



Victorian
Small Business
Commission

Annual Report 2022-23

**Victorian Small Business Commission
Annual Report 2022–23**

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**Victorian
Small Business
Commission**

The Hon Natalie Suleyman MP
Minister for Small Business
1 Spring Street
MELBOURNE VIC 3000

Dear Minister

Annual Report 2022–23

I am pleased to present to you the Annual Report 2022–23 on the operations of the Victorian Small Business Commission, covering the period 1 July 2022 to 30 June 2023.

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

In 2022-23 we celebrated the 20th anniversary of the Victorian Small Business Commission (VSBC). This marked a significant milestone for the VSBC but most importantly for each and every small business owner who we have assisted over this time. I would like to acknowledge the significant contributions of previous commissioners Mark Brennan, Geoff Browne and Judy O'Connell, who have each led our office with determination and passion for creating a fair and competitive trading environment for small business owners across the state.

The VSBC was the first of its kind in Australia. Our office was created to help small business people navigate the challenges of running a business, particularly when dealing with landlords or large organisations where there is a significant power imbalance.

Much has changed over the past 20 years but the entrepreneurial spirit, creativity and bravery of Victoria's small businesses remains as strong today as it was 2003. Not surprisingly, Victoria's small businesses have continued to innovate, develop new industries and grow into new markets while responding with resilience to the challenges confronting them.

While there is much to be optimistic about with the opportunities ahead for our Victorian small businesses, there are headwinds also. Many small businesses are continuing to grapple with compounding pressures – from the impacts of debt deferrals and lost revenue as a result of COVID-19 through to soaring increases in the costs of doing business. This is amplified by persistent labour and skills shortages affecting many industries.

In 2022-23 our office recorded an 8 per cent increase in the number of dispute applications we received when compared to the pre-pandemic period of 2018-19.

This demonstrates that demand for our services continues to be strong as we provide a vital low-cost alternative dispute resolution service to small businesses, enabling them to avoid the cost and stress of litigation. We continue to pride ourselves on the important role we play within the broader justice system by resolving or reducing disputes that would otherwise need to be dealt with by VCAT and the court system.

In 2022-23, we finalised disputes raised with our office in less than three months on average – even for matters requiring an independent mediation. By promptly completing disputes, we ensured that small businesses could quickly focus their attention and energies back on the business of running their business.

In March 2023 the VSBC was honoured to be awarded the 2022 Ombudsmen and Commissions Alternative Dispute Resolution Group of the Year. This was fabulous recognition of how we have continued to innovate and strive for excellence in every dispute we are entrusted to handle. My heartfelt congratulations to the VSBC staff and our panel of independent mediators who are such worthy winners.

Through Small Business Friendly Council (SBFC) Connect – the council-focused stream of our engagement initiative, VSBC Connect – we delivered a series of forums for economic development teams.

“The VSBC has and will continue to have a strong voice across all levels of government to fight for Victorian small businesses to have a fair and competitive environment to do business.”

— Lynda McAlary-Smith
Victorian Small Business Commissioner

Our aim was to help build the capability of local councils to meet their charter commitments, and provide a platform for sharing tips and success stories.

In 2022–23 we held forums on:

- the benefits of eInvoicing
- reviewing our resources for supporting small businesses through infrastructure disruption
- sharing tips for engaging effectively with local small businesses.

In 2022–23 we focused our efforts on developing informative and engaging resources in response to identified small business needs. These included an expert panel discussion on managing small business debts, a new fact sheet for retail tenants on preparing for end of lease and a blog with practical, step-by-step guidance on getting paid on time.

In late 2022 we saw significant changes to the *Farm Debt Mediation Act 2011* designed to strengthen farmers' rights, streamline the farm debt mediation process and align aspects of the legislation with other states. As part of these changes, the VSBC took on full administrative responsibilities for the Farm Debt Mediation Scheme from Agriculture Victoria.

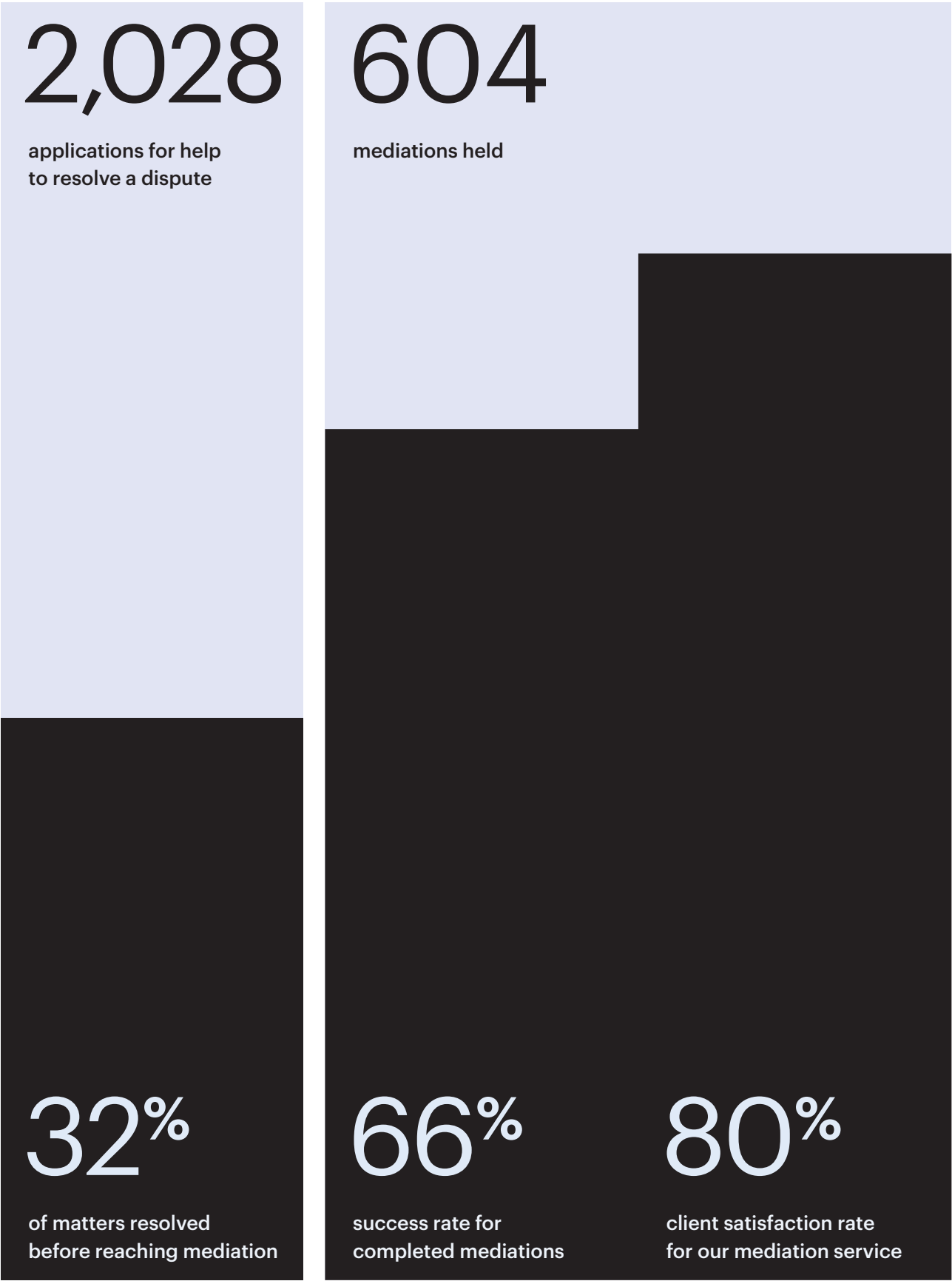
Throughout 2022–23 we continued to strengthen our partnerships across all levels of government. I would like to particularly acknowledge Industrial Relations Victoria and Agriculture Victoria for their support in enabling the VSBC to continue to provide its vital services to Victoria's small businesses.

I thank the Minister for Small Business, the Hon Natalie Suleyman MP, and her predecessor, the Hon Jaala Pulford, for their support of our office during 2022–23. I would also like to acknowledge and thank the Department of Jobs, Skills, Industry and Regions for the ongoing assistance and support that is provided to our office.

Finally, my thanks go to the VSBC staff and our panel mediators whose deep commitment to serving the small business community with excellence and care continued unabated during 2022–23.



Year at a glance



197,762

visits to our website

126,268

impressions across
our social media profiles

9,731

phone and email enquiries

Our role

Our purpose and functions

The Victorian Small Business Commission 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*
- *Commercial Passenger Vehicle Industry Act 2017*.

In 2022–23 we continued to provide our additional dispute resolution function for outstanding matters under the Victorian Government's Commercial Tenancy Relief Scheme, which was introduced to help address the financial pressure experienced by commercial tenants as a result of the COVID-19 pandemic.

Following the introduction of the Victorian Government's Gig Worker Support Service, we increased our focus on resolving business-related disputes between gig workers and their platforms.

We also assumed additional responsibilities for Victoria's Farm Debt Mediation Scheme following amendments to the *Farm Debt Mediation Act 2011*.

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 people in small business and their operating environment

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

Engaging with and advocating for Victoria's small business communities

In 2022-23 we continued to monitor Victoria's small business environment in order to identify and grow our understanding of the issues affecting small business people across all industries.

In response to continued and evolving pressures – from skills and labour shortages to inflation – we focused our efforts on raising awareness of how small business owners can access trusted information, services and support. We achieved this through the strategic use of targeted communications across multiple platforms to directly reach small business owners. We also continued to invest in strengthening our relationships with their trusted representatives and other key stakeholders.

Our communications and engagement efforts contributed to a steady flow of enquiries and applications for our specialised help.

We saw growth in the VSBC's social media following, strong visitation to our website and continued demand for our advocacy work.

Engaging with our stakeholders

In 2022-23 we continued to grow our stakeholder relationships as we implemented our overarching stakeholder engagement strategy.

The aim of this strategy is to support the VSBC in purposefully:

- increasing the visibility of our dispute resolution services
- ensuring that our service delivery is accessible and inclusive of Victoria's diverse small business communities
- growing our understanding of the evolving issues affecting small business people in order to advocate more effectively on their behalf.

In 2022-23 we participated in over 260 stakeholder meetings with a range of industry associations, local business networks, chambers of commerce, local councils, government agencies and small business supporters.

We directly engaged retail tenants, other small business owners and landlords through the 44 presentations we delivered, and by becoming actively involved in stakeholder webinars, panel discussions, podcasts and roundtables exploring key topics.

In 2022-23 we valued the ongoing support of our stakeholders as we worked together to help small business people through a challenging and uncertain period for the sector.

Engaging with regional Victoria's small business communities

During the VSBC's visits to Victoria's north east (Mitchell Shire, Rural City of Wangaratta, City of Wodonga and Towong Shire) and south west (Pyrenees Shire and City of Ballarat), local small business owners shared their experiences of resilience, optimism and strength in recovering from the pandemic and recent floods.

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

While in the south west, the Commissioner took part in the Central Highlands Local Jobs Forum, which focused on responses to the local skills and labour shortages and support for businesses looking for staff. Forum discussions highlighted the value of employers working with community champions to recruit staff locally and the importance of creating a sense of community for staff who are new to the area.

“Local business owners spoke about recruiting and training people who may have otherwise faced challenges in finding work, and how this investment has enabled them to build a skilled and loyal team of staff.”

— Commissioner Lynda McAlary-Smith

While in the north east, the Commissioner heard about the continued impacts on local businesses that are yet to reopen following the recent floods. She also saw a firm commitment to rebuilding and recovering.

“It's clear that small businesses in the north east are keen to expand and bring new business ideas to life. It's this innovation and drive that draws visitors to the area and valuable dollars into the community.”

— Commissioner Lynda McAlary-Smith

During these visits, the Commissioner encouraged small businesses to join their local business network and raised awareness of key initiatives that can help, including our free preliminary assistance and low-cost mediation services for commercial disputes that may arise.



First: Commissioner Lynda McAlary-Smith meeting with Mitchell Business Network Chairman Darren Knight, Go Seymour President Stuart Locke and local small business owners

Second and third: Ellie Feery, owner of Gardenia Magnifica in Ballarat, meeting with Commissioner Lynda McAlary-Smith

Fourth: Tim Chandler, owner of Cave Hill Creek in Beaufort, meeting with Commissioner Lynda McAlary-Smith

Our website

In 2022-23 we recorded 197,762 visits to the VSBC website and 390,907 page views.

Key areas of interest included:

- retail leasing information and guidance, and how to apply for our help to resolve a retail leasing dispute
- the different types of disclosure statements and when these must be provided to a tenant
- outgoings and other charges under a retail lease
- applying to us for our impartial help in resolving a commercial dispute or to request a certificate
- repairs and maintenance rights and obligation under a retail lease.

Engaging via our social media profiles and VSBC News

By 30 June 2023 our following across the VSBC's Twitter, Facebook, LinkedIn and Instagram profiles had grown to 5,367, which is a 17 per cent increase on the previous financial year.

We also recorded 3,986 engagements (including reactions, comments, shares and link clicks) and 126,268 impressions (the number of times content on our profiles was displayed to users).

We also furthered our direct engagement with people in small business and their supporters through increasing subscribers to our newsletter, VSBC News, to 3,056.

Our newsletter and social media profiles provided valuable channels to promote our specialised services and trusted guidance in avoiding and resolving disputes, as well as broader messaging about programs and grants that were responsive to small business needs.

Victorian Small Business Commission @VSBCommission · Jun 30 ...
There are important steps that retail [#tenants](#) should take to prepare for the end of their lease.
Why? So they can make sure they meet their responsibilities, avoid running into issues and focus on closing – or relocating – their [#smallbiz](#) 🏠
bit.ly/3NujASR



Victorian Small Business Commission @VSBCommission... · Dec 1, 2022 ...
This month's edition of **VSBC News** includes changes to [#landlord](#) retail leasing obligations, our top tips for resolving a dispute yourself, ways for hospitality businesses to save – and more. Subscribe via the button in the top left corner: bit.ly/3VKV60R [#smallbiz](#)



Working with the media

We achieved 73 VSBC mentions in industry and mainstream media outlets across Victoria as well as nationally. A significant amount of coverage was on the Commissioner's regional visits and changes to the *Farm Debt Mediation Act 2011*, including the following:

- **Seymour Telegraph** reported on the Commissioner visiting Seymour to hear more about the issues impacting local small businesses as they recover from the recent floods

“The community of Seymour is a resilient one with a great sense of entrepreneurship and optimism for the future.”

— Commissioner Lynda McAlary-Smith

- **Ballarat Times** reported on the Commissioner attending the local Jobs Victoria Forum, which explored ways to address the issue of local jobs shortages

“The forum explored practical ideas around employment for the region and opportunities to hire people who might need additional support, and the benefit that can have for a business.”

— Commissioner Lynda McAlary-Smith

- **The Standard** reported on Moyne Shire Council agreeing to help fund the operations of the newly-established Commerce Moyne, following the Commissioner speaking in the region about the importance of local chambers in ensuring a strong business community

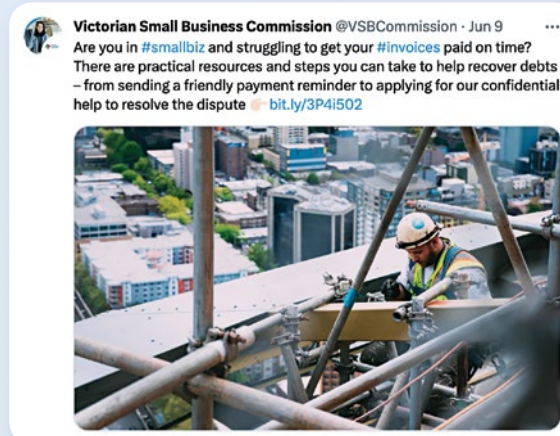
“The idea of Commerce Moyne was raised with her 'Commissioner Lynda McAlary-Smith' at that meeting and she was incredibly supportive and encouraged us to continue towards getting it established.”

— Moyne Shire Mayor Cr Ian Smith

- **Australasian Farmers' And Dealers' Journal** reported on how changes to farm debt mediation in Victoria will strengthen farmers' rights, and how rural financial counsellors can provide support at each stage of the process

“We offer free expert financial support to farmers before, during and after farm debt mediation, which can include providing wellbeing and decision-making support, help in understanding their financial position, and guidance on options for resolving their matter.”

— Sarah Moncrieff, Senior Coordinator,
Rural Financial Counselling Service Victoria West



Strengthening engagement with the building and construction industry

In 2022–23 the building and construction industry continued to experience significant pressures, from increasing costs for materials and supply chain delays through to skilled labour shortages affecting a number of trades. Many builders struggled to absorb cost increases that could not be passed on to consumers who had signed fixed price contracts. These pressures, together with the collapse of some larger building companies, placed a considerable strain on small building companies and subcontractors in the industry.

We promoted the availability of our dispute resolution services by delivering informative presentations to members of the Housing Industry Association, Master Builders Victoria and Master Plumbers. Following our Master Plumbers presentation, the questions we received from participants were overwhelmingly on how to recover payments that are overdue. In addition to responding to Master Plumbers with tailored guidance, we developed a Commissioner's blog on ways that all small business owners can recover overdue payments and adopt best practice processes going forward.

We also provided information to the Victorian Parliament's Inquiry into employers and contractors who refuse to pay their subcontractors for completed works.

Cracking the code: achieving gender equality and future-proofing Victoria's small businesses

Achieving gender equity is a proven way for people in small business to position themselves as employers of choice. This helps them to attract and keep great people, helping to address continued skills and labour shortages.

In support of International Women's Day 2023, we raised awareness of practical tools that small businesses can access to achieve gender equality, including:

- the Victorian Equal Opportunity and Human Rights Commission's (VEOHRC) digital materials and e-learning modules on equal pay, which can help small business owners to build their knowledge and capability in:
 - understanding equal pay and why it matters
 - reinforcing the legal requirement of employers to make sure that roles of the same skill, effort and responsibility are paid equally
 - understanding unconscious biases and how to check these in the workplace
 - ensuring equal access to training and development opportunities for people of all levels and backgrounds.
- VEOHRC's equal opportunity practice guideline, *Guideline for the recruitment industry and employers*, which can help small business owners to understand the impacts of discrimination and meet their responsibilities under the *Equal Opportunity Act 2010*.

“This International Women's Day, I strongly encourage you to commit to making the most of these digital resources and training modules to help you achieve gender equity and future-proof your small business.”

— Commissioner Lynda McAlary-Smith

Communicating legislative changes

A core component of the VSBC's role is to ensure small businesses have accessible and up-to-date information about their rights and obligations under legislation within the VSBC's jurisdiction.

In 2022-23 our key focus in this area was the significant changes to the *Farm Debt Mediation Act 2011*, which strengthened farmers' rights, streamlined the process and aligned aspects of the legislation with other states.

We consulted with Agriculture Victoria to develop guidance and resources, and deliver strategic awareness-raising initiatives to build understanding, including:

- direct correspondence to creditors, creditor associations and relevant agencies
- news updates and media releases targeting creditor, regional and farming news outlets
- a new farm debt mediation fact sheet and updated *Guide to mediation*
- a suite of accessible Word and online forms
- eight new web pages offering guidance on farm debt mediation processes and supports
- a Commissioner information session with rural financial counsellors
- a series of social media posts that reinforced ongoing supports and walked through important changes.

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

- the making of the Retail Leases Regulations 2023, which include updated disclosure statements that landlords must give their tenants when entering into or renewing a retail lease
- new owner driver rates and cost schedules that take into account price variations in fuel, labour and other input costs for owner drivers
- the ban on selling and supplying single-use plastics in Victoria
- the implementation of the National Construction Code 2022
- changes to annualised wage arrangements for restaurant, café and hospitality workers
- changes to workplace laws including more employees being able to access flexible working arrangements and the prohibition of sexual harassment in the workplace.

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:

- promote prompt payment of small business supplier invoices
- help small businesses 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
- 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.

The VSBC works closely with councils who have joined our initiative to ensure they are meeting their charter commitments. **We work closely with their economic development teams to address any areas of concern, and to ensure that our communications, engagement and advocacy work is driven by local business needs.**

By the end of 2022–23, sixty-five councils had signed our charter.



Building capability

Through SBFC Connect – the council-focused stream of our engagement initiative, VSBC Connect – we delivered a series of forums for economic development teams.

Our aim was to help build the capability of local councils to meet their charter commitments, and provide a platform for sharing tips and success stories.

In 2022–23 we held forums focussed on:

- exploring the benefits of eInvoicing
- reviewing our resources for supporting small businesses through infrastructure disruption
- sharing tips for engaging effectively with local small businesses.

eInvoicing

We often see small businesses not being paid for their work or being paid far too late. Some avoid following up overdue invoices with government clients because they fear they won't be considered for future work (see Monitoring government fair payments p.14).

All councils that signed our SBFC Charter after September 2020 have committed to initiate processes to make sure they pay their small business suppliers within 14 calendar days. Some councils were finding it challenging to meet this commitment, with reasons including legacy IT systems and resourcing challenges.

In response, we promoted eInvoicing – the secure, digital exchange of invoice information – at our first SBFC Connect Charter Capability Building Forum for 2022–23. We looked at how local councils can adopt eInvoicing and support their local businesses to do the same.

We were joined by Bryce Gray, the ATO's eInvoicing Adoption Lead for State, Territory and Local Government. Bryce explained the benefits, including automated entry and processing allowing for prompt payments, and the elimination of time, cost and human error that comes with manual handling.

Bryce discussed:

- steps for councils to become enabled, including finding out about eInvoicing options and onboarding their suppliers
- the ATO's information to guide small businesses in making the move too – including advice on getting started.

Promoting informed decision making

One of the key areas of focus that drives our advocacy efforts is encouraging small business owners to make informed decisions so they can best operate their businesses and avoid disputes.

In 2022-23 we developed a range of resources to educate and inform small businesses and their trusted representatives on relevant issues.

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

- steps small business owners can take to help recover overdue payments and adopt best practice processes going forward
- practical, trusted tools for helping to manage small business debts
- how regional small businesses can prepare for and effectively respond to disasters and disruptions, and look after their staff, assets and brand equity
- supports for flood-affected small businesses, including the Victorian Government's Business Relief Service, which supports business owners in assessing the impacts of flood damage and accessing government supports
- how small business owners can achieve gender equity in the workplace and future-proof their businesses
- our hybrid model for resolving commercial disputes online and in person, and how our customers can benefit from online mediation
- the importance of local councils paying their small business suppliers on time, and how councils can achieve faster payment times by making the move to eInvoicing.

We expanded the scope of information available on our website in response to evolving small business needs. We developed and published:

- a new fact sheet for landlords on their rights and obligations under a retail lease, and the impartial services that we provide to help resolve retail tenancy disputes
- a new web page and fact sheet to guide tenants in preparing for end of lease so they can avoid encountering issues
- **new guidance on the responsibilities of:**
 - tenants to notify of loss or damage to a retail premises
 - landlords to repair the damage and pay their tenant compensation.

Managing small business debts

In 2022-23 Commissioner Lynda McAlary-Smith facilitated a panel discussion exploring practical tools that small business owners can use to help manage their debts.

VSBC Mediator Andrew Moffat discussed mediation, which can help people in a commercial dispute (for example, over unpaid services) to resolve their matter impartially and confidentially, without the need for costly litigation.

Financial Counselling Australia's Small Business Financial Counsellor Sandra Blake discussed the Small Business Debt Helpline. Sandra explained how the service connects small business owners experiencing financial difficulty with financial counsellors who can offer free, independent and confidential advice.

The Australian Banking Association's (ABA) Director, Business Engagement and Policy Ellen Choulman walked through the ABA website. Here, small business owners can access direct phone numbers to hardship teams at member banks, and a financial assistance hub for guidance on their specific situation.

The Australian Taxation Office's (ATO) Assistant Commissioner, Lodge and Pay Solutions Branch Jacqui Marchment discussed the ATO's business supports. These include website guidance on the National Tax Clinic program (which provides taxation assistance to people who may not be able to afford professional advice and representation) and options to help small businesses pay their taxation debts (such as payment plans and additional time to pay).

The panel discussion was an opportunity to encourage small business owners who are experiencing financial strain to communicate as early as possible with their bank, the ATO, businesses or providers that they owe money to so they have the best chance of navigating their way out of difficulty.

We recorded this panel discussion and distributed it widely through our stakeholder networks.



Preparing for end of lease

In response to trends that the VSBC identified in retail tenancy disputes, we developed a new web page and fact sheet to help small business tenants prepare for the end of their lease. Our guidance includes important steps to help tenants meet their responsibilities, avoid encountering problems and focus on relocating or closing their small business.

Our new resources encourage retail tenants to:

- understand what is required of them when it comes to giving notice
- ensure they understand their 'make good' requirements and if they are unsure, ask their landlord or agent
- ask for an early inspection to allow sufficient time to remove or repair anything that will impact their ability to make good
- keep conversations or agreements about the state of the premises in writing
- prepare a full inventory of all fit-outs and fixtures at the premises and share this with their landlord or agent
- confirm with their landlord or agent and service providers when essential services should be disconnected
- review their records for all rent and outgoings paid throughout the tenancy
- ensure they understand that once their lease has ended and they have met all of their obligations, their landlord must give them back their security deposit within 30 days along with any interest, and must also account for the interest earned.



L-R clockwise: Commissioner Lynda McAlary-Smith, Assistant Commissioner, Lodge and Pay Solutions Branch Jacqui Marchment, Small Business Financial Counsellor Sandra Blake, VSBC Mediator Andrew Moffat and Director, Business Engagement and Policy Ellen Choulman

Supporting mental health and wellbeing

In 2022–23 our 'looking after your mental health' web page was included in the National Mental Health Commission's (NMHC) new **Mentally Healthy Workplaces** digital platform. The platform aims to be a central hub where businesses and organisations can access trusted guidance on workplace wellness.

Our web page gives access to the VSBC's *A small business owner's guide to creating a mental health plan*, and our associated template and example plan. It also provides helpful guidance on available small business wellness and crisis supports.

In addition to working with the NMHC, we continued our role as 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 in recovering from the pandemic by providing 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 2022–23.

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.

Victorian Small Business Commission @VSBCommission · Mar 21
Feeling stressed? The Partners in Wellbeing helpline (1300 375 330) offers free and confidential support for Victorians in #smallbiz. Get access to wellbeing coaches, financial counsellors, business advisors and guidance in languages other than English bit.ly/3v7AihZ



Monitoring government fair payments

The VSBC undertook a 2022-23 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 reduced the payment times further 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 2022-23 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 1,667,358 invoices relating to contracts under \$3 million were paid (see Figure 1). Seventy-two percent of these invoices were reported as being paid within 10 business days, with an average payment time of 13.87 calendar days.

Reasons for not meeting the 10 business day payment terms requirement include administrative errors, incomplete or incorrect invoices, staff shortages and disputes over goods or services provided.

There is potential to considerably improve the performance reported from some departments and agencies through more accurate recording of payment times. For example, finance systems being able to take into account when payment is delayed due to issues such as a dispute over goods or services, an invoicing error or where an invoice is issued late.

We're committed to working closely with departments and agencies to help improve policy compliance through improved processes and reporting to ensure faster payment times. We will continue to request data and report on fair payment performance and will look at sharing more specific data at the individual department and agency level in our next annual report.

Figure 1. Payment of invoices for contracts less than \$3 million in 2022-23

	Invoices (< \$3 million)	Average days taken to pay invoice	Invoices paid within 10 days (%)
Departmental core	588,093	12.68	87
Agencies	1,079,265	15.07	64
Total	1,667,358	13.87	72

Contributing to consultations and raising awareness of small business opportunities

Our monitoring function involves reviewing new legislation and policies that may impact on Victorian small businesses. In line with this function, we contributed to several state and national consultations and reviews, including:

- meeting with consultants undertaking the Australian Government's review of the *Payment Times Reporting Act 2020*
- providing information to the Victorian Parliament's Inquiry into employers and contractors who refuse to pay their subcontractors for completed works.

Our regular meetings with bodies such as Small Business Victoria, other state commissioners and members of the Federal Regulatory Agencies Forum also provided opportunities to exchange information, contribute to policy, and discuss small business issues and ways to advocate for change.

We also regularly participated 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.

Importantly, we also promoted opportunities for small businesses to speak up and have their say via the strategic use of our social media profiles. This included opportunities to contribute to developments in government policy and legislation that had the potential to impact their operating environment.

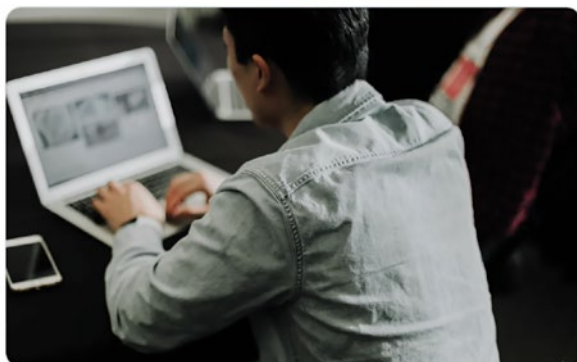
We raised awareness of key consultations and other opportunities for providing feedback, including the following:

- The Department of Transport and Planning's design of the Brunswick Tram Depot upgrade and ways to minimise disruption to local trade
- Safe Transport Victoria's Monitoring Compliance and Enforcement Policy and Strategy for creating a safer commercial passenger vehicle industry
- Music Victoria's Melbourne Live Music Census 2021, which aimed to inform policy and future investment to help restore Melbourne's world-famous live scene
- New legislation for clarifying and consolidating Victoria's biosecurity laws into a single Biosecurity Act, helping to support our agricultural industries
- Regional Development Victoria's Business Environment Survey, which aimed to gain a better understanding of regional business needs and what can be done to improve the business environment in regional Victoria
- The Victorian Government's survey on advanced manufacturing practices and technology, which aimed to inform policy development
- The National Mental Health Commission's trial of their Mentally Healthy Workplaces digital platform, which aims to be a central hub of trusted information to build mentally healthy workplaces
- The Australian Small Business and Family Enterprise Ombudsman's Inquiry to examine the impact of reforms to Commonwealth procurement rules on small businesses
- The University of the Sunshine Coast's survey on small business owners' perspectives of unfair practices in Australia's digital marketing industry
- The Australian Government's consultation on potential measures to ensure the responsible, ethical and safe use of AI
- Treasury's survey of tourism and accommodation providers who were facing restrictions in setting their own prices due to the practices of online booking platforms in Australia.



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The Mentally Healthy Workplaces digital platform is your one-stop-shop for trusted information to build mentally healthy workplaces. During the testing phase, the @NMHC wants your feedback to help them fine-tune the platform. Have your say: bit.ly/3NUJF3K #smallbiz



03

Celebrating 20 years of VSBC achievements for small business

In March 2023 we reflected on and celebrated our 20 years of achievements for Victoria's small businesses. Over those years, previous commissioners Mark Brennan, Geoff Browne and Judy O'Connell, and Commissioner Lynda McAlary-Smith, have led our office with determination and passion for creating a fair and competitive trading environment for Victorians in small business.

Each and every dispute that we have helped to resolve has mattered, and our staff and mediators' focus has always been on the people in need of our guidance, compassion and expertise.



Top: L-R Previous commissioner Judy O'Connell, Commissioner Lynda McAlary-Smith, Minister for Small Business the Hon Natalie Suleyman MP, previous commissioner Geoff Browne, inaugural commissioner Mark Brennan

Right: Commissioner Lynda McAlary-Smith

Bottom: L-R Dispute Resolution Officer Joseph Krznaric, Manager Dispute Resolution Elizabeta Galevska

Left: L-R VSBC Mediator David Brett, previous commissioner Geoff Browne, VSBC Mediator Glen Pauline, VSBC Mediator Jane Penberthy, Senior Manager, Dispute Resolution Services Mark Schramm

We began in 2003 as the Victorian Small Business Commissioner, where we helped to resolve retail leasing and small business disputes. Building on the successes we were able to achieve in these areas, our jurisdiction has progressively broadened to enable us to help many more of Victorian's more than 700,000 small businesses – from owner drivers and farmers to taxi drivers and gig workers.

The 2014 amendments to the *Small Business Commissioner Act 2003* increased our jurisdiction and provided us with additional powers to encourage parties to engage in the dispute resolution process.

The *Small Business Commission Act 2017* created the VSBC as the independent Commission that we know today. It saw us adopt the key strategic priorities of:

- **engaging** with Victoria's small business communities to promote our services and encourage informed decision making
- **monitoring** the impact of market trends, legislation and government policies on small business
- **advocating** on issues affecting small business people and their operating environment.

In meeting our strategic priorities we created a broad range of informative and engaging resources, from our small business owner's guide to creating a mental health plan to fact sheets on ways we can help in a range of community languages. We did so with the clear aim of helping small business people to avoid and resolve commercial disputes and future-proof their businesses.

The VSBC has been the driver of many significant achievements for small business. These include improving tenant and landlord understanding of the Victorian Government's Commercial Tenancy Relief Scheme regulations and increasing local small business supports through our Small Business Friendly Council initiative.

In response to the unprecedented impacts of the pandemic on small business owners, we focused our efforts on communicating timely and accurate information on their rights and responsibilities and promoting access to our free or low-cost dispute resolution services. To ensure Victorians could still access our services, we moved mediations from in-person to online via videoconferencing.

In 2020-21 we received a record 5,175 dispute applications. This 97.6 per cent increase on the previous year was driven by more than 3,700 applications for our help to resolve rent relief disputes, many of which were under the Commercial Tenancy Relief Scheme.

In early 2022 we reviewed our changed model for delivering mediations to find out how parties were benefitting and identify any improvements that we could make. Based on our findings, we decided to embed online mediations as part of our usual operating model while still offering in-person sessions, where the need arises. Our hybrid model sees us provide an expert, efficient and responsive service, and expand our reach to help more Victorians.

In 2022-23, as we supported businesses in recovering from the impacts of the pandemic and floods, application numbers remained higher than pre-pandemic levels, demonstrating continued demand for our specialised help.

2023 saw the VSBC being awarded the 2022 Ombudsmen & Commissions Alternative Dispute Resolution Group of the Year, which is testament to the quality and value of our mediation service, and our commitment to increasing access to justice.

“We thank each and every one of our stakeholders for working with us to continue to support Victoria's small business people to thrive.”

— Commissioner Lynda McAlary-Smith

We've responded to over 207,600 enquiries, assisted over 33,700 Victorians who applied for our help to resolve a dispute and resolved over 19,600 disputes successfully with free help early on or low-cost mediation.



Top: L-R clockwise Minister for Small Business the Hon Natalie Suleyman MP, Commissioner Lynda McAlary-Smith, inaugural commissioner Mark Brennan, previous commissioner Judy O'Connell, previous deputy secretary David Latina, Manager Dispute Resolution Elizabeta Galevska, VSBC Mediator Alan Wein

“[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.”

“Our mediator showed great empathy for the situation while still giving firm guidance in legal rights.”

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

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

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

Resolving small business disputes

The VSBC provides impartial and confidential alternative dispute resolution services to help resolve a broad range of commercial disputes.

These include disputes between:

- two businesses, where one of the businesses identifies as a small business
- a small business and a government agency or department
- a franchisee and franchisor
- a commercial tenant and landlord
- a gig worker and their platform
- 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. Where a resolution cannot be reached, we offer our low-cost mediation service.

Developments in VSBC alternative dispute resolution

The VSBC is committed to continuous improvement and modernising how we deliver our services to Victorians in small business. In 2022-23 we took significant steps in furthering this commitment by embedding our hybrid model for resolving disputes, and taking on significant additional responsibilities across our relevant jurisdictions.

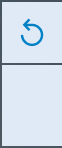
Changes to farm debt mediation in Victoria

In 2022 we saw significant changes to the *Farm Debt Mediation Act 2011* to strengthen farmers' rights, streamline the process and align aspects of the legislation with other states.

From 31 October 2022, the following changes took effect:

- The VSBC took on full administrative responsibilities for the Farm Debt Mediation Scheme from Agriculture Victoria, which means that:
 - creditors now notify the VSBC directly of an agreement to mediate
 - mediation guidance and forms are now accessible via the VSBC website
 - the VSBC is now the first point of contact for farm debt mediation queries.
- The definition of 'farming operation' now includes aquaculture and forestry and timber production, ensuring a wider range of farmers are protected.
- A creditor is now required to obtain an exemption certificate in all instances before taking enforcement action (recovering debt on a farm mortgage).
- The VSBC now has some discretion in the issuing of exemption certificates and prohibition certificates (which stop creditors from taking enforcement action).
- If a farmer asks their creditor to mediate when they are not in default and mediation takes place, an exemption certificate cannot be issued, and the farmer will keep their right to be offered mediation if they are later in default.
- If a creditor has been issued with a three-year exemption certificate but does not start enforcement action before the certificate expires, they must provide the farmer with notice of the availability of mediation again, and obtain a new exemption certificate before they can take enforcement action.

We continue to provide early help in relation to farm debt mediation, which includes giving both parties guidance on their rights and obligations, encouraging open communication, appointing a mediator, and determining a mutually acceptable time and location for their session to take place.



Retail leasing

In December 2022 the Victorian Government amended the Retail Leases Regulations 2013. These amendments included updated disclosure statements to reflect the 2020 changes to the *Retail Leases Act 2003* (the Act).

We provided information and support to advise those impacted that:

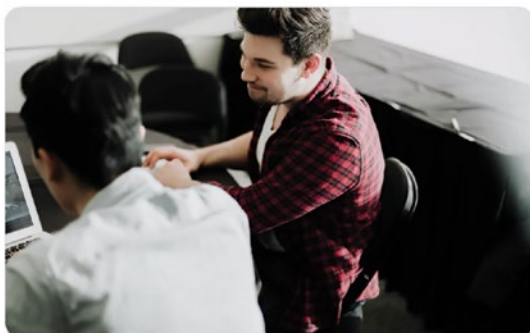
- when entering into or renewing a retail lease, landlords must give their tenants a disclosure statement, which outlines essential lease information
- if a disclosure statement is misleading, false or incomplete, the tenant can take action that may result in the termination of the lease.

We also developed a new fact sheet to support landlords in understanding their rights and meeting their obligations, including in relation to ending a lease early and repairing damage to a retail premises.

This responded to trends we had observed in VSBC disputes and discussions with our stakeholders about guidance that would assist.

In April 2023 we shared the Victorian Government's remaking of the Retail Leases Regulations 2013, reinforcing the importance of understanding the regulations and their main objectives.

Victorian Small Business Commission @VSBCCommission · Jun 7
Did you know we can help resolve #gigworker disputes – at no charge to the gig worker? We can help:
👉 owner drivers who deliver food or transport passengers
👉 workers who provide disability support, domestic services and a variety of other tasks 📄 bit.ly/3IVjodQ



Supporting gig workers

On 1 May 2023, Industrial Relations Victoria launched the Gig Worker Support Service (GWSS) to improve fairness and support for gig workers across the state. Their role includes providing information and advice about services that can help gig workers working in all industries.

Gig workers who find themselves in a dispute with their platform can contact the GWSS, which can direct them to agencies that can assist, including the VSBC. Gig workers can also apply directly to us for our help to resolve their dispute.

Disputes can be:

- **where the gig worker is experiencing payment issues or thinks that they are being treated unfairly by their platform**
- **over rights and entitlements under Victoria's owner driver laws**
- **over unfair contract terms – and more.**

We offer dispute resolution services to independent contractor gig workers under the following legislation:

- *Owner Drivers and Forestry Contractors Act 2005*, which provides protection for owner drivers transporting goods, using up to three vehicles supplied by them – this includes drivers who work for online platforms such as DoorDash and Menulog
- *Small Business Commission Act 2017*, which enables the VSBC to help resolve general business-to-business disputes for a broad range of gig workers, including owner drivers who transport passengers (such as Uber and DiDi drivers) and workers who provide disability support, domestic services and a variety of other tasks (such as Mable and Airtasker workers).

We provide free, specialised help early on and can progress more complex matters to mediation at no cost to the gig worker. At mediation, an independent mediator helps the gig worker and their platform to negotiate a fair and confidential agreement.

From the launch of the GWSS until the end of June 2023, the VSBC received 17 applications from gig workers seeking our assistance to resolve a dispute with their platform.

A gig economy food delivery driver in Melbourne's north

Kaito had been working as a driver for an online food ordering and delivery platform for two years, relying on this work as his only source of income. The platform asked Kaito to provide a real-time photo of himself for identification purposes. Shortly after Kaito supplied the photo, he discovered that his account had been de-activated. He called the platform to understand what had happened. Kaito was told that fraudulent activity had been identified on his account, and that an investigation would follow. Despite making numerous phone calls to the platform to determine the outcome of the investigation, he didn't receive a response.

Kaito contacted the Gig Worker Support Service to discuss his situation, and was referred to the VSBC for help to resolve his dispute. He submitted an application to the VSBC seeking the reactivation of his account and compensation for lost revenue.

After reviewing Kaito's application, the VSBC's dispute resolution officer contacted the platform and Kaito's account was reactivated. The platform offered Kaito \$700 to cover lost revenue during the time taken to finalise the investigation. Kaito requested \$1,500 in compensation. In their response, the platform reminded Kaito of the importance of updating his profile photo if his appearance changed in order to assist with verification. In an effort to resolve the dispute in good faith and without admission of fault, the platform agreed to pay Kaito a sum of \$1,500, which Kaito accepted.

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



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 timely news and social media content, undertaking a broad range of engagement activities and making direct contact with small business owners.

In 2022-23 our team responded to 9,731 phone and email enquiries. The majority of enquiries related to retailing leasing rights and responsibilities, general commercial disputes and the VSBC's role in mediation.

Dispute applications we received

Over 2022-23 we received a total of 2,028 applications for our impartial, expert help to resolve a commercial dispute. The number of Victorians applying to us remained significantly higher than before the pandemic. Our office recorded an increase of 8 per cent ($n = 146$) on the total number of applications received in 2018-19 ($n = 1,882$), demonstrating continued, strong demand for our services.

Compared to 2018-19, applications under the *Retail Leases Act 2003* rose by 17 per cent, while those under the *Small Business Commission Act 2017* fell by 4 per cent. There was a 47 per cent decrease in disputes under the *Farm Debt Mediation Act 2011* and a 4 per cent increase in disputes under the *Owner Drivers and Forestry Contractors Act 2005* (see Figure 2).



A small IT repair and retail business in regional Victoria

The VSBC received an urgent request for assistance from Aminah, a commercial tenant who runs a small IT repair and retail business in regional Victoria. Aminah explained that her landlord's real estate agent Deric had conducted an inspection of the premises she was leasing and told her that she needed to immediately remove all second hand parts (such as motherboards, graphics cards and processors). Deric had said to Aminah that she was in breach of her lease, and if she failed to meet his request, she would be locked out that same day.

The VSBC's dispute resolution officer contacted Deric, who said that the tenant's storing of spare parts in such large quantities was creating a fire risk, preventing the landlord from taking out insurance for the premises. After the VSBC contacted Aminah to explain the situation, she agreed to promptly remove the second hand parts from the premises. As a result, the landlord was able to obtain insurance so that Aminah could keep trading.

Aminah was also concerned that she hadn't been provided with an estimate of the insurance premium as part of the outgoings she would have to pay. Under the *Retail Leases Act 2003*, the landlord must give the tenant a written estimate of all outgoings that the tenant is expected to pay under the lease. Aminah's landlord is required to do this at least one month before the start of each of their accounting periods during the term of the lease (i.e. each year). Aminah isn't required to pay for outgoings if an estimate hasn't been given.

Deric agreed to waive the cost for the current year of insurance, and to provide Aminah with an estimate so that moving forward, she would be able to plan for this expense.

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

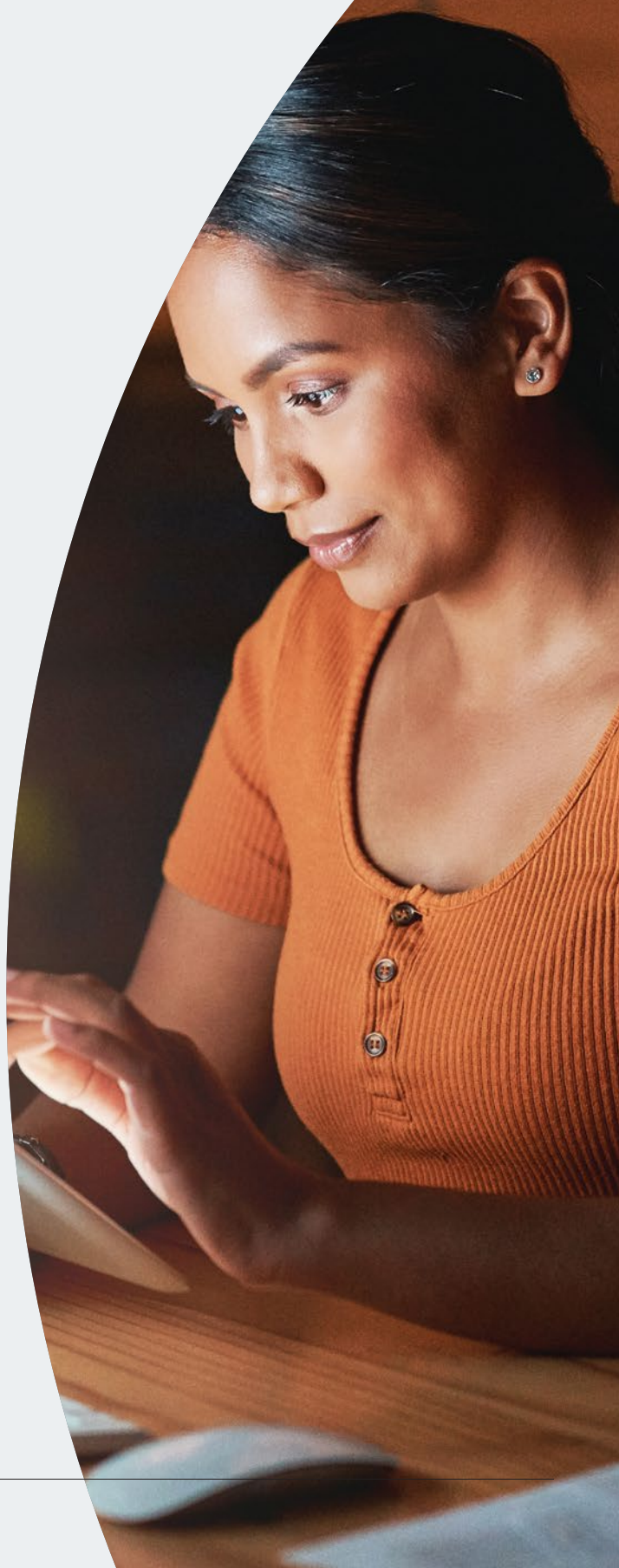


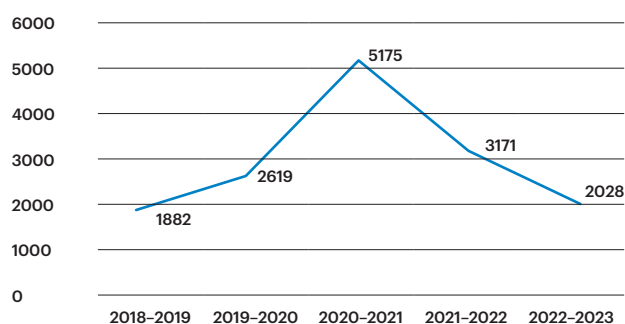
Figure 2. Applications received from 2018-19 to 2022-23

Applications received	2018-19	2019-20	2020-21	2021-22	2022-23
*Commercial Tenancy Relief Scheme	n.a.	877	2,407	875	14
<i>Retail Leases Act 2003</i>	1,040	886	2,056	1,554	1,221
<i>Small Business Commission Act 2017</i>	785	799	680	701	751
<i>Owner Drivers and Forestry Contractors Act 2005</i>	23	26	12	20	22
<i>Farm Debt Mediation Act 2011</i>	34	31	18	20	18
<i>Commercial Passenger Vehicle Industry Act 2017</i>	0	0	2	1	2
Total disputes	1,882	2,619	5,175	3,171	2,028

* 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

For disputes that we completed in 2022-23, the top industries were retail trade (30 per cent) and accommodation and food services (25 per cent).

Figure 3 shows the significant rise in applications in early 2020 following the onset of the pandemic and subsequent introduction of the Commercial Tenancy Relief Scheme. The number of applications remained significantly greater than pre-pandemic levels throughout 2022-23.

Figure 3. Dispute applications from 2018-19 to 2022-23**Dispute applications**

Under the *Small Business Commission Act 2017*, the top five issues causing the disputes we helped to resolve in 2022–23 relate to the following:

1. **Unpaid money**, for example, where a building sub-contractor has completed work on a residential building but hasn't been paid: **39.1 per cent**
 2. **Undelivered goods or services**, for example, where a business paid upfront for flooring that was not then installed by the supplier: **13.0 per cent**
 3. **Quality of goods or services**, for example, where a farmer purchased farming equipment that they then found to be defective: **11.9 per cent**
 4. **Commercial (non-retail) leases**, for example, disputes under a lease for a premises that is used for manufacturing without retail activity: **10.4 per cent**
 5. **Contractual disputes**, for example, where parties are not meeting their contractual obligations: **10.3 per cent**
-

Under the *Retail Leases Act 2003*, the top five issues causing the disputes we helped to resolve in 2022–23 relate to the following:

1. **Money owed by the tenant**, for example, where a tenant is unable to pay ongoing monthly rent in addition to rent that was deferred during the pandemic: **35.0 per cent**
 2. **Responsibility for repairing and maintaining the premises**, for example, where a landlord is not repairing damage caused by extreme weather or providing compensation to the tenant: **13.4 per cent**
 3. **The value of outgoings**, for example, where the cost charged to a tenant for outgoings is significantly greater than the estimated cost in the disclosure statement: **13.3 per cent**
 4. **Security deposits**, for example, where a landlord isn't returning the tenant's security deposit, and the interest earned, within 30 days of the lease ending: **9.5 per cent**
 5. **Early termination of the lease**, for example, where a small business owner is wanting to close their business due to factors such as the continued rise in the cost of running their business and the ongoing difficulties in finding staff: **5.4 per cent**
-

Preliminary assistance to reach an early resolution

When we receive an application for help to resolve a 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 specialised guidance on the legislation we administer and alternative dispute resolution can often help the parties to negotiate a fair 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*, where our role involves giving both parties guidance on their rights and responsibilities, and arranging and conducting mediations
- *Commercial Passenger Vehicle Industry Act 2017*, where our role is limited to arranging and conducting mediations.

In 2022–23 our team successfully resolved 32 per cent of matters early on without needing to progress to mediation.

“I am so impressed with the response rate, professionalism and ease with which my dispute was managed. I am so grateful for [the dispute resolution officer] and the VSBC's services. Thank you.”

— Preliminary assistance feedback

“[The dispute resolution officer] was supportive and able to highlight the critical matters in the claim, with a view to bring the dispute to a satisfactory conclusion.”

— Preliminary assistance feedback

“The VSBC was readily available to assist and regularly checked in as to the status of the matter. The VSBC offered to hold a mediation and acted as an effective gateway of communication between the parties. Thank you.”

— Preliminary assistance feedback

Impartial mediation

A core function of the VSBC is to bring parties together to 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, impartial and confidential environment. The mediation process is flexible. It 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. Each party pays \$195 or \$95 if the dispute falls under the *Owner Drivers and Forestry Contractors Act 2005* or *Commercial Passenger Vehicle Industry Act 2017*.

In 2022-23 we continued our efforts to make our dispute resolution services more inclusive and accessible for business owners of culturally and linguistically diverse backgrounds. We provided interpreters at no cost to the parties for 67 mediation sessions and on 38 occasions when we provided pre-mediation support.

Of the 672 matters that were concluded at mediation in 2022-23, 66.1 per cent were resolved successfully (a decrease from 69.5 per cent in the previous year). Settlement rates varied from 61.8 per cent to 92.9 per cent across jurisdictions (see Figure 4).

The overall satisfaction rating with our mediation services was 80 per cent (a decrease from 87.6 per cent in the previous year).

The decline in the overall satisfaction rating and matters successfully resolved at mediation reflects the climate. The emotional and financial stress levels of the parties we helped, many of whom were still recovering from the impacts of the pandemic and recent floods, were often significantly high. We also saw a marked increase in the complexity of cases, many of which related to significant amounts of unpaid rent, outgoings and other tenant obligations under a lease. These factors reduced the capacity for parties to negotiate successful outcomes at mediation, which in turn understandably impacted our client satisfaction ratings.

Figure 4. Mediation outcomes by legislation

Legislation	Success rate (%)
*Commercial Tenancy Relief Scheme	79.4
Retail Leases Act 2003	61.8
Small Business Commission Act 2017	73.6
Owner Drivers and Forestry Contractors Act 2005	85.7
Farm Debt Mediation Act 2011	92.9
Total	66.1

* 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

“[The mediator] was absolutely brilliant. She went above and beyond in her role as mediator. We were extremely happy with her presiding over the mediation. She explained everything in detail and allowed us to speak freely. We could not have asked for a more understanding, compassionate and fair person.”
— Mediation feedback



“[The mediator] had a very calming influence and set the expectations for how a successful mediation worked.”

— Mediation feedback

“[The mediator] was terrific, engaged and helpful throughout the whole mediation process.”

— Mediation feedback

“Very good mediator. Tested our position (and no doubt the other side) carefully and with respect to achieve a result.”

— Mediation feedback

“[He] was a great mediator. He encouraged the parties to work towards a resolution and summarised the parties' positions in a clear and concise way.”

— Mediation feedback

Recognised for excellence in dispute resolution

In March 2023 the VSBC was honoured to be awarded the 2022 Ombudsmen and Commissions Alternative Dispute Resolution Group of the Year.

We were recognised nationally by the Australian Disputes Centre for our innovative and modernised hybrid model for resolving commercial disputes.

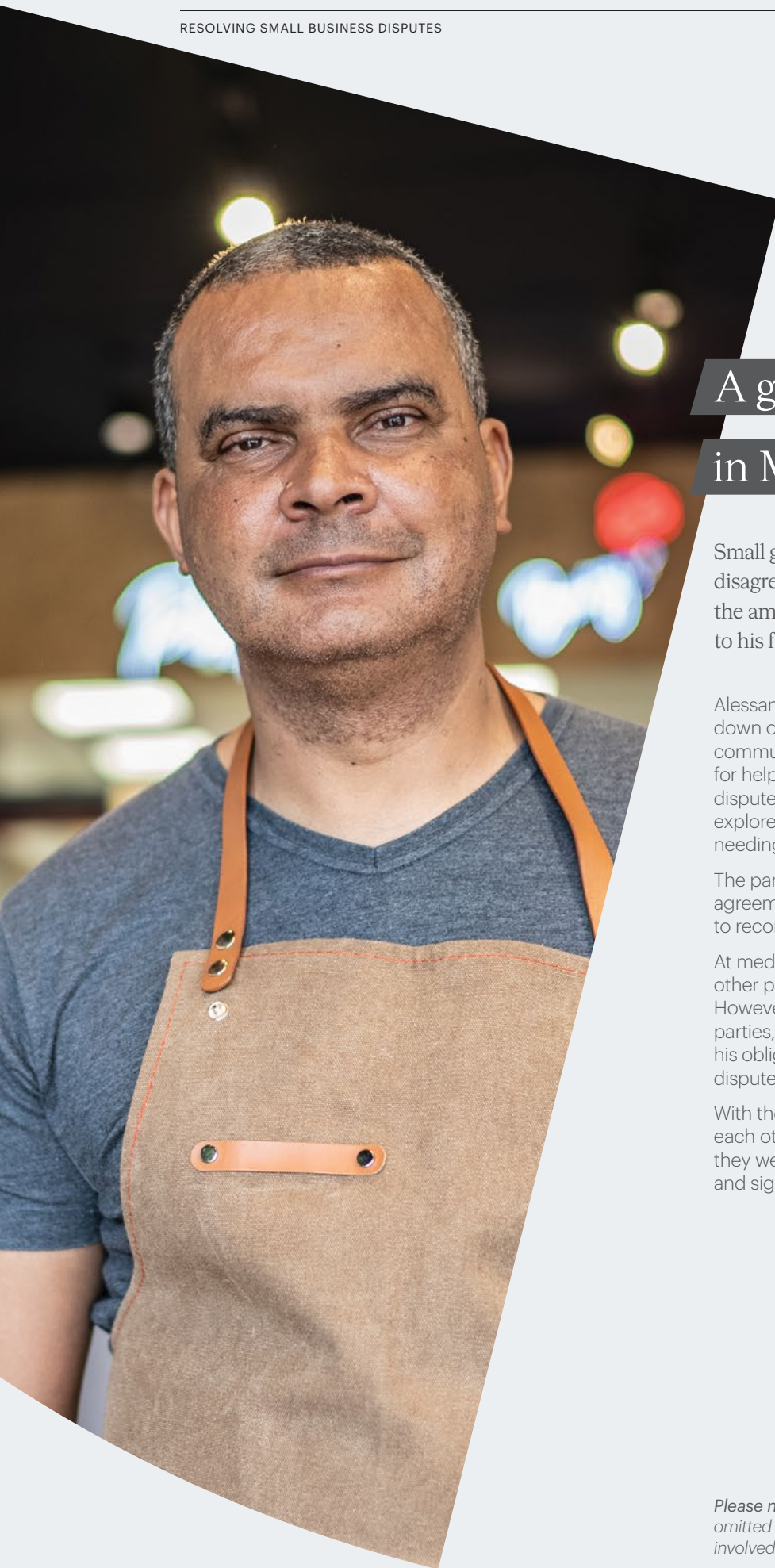
Under the model, we deliver most of our impartial mediations online, alongside in-person sessions where the need arises.

Our hybrid model enables the VSBC to:

- provide a tailored, expert service that is firmly focused on understanding and meeting the needs of our customers
- work in a flexible, efficient and responsive manner
- expand our reach and increase access to justice for people in small business – including throughout regional Victoria
- help more Victorians to avoid the high fees, stress and extended delays that often come with litigation.

“We’re absolutely thrilled to have the expertise, dedication and passion of our specialised team and mediators recognised through this award. We’re committed to providing high quality alternative dispute resolution services that support our small business people to thrive, and enable parties to move forward when commercial conflict arises.”

— Commissioner Lynda McAlary-Smith



A grocery store owner in Melbourne's east

Small grocery store owner Vihaan was in a disagreement with his landlord Alessandra over the amount that she had agreed to contribute to his fitout and the value of other outgoings.

Alessandra and Vihaan's relationship gradually broke down over the disagreement and they soon stopped communicating. Vihaan decided to apply to the VSBC for help. After receiving his application, the VSBC's dispute resolution officer contacted both parties to explore the possibility of resolving the matter without needing mediation.

The parties started talking again but couldn't reach agreement, prompting the dispute resolution officer to recommend mediation.

At mediation, neither party was prepared to hear the other party's opening statement without interrupting. However, as the mediator explored the issues with both parties, it became clear that Vihaan had been meeting his obligations under his lease and that the matters in dispute were relatively minor.

With the parties having a better understanding of each other's position and communicating respectfully, they were able to resolve the issues, reach agreement and sign binding terms of settlement.

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

Specialist retail valuer appointments

The VSBC has a role under the *Retail Leases Act 2003* to appoint a specialist retail valuer (SRV) where the tenant and landlord are unable to agree on a market review of the rent and the appointment of their own SRV. In 2022–23 we received a total of 148 applications requesting the appointment of an SRV, a decrease from 166 in the previous year.

Farm debt mediation certificates

In addition to arranging mediations, the other main function for the VSBC under the *Farm Debt Mediation Act 2011* is the issuing of exemption and prohibition certificates. Before a creditor can take enforcement action against a farmer, they require an exemption certificate from the VSBC. Conversely, a farmer can request a prohibition certificate from the VSBC, which prevents their creditor from taking enforcement action until satisfactory mediation has taken place. In 2022–23 the VSBC received 24 applications for an exemption certificate and no applications for a prohibition certificate.

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 website's fully automated process that enables them to receive an explanation of section 21 of the Act, apply and automatically receive a waiver certificate online. **In 2022–23 we issued 2,597 certificates, which is a 6.8 per cent increase on 2021–22. This reflects industry intelligence that in some situations, both tenants and landlords are preferring shorter lease periods.**

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 specialised services and the consequences if we find their refusal to be unreasonable.

In 2022–23 the VSBC issued two unreasonable refusal certificates. We have chosen not to publish the details of these matters.

Responding to the Minister's Statement of Expectations

In 2019 the then Minister for Small Business issued a Statement of Expectations for the VSBC, for the period 1 July 2019 to 30 June 2021. The statement included a requirement for the VSBC to contribute to the Victorian Government's program for reducing 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, with the expectation that a new Statement of Expectations will be received in 2023-24.

We are required to report on the activities we have undertaken to reach the performance targets and improvements that have been set out in this statement (as underlined on page 33). We have reported on these activities 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 June 2022 we launched a new fit for purpose case management system to further reduce manual handling and duplication of records, streamlining our dispute resolution processes.

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 2022–23 the average time taken to complete a dispute was 77 days.

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 in 2022–23, the client satisfaction rate was 94.2 per cent for disputes that were successfully resolved and 96 per cent for matters that were unresolved.

Our preliminary assistance function successfully resolved 32 per cent of all disputes raised with our office, without needing to progress these matters to mediation.

For matters that progressed to mediation, the overall satisfaction rate was 80 per cent.

The success rate for matters that progressed to mediation was 66.1 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 provided insights that have helped 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 has an annual risk management plan 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 2022–23, with key outcomes including:

- recording 5,367 followers across our social media profiles (a 17 per cent increase on the previous year)
- recording 73 VSBC media mentions across industry and mainstream outlets, both statewide and nationally
- delivering targeted and effective communications campaigns to raise awareness of amendments to the *Farm Debt Mediation Act 2011* and our enhanced role in supporting Victoria's gig workers to resolve disputes with their platforms.

In 2022–23 we implemented our overarching stakeholder engagement strategy, strengthening our relationships with key stakeholders.

Appendix A:

Compliance and accountability

Our team

The VSBC is made up of 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, Skills, Industry 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

Our performance framework is defined by the legislative frameworks within 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 2023 these expectations were a continuation of those put forward for 2019-21.

The VSBC also undertook notable efforts in response to the most recent 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.

In 2022–23 we met one of our three performance measures. These results reflect the climate where the emotional and financial stress levels of the parties we helped were often significantly high. We also saw a marked increase in the complexity of cases, many of which related to significant amounts of unpaid rent, outgoings and other tenant obligations under a lease. These more complex disputes were less likely to be resolved at mediation, with this understandably impacting client satisfaction ratings for 2022–23.

Figure 6. Budget Paper No.3 performance measures

Budget Paper 3 Performance measures	BP3 measure (target)	
	2021–22	2022–23
Disputes resolved prior to mediation	42.6%	32%
Mediation success rate	69.5%	66%
Client satisfaction rate	87.6%	80%

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.

In 2022–23 no issues arose in relation to occupational health and safety.

Environmentally sustainable practices

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

In 2018 we moved from a paper-based file system to a paperless office, which we continue. The transition to online mediations for the majority of the sessions we hold has reduced the travel associated with in-person sessions, assisting in further reducing the environmental impact of our work.

Systems

The department provides our corporate support systems including financial and procurement, information technology, risk management and records management.

We have a specialised case management system that we use for:

- dispute management and reporting
- preliminary enquiries
- recording engagement and advocacy activities.

Complaints

We have a complaints process, which we make available on our website. We received four complaints in 2022–23 relating to our dispute resolution services, three of which were investigated internally and resolved with each individual. One complaint was still being investigated as at 30 June 2023.

Freedom of Information

In 2022–23 we did not receive any Freedom of Information requests relating to the activities of the VSBC.

Protected disclosure procedures

The VSBC operates in accordance with the department's protected disclosure procedures. As at 30 June 2023 we had not received any disclosures made under the *Protected Disclosure Act 2012*, nor had the Victorian Ombudsmen referred any such disclosures to us for investigation.

Major contracts

From 1 July 2022 to 30 June 2023 the VSBC did not enter into any contracts over \$10 million or engage consultants. There was one consultancy where the total fees payable to the consultant were \$10,000 or greater.

Consultant	Purpose of consultancy	Start date	End date
Victorian Government Solicitor's Office	Legal Advice	22/02/2023	31/12/2023

Total approved project fee (excluding GST)	Expenditure 2022–23 (excluding GST)	Future expenditure (excluding GST)
\$175,000	\$30,883.34	TBC

Appendix B: Operations

Funding		\$
Appropriation		
Victorian Small Business Commission		2,512,100
Other operational funding		1,610,510
Total 2022-23 funding		4,122,610
Expenditure		
Employee-related expenses		2,892,599
Consultants and professional services*		330,997
IT and telecommunications		167,239
Office accommodation		581,441
Other expenses		150,332
Total 2022-23 expenditure		4,122,609

*Includes fees paid to mediators



Annual Report 2022-23

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