources
- how the VSBC can assist in resolving the matter through our quick, effective and impartial dispute resolution services.

MONITORING GOVERNMENT FAIR PAYMENTS

The VSBC undertook a 2021–22 review of compliance with the Victorian Government's Fair Payment Policy in consultation with Small Business Victoria.

The policy, introduced in 2004, initially required Victorian Government departments and certain agencies to pay invoices with a contract value of less than \$3 million within 30 days of receiving the invoice.

From 1 January 2021, the policy was amended to require all Victorian Government departments and applicable agencies to pay invoices with a contract value of less than \$3 million in 10 business days and insert fair payments clauses into new contracts of this value.

Departments and applicable agencies are liable to pay penalty interest on payments that are not made within 10 business days, at the initiation of the supplier.

In 2021–22 we wrote to all nine departmental secretaries to request key data on invoice payments from each department and their applicable agencies within each portfolio area.

Respondents reported that 1,586,144 invoices relating to contracts under \$3 million were paid (see Figure 1). Sixty-nine per cent of these invoices were reported as having been paid within 10 business days, with an average payment time of 16.21 calendar days.

Reasons provided for not meeting the 10 business day payment requirement include financial systems not being able to track performance or account for issues, for example, where there is a dispute over goods or services provided or an invoicing error, or where an invoice is provided late.

We are committed to working closely with departments and key agencies to help improve compliance with the policy and ensure faster payment times for people in small business.

FIGURE 1

Payment of invoices for contracts less than \$3 million in 2021–22

	Invoices (<\$3m)	Average calendar days taken to pay invoice	Invoices paid within 10 business days (%)
Departmental core	626,270	16.25	79
Agencies	959,874	16.17	62
Total	1,586,144	16.21	69



CONTRIBUTING TO CONSULTATIONS, REVIEWS AND INDUSTRY FORUMS

Our monitoring function involves reviewing relevant new legislation and policies that may impact on small business. In line with this function, we contributed to several state and national consultations and reviews, including for the development of legislation to reintroduce the Commercial Tenancy Relief Scheme and to amend the *Farm Debt Mediation Act 2011*.

Importantly, we also promoted opportunities for small businesses to speak up and have their say on issues affecting their operating environment.

Our regular meetings with bodies such as Small Business Victoria, other state commissioners and members of the Federal Regulatory Agency Group also provide opportunities to exchange information, contribute to policy, and discuss small business issues and ways to advocate for change. We also regularly participate in a range of industry forums including the:

- Council of Small Business Organisations Australia Member and Stakeholder Roundtable
- Australian Competition and Consumer Commission Small Business and Franchising Consultative Committee
- Australian Taxation Office Small Business Stewardship Group.

RAISING AWARENESS OF OPPORTUNITIES FOR SMALL BUSINESS OWNERS TO MAKE VALUED CONTRIBUTIONS TO CONSULTATIONS

In 2021–22 we continued to promote consultation opportunities to small businesses, including opportunities to contribute to developments in government policy and legislation that had the potential to impact their business. We used our social media platforms to raise awareness of a broad range of opportunities, which included providing feedback on:

- the Australian Government's consultation paper for a Business eInvoicing Right, where businesses would be legally obliged to adopt and send e-invoices when requested by a trading partner
- the Victorian Government's:
 - > Secure Work Pilot Scheme, which seeks to improve the economic security of Victorian casual and contract workers in certain occupations
 - > Draft Primary Production Adaptation Action Plan, which seeks to address climate change risks facing primary industries
 - > directions paper for the Visitor Economy Master Plan, which is Victoria's strategy to drive tourism development over the next 10 years
- the Australian Competition and Consumer Commission's Digital Service Platform Inquiry, which seeks to examine markets for the supply of digital platform services
- the Victorian and Equal Opportunity and Human Rights Commission's small business resources to help achieve workplace gender equality
- the Australian Small Business and Family Enterprise Ombudsman's *The Show Must Go On* interim report, which seeks to explore potential solutions to insurance issues experienced by Australia's amusement, leisure and recreation sector
- WorkSafe Victoria's:
 - > proposed compliance code for communicating occupational health and safety across languages, which seeks to help employers and employees across a range of industries to more easily comply with the *Occupational Health and Safety Act 2004* and *Occupational Health and Safety Regulations 2017*
 - > proposed Occupational Health and Safety Amendment (Psychological Health) Regulations, which seek to better prevent workplace psychological hazards and injuries.

03

Resolving small business disputes

The VSBC provides alternative dispute resolution services to help resolve a broad range of commercial disputes. These include disputes between:

- two businesses
- a small business and a government agency or department
- a franchisee and franchisor
- a commercial tenant and landlord
- an owner driver and hirer
- a farmer and creditor
- a taxi driver and operator.

Our services include preliminary assistance, where our specialised dispute resolution officers try to resolve disputes promptly, early on. Our impartial and low-cost mediation service is offered where a resolution cannot be reached.

OUR DISPUTE RESOLUTION SERVICES

We work with parties to resolve disputes as quickly and simply as possible, without the need for expensive and stressful legal action.

Information and education

The VSBC provides people in small business with the resources and guidance that they need to avoid disputes, as well as tips for resolving disputes themselves directly with the other party. We do this by providing comprehensive, up-to-date information via our website, sharing news and social media content, undertaking a broad range of engagement activities and making direct contact with businesses in person, via email and phone.

In 2021-22 our team responded to 19,975 phone and email enquiries, increasing from 19,421 in the previous year. The majority of enquiries related to tenant and landlord rights and obligations under the Commercial Tenancy Relief Scheme – from tenants seeking guidance as to whether they were eligible to landlords asking for our help in situations where their tenant was refusing to pay rent.

“...I made a couple of phone calls to VSBC to get a couple of specific details ironed out. On both occasions the customer service staff were simply fantastic. Not only courteous, understanding and sympathetic, but also clear and supportive in their responses. I have no choice but to take the time and leave these people with great feedback, because now more than ever before, they really deserve the credit.”

— VSBC GOOGLE REVIEW

Dispute applications we received

In 2021–22 we received a total of 3,171 applications for our help to resolve a commercial dispute, demonstrating the continued need for our specialised support. Application numbers remained significantly higher than pre-pandemic levels, with an increase of 68 per cent on the total number of applications received in 2018–19 ($n = 1,882$).

Over 48 per cent of matters related to rent relief ($n = 1,530$), 875 of which were assessed as eligible for the Scheme's protections and supports. We also received an additional 655 applications to resolve pandemic-related disputes over rent relief that were not eligible for the Scheme, for example, where the tenant did not meet the required reduction in turnover for the relevant test period. We helped to resolve these matters under our retail leasing ($n = 634$) and general business-to-business ($n = 21$) dispute resolution functions.

Compared to the previous year, applications under the *Retail Leases Act 2003* decreased by 24.8 per cent, mostly due to a fall in applications relating to rent relief, while those under the *Small Business Commission Act 2017* rose by 2.5 per cent. We saw an 11.1 per cent increase in applications under the *Farm Debt Mediation Act 2011* and a 66.7 per cent increase in applications for disputes under the *Owner Drivers and Forestry Contractors Act 2005* (see Figure 2).

FIGURE 2 Applications received 2017–18 to 2021–22

	2017–18	2018–19	2019–20	2020–21	2021–22
Commercial Tenancy Relief Scheme*	N/A	N/A	877	2,407	875
<i>Retail Leases Act 2003</i>	904	1,040	886	2,056	1,554
<i>Small Business Commission Act 2017</i>	700	785	799	680	701
<i>Owner Drivers and Forestry Contractors Act 2005</i>	44	23	26	12	20
<i>Farm Debt Mediation Act 2011</i>	54	34	31	18	20
<i>Commercial Passenger Vehicle Industry Act 2017</i>	1	0	0	2	1
Total disputes	1,703	1,882	2,619	5,175	3,171
Specialist retail valuer appointments	133	132	121	189	166
<i>Farm Debt Mediation Act 2011</i> exemption and prohibition certificates	42	33	34	20	13
Commercial Tenancy Relief Scheme binding orders	N/A	N/A	N/A	2	1
<i>Small Business Commission Act 2017</i> determination	0	0	0	0	1
Other**	1	27	16	9	0
Total applications	1,879	2,074	2,790	5,395	3,352

* Commercial Tenancy Relief Scheme includes eligible disputes received under the COVID-19 Omnibus (Emergency Measures) Act 2020 and the Commercial Tenancy Relief Scheme Act 2021

** Other includes categories no longer recorded

03

Resolving small business disputes

continued

OUR COMMITMENT TO CONTINUOUS IMPROVEMENT AND SERVICE EXCELLENCE

The VSBC is committed to continuous improvement and modernising how we deliver services to Victorian small businesses. In 2021-22 we took significant steps in furthering this commitment through the launch of our new case management system and embedding virtual mediations as part of our normal business practices.

New case management system

In 2022, as part of our continued digital transformation, we launched our new, secure case management system. This new system has a public-facing portal where Victorians can apply for impartial help from the VSBC to:

- resolve a dispute over a commercial matter – from retail leasing obligations to undelivered goods and services
- request a certificate – including waiver certificates for owner drivers under the *Owner Drivers and Forestry Contractors Act 2005*
- request the appointment of a specialist retail valuer.

In undertaking this important project, we worked as a team to closely review our dispute resolution processes and identify issues and opportunities for improvement. We then worked collaboratively with Deloitte, with the support of the Department of Jobs, Precincts and Regions, to develop a modern case management system.

Implementing our new system has significantly upgraded the VSBC's digital capability. We are now able to resolve disputes more efficiently with a streamlined case management system in a secure environment.

The portal has improved the customer experience by providing a new smart form that guides people in identifying the service they need and providing us with the information we require to best assist. Our portal will also allow us to leverage the intelligence and trends from enquiries and disputes to inform our work in advocacy and engagement.

To access the portal, go to vsbc.vic.gov.au.

Online dispute resolution

During the pandemic, the VSBC moved mediations from in-person to online via videoconferencing to ensure Victorians could still access our services.

In early 2022 we reviewed our changed service delivery model to find out how parties were benefitting and identify any improvements that we could make. We consulted widely, including with small business owners, landlords, our mediators and trusted advisors to small businesses.

We made available a summary paper identifying a number of key benefits of online dispute resolution, which include the following:

- **Safe** – it's a COVIDSafe method for bringing parties together for mediation
- **Accessible** – it removes the barrier and cost of travelling to a set location and parties don't need to take as much time away from their work and family
- **Calm** – taking part in a session from home or work means that mediation can be less stressful, emotions are less likely to escalate and decisions are more likely to be made on the day

Online mediations also allowed the VSBC to quickly scale up to meet the surge in demand for our services during the COVID-19 pandemic without physical resourcing or scheduling constraints.

Based on our findings, we decided to embed online mediations as part of our usual operating model while still offering in-person sessions for certain situations. This builds on the VSBC's ongoing digital transformation, which commenced with the agency's move to a paperless office in 2018. These efforts provided a strong foundation for us to respond to the challenges presented by the COVID-19 pandemic.

Supporting parties through dispute resolution

In 2021-22 VSBC mediators provided expert help to support parties throughout their mediations. This included:

- helping parties to overcome communication barriers
- letting parties know just how important it is to communicate messages in a clear, direct and upfront manner, particularly in an online environment
- advising parties that mediations can be emotional, and that speaking up to voice your perspective or position is okay and can be an important part of moving to a solution.

The VSBC took steps to help ensure parties have good financial literacy before making important decisions at mediation. Our staff who provide specialised preliminary help to resolve disputes completed training in identifying when a party might be in need of financial counselling and providing them with information to access free supports via Partners in Wellbeing. We will be monitoring the impact this has on mediation outcomes over time.

We also published a plain English fact sheet for parties to highlight the benefits of having their mediation online, tips for making the most of their session and how they can best prepare.

To download these new resources, go to vsbc.vic.gov.au.

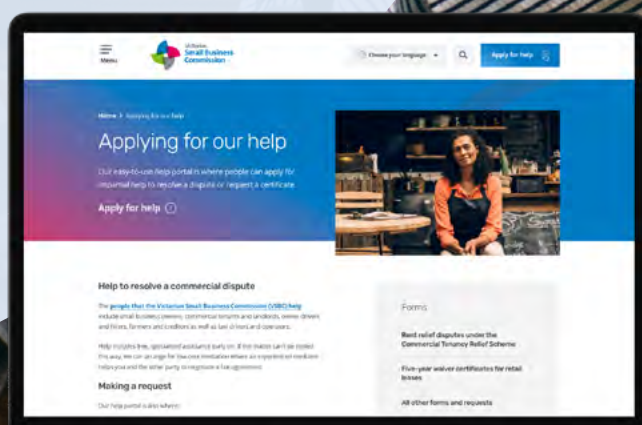
A BEAUTY SALON WHOLESALE BUSINESS IN THE BAYSIDE PENINSULA REGION

Small business wholesaler Mathilde had supplied beauty salon owners Jason and Thaddeus with the three stools, two-tier trolley and steriliser that they had ordered via her website and sent them an account invoice for payment within 30 days. When the 30 day period had ended, Mathilde sent a payment reminder and received no response. Over the weeks that followed, Mathilde sent a notice explaining that the payment was overdue and offering an extended due date, followed by a final notice. The salon owners continued to not respond.

Mathilde applied to the VSBC for help to resolve the dispute via our new online help portal, which guided her in selecting the right service and in providing us with the information we required to help resolve the matter. The VSBC's dispute resolution officer contacted Jason and Thaddeus to discuss the dispute and to try to find out why there was an issue with payment. Thaddeus responded, explaining that they had experienced a significant downturn in trade and were struggling to cover expenses, including payment of supplier invoices.

In the VSBC's discussions with the parties, Mathilde said she was happy to offer a payment plan to Thaddeus and Jason so that they could pay the invoice in three instalments over six weeks. The VSBC relayed Mathilde's offer to Jason and Thaddeus who agreed to this solution. The VSBC also spoke with Thaddeus and Jason about the free and confidential financial counselling and business advice that they could access through the Partners in Wellbeing helpline.

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



“The mediator ensured that the video-conferencing process which was very new to us, worked very efficiently and without additional stress caused by the process.”

— MEDIATION FEEDBACK

03

Resolving small business disputes

continued

**A PHYSIOTHERAPY CLINIC IN
MELBOURNE'S WEST**

Benedict had bought a treatment table for his physiotherapy clinic from an online wholesale business based in South Australia. With restrictions having eased, Benedict was relieved to be able to resume trading. After using the new table as instructed for just over a month, the electric foot control stopped working. Having one less table at the clinic immediately impacted the number of patients Benedict could assist.

Benedict tried calling wholesale business owner Asim but couldn't get through. He sent Asim four emails over the weeks that followed, where he raised the issue of the faulty foot control and the effect this was having on his turnover. He received no response.

Benedict became increasingly concerned over having to limit his services and turn away patients in need after long periods of not being able to trade. Taking the advice of a business owner in his local network, Benedict issued Asim with a formal letter of complaint. Asim responded, letting Benedict know that he would call him to discuss the matter. Two weeks passed and Benedict received no phone call or response to his follow up email.

Benedict decided to apply to the VSBC for help. On receiving Benedict's application, the VSBC's dispute resolution officer called Benedict to ask for more information, including a copy of the letter of complaint. The VSBC also called Asim to discuss Benedict's claim and attempts to make contact. Asim explained that he was heavily understaffed and was struggling to keep on top of enquiries, and that the issue Benedict was experiencing was most likely due to how the table had been used.

Following further discussion with both parties, the VSBC progressed the matter to mediation, where Benedict and Asim were supported by an independent mediator to discuss their concerns and try to reach a fair settlement. Benedict was able to talk more about his experience and use of the table at the clinic. Asim could see that the issue may be a manufacturer's fault and agreed to arrange for an assessment.

Benedict asked Asim for confirmation as to when the table would be collected from his premises, how long the repair would take and the warranty on the repair. Asim confirmed he would collect the table within the week and if assessed to be faulty, he would arrange for an urgent replacement of the foot control and return it within the following week, with the repair insured for two years.

Benedict asked to be compensated for loss of business for the three months that he had been unable to use the table, supplying a statement prepared by his accountant. After further negotiations, taking into consideration that Benedict had continued to provide some consultations, the matter was settled and Terms of Settlement were signed.

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



“[The dispute resolution officer] was phenomenal in identifying the points and creating a space to find a resolution. I am grateful for the professionalism and experience regarding this matter.”

— PRELIMINARY ASSISTANCE FEEDBACK

“The case officer was patient but firm and helped us clean up an entrenched dispute without substantial legal expense or even a mediation.”

— PRELIMINARY ASSISTANCE FEEDBACK

For our disputes completed in 2021–22, top industries were retail trade (37 per cent) and accommodation and food services (28 per cent).

Figure 3 shows the significant rise in applications in early 2020 following the onset of the COVID-19 pandemic and subsequent introduction of the Scheme, with the level remaining significantly above pre-pandemic levels throughout 2021–22.

Preliminary assistance to reach an early resolution

When we receive an application for help to resolve a commercial dispute, we engage with both parties to see if the matter can be resolved early on without needing to progress to mediation. Staff experienced in providing guidance on the legislation we administer and alternative dispute resolution can often help the parties to reach an outcome that they can both accept. If the dispute cannot be resolved this way, we explain the benefits of mediation to the parties, for example, to avoid the emotional distress, delay, cost and distraction of litigation, and encourage them to take part.

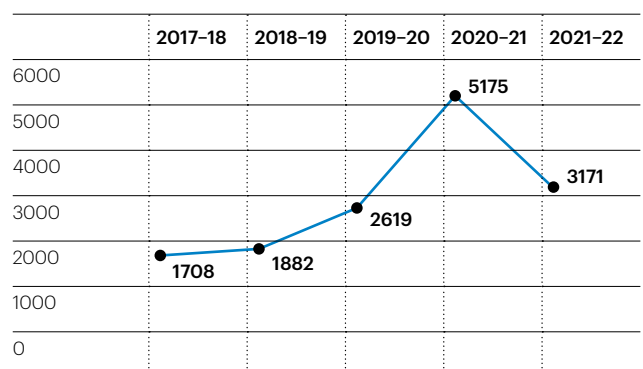
The exceptions are disputes under the *Farm Debt Mediation Act 2011* and the *Commercial Passenger Vehicle Industry Act 2017*, where our role is limited to arranging and conducting mediation.

In 2021–22 our team successfully resolved 42.9 per cent of matters early on, an increase from 38.1 per cent in the previous year.

“The support offered by [the dispute resolution officer] was thorough and professional. It gave me the confidence to stand my ground with the unfair claims being made. If I didn't have the VSBC to go to my only option would have been to engage a lawyer which is too costly following the closures of the past two years. Thank you.”

— PRELIMINARY ASSISTANCE FEEDBACK

FIGURE 3 Dispute applications from 2017–18 to 2021–22



03

Resolving small business disputes

continued

Impartial mediation

A core function of the VSBC is to bring parties together to confidentially discuss and resolve their dispute with the help of an experienced and independent mediator. The mediator guides parties in putting forward their position, discussing the issues at hand and having good faith negotiations in a safe and confidential environment. The mediation process is flexible and empowers parties to take an active role in settling their dispute on their terms, with many walking away with their commercial relationship preserved.

VSBC mediations are subsidised by the Victorian Government, which makes the cost to parties significantly less than litigation – \$195 per party or \$95 if the dispute falls under the *Owner Drivers and Forestry Contractors Act 2005* or *Commercial Passenger Vehicle Industry Act 2017*. In 2021–22 there was no cost to parties for mediations of rent relief disputes.

“*[The mediator] went above and beyond. He was fair, efficient, and also seemed not only competent but caring and able to be impartial but still sincere and understanding.*”

— MEDIATION FEEDBACK

This year we again saw a significant demand for interpreter services. We provided interpreters for 123 mediation sessions and on 103 occasions during pre-mediation support. This reflects our efforts to make our dispute resolution services more inclusive and accessible for business owners of culturally and linguistically diverse backgrounds.

In 2021–22 most mediations were conducted via videoconference or teleconference instead of in-person sessions (see p. 24).


Of the 1,215 matters that were concluded at mediation in 2021–22, 69.5 per cent were resolved successfully, with settlement rates varying from 67 per cent to 93 per cent across jurisdictions (see Figure 4). The decline from 77 per cent in the previous financial year of matters successfully resolved at mediation is, in part, attributable to the marked increase in the number of matters successfully resolved early on, without needing mediation (42.9 per cent). The matters that did progress to mediation were more inclined to be complex disputes that included multiple issues with higher monetary values, which can reduce the capacity of the parties to reach a successful resolution.

In 2021–22 the overall satisfaction rating with our mediation services was 87.6 per cent, up from 81.2 per cent in the previous year.

FIGURE 4 Mediation outcomes by legislation

Legislation	Completed mediations	Successful	Unsuccessful	Success rate (%)
Commercial Tenancy Relief Scheme*	259	202	57	78
Retail Leases Act 2003	807	524	283	64.9
Small Business Commission Act 2017	128	101	27	78.9
Owner Drivers and Forestry Contractors Act 2005	6	4	2	66.7
Farm Debt Mediation Act 2011	15	14	1	93.3
Total	1,215	845	370	69.5

* Commercial Tenancy Relief Scheme includes eligible disputes received under the *COVID-19 Omnibus (Emergency Measures) Act 2020* and the *Commercial Tenancy Relief Scheme Act 2021*



LOCAL YUM CHA RESTAURANT IN MELBOURNE'S SOUTH EAST

Small business owner Liu's rent relief agreement under the Commercial Tenancy Relief Scheme (the Scheme) was due to end on 15 January 2022.

Although public health restrictions had eased, Liu's turnover continued to be impacted during December and into January as the state responded to the Omicron wave. Liu was struggling to attract new customers to dine in, his regular customers weren't making reservations like they used to and takeaway orders were dropping off. He was also struggling to resolve an ongoing dispute with his landlords Ramesh and Priya over repairs to the premises to fix a burst pipe and the water damage it had caused.

Liu heard that the Victorian Government would be extending the Scheme. Liu contacted his accountant for guidance and was able to confirm that he met the criteria. Liu made a written request for 60 per cent rent relief in the form of a rent waiver, in light of his significant fall in turnover and mounting debts. Liu again requested that the landlords pay for the repairs to the premises.

Ramesh and Priya responded, saying Liu's rent relief request was unreasonable and that the repairs were not their responsibility. They also requested that Liu promptly pay last month's invoice for council rates that was now overdue. Liu emailed the landlords to try to discuss the matter further, but received no response.

Liu applied to the VSBC for free help to resolve the matter. The VSBC's dispute resolution officer helped early on, explaining that Liu was only entitled to rent relief that matched his fall in turnover, with only 50 per cent required to be in the form of a waiver and the remainder able to be deferred. Priya, Ramesh and Liu started talking again but couldn't find common ground. The VSBC progressed the matter to free mediation, where an independent mediator guided the parties in negotiating and reaching a fair outcome.

They agreed to 40 per cent rent relief from 16 January to 15 March 2022, matching Liu's fall in turnover. Half was to be waived and the remainder deferred until 16 March 2022, with payments to be spread over 24 months. Payments of Liu's deferred rent from the previous agreement that were still owing were to also restart on 16 March 2022. Priya and Ramesh were reminded of their obligations under the retail lease and agreed to pay for the repairs to the premises. Liu agreed to pay the outstanding invoice for council rates.

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

03

Resolving small business disputes

continued



“*[The mediator] was clear and concise on the process and demonstrated great balance in facilitating discussion and negotiation.*”

— MEDIATION FEEDBACK

“*Excellent facilitator with obvious experience. Made me feel very comfortable and at-ease.*”

— MEDIATION FEEDBACK

“*[The mediator] was very calm and collaborative and made sure all parties felt heard...He had a very quick grasp of the facts put forward.*”

— MEDIATION FEEDBACK

ENSURING DIVERSITY, INCLUSIVITY AND ACCESSIBILITY IN THE SERVICES WE PROVIDE

In October 2022 we sought to recruit a new VSBC mediation panel of experienced and independent professionals who could provide an inclusive and accessible service to Victorians.

In endeavouring to ensure that our panel reflected the diversity we see across the small business sector, we sought to appoint mediators who identify as, or have experience in providing mediation services to Aboriginal people, Victorians with a disability, disadvantaged Victorians or clients who experience mental health challenges.

We promoted our search for mediators across traditional and social media channels, actively seeking good communicators who:

- understand the issues confronting metropolitan, regional and rural small business owners
- are passionate about helping parties to resolve disputes quickly, efficiently and at a low cost.

We were pleased to have received a strong response to our call for applications. This enabled us to recruit a diverse panel of experienced professionals who will work with us over their two-year term to provide a specialised dispute resolution service accessible to all Victorians.



Five-year waiver certificates

Section 21 of the *Retail Leases Act 2003* provides that a tenant can waive their right to a minimum five-year lease term by applying to the VSBC for a certificate and giving a copy of that certificate to their landlord.

Tenants can apply through our fully automated process that enables them to receive an explanation of section 21 of the Act, apply and receive a waiver certificate online. In 2021–22 we issued 2,432 certificates, which is a 11.6 per cent increase on 2020–21.

Owner drivers waiver certificates

Section 21(2) of the *Owner Drivers and Forestry Contractors Act 2005* provides that a contractor can waive their right to be provided with a notice of termination from their hirer. In 2021–22 we issued one waiver certificate under this section.

“*[The mediator] assisted us to achieve a very positive outcome that will allow the applicant and respondent to rebuild their working relationship.*”

— MEDIATION FEEDBACK

Unreasonable refusal

Section 16(4) of the *Small Business Commission Act 2017* provides that the VSBC has the power to publish details in its annual report of certificates issued certifying that a party to a dispute has unreasonably refused to take part 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 with the help of our dispute resolution services and the consequences if we find their refusal to be unreasonable.

In 2021–22 the VSBC issued one unreasonable refusal certificate, the details of which are shown in Figure 5.

FIGURE 5 Certificates issued to a party for unreasonably refusing to take part in alternative dispute resolution

Certificate date	Party
22 November 2021	Mates Car Detailing Pty Ltd

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Responding to the Minister's Statement of Expectations

In 2019 the then Minister for Small Business issued a Statement of Expectations for the VSBC. The statement included a requirement for the VSBC to contribute to the Victorian Government's program to reduce red tape affecting businesses by promoting greater efficiency and effectiveness in the administration and enforcement of regulation. This statement continues to guide the work of the VSBC.

We are required to report on activities undertaken to reach the performance targets and improvements (as underlined) set out in this statement, as detailed in this chapter.

TIMELINESS

Prioritise resources to implement efficiencies in the time taken to resolve disputes through reduced manual handling and duplication of records

Following our 2018–19 review of the VSBC's dispute resolution methodology, we have continued to implement recommended efficiencies to reduce the time taken to resolve disputes. In response to our proposal to the Victorian Government, the VSBC received funding in the Victorian Budget 21/22 to develop and implement a new fit for purpose case management system to further reduce manual handling and duplication of records, streamlining our dispute resolution processes. The case management system was launched in June 2022.

The VSBC will provide customers with estimated timeframes for their cases

In 2019–20 our processes were amended so that initial correspondence to all parties included guidance on the average timeframes for resolving disputes.

In 2021–22 the average time taken to complete a dispute was 13.7 weeks. The average time taken to complete a dispute through preliminary assistance was 12.6 weeks and 15.3 weeks for disputes completed through mediation.



COMPLIANCE-RELATED ASSISTANCE AND ADVICE

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

We monitor client satisfaction with the VSBC's dispute resolution services for matters completed through preliminary assistance and through mediation. We achieve this by sending a survey to parties after a matter has concluded.

For matters concluded through preliminary assistance, the client satisfaction rate was 94.4 per cent for disputes that were successfully resolved and 75.6 per cent for matters that were unresolved.

Our preliminary assistance function successfully resolved 42.9 per cent of all disputes raised with our office, without needing to progress the matter to mediation. This is an increase from 38.1 per cent in the previous year.

For matters that progressed to mediation, the overall satisfaction rate was 87.6 per cent.

The success rate for 2021–22 matters that progressed to mediation was 69.5 per cent.

Develop a process to assess awareness of VSBC dispute resolution services in the small business sector and identify opportunities for improvement (if necessary)

A survey was undertaken in 2020–21 to assess understanding of the VSBC's services and identify opportunities to increase awareness. The survey findings will provide insights that will help to inform the VSBC's engagement strategy for 2022–23.

RISK-BASED STRATEGIES

Prepare a risk management plan that identifies foreseeable risks and appropriate mitigation strategies

The VSBC documented an annual risk management plan in 2019–20 that is subject to quarterly review. At each review the plan is updated and actions implemented, where appropriate.

STAKEHOLDER CONSULTATION AND ENGAGEMENT

Prepare a social media and communications strategy to raise awareness of the Government's dispute resolution service, as well as extended outreach

A social media and communications strategy was developed in 2019–20 to raise awareness of the VSBC's dispute resolution services. We continued to implement this strategy in 2021–22, with key outcomes including:

- gaining 4,586 followers across our social media sites (a 29 per cent increase on the previous year)
- recording 188 VSBC media mentions across industry and mainstream outlets
- delivering a targeted and effective communications and advertising campaign to raise awareness of our free and impartial services for resolving rent relief disputes under the Commercial Tenancy Relief Scheme.

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Appendix A: Compliance and accountability

OUR TEAM

The VSBC is made up of the Victorian Small Business Commissioner Lynda McAlary-Smith and other Victorian Public Sector (VPS) staff, including senior managers in the areas of corporate and business improvement, advocacy and engagement, 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 people and culture activities, and comply with the department's financial, procurement, information systems and other policies and codes of conduct.

ASSESSING OUR PERFORMANCE

The VSBC's performance framework is defined by the legislative frameworks in which we operate, performance metrics outlined in the VSBC Corporate Plan, and the Ministerial Statement of Expectations – the VSBC's governing document. As at 30 June 2022 these expectations were a continuation of those put forward for 2019–21.

In 2021–22 we performed very well against our set performance metrics in what was a challenging environment. Due to the COVID-19 pandemic, many small business owners were experiencing heightened emotional and financial distress, and a growing inability to repay their debts. The VSBC also undertook notable efforts in response to the Minister's Statement of Expectations, having fully responded to the requirements.

BUDGET PAPER NO.3 MEASURES

We are required to report in the Victorian Government's Budget Paper No.3 on how we are delivering our performance targets regarding the quality of the VSBC's alternative dispute resolution services. The results against the performance measures are detailed in Figure 6.

FIGURE 6 Budget Paper No.3 performance measures

Budget Paper 3 Performance measures	2021–22	2020–21	BP3 measure (target)
Disputes resolved prior to mediation	42.6%	38.1%	30%
Mediation success rate	69.5%	77%	75%
Client satisfaction rate	87.6%	81.2%	85%

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, labour hire staff, contractors and visitors. To support staff working remotely, the VSBC continued to prioritise staff wellbeing by providing regular updates at all staff meetings on opportunities to improve mental wellness through the department's Mental Health and Wellbeing Program.

We also provided all staff with specialised training in managing challenging interactions in response to the increased emotional and financial pressure experienced by our customers, and developed and implemented a policy for mental health and comprehensive mental health guidance for staff.

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.

In 2018, the VSBC moved from a paper-based file system to a paperless office, which it continues. The transition to online mediations has also assisted in reducing the environmental impact of the VSBC's work by reducing the travel associated with in-person mediations.

SYSTEMS

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

For most of 2021–22 we used a specialised database for:

- dispute management and reporting
- preliminary enquiries
- survey reporting on client satisfaction with our mediation service and preliminary assistance.

We replaced this database in June 2022 with a new and secure case management system.

COMPLAINTS

We have a complaints process, which we make available on our website. We received five complaints in 2021–22 relating to our dispute resolution services, which were investigated internally and resolved with each individual who made the complaint.

FREEDOM OF INFORMATION

In 2021–22 no Freedom of Information requests relating to the activities of the VSBC were received.

PROTECTED DISCLOSURE PROCEDURES

The VSBC operates in accordance with the department's protected disclosure procedures. As at 30 June 2022 we had not received any disclosures made under the *Protected Disclosure Act 2012*, nor had the Victorian Ombudsman referred any such disclosures to us for investigation.

MAJOR CONTRACTS AND CONSULTANCIES

From 1 July 2021 to 30 June 2022 the VSBC did not enter into any contracts over \$10 million. There was one consultancy where the total fees payable to the consultant was \$10,000 or greater (see Figure 7).

FIGURE 7 Consultancies

Consultant	Total approved project fee (ex GST)	Expenditure 2021–22 (ex GST)	Future expenditure (ex GST)
Deloitte	\$301,537.30	\$301,537.30	\$0

Purpose of consultancy: Deliver case management system

Start date: 2 December 2021

End date: 30 June 2022

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Appendices

continued

*Appendix B:
Operations***Funding 2021-22**

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Appropriation

Victorian Small Business Commission	2,585,000
Commercial Tenancy Relief Scheme	3,000,000
Case management system	800,000
Total funding	6,385,000

Expenditure

Employee related expenses	4,130,122
Consultants and professional services**	1,326,815
IT and telecommunications**	317,515
Other expenses^^	415,350
Capital asset charge and depreciation	106,807
Total expenditure	6,296,609

In the 2021-22 financial year, the VSBC received additional resourcing to provide dispute resolution services under the Commercial Tenancy Relief Scheme and to implement a case management system.

*Includes fees paid to mediators (\$1.17m)

^Includes interpreting services and translated materials (\$90k)

**Includes licencing and support costs

^^Includes contact centre services (\$190k) and labour hire services (\$160k)



ANNUAL REPORT 2022

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