

Annual Report 2023—24

We're here for small business



Victorian
Small Business
Commission



The Hon Natalie Suleyman MP
Minister for Small Business
Level 36, 121 Exhibition Street
MELBOURNE VIC 3000

Dear Minister

Annual Report 2023–24

I am pleased to present to you the Annual Report 2023–24 on the operations of the Victorian Small Business Commission, covering the period 1 July 2023 to 30 June 2024.

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

A handwritten signature in black ink, appearing to read "Lynda McAlary-Smith", is positioned above the printed name.

Lynda McAlary-Smith
Victorian Small Business Commissioner

Victorian Small Business Commission
Annual Report 2023–24

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of the Parliament of Victoria
October 2024

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Authorised by the Victorian Small Business
Commission

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01

COMMISSIONER'S
MESSAGE

The Victorian Small Business Commission (VSBC) has proudly continued servicing Victoria's small businesses throughout its 21st year of operation.

My sincere thanks go to each and every one of Victoria's 701,000 small businesses and their families for the critical contribution that they make to the Victorian economy and to their local communities. Running a small business can be incredibly rewarding in many ways but it also requires courage, ingenuity and extraordinary levels of hard work and risk taking.

We have an endless variety of small businesses within Victoria operating within every sector imaginable. Many are self-employed sole traders while others employ a number of staff and are navigating the transition from a smaller business to a larger enterprise.

While there is much discourse on the definition of a small business and varying definitions across different jurisdictions, I am not yet persuaded that a singular definition is necessary, or better.

Definitions are about ruling some businesses in and ruling others out. There is greater value in ensuring the policy designers and decision makers are always sharply focused on the precise problem or opportunity at hand. Being clear (and accountable) for which types of businesses are impacted, and how, is what is critical.

That said, where 'small business' has been defined, it is difficult to see the utility in different definitions within the same legislation where the thresholds are intended as relief from burdensome complexity.

It is clear that small businesses within Victoria are under pressure and face a challenging operating environment. The heightened levels of stress, monetary pressures and uncertainty about the future have not fallen away for small businesses as we have moved beyond the intensity of the COVID-19 pandemic.

Enquiries and dispute resolution under the *Retail Leases Act 2003* continue to drive a significant amount of our work. My expert Dispute Resolution Officers and independent panel mediators reflect to me that they are dealing with parties exhibiting higher levels of distress and aggression and/or animosity towards each other than we have historically seen over the VSBC's 21 years.

We have also seen an increase in applications for mediations under the *Farm Debt Mediation Act 2011* and financiers seeking Exemption Certificates under the same legislation to enable them to take enforcement action against farmers in arrears.

For the first time, in this Annual Report we're sharing some of the key issues that we've surfaced through our monitoring activities and engagement with stakeholders which we have in turn advocated to governments and their departments and agencies to address.

I am pleased to report improved cooperation has resulted in the strongest results yet from Victorian Government departments and agencies with respect to their Payment Times Reporting obligations since the ten business day payment terms were introduced in 2021. Paying small businesses in a timely way makes a real difference to our small business operators.

In 2023-24, the VSBC's funding was impacted by a combination of factors which resulted in a reduction in resources available to the VSBC and required several organisational changes to be made.

This was coupled with continuing high levels of demand for VSBC services which has exacerbated the service impact of those organisational changes.

I am in ongoing discussions with the Victorian Government regarding the VSBC's funding needs and I thank industry stakeholders for their support and advocacy.

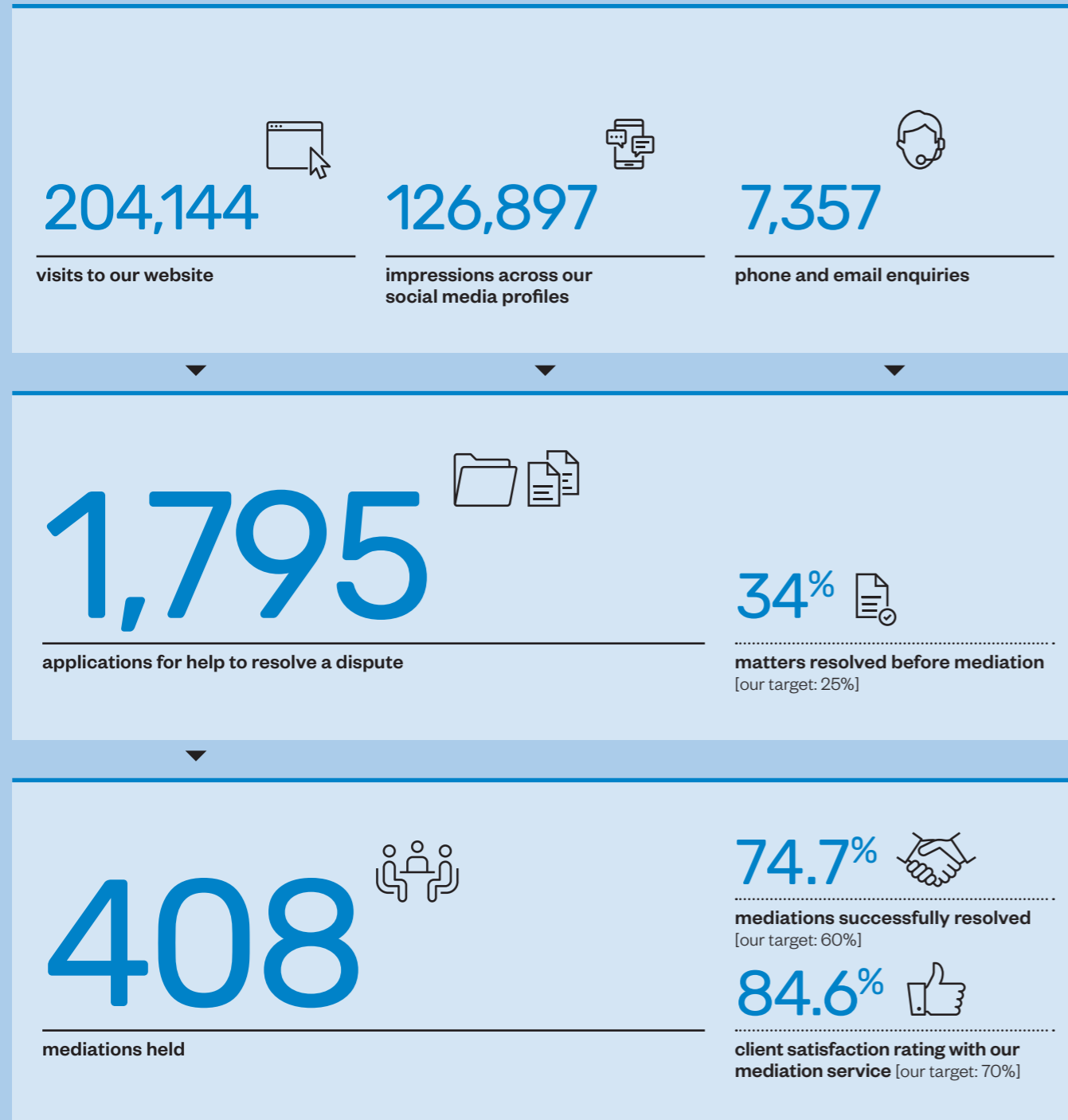
I thank the Minister for Small Business, the Hon Natalie Suleyman MP and her office for their constructive engagement on issues facing small businesses. I would also like to acknowledge and thank the Department of Jobs, Skills, Industry and Regions for the ongoing assistance and support that is provided to our office.

Finally, my thanks go to the VSBC staff and our panel mediators whose expertise and passion for delivering excellent services to small businesses are the heart of the VSBC.

Lynda McAlary-Smith
Victorian Small Business Commissioner

Note: while it appears the VSBC has dramatically exceeded its BP3 targets, these were revised down by the Department of Treasury and Finance during this financial year in order to reflect the VSBC's reduced staff numbers and capacity. While the targets were revised for the complete financial year, the clause 11 restructure process wasn't complete until early 2024, which meant that we maintained the bulk of our dispute resolution staff until that time – to the benefit of our performance measures.

2023–24 AT A GLANCE



ABOUT THE VICTORIAN SMALL BUSINESS COMMISSION

Our role, purpose and functions

The Victorian Small Business Commission (VSBC) was an Australian first when it was established in 2003 with the *Small Business Commissioner Act 2003*.

The VSBC, as it operates today, came into effect on 1 July 2017 with the commencement of the *Small Business Commission Act 2017* (the Act) which repealed and re-enacted (with amendments) the *Small Business Commissioner Act 2003*.

The Act established 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 2023-24 we finalised the last of the 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. It should be noted that the economic repercussions of the COVID-19 pandemic are still being felt today, with COVID-related debts and arrangements surfacing as disputes under other jurisdictions (*Retail Leases Act, Small Business Commission Act and Farm Debt Mediation Act*).

We've also supported the resolution of business-related disputes between gig workers and their platforms since the introduction of Victorian Government's Gig Worker Support Service in May 2023.

Our vision

To help achieve a fair and competitive operating environment for Victorian small business to operate, grow and prosper.

Our work streams

Dispute resolution [page 06]

Providing efficient, accessible, impartial and low-cost alternative dispute resolution services for small businesses

Engagement [page 16]

Connecting with Victoria's small business communities to make them aware of the VSBC's services and encourage informed decision making

Monitoring [page 22]

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

Advocacy [page 23]

Advocating on issues affecting people in small business and their operating environment

02

DISPUTE RESOLUTION

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.

We offer low-cost mediation services, but importantly, this occurs after exhausting preliminary assistance where our specialist dispute resolution officers try to resolve the disputes.

Endeavouring to maintain services with reduced resources and personnel

In 2023-24, the VSBC's funding was impacted by a combination of factors which resulted in a reduction in resources available to the VSBC and required several organisational changes to be made.

This was coupled with continuing high levels of demand for VSBC services which has exacerbated the service impact of those organisational changes.

These organisational changes included a reduction in its property footprint to reduce leasing costs and to reflect the permanent change to online mediation which the VSBC has embraced.

A reduction in staffing of 60% was also required for the VSBC to operate within its base funding after savings measures were applied.

VSBC reviewed its fee structure and from 1 September 2023 increased the fees charged to parties accessing its mediation service to \$300 per party for most mediations.

The reduction in staffing has seen the wait time for the allocation of a case to an expert Dispute Resolution Officer grow to more than 15 weeks.

The Commissioner is in ongoing discussions with the Victorian Government regarding the continuing high demand for the critical services that the VSBC provides, which is only expected to increase.

Our committed Dispute Resolution Officers and mediators have worked hard to maintain a high level of service, which is reflected in our client satisfaction rating. Mediation participants rated the VSBC's mediation services an average of 4.23 out of 5, reflecting a client satisfaction rate of 84.6%.

Our online-first approach to mediation

The COVID-19 period necessitated online mediations as the VSBC supported an unprecedented number of disputes, particularly claims for assistance through the Commercial Tenancy Relief Scheme. The lessons from this period informed our award-winning online approach to mediation where we offered mediations online, and in-person mediations only in limited circumstances (including Farm Debt mediations).

The VSBC was recognised as the 2022 Ombudsmen and Commissions Alternate Dispute Resolution Group of the Year in the Australian ADR Awards.



Benefits of online mediation:

- Removes the barrier and cost of travelling to a set location
- Parties don't need to take as much time away from their families and businesses
- The online environment helps place parties on equal ground
- Some parties find taking part in mediation from their home or business to be less stressful.

In response to the success of online mediations, and positive feedback from participants, the Commissioner decided to relinquish the lease of the VSBC's physical mediation facilities at 121 Exhibition Street Melbourne and move to an online-first approach for mediation. This decision has reduced the commission's physical footprint and resulting expenditure on commercial accommodation, while also benefiting mediation participants.

Our dispute resolution process

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

Preventing disputes: 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.

Our website hosts comprehensive information and guidance. It was visited more than 204,000 times this financial year. We also provide information to small businesses through our active engagement program (detailed from page 16) with their trusted advisors, industry associations, local government and other influential organisations.

Importantly, our contact centre assists thousands of Victorians with their questions over the phone and email. In this financial year the team received 7,357 enquiries, with the most common queries related to:

- commercial disputes
- mediation
- the role of the VSBC
- retail leasing – repairs and maintenance
- retail leasing – outgoing
- retail leasing – evictions and lockouts.

DISPUTE RESOLUTION CONTINUED

Our dispute resolution process (continued)

Preliminary assistance for pre-mediation 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 without needing to progress to mediation. Our Dispute Resolution Officers are experienced in providing guidance on the legislation we administer and can often help the parties to negotiate a fair outcome that they can both accept.

Our team successfully resolved 34% of matters without requiring formal mediation. This exceeded the 32% resolved in 2022-23 and our BP3 target of 25%.

If the dispute cannot be resolved this way, we explain the benefits of mediation to the parties in the context of the relevant legislation that applies to their dispute and encourage them to take part. These benefits include avoiding the emotional distress, delay, cost, distraction and uncertainty of litigation.

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.

Mediation outcomes

Of the 672 matters progressed to mediation in 2023-24, 74.75% were resolved successfully (an increase over 66.1% in the previous year and 69.5% in the year prior to that).

The overall satisfaction rating with our mediation services was 84.6% (an increase over the 80% achieved in 2022-23, but lower than the 87.6% rating of 2021-22).

Mediation outcomes by legislation

Legislation	Cases brought to mediation	Successful mediations	Success rate (%)
Commercial Tenancy Relief Scheme*	11	7	64%
Retail Leases Act 2003	332	247	74%
Small Business Commission Act 2017	44	32	73%
Owner Drivers and Forestry Contractors Act 2005	2	1	50%
Farm Debt Mediation Act 2011	19	18	94%
Total	408	305	75%

*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

Mediation Fees

VSBC mediations are subsidised by the Victorian Government, which makes the cost to parties significantly less than litigation and private mediation.

On 1 September 2023 the VSBC increased its mediation fees, this was the first increase to mediation fees in 15 years.

Each party pays \$300 for a half-day session and \$600 (incl. GST) for a full-day session. Farm debt mediations are currently \$195 per party and gig workers in a dispute with their digital platform did not pay a mediation fee until 1 July 2024 (with their fees covered by Industrial Relations Victoria).

DISPUTE RESOLUTION
CONTINUED

Disputes by legislation

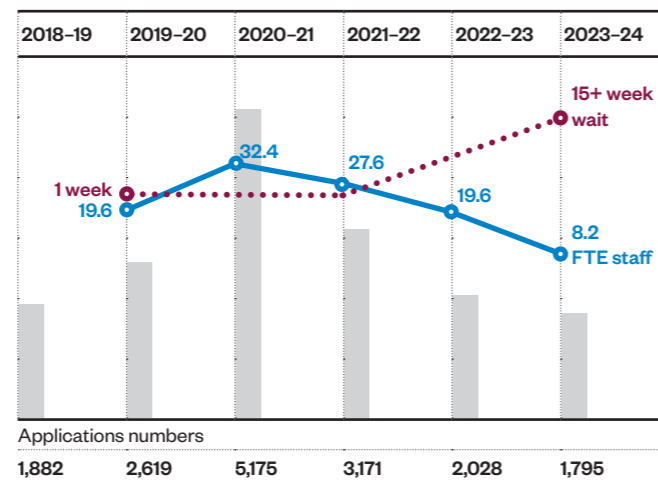
Dispute applications we received

We received 1,795 applications for our impartial, expert help to resolve commercial disputes this financial year, which is comparable to the number received prior to the COVID-19 pandemic.

When compared to the pre-pandemic period, applications relating to the Owner Drivers and Forestry Contractors Act 2005 have more than doubled. While applications related to Farm Debt increased by 11%.

This chart plots the relationship between case numbers, FTE equivalent staffing and the wait time for cases to be allocated to Dispute Resolution Officers between 2018-19 and 2023-24.

Application numbers, FTE staff numbers and resulting wait times



Applications received from 2018-19 to 2023-24

	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24
<i>Small Business Commission Act 2017</i>	785	799	680	701	751	775
<i>Retail Leases Act 2003</i>	1,040	886	2,056	1,554	1,221	929
<i>Farm Debt Mediation Act 2011</i>	34	31	18	20	18	38
<i>Owner Drivers and Forestry Contractors Act 2005</i>	23	26	12	20	22	52
<i>Commercial Passenger Vehicle Industry Act 2017</i>	0	0	2	1	2	1
Commercial Tenancy Relief Scheme*	n.a.	877	2,407	875	14	n.a.*
Total disputes	1,882	2,619	5,175	3,171	2,028	1,795

*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.

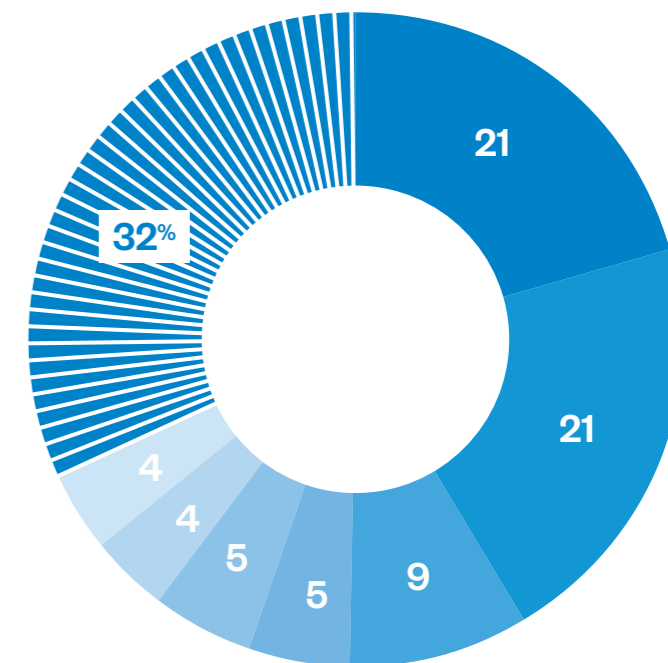
The Commercial Tenancy Relief Scheme ended 15 March 2022 and therefore no new applications were able to be made in 2023-24.

We assist small businesses from all industries

Small businesses span every sector and we therefore assist a great diversity of businesses. While a large number are from the retail, accommodation and food services and transport, postal and warehousing industries, there's significant diversity in industries represented – from construction to beauty and professional services.

This chart illustrates the great diversity of small businesses we've assisted, by industry.

- 21% Retail**
- 21% Accommodation and food services**
- 9% Transport, postal and warehousing**
- 5% Professional, scientific and technical services**
- 5% Healthcare and social assistance**
- 4% Construction**
- 4% Arts and recreation services**
- 32% Other industries including:**
 - Hairdressing and Beauty Services
 - Manufacturing
 - Agriculture, Forestry and Fishing
 - Information media and telecommunications
 - Rental hiring and real estate services
 - Administrative and support services
 - Wholesale trade
 - Education and training
 - Other personal services
 - Automotive Repair and Maintenance
 - Repair and maintenance
 - Financial and insurance services
 - Electricity, Gas, Water and Waste Services



DISPUTE RESOLUTION CONTINUED

Dispute resolution, by legislation

Small Business Commission Act 2017

Under the *Small Business Commission Act 2017*, the top five issues causing the disputes we helped to resolve in 2023–24 related to:

- 1—Unpaid money**, 41% of disputes, 218 disputes, for example, where a building sub-contractor has completed work on a residential building but hasn't been paid.
- 2—Contractual rights**, 12% of disputes, 66 disputes for example, a franchisor repossessing a franchise without compensation.
- 3—Commercial (non-retail) leases**, 9% of disputes, 47 disputes for example, disputes under a lease for a premises that is used for manufacturing without retail activity.
- 4—Quality of goods or services**, 8% of disputes, 44 disputes for example, where a farmer purchased farming equipment that they then found to be defective.
- 5—Undelivered goods or services**, 6% of disputes, 33 disputes for example, where a business paid upfront for flooring that was not then installed by the supplier.

Case study

An independent contractor who provides interpreting services on behalf of a government service had his contract terminated by the organisation for allegedly breaching interpreting guidelines.

The contractor disputed the termination and sought the VSBC's assistance in addressing the power imbalance he faced in making that challenge. The complaint suggested the interpreter had assisted a client with a test, which the interpreter denied, requesting evidence and pointing to his long and positive service record.

Our dispute resolution officer facilitated communication between the parties, encouraging them to revisit the decision. They agreed to reinstate the translator's contract prior to formal mediation becoming necessary.

"Thank you for getting my job back! Today I was in court for my first interpreting job after two years. I want to say thank you for all your help."

Retail Leases Act 2003

Retail leasing disputes occupy the greatest portion of the VSBC's dispute resolution time, representing just over half (51.75%) of applications we receive.

The top five issues causing the disputes we helped to resolve in 2023–24 under the *Retail Leases Act 2003 (RLA)* related to:

- 1—Money owed by the tenant¹**, for example, where a tenant is unable to pay ongoing monthly rent in addition to rent that was deferred during the pandemic. In all cases, there were additional issues in dispute to arrears.
- 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.
- 3—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.
- 4—Make good at end of lease**, for example, where a tenant has failed to return a retail premises to its original state at the end of their lease and the landlord requires their fixtures to be removed.
- 5—Lease options and renewals**, for example, where a landlord fails to recognise a tenant's option to renew their lease, as per their contract, and requests that they vacate the premises.

Industries of applicants

- 33% Accommodation and food services
- 30% Retail
- 7% Healthcare and social assistance
- 5% Arts and recreation services
- 4% Professional, scientific and technical services

The VSBC regularly considers the causes of disputes to inform our engagement work to educate retailers and landlords about how they can mitigate the risk of a dispute. Analysis of the industries represented among dispute applicants under the RLA underscores the importance of the VSBC's relationship with industry associations such as the Australian Hotels Association and Australian Retailers Association, among others. You can read about this outreach work in the engagement chapter of this report.

Case study

A bicycle sales and repair business had agreed to pay owners' corporation fees as part of the outgoings for the shop that they leased. The business noticed that the amount of owners' corporation fees began to increase substantially over the course of the lease.

The business checked the outgoings statement provided by the real estate agent and noticed that a maintenance levy was being charged as part of the owners' corporation fees.

Section 52 of the *Retail Leases Act 2003* (the Act) requires the landlord to carry out repairs and maintenance. VCAT has confirmed that landlords can't pass on those costs to the tenant.

Through our preliminary process of engaging both the business and the landlord and informing them of their requirements under the Act, the landlord agreed to reimburse the tenant for the maintenance levy.

¹ Cases of rental arrears alone are excluded by the *Retail Leases Act 2003*, part 10, section 81(2), and are matters for the Victorian Civil and Administrative Tribunal (VCAT). However, rental arrears rarely occur in isolation and are frequently associated with retail leasing disputes, such as repair and maintenance.

DISPUTE RESOLUTION
CONTINUED

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 the appointment of a SRV to conduct a market review of the rent.

In 2023–24 we received a total of 123 applications requesting the appointment of an SRV, a decrease from 148 in the previous year and 166 in 2021-22.

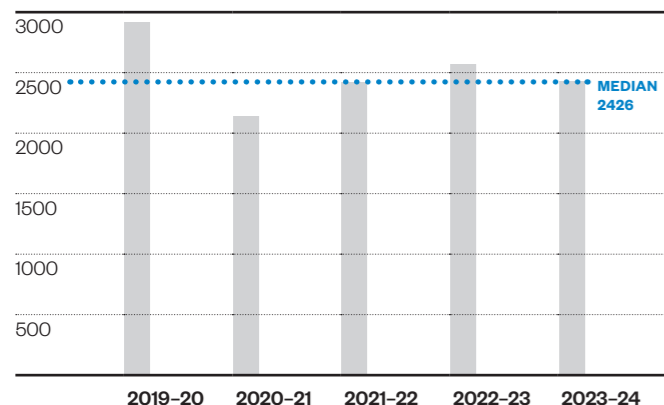
Five-year waiver certificates

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 2023–24 we issued 2,411 certificates, which is broadly consistent with the past four years. The ongoing demand for these waivers is indicative of many small businesses wanting to trial ideas in physical retail spaces without the risk and commitment of a five-year contract.

Five-year waiver certificates issued



Farm Debt Mediation Act 2011

Since the *Farm Debt Mediation Act 2011* was amended in October 2022, the Commissioner has held full administrative responsibilities for the Farm Debt Mediation Scheme. The scheme requires a mediation to take place between the farmer and the creditor prior to enforcement action being commenced.

The VSBC provides assistance through the farm debt mediation process, beginning with guidance to both parties on their rights and obligations and encouraging open communication. It also appoints mediators who bring the parties together in person, at a mutually acceptable time and location.

We received 38 applications for farm debt mediations this financial year, more than double the 18 received in 2022-23. This reflects what we've heard in our monitoring work that farmers across the country are experiencing liquidity issues as a result of market prices reducing revenues and inflation increasing the cost of operations.

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 a satisfactory mediation has taken place.

In 2023–24, 66 applications were made for farm debt mediation certificates. Two of these applications were for prohibition certificates, however they did not progress to the point of requiring the Commissioner to consider issuing the certificates.

Owner Drivers and Forestry Contractors Act 2005

Of the 33 disputes we resolved related to the *Owner Drivers and Forestry Contractors Act 2005*, 21 (63.63%) concerned gig economy contractors.

No disputes were related to forestry contractors during this year, and of the owner driver disputes that weren't lodged by participants in the gig economy, 8 were disputes about contractual rights and one was related to the notice period of a contract termination.

Three disputes went to mediation (of which 2 were successful). The Commission issued 3 certificates because the respondent couldn't be contacted and 2 certificates were issued because the dispute was unable to be resolved.

Commercial Passenger Vehicle Industry Act 2017

Taxi and hire car drivers and operators can access mediation through the VSBC when:

- the dispute is first referred to Safe Transport Victoria (STV) (formerly Commercial Passenger Vehicle Victoria)
- STV has been unable to resolve the dispute
- STV has issued a certificate to the parties within the past 30 days enabling the dispute to be referred to the VSBC or Victorian Civil Administrative Tribunal (VCAT) for mediation.

One application was received relevant to the Commercial Passenger Vehicle Industry Act 2017, however the applicant had not yet approached STV and did not hold a certificate from STV. The case was therefore not able to be progressed.

Supporting gig workers

Contract workers in the gig economy who deliver services via an online platform can apply for assistance in resolving disputes with those platform owners. Examples of disputes are:

- 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 support independent gig contract workers under two pieces of 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 good delivery platforms such as Uber Eats, DoorDash and Menulog. **These represented 30% of resolved gig worker disputes this year.**
- *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 (ie. not goods) (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). **These represented 70% of resolved gig worker disputes this year.**

The VSBC assisted 94 gig workers this year, 82% of whom applied directly to the VSBC for assistance. Of the disputes resolved, 46% were caused by communication issues; 15% were caused by a failure to read or understand a contract; 39% were caused by a power imbalance between the worker and the platform.

Unreasonable refusal

In financial year 2023-24, 3 unreasonable refusal certificates were issued. The Commissioner has chosen to exercise her ability to publish the details of one certificate for record.

On 27 July 2023, a certificate of unreasonable refusal was issued to Dragan Jovanovic of Lara who refused to participate in an alternate dispute resolution process despite repeated requests from the VSBC.

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.

ENGAGEMENT

The VSBC connects with Victoria's small business communities to make them aware of its services and encourage informed decision making.

This financial year the VSBC continued delivering upon its engagement aims of:

- increasing the visibility of our dispute resolution services
- ensuring that our service delivery is accessible and inclusive for 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.

The VSBC builds positive working relationships with industry groups, peak bodies, local chambers of commerce and local, state and federal governments, among others, to maximise its opportunities to reach small businesses. As a part of this work, the VSBC meets regularly with a large number of organisations. In addition to supporting the VSBC's outreach to businesses, these meetings also provide insight into the issues and challenges facing small business to inform our monitoring and advocacy work.

Commissioner McAlary-Smith delivered 17 presentations at industry and local government business events, stakeholder seminars and expos. The VSBC was also represented at 19 networking events, with examples including the Kinaway Victorian Aboriginal Business Awards 2023, The CommBank SmallBiz Week Business Leaders Breakfast and the Master Grocers Australia AGM.



Commissioner McAlary-Smith speaking at the Australian Retailers Association and American Express Small Business Round Table in Sydney.

Organisations the VSBC regularly meets with:

- Australia and New Zealand Banking Group (ANZ)
- Australian Banking Association
- Australian Competition and Consumer Commission (ACCC)
- Australian Financial Security Authority (AFSA)
- Australian Hairdressing Council
- Australian Hotels Association (AHA)
- Australian Industry Group
- Australian Retailers Association
- Australian Securities and Investments Commission (ASIC)
- Australian Small Business and Family Enterprise Ombudsman (ASBEFO)
- Australian Taxation Office (ATO)
- Better Regulation Victoria
- CPA Australia
- Civil Contractors Federation
- Commonwealth Bank
- Communications and Information Technology Training (CITT)
- Council of Small Business Organisations Australia (COSBOA)
- Fair Work Ombudsman
- Franchise Council of Australia
- Geelong Chamber of Commerce
- Housing Industry Association (HIA)
- Institute of Public Administration Australia (IPAA)
- Law Institute of Victoria
- Master Builders Association Victoria
- Master Builders Victoria
- Master Grocers Association
- National Australia Bank (NAB)
- New South Wales Small Business Commission
- Office of the South Australian Small Business Commission (SASBC)
- Queensland Small Business Commission
- Real Estate Institute of Victoria (REIV)
- Resolution Institute
- Rural Financial Counselling Service
- Shopping Centre Council of Australia
- Small Business Victoria
- The Pharmacy Guild of Australia
- Victorian Association for Newsagents (VANA)
- Victorian Automotive Chamber of Commerce (VACC)
- Victorian Chamber of Commerce & Industry
- Victorian Civil and Administrative Tribunal (VCAT)
- Wage Inspectorate Victoria
- Western Australia Small Business Development Corporation
- Westpac
- VSBC Mediator Panel

ENGAGEMENT
CONTINUED

Visiting regional communities

The VSBC is committed to ensuring all Victorian small businesses can access its services and proactively works with local governments, chambers of commerce and community groups in regional Victoria.

The Commissioner visited Maldon in Victoria's Goldfields to attend the inaugural Maldon Business Expo where she moderated business pitches.

In June, Commissioner McAlary-Smith attended the Horsham Rural City Council meeting, a meeting of West Vic Business members and was a keynote speaker at the Yarriambiack Shire Business Expo.

The Commissioner visited Gippsland twice, in August to attend a meeting of the South Gippsland Shire Council and as keynote speaker at the Gippsland Valuers Discussion Group Conference. In September the Commissioner attended Wellington and Baw Baw Shire Council meetings, the Drouin Business Community roundtable, a meeting of the Warragul Business Group and the Sale Business & Tourism Association. The Commissioner also met with the Deputy Chair of the Gippsland Rural Financial Counselling service, Raelene Hanratty and made the opening address at the launch of the Latrobe Valley Small Business Festival.



^
Top: Commissioner McAlary-Smith at the Yarriambiack Business Expo held in Warracknabeel Town Hall

Above: Ylva Carosone, Luz Restrepo OAM, Jamie Heffernan and Commissioner McAlary-Smith at the Maldon Business Expo 2023.

How applicants heard of the VSBC

The VSBC's outreach and engagement work is reflected in the referral sources quoted by applicants to our dispute resolution service.

While the majority of applicants heard of the VSBC via our website and communications work (37%), a comparatively large number were referred by trusted advisors (31% - accountants, lawyers, real estate agents and property managers). More than a quarter of (27%) referrals were made from our key stakeholders – statutory authorities, local governments, local business networks and industry associations.

Our website

In 2023-2024, we recorded 204,144 visits to the VSBC website and 342,310 page views.

The most visited pages included:

- Repairs and maintenance
- Outgoings and other charges under a lease
- Disclosure statements
- Accurate lease information
- Retail tenants and landlords
- Applying for our help

These results indicate that tenants, landlords and parties acting on their behalf regularly refer to the VSBC's website for information about their rights and obligations.

Sources	Activities
VSBC communications 37%	Presentation by VSBC Media Social Media Online search/website
Trusted advisors 31%	Accountant Lawyer Real Estate Agent / Property Manager
Professional and community networks 20%	Industry or business association Business Network Local council
Authorities 7%	ACCC VCAT Consumer Affairs Victoria ASBEFEO
Other 5%	Friends and family Other
Combined total 27%	<i>27% of referrals came from our key stakeholders – Industry and business associations, business networks, local councils and statutory authorities.</i>

ENGAGEMENT CONTINUED

Media coverage

25 mentions were made of the VSBC in the media during the financial year, representing about one third of the activity recorded in past years. This reflects the cessation of COVID-19 related activities and the absence of dedicated communications personnel for the majority of the reporting period.

7 mentions related to the Commissioner's advocacy for the establishment of a chamber of commerce in Warrnambool. The issue was debated and covered by local media for an extended period.

"Can business chamber get up?"

Katrina Lovell, [The Standard](#) Thursday 31 August 2023.

"Concern over apathy for chamber of commerce idea"

Katrina Lovell, [The Standard](#) Thursday 17 August 2023.

The balance of mentions were coverage of the Commissioner's regional visits and industry engagements.

"ARA and AMEX uncover true sentiment among small business owners"

Eily Bencic, [RetailBiz](#), Monday 6 November 2023.



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Commissioner McAlary-Smith pictured in the RetailBiz article published 6 November 2023.

Social media

VSBC social media channels were managed by the executive office during the absence of a dedicated communications professional for much of the 2023-24 reporting period.

Despite limited capacity, the VSBC continued to regularly publish updates to followers, largely aggregating content relevant to small business from key stakeholders such as the Australian Tax Office, Small Business Victoria and the Victorian Chamber of Commerce and Industry.

During the 2023-24 reporting period the VSBC's following across LinkedIn, Facebook, Instagram and X (formerly Twitter) grew to 5,457 followers.

Content was published less frequently than past years, 492 posts were published across all channels, compared to 1,313 posts in the previous period.

VSBC Newsletter

Due to staffing constraints, including the absence of a dedicated communications professional, the VSBC paused issuing its quarterly email VSBC News.

One edition was published in July 2023 before the pause was implemented.

Small Business Friendly Council initiative

65 councils have signed the Small Business Friendly Charter since we established the initiative in May 2019. By partnering with local councils we endeavor to identify and respond to the needs of local small businesses in communities across Victoria.

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.

Due to resourcing constraints during this financial year, the VSBC paused work in expanding the program and was not in a position to run any workshops or seminars with councils.

The program will be revisited and reviewed as to how it can best engage councils in the coming financial year.

MONITORING

The VSBC observes the impact of legislation, government policies and market trends upon small businesses and their operating environment.

The Commissioner frequently visits small businesses to hear from them first-hand. She also regularly meets with representative groups, including chambers of commerce and industry associations to surface information. VSBC representatives also meet with stakeholders such as the Australian Taxation Office and the major banks. These meetings inform our monitoring work, and you'll find them detailed in the engagement chapter of this report.

Monitoring the Victorian Government's compliance with its Fair Payments Policy

It's important that the Victorian Government leads by example in paying small businesses for their products and services in a timely manner.

Since the introduction of the Victorian Government's Fair Payment Policy in 2004, the VSBC has worked with Small Business Victoria to monitor the compliance of departments and agencies with the policy.

Initially departments and some agencies were required to pay invoices with a contract value of less than \$3 million within 30 days of receiving the invoice. Then from 1 January 2021, the policy was amended to bring payments forward to ten business days. Fair payment clauses were also required to be added to new contracts.

Departments and applicable agencies that don't make payments to these suppliers within ten days are liable to pay penalty interest.

The Commissioner writes to Victorian Government department secretaries each year, requesting reports on invoice payments from their departments and portfolio agencies. Small Business Victoria then works with the VSBC to analyse their compliance and produce this report.

2023-24 has seen the strongest results since the ten business day payment terms were introduced in 2021.

84% of invoices under the value of \$3 million were paid within ten business days, a notable increase over the 72% recorded last year. Furthermore, the average number of calendar days to payment was 10.6 in 2023-24, down from 14.

While governments can hold policies, implementation is another matter – particularly across large organisations where multiple hands are required to undertake a transaction. Recognising this, Commissioner McAlary-Smith and Small Business Victoria proactively engaged departments across the Victorian Government during the financial year to encourage a culture of promptly paying small businesses. They also worked with departments and agencies to share knowledge on uplifting their systems and processes to enable timely payments.

The VSBC welcomes the work that departments and agencies have undertaken to deliver upon this policy and encourages them to continue working with the VSBC and Small Business Victoria to ensure more small businesses are paid for their goods and services in a timely manner.

Payment of invoices for contracts less than \$3 million 2023-24	Total number of invoices paid	Average number of calendar days to pay invoices	Compliance rate of invoices paid within 14 calendar days (ten business days)
Departments	549,098	8.6	89%
Agencies	946,556	12.5	81%
Total	1,495,654	10.6	84%

ADVOCACY

The Commissioner is a frank and fearless voice to government on the issues affecting people in small business. To inform the Commissioner's advocacy, we actively monitor the challenges faced by small businesses, and the impact of legislation, government policies and market trends upon small businesses and their operating environment.

The Commissioner provides fortnightly updates to the Minister for Small Business, highlighting and advocating on the key issues faced by Victoria's small businesses. She also meets regularly with Small Business Victoria (within the Department of Jobs, Skills, Industry and Regions) to share information about the state's operating environment to inform their small business related policy work and program delivery.

Also working at a Commonwealth level, the Commissioner regularly meets with interstate small business commissioners and members of the Federal Regulatory Agencies Group to exchange information, contribute to policy, and to advocate for positive change. As part of this work the Commissioner contributes to the:

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

Issues raised by the Commissioner during this financial year include, but weren't limited to:

- Weakened consumer confidence impacting small businesses
- Continued labour and skills shortages in most industries
- Increasing small business debt enforcement from the Australian Tax Office
- Increasing business and compliance costs in Victoria
- Weakened business conditions and confidence
- Insufficient consultation on policy changes in Victoria with respect to practical implementation timeframes
- Frustration among small businesses on the implementation of Australian Government budget initiatives.

03

RESPONDING TO THE MINISTER'S STATEMENT OF EXPECTATIONS

The VSBC has continued to work in response to the Minister for Small Business' Statement of Expectations, as articulated in 2019 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.

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 outlined in this section of the report.

Timeliness

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

Since the Statement of Expectation in 2019 the VSBC launched a new case management system in June 2022 which reduced the manual handling and duplication of records, streamlining our processes.

The Commissioner is in ongoing discussions with the Victorian Government regarding the VSBC's funding needs.

Our committed Dispute Resolution Officers and mediators have worked hard to maintain a high level of service, which is reflected in our mediation client satisfaction rating of 84.6%.

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 2023–24 the average time taken to complete a dispute was 108 days, or 15.5 weeks.

Upon receipt of a dispute, the VSBC issues the applicant with an estimated timeframe for it to be allocated to a Dispute Resolution Officer. This has grown to 15 weeks.

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 mediation service by sending a survey to parties after the matter has concluded.

This financial year our client satisfaction rate was 84.6%, an increase on last year of 4.6%. 75% of disputes that went to mediation were successfully resolved, an increase of 8.9 percentage points on last year.

Due to resourcing constraints we ceased measuring client satisfaction rates with preliminary assistance, as had been measured in past years.

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 financial years 2022–23 and 2023–24.

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 and 2023–24, but with limited capacity in this financial year due to staffing constraints that saw the Executive Office take on many communications and engagement responsibilities.

This year the VSBC:

- Grew its following across LinkedIn, Facebook, Instagram and X (formerly Twitter) to 5,457 users, a modest increase of 90 followers (1.67%, less than the 17% growth of the previous year)
- Was mentioned 25 times in the media, down from 73 mentions in the previous year, which reflected the transition away from COVID-19 relief activities and reduced staffing which meant we were unable to pursue proactive opportunities.

The VSBC is planning for a significant increase in these areas in 2024–25 following a recruitment exercise to secure a Senior Communications & Engagement Adviser.

04

APPENDIX—A COMPLIANCE AND ACCOUNTABILITY

Our team

The VSBC is made up of Victorian Small Business Commissioner Lynda McAlary-Smith and Victorian Public Sector (VPS) staff, who deliver corporate and business operations, communications, 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.

As at 30 June 2023 there were 7 VPS staff to support the Commissioner and assist in delivering the work of the VSBC.

Assessing our performance

Our performance framework is defined by the legislative frameworks within which we operate, performance metrics outlined in the VSBC Corporate Plan 2022-26, and the Ministerial Statement of Expectations – the VSBC’s governing document. As at 30 June 2024 these expectations were a continuation of those put forward for 2019–21.

Assisting Victorians in the languages they speak

The VSBC assists Victorians of all cultural and linguistic backgrounds.

One in five applicants for dispute resolution assistance speak a language other than English at home.

To ensure the inclusion of Victorians who speak a language other than English, interpreters are available to assist in speaking with our contact centre, and throughout the mediation process. On 71 occasions interpreters assisted Victorians to participate in telephone calls or mediations with the VSBC.

Languages spoken, as reported by dispute applicants

Main language spoken at home	Disputes received (2023-24)	
English	1,407	78.82%
Other (unspecified)	104	5.82%
Mandarin	84	4.71%
Hindi	51	2.86%
Punjabi	47	2.63%
Arabic	17	0.95%
Vietnamese	17	0.95%
Dari	16	0.90%
Cantonese	14	0.78%
Greek	8	0.45%
Spanish	6	0.34%
Prefer not to say	14	0.78%
Total	1785	

Mediation and phone translation engagements

Language	Total	%	Mediation	Phone
Mandarin	35	49.30%	14	21
Spanish	10	14.10%		10
Vietnamese	8	11.30%	3	5
Turkish	4	5.60%		4
Cantonese	3	4.20%	1	2
Farsi	3	4.20%	1	2
Arabic	2	2.80%		2
Thai	2	2.80%	1	1
Greek	1	1.40%	1	
Hindi	1	1.40%		1
Nepali	1	1.40%	1	
Sinhalese	1	1.40%		1
Total	71		22 (31%)	49 (69%)

APPENDIX—A COMPLIANCE AND ACCOUNTABILITY CONTINUED

Budget Paper No.3 measures

We are required by the Victorian Government's Budget Paper No.3 (BP3) to report on how we are delivering our performance targets regarding the quality of the VSBC's alternative dispute resolution services.

In 2023–24, we continued to exceed our performance measure on the number of disputes resolved prior to mediation. Pleasingly, we also increased the success rate of mediations undertaken, and our client satisfaction rate also increased, year on year.

It should be noted that while it appears the VSBC has dramatically exceeded its BP3 targets, these were revised down by the Department of Treasury and Finance during this financial year in order to reflect the changed environment for the VSBC. While the targets were revised for the complete financial year, the staffing reductions were not complete until March 2024, which meant that we maintained the bulk of our dispute resolution staff until that time – to the benefit of our performance measures.

Budget Paper No.3 performance measures

	BP3 measure (target)	2022-23	2023-24
Disputes resolved prior to mediation	25%	32%	34%
Mediation success rate	60%	66%	74.75%
Client satisfaction rate	70%	80%	84.6%

Occupational health and safety

We endeavor 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 2023–24, 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.

Our 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 finance 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 is outlined on our website.

We received two complaints in 2023–24 relating to our mediation services, and one complaint against a dispute resolution officer. The complaints were all investigated internally and concluded without any further action being required.

Freedom of Information

In 2023–24, we received one Freedom of Information request, which we accepted but declined to undertake a document search under the provisions of the Freedom of Information Act.

Protected disclosure procedures

The VSBC operates in accordance with the department's protected disclosure procedures. As at 30 June 2024 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

From 1 July 2022 to 30 June 2023, the VSBC did not enter into any contracts over \$10 million or engage consultants in that value range.

The Victorian Government Solicitor's Office was engaged for \$31,958.89 to defend proceedings against the VSBC and the Commissioner in the Supreme Court. The VSBC and the Commissioner were successful in having the proceedings dismissed, with the Court ordering that the VSBC and the Commissioner's costs be paid on an indemnity basis.

The case, and judge's ruling, can be viewed by searching for *Koronczyk v Victorian Small Business Commissioner & Ors [2023] VSC 431*.

Consultant	Victorian Government Solicitor's Office
Purpose of consultancy	Legal advice and representation
Start date	22 February 2023
End date	31 December 2023
Total approved project fee (excluding GST)	\$175,000
Expenditure 2023–24 (excluding GST)	\$31,958.89
Future expenditure (excluding GST)	Nil

APPENDIX—B OPERATIONS

Financial statement 1 July 2023 – 30 June 2024

Funding

Appropriation

Victorian Small Business Commission	2,311,900
Other operational funding	479,954
Total 2023–24 funding	2,791,854

Expenditure

Employee related expenses	2,152,591
Consultants and professional services (<i>includes fees paid to mediators</i>)	177,944
IT and telecommunications	130,807
Office accommodation	263,888
Other expenses	66,624
Total 2023–24 expenditure	2,791,854

Annual Report 2023—24

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