

# ANNUAL REPORT 2015/16



Government  
of South Australia



**Small Business  
Commissioner**

SOUTH AUSTRALIA

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**Government  
of South Australia**



**Small Business  
Commissioner**  
SOUTH AUSTRALIA

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Dear Minister

I am pleased to present to you the Annual Report on the operations of the Small Business Commissioner South Australia, covering the period 1 July 2015 to 30 June 2016.

The Report is provided to you as required under the *Public Sector Act 2009*, in order for you to cause the Report to be laid before each House of Parliament.

Yours sincerely

John Chapman  
**SMALL BUSINESS COMMISSIONER**  
30 September 2016







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# 1

## MESSAGE FROM THE SMALL BUSINESS COMMISSIONER

The operations of the Office of the Small Business Commissioner continued to evolve during 2015/16 with the commitment by the State Government to fund a Small Business Centre in Adelaide's CBD.

The new home for the Small Business Commissioner at 99 Gawler Place Adelaide will open in September 2016 and aims to provide a first-stop-shop for small business enquiries. In particular, it will concentrate on bringing together small business information from the Office of the Small Business Commissioner, the Office of the Industry Advocate and the Department of State Development.

Over time it is planned that information relating to activities of other State, Federal and Local Government agencies and other groups which assist small business will be brought together.

I appreciate the support of the State Government in funding the new approach to assisting small businesses.

Business conditions remained challenging during 2015/16 and the Office of the Small Business Commissioner continued to assist businesses to negotiate a wide range of disputes.

### **The biggest challenge for the office emerged with the appointment of administrators to Arrium/OneSteel at Whyalla in April 2016.**

The Office moved quickly to develop links with SA based suppliers and contractors who were affected by this development, with many suffering serious cash flow issues.

Discussions at the highest levels of Government resulted in the announcement of a \$10 million dollar package to assist small businesses with direct exposure to the Arrium companies.





Small Business Commissioner John Chapman meeting with Minister for Regional Development Hon Geoff Brock and Mark Mentha from Korda Mentha in Whyalla on 14 April 2016.

Other measures were also put in place to support small business, including legal and financial advice as well as programs by the ATO and Revenue SA to assist with taxation payments.

At the time of writing, the future of the South Australian Arrium businesses, including the iron ore mines, remains undetermined.

For the State and Federal Governments, the future of Whyalla hinges on the positive outcome that includes the continuation of both the mining and steel producing businesses. The alternative is almost unthinkable given the reliance of the city on a single important company.

## ENERGY ISSUES

The Office continues to work with small businesses impacted by the cost of energy, as well as adverse changes to rules instigated by market participants.

At the time of writing, the Office was continuing to investigate the negative and unfair impact of SA Power Network tariff arrangements on small businesses relating to the installation of solar panels.

The decision to penalise businesses with a higher tariff rate when they attempt to save costs by installing solar is inconsistent with the State Government's objective of Adelaide becoming carbon neutral by 2050.

South Australia's vulnerable position in the national electricity market in terms of pricing and stable supply remains a matter of ongoing and serious concern and one which I am currently pursuing with the State Government. I note that the State Government also happens to be the lead legislator in relation to the national electricity market.

I am pleased that the State Government has allocated \$500,000 to allow for the investigation of another interconnection line to the Eastern States, which should provide added energy security for the State.

## IMPACT OF CONSTRUCTION ON SMALL BUSINESS

The Office has two ongoing cases relating to the impact of construction of significant office or accommodation high rise towers in the CBD.

It is apparent that there is a need for the planning authorities to take into account the impact construction works are likely to have on neighbouring businesses and to ensure that appropriate mitigation measures are put in place. Where appropriate, compensation should be negotiated due to business losses incurred through development.

### **In some cases, small businesses are facing serious and substantial losses from the actions of others.**

It seems to me that there is a need to strike a better balance between property development and existing neighbouring businesses.

## PRIVATE TRAINING PROVIDERS

Following the 2015 State Budget, a number of registered training providers (RTO's) approached the Office seeking assistance due to funding arrangements for training delivered by private RTO's being significantly reduced while TAFE funding was little changed.

As a result of these complaints I sought detailed information from the Department of State Development in relation to the funding for Vocational Education Training in SA.

I also wrote to 152 RTOs seeking information in relation to their funding. Twenty two replied and provided details requested in a pro-forma document.

After a detailed assessment of this information and a number of discussions with senior Departmental staff, I prepared detailed correspondence to the Minister for Small Business and the Treasurer providing a number of options to address the impact of the changed funding arrangements. I also had a number of discussions with the Minister as well as the Office of the Premier in relation to this issue.

The Mid Year Budget Review in December 2015 provided an additional \$7.9 million over the next two financial years under 'Work Ready' and a further \$6.4 million for 'Job First' STL projects and Jobs First Employment projects over the same period.

I recognise that the additional funding arrangements may not address all the issues that were raised as a result of the altered funding model under WorkReady. However, it is a positive development and recognises the importance of private training providers in delivering positive outcomes for small business.

I would urge the State Government to develop an improved consultation process in relation to training funding allocations with private RTO's and maintain an emphasis on linking training with real job outcomes.

## ROAD SAFETY REMUNERATION TRIBUNAL

I am pleased to note that the Federal Government has abolished the Road Safety Remuneration Tribunal following an outcry by owner/drivers on new mandated freight rates which threatened to put many out of business.

I provided a submission to the Tribunal opposing the proposed changes which were due to take effect on 4 April 2016. It was pointed out that what had been proposed was ill-conceived and did not reflect an understanding of the industry and in particular, how back loading rates are negotiated.

## MARKET POWER AND LOCAL GOVERNMENT

I am maintaining a close interest in a proposal by a number of Adelaide Councils to form a lawful cartel and consolidate all of their waste management under one contract.

Through the vehicle 'Council Solutions', the Councils are seeking an authorisation from the ACCC to lock up all streams of waste management (of more than 30 percent of the metropolitan area) for up to 14 years.

The Office of the Small Business Commissioner has been approached by both small and large waste industry operators expressing concern about the proposal and the potential negative impact on their businesses and the broader community.

I lodged a submission opposing Council Solutions' proposal and appeared at an ACCC conference of "interested parties" held in Adelaide in March 2016 to outline the feedback I had received and my total opposition to the proposal.

The ACCC was due to make a decision on the matter in May 2016 but has extended its timetable to allow further consultation with interested parties.



## LOCAL GOVERNMENT REGULATION

The interaction between the sometimes conflicting views of Local and State Government were highlighted in a dispute between Feathers Fish and Chip Shop and the Burnside Council over a very small LED flashing “OPEN” sign, which had been operating for many years.



The business owner was advised by the Council that he needed to seek approval to display the sign as the Council had determined that it was advertising under the *Development Act 1993*.

### **The cost of assessment of the sign and approval process was \$290.**

After discussions with the owner of the shop, I then sought advice from the Council and, after reviewing the *Development Act 1993* and associated regulations, came to the conclusion that the Council was technically correct given the broad wording of what constituted ‘advertising’ and its visibility from the street.

I worked with the Local Government Association and the Council to identify a solution, and as a result, the Council approved an enforcement policy which will allow it to use discretion in dealing with such matters in the future.

While the case was frustrating to many, our Office, with the support and goodwill of the Council, was able to navigate a solution which was acceptable to all parties.

I appreciate the support of the Burnside Council in this matter and also that of former LGA CEO, Ms Wendy Campana.

## LATE PAYMENT OF GOVERNMENT DEBTS

The State Government sought advice on whether it should implement a financial accounting system to automatically provide for penalty payments which had not been effected within 30 days of invoice date.

Based on the complexity for small businesses and the cost of implementing a system, I did not support the concept of automation at this time.

The Office stands ready to work with small businesses and the Government on late payment issues which are not prevalent items in the enquiry list to the Office.

That said, the Office has dealt with one substantial case which relates to non-payment by a Government agency, with one business experiencing outstandings over 30 days of over \$400,000. The agency concerned engaged positively with the Office and the case highlighted difficulties in the internal authorisation process.

The agency allocated extra resources to the area and at the end of the financial year the monthly outstanding amounts were at a level that was acceptable to the business.

The agency also commissioned an independent review of its account processing in an effort to streamline the service to its external providers.

I will continue to monitor performance in this area given there is still some way to go to reach a 100% success rate of payments in 30 days or less from invoice date.

## SAFework SA

Concerns were raised by a number of small businesses about a shift in emphasis by SafeWork SA to undertake direct contact with small businesses on how to improve their management of work, health and safety (WH&S) responsibilities.

The concerns were that specialist businesses were losing business because of the perception that SafeWork SA offered a “free” service.

In response, SafeWork SA outlined that it had split its divisions to have one which concentrated on education and customer service to employers, with the second dealing with regulatory enforcement and investigation. SafeWork SA contended that there was significant work to be done with small business and that its new unit would only be able to assist business in recognising its WH&S obligations. Also, at times, specialist advice would be required to ensure a business was fully compliant with its legal obligations and responsibilities.

I will continue to monitor the implementation of SafeWork SA's new plan to ensure the small businesses which offer specialist WH&S support are not being unfairly disadvantaged.

I appreciate the constructive working relationship which has been developed with SafeWork SA, including the delivery of information sessions conducted by the Office.

The State Government also consulted with me in relation to amendments to the *Work Health & Safety Act 2012* to change the process of advice to the Minister in relation to Code development. The final amendments were agreed and were passed in Parliament, coming into effect in November 2015.

### INDUSTRY CODE ACTIVATION UNDER THE FAIR TRADING ACT 1987

The *Fair Trading (Motor Vehicle Industry Dispute Resolution Code) Regulations 2014* (Code) were formally invoked for the first time by me in July 2015 when a major manufacturer/distributor gave notice that it intended to terminate a franchise agreement covering a regional dealership.

After initial inquiries with the manufacturer and the commencement of voluntary alternative dispute resolution processes, I exercised my powers under the Code to escalate the matter to a higher level. This produced a responsive engagement from the manufacturer/distributor.

The regional dealership then chose to use the dispute resolution procedures in its dealer agreement with the Manufacturer and by December 2015 an in-principle agreement to address the manufacturers original concerns had been reached.

As a result, I closed this case on 18 May 2016 as both parties had come to an amicable resolution.

I invoked the Code a second time in relation to another dealer and a major manufacturer/distributor relating to tenure and proposed consolidation of primary market area. Formal mediation was undertaken by my office on two occasions. In both cases the manufacturer/distributor concerned engaged positively and fairly with the Office with the Code in force.

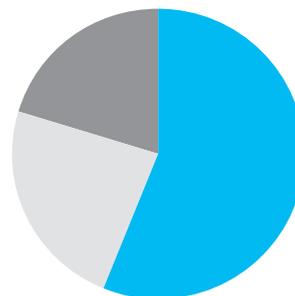
### STATISTICAL OUTCOMES

In 2015/16 the office dealt with 3134 enquiries. The following chart shows the enquiries according to their relevant Act:

<i>Small Business Commissioner Act 2011</i>	<b>1285</b>
<i>Retail and Commercial Leases Act 1995</i>	<b>1392</b>
<i>Building and Construction Industry Security of Payments Act 2009</i>	<b>68</b>
Other Jurisdictions	<b>389</b>

Of these disputes 279 moved on to become formal disputes.

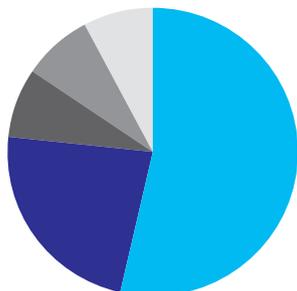
In 2015/16, 239 cases were closed. The following chart shows the outcome of the disputes:



### Cases Closed 2015/16

Successfully resolved	135
Assistance provided	56
Unsuccessful	48

Thirteen of those cases moved on to the formal mediation stage. The following chart shows the outcome of the mediations



- 7 were successfully resolved
- 3 were not successful (but assistance was provided)
- 1 was terminated due to one party not mediating in good faith
- 1 was unsuccessful and the matter was remitted to the Adelaide Magistrate's Court for hearing
- 1 matter remained ongoing as at 30 June 2016

The quantum of disputes ranged from \$45 to \$200,000 and again involved business to business, business to Local Government and business to State Government.

## LEGISLATION, KEY DEVELOPMENTS

### ***Building and Construction Industry Security of Payment Act 2009***

Following the completion of a review by former District Court Judge Alan Moss in March 2015, the Office undertook further consultation and prepared a further paper outlining my response to the Moss Review and other proposals for legislative reform.

That consultation paper was released by the State Government in June 2016 for a two month consultation period.

For further information see item 3.1 of this report.

### ***Retail and Commercial Leases Act 1995***

The Office of the Small Business Commissioner commenced a three month consultation in June 2016 on the Review of the *Retail and Commercial Leases Act 1995* conducted by former District Court Judge Alan Moss. Final submissions closed on 26 August 2016. Recommendations for any legislative change will be prepared for consideration by the State Government.

For further information see item 3.2 of this report.

## INDUSTRY CODES

A highlight of the year was the Government's decision to endorse a fourth industry code under the *Fair Trading Act 1987* covering the franchise sector. The *Fair Trading (Franchising Industry Dispute Resolution Code) Regulations 2015* were made on 8 October 2015.

I briefed the Legislative Review Committee on the background to the development of the regulations and operational issues on 2 December 2015.

For further information see item 2.4 of this report.

## FEDERAL ISSUES

### **Horticulture Code**

I was interviewed as part of the consultation process on a review of the Horticulture Code of Conduct. I expressed the view that the Code should be extended to include retailers, particularly the major supermarkets.

### **Unfair Contract Laws**

The Office of the Small Business Commissioner successfully lobbied the Federal Government for increases in the proposed limits on the dollar value of contracts which would be captured by the extension of laws relating to unfair contracts to small business.

The original proposals for a limit of \$100,000 on a contract, or \$250,000 for contracts greater than a year in duration, did not go far enough. I was pleased to see the Federal Government amend its original proposals to cover standard form contracts where at least one of the parties employs less than 20 people, and where the upfront price of the contract does not exceed \$300,000, or \$1 million for contracts longer than 12 months.

### **The new Unfair Contract Legislation will come into effect on 12 November 2016.**

The Office of the Small Business Commissioner will work with the ACCC to provide information to small businesses on how the new laws will work.

### **SENATE ECONOMICS REFERENCE COMMITTEE**

I appeared before the Senate Economics Reference Committee meeting in Adelaide on 21 September 2015. The Committee is looking into insolvency in the building industry and sought input in relation to the operations of the *Building and Construction Industry Security of Payment Act 2009* and other possible legislative measures which could be taken to ensure subcontractors receive their financial entitlements in a timely manner.

### **SUBMISSIONS**

The Office has been active in providing submissions on key small business issues. Submissions were made on the following topics in 2015/16:

- › Council Solutions' Application for Authorisation of a Combined Wasted Tender Process
- › Electricity Ring-Fencing Guideline
- › Australian Consumer Law Review
- › Australian Payments Clearing Association and 3D Security
- › SA Power Networks' proposed Tarrif Structure
- › *Road Safety Remuneration Act 2012*

### **EVENTS AND INFORMATION SESSIONS**

The Office continues to build its profile with an increase in the number of information sessions and workshops conducted.

During 2015/16 the Office conducted 19 sessions covering a range of topics which were attended by over 300 small business operators and other interested parties.

In addition to these events, I attended and presented to a number of groups and organisations on the operations of the office.

See item 7 Stakeholder Engagement for further information.

### **REGIONAL VISITS**

I undertook extensive travel to regional areas to reinforce the work of the Office to various stakeholder groups.

Many trips were undertaken by myself and my staff including Mount Gambier, Murray Bridge, Maitland, Whyalla (7 times), Port Augusta, Clare, Tanunda and Berri.



**WE HAVE A RELATIVELY NEW BUSINESS CONCEPT AND THE SMALL BUSINESS COMMISSIONER'S OFFICE HAS BEEN PARTICULARLY HELPFUL IN GIVING STRATEGIC DIRECTION AND CONNECTION WITH VARIOUS GOVERNMENT DEPARTMENTS.**

**DAVID MCCLAREN**

## MARKETING AND COMMUNICATION

In March 2016, the Minister for Small Business launched the Retail and Commercial Leases Guide which was produced by my Office and outlines responsibilities for both lessees and lessors.

The importance of engagement with small business operators from non-english speaking backgrounds has been recognised with an entry point established for different languages in December 2015 on the Small Business Commissioner website.

## CHANGE OF MINISTERS

**In January 2016, responsibility for the Small Business portfolio was transferred from the Hon Tom Koutsantonis MP to the Hon Martin Hamilton-Smith MP.**

I take this opportunity to thank Minister Koutsantonis and his staff for their ongoing commitment and support of my Office. Minister Hamilton-Smith and his staff are providing equally strong support and attention to the matters which affect small business.



Office of the Small Business Commissioner staff with Minister Martin Hamilton-Smith and his Office Manager. Left to Right: Craig Ellis, Susie Sammut, John Chapman, Minister Hamilton-Smith, Rosanne Davies, Stephanie Burke and Jennifer Fleming (Office Manager).

## DEPUTY SMALL BUSINESS COMMISSIONER

In February 2016, Deputy Small Business Commissioner Frank Zumbo, tendered his resignation to the Minister for Small Business.

Mr Zumbo was instrumental in assisting the State Government during the concept development of the Office of the Small Business Commissioner, the passage of the enabling legislation, the development of four industry codes and the management of a number of complex cases in his part-time role.

I thank Mr Zumbo for his ongoing support of the Office, and advice on alternative dispute resolution and matters relating to small business growth and development.

Finally, I thank my dynamic, committed and experienced team who work daily to assist small business. Their constant and consistent efforts reinforce the value my Office can deliver to small businesses.

A handwritten signature in black ink, appearing to read 'John Chapman'.

**John Chapman**  
Small Business Commissioner



# OPERATIONS OF THE OFFICE OF THE SMALL BUSINESS COMMISSIONER

## 2.1. Overview and Role of the Office

The Office of the Small Business Commissioner was created by the South Australian Government in 2012 primarily to assist small business. As an independent statutory authority, the office monitors and works with small businesses to resolve disputes between other small business, landlords and Local and State Government bodies across the State.

Thousands of South Australian businesses have been assisted since the inception of the Office and this underpins the success of the Office. In the 2015/16 financial year alone more than 3,000 business enquiries were made to the Office.

With a strong legislative framework which deals with a diverse range of matters, as well as a range of Industry Codes to assist business sectors, the Office is well placed to service, support and advocate for the needs of small business in South Australia.

Small businesses in South Australia can contact the Office through phone, email, facsimile, direct attendance to the office or via the website and link to the 3 main services:

- › Dispute Resolution Services
- › Information Services
- › Advocacy

Adopting a proactive approach to dispute resolution services, the Office also provides information, and tailored industry specific support to improve the capacity of small business to manage their business and make informed decisions so that disputes are less likely to occur.

Retail and commercial leasing matters are also managed and serviced through this Office. Under the *Retail and Commercial Leases Act 1995*, the Office processes and administers security bonds as all security bonds must be lodged with the Small Business Commissioner. Other responsibilities include matters in relation to Security of Payment in the Building and Construction sector, Codes of Practice under the *Work Health Safety Act 2012 (SA)* and any late payment of Government debts.

The Small Business Commissioner also provides independent recommendations to the Government on issues affecting small business, and makes representations or submissions for relevant enquiries to the Minister for Small Business, other relevant Ministers or Government agencies.

## 2.2. Dispute Resolution

The main priority for this Office is to support and provide a fair and competitive operating environment for South Australian small businesses. A no or low cost dispute resolution service is offered to assist to resolve disputes between businesses and/or Government bodies.

During the 2015/16 year, the Office has further refined its dispute resolution services and process, in particular by facilitating a greater number of formal mediations, often at an earlier point in the dispute resolution process.

The transition from resolving a majority of the disputes at the initial stages has shown significant success and is reflected in the Office's statistics. The Office found that small business owners and managers prefer to resolve disputes quickly and efficiently to enable them to return to the core purpose of running their day-to-day business.

The Case Officers in the Dispute Resolution Team are highly trained and experienced in the process of negotiating, mediating and assisting small business owners to reach an amicable resolution to their disputes.

During the 2015/16 financial year, the Office received 279 new dispute matters. At any one time, the Office has approximately 80-100 active disputes under management.

**There are three distinct phases that the Case Team use to facilitate a resolution of a dispute, which are detailed below.**

### PHASE 1 – INITIAL ASSISTANCE

Once the Office receives an enquiry, a Case Officer will discuss the matter with the complainant and may request further information and/or provide general advice to the business concerned.

Many enquiries relate to retail and commercial leases where the Lessor or Lessee is seeking clarification of their rights and responsibilities under the *Retail and Commercial Leases Act 1995*.

However, small business also seek our advice on a range of business-related matters where the Office can provide immediate referral or information.

If the enquiry is complaint or dispute driven, a Case Officer will provide relevant information and assistance which outline the various options that might be open to the complainant. The Case Officer might suggest that the person seeks competent legal advice where risks are detected by the Case Team.

In many cases, the provision of timely information at this early stage can be conducive to resolving the dispute and may eliminate the necessity to escalate to the pre-mediation phase.

Also as a part of this first phase, parties are requested to provide documentation to identify the exact issues in dispute and verify that there is in fact a bona fide complaint. The complainant may choose to accept the advice provided or might seek advice from an independent third party in regard to their particular issue. Alternatively, they might be referred to another Government agency for assistance, or the matter may proceed to the next phase.

One of the most common causes of disputes that the Case Team encounters arises out of miscommunication between the parties, or a simple breakdown of communications. Once information starts to flow again, people often regain their perspective, eliminating the need to progress the dispute further.

**Up to this point, any service provided by the Office is at no cost to the business.**

### PHASE 2 – PRE-MEDIATION

Once a complaint/dispute has been verified, is ongoing and the parties have been contacted, it is then managed within the Office as a formal 'case'.

In this second (pre-mediation) phase, further facts are gathered and assessed by the Case Officer and facilitated discussions are initiated. These involve the Case Officer discussing options with the parties to attempt to resolve the dispute in a timely manner.

During this phase, the Commissioner and/or delegate will have regular contact with all parties to facilitate discussions geared towards successful resolution of the dispute. Any resolution needs to be commercially acceptable to both parties, and will be signed off by authorised persons at the appropriate time.

There is often a period of negotiation between the parties during this phase and this normally takes place by correspondence, telephone calls, or through direct negotiations in our Office. If this process is successful, a binding Agreement can be prepared and signed with each party being provided with a copy of the Agreement. These Agreements contain a confidentiality clause, and are able to be legally enforced.

**There is no cost for disputes that are settled at this phase.**

### PHASE 3 – FORMAL MEDIATION

If the dispute is not resolved in phases 1 or 2 above, the matter can be referred to formal mediation by the Commissioner. In 2015/16 there were 13 cases that reached the formal mediation phase.

The small percentage of disputes that reach the formal mediation stage can be attributed to the thorough and effective approach to dispute resolution services provided by the Case Team.

Once the need for a formal mediation has been identified the Commissioner, or his delegate, will organise and facilitate a formal mediation at a cost of \$195 per party, per mediation day (multiple mediations can occur with the agreement of the parties if required). Matters mediated under the *Retail and Commercial Leases Act 1995* will not be charged a mediation fee, as there is no regulation that allows this charge to be levied.

This entails the Small Business Commissioner, or his delegate, liaising with all parties to select a mutually convenient date and time to attend the mediation. A confidentiality/indemnity agreement will be required to be signed by the parties at this stage.

As an entirely voluntary process during which good faith is expected of the parties, mediation usually begins with all parties meeting in caucus and setting out the ground rules.

The parties then follow the guidance of the mediator, who may request the parties to separate into private rooms where further discussions will occur in order to progress the dispute.

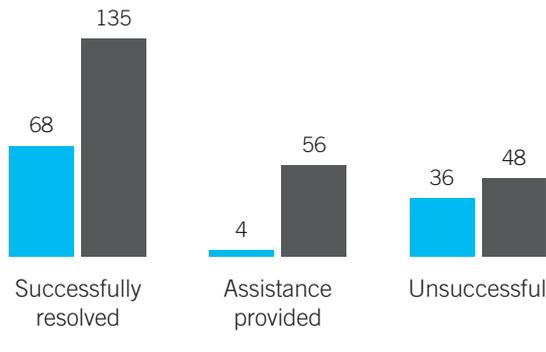
If a resolution is reached, the parties will conclude the mediation with the terms of agreement be recorded in a formal Settlement Agreement that is provided to each party and the Office of the Small Business Commissioner.

**This Agreement then becomes binding upon them and can be enforced by a Court.**

### DISPUTE RESOLUTION STATISTICS

The Case Team provide a dispute resolution service to small business on a number of matters business to business, business to Local or State Government. During 2015/16, the Office of the Small Business Commissioner took on a total of 279 new cases. The Office also closed 238 cases during this time.

The below graph shows a comparison from 2014/15 to 2015/16 on the number of cases closed based on their result.



Cases Closed	2014/15	2015/16
Successfully resolved	68	135
Assistance provided	4	56
Unsuccessful	36	48
<b>TOTAL</b>	<b>116*</b>	<b>239</b>

**NOTE** \*8 cases in 2014/15 were partially resolved. This category wasn't captured in 2015/16 (no longer exists). – 92 cases remained open past 30 June 2016.

There was a slight reduction in the overall “success rate” of cases dealt with by the Office from 56% in 2015/16 (down from 59% in 2014/15). To place that result into some context:

- › the number of cases closed by the Office in 2015/16, more than doubled (from 116) to 239 (in increase of 106%);
- › the number of cases remaining open as at 30 June 2016 was 92 (compared to 67 at 30 June 2015);
- › of those cases that were closed by the Office, the “unsuccessful rate” decreased markedly. In 2014/15 the unsuccessful rate was 31% (36 cases), whilst in the 2015/16 year, the “unsuccessful rate” reduced to 20% (48 cases);

› the Office’s ‘success criteria’ has been modified to be more accurate than has been in the past. Whilst there has been a slight reduction in the percentage of matters “Closed Successfully Resolved”. This is more than off set by the percentage of matters “Closed Assistance Provided” which encompasses the following:

- Options provided to client
- Information provided to both parties
- Offer obtained but not accepted by the other party
- Client does not require further assistance with negotiations
- Client wishes to take matter to another service (e.g. solicitors, Courts etc)
- Matter falls outside of the Office’s jurisdiction - referral given.

› it should be noted that the function of the Office is squarely set in the alternative dispute resolution (ADR) space, where the conversations are non-partisan and based upon the broader interests of disputing parties, (as compared to any legal rights that might be determined by a Court or Tribunal);

› the Office’s non-partisan role can become a factor in some matters because some clients have unrealistic expectations of the services that the Office can offer (i.e. they are actually seeking the enforcement of a contract or right);

› in some cases, one or both parties might be so adhered to a certain position that they are simply unable to concede any ground (as good faith bargaining tends to require);

› there are also occasions where clients insist solely on a winner-take-all outcome, and the Office is simply unable to fulfil those expectations through a negotiation/ mediation approach.

## Results of Disputes Successfully Resolved



**128**

**Disputes successfully resolved prior to mediation**



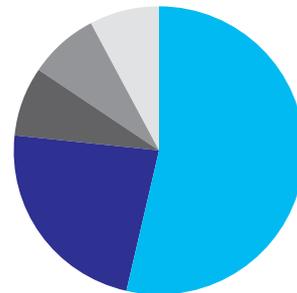
**7**

**Disputes successfully resolved at mediation**

## MEDIATIONS

As discussed above, formal mediations are conducted at the third phase of the dispute resolution process. The Office of the Small Business Commissioner conducted 13 formal mediations in 2015/16 which were conducted over 16 mediation days (i.e. 3 matters that had 2 mediation days each).

The below graph shows the number of mediations held based on their result.



### Of the 13 mediations in 2015/16:

- **7** were successfully resolved
- **3** were not successful (but assistance was provided)
- **1** was terminated due to one party not mediating in good faith
- **1** was unsuccessful and the matter was remitted to the Adelaide Magistrate’s Court for hearing
- **1** matter remained ongoing as at 30 June 2016

In July 2015, the Office of the Small Business Commissioner commenced an Expression of Interest process to create a preferred list of suppliers to provide mediation services to the Office.

As at 1 October 2015, the revised panel of 7 mediators included:

- › Ruth Beach
- › Blackforrest Consulting
- › Fullerton Consulting
- › Ian Nosworthy and Partners
- › Monica Redden Consulting
- › Pathways CBS Pty Ltd
- › Shaw Mediation Australia

The breadth of expertise and experience available through the mediators includes fields such as Small Business; Commercial Contracts; Farming; Retail Leasing and/or Franchising.

All of the mediators on the panel bring a minimum of two years' experience as mediators in addition to at least five years' experience in a professional commercial environment.

Through the dispute resolution process, the Case Team allocate the cases which have reached the formal mediation stage to an appropriate mediator. The criteria used to determine which mediator is assigned to a case depends on the expertise required, the nature of the dispute and any specific requirements for the parties.

## ENQUIRIES

During 2015/16, the Office of the Small Business Commissioner received 3,134 enquiries covering the *Small Business Commissioner Act 2011* and the *Retail and Commercial Leases Act 1995*, along with general small business enquiries.

The below graph shows the number of enquiries based on the legislation they relate to:



<b>TOTAL</b>	<b>3134</b>
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In an effort to further increase the Office's public visibility, the Office will relocate to a new 'Shopfront' premises at 99 Gawler Place, Adelaide in September 2016.

**Enhanced by the new shopfront exposure, the Office anticipates a 5% increase the overall number of enquiries in 2016/17 equating to a target of around 3,291 enquiries.**

The new shopfront is intended to operate as a first-stop-shop for small business, bringing together the services and advice from the Office of the Small Business Commissioner, the Department of State Development and the Office of the Industry Advocate.



## 2.2.1 Statistics relating to enquiries by relevant Act

### *Small Business Commissioner Act 2011*

How were enquiries made?	2015						2016						Total 2015/16
	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	
Email	4	6	1	4	7	0	2	4	2	6	4	4	44
Phone	131	99	94	75	67	70	64	78	124	119	125	125	1,171
Online Form	2	2	1	0	2	2	3	3	3	6	2	2	28
Walk-in	3	1	7	1	2	3	1	6	3	4	7	2	40
Letter	1	0	0	0	0	0	0	0	0	0	0	1	2
<b>TOTAL</b>	<b>141</b>	<b>108</b>	<b>103</b>	<b>80</b>	<b>78</b>	<b>75</b>	<b>70</b>	<b>91</b>	<b>132</b>	<b>135</b>	<b>138</b>	<b>134</b>	<b>1,285</b>

Subject matter	2015						2016						Total 2015/16
	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	
Farming	3	1	1	0	2	2	0	3	2	1	2	0	17
Franchising	1	4	1	1	3	2	0	1	0	3	3	3	22
Local Government	1	0	0	0	0	0	2	0	0	0	1	0	4
Small Business Issue	105	84	74	48	56	51	57	66	108	112	105	125	991
State Government	0	0	1	3	0	1	4	4	2	3	5	2	25
Motor Vehicle	8	6	4	2	5	5	5	4	10	7	6	1	63
Newsagent	0	0	0	2	0	0	0	0	0	0	0	0	2
Other	6	7	5	1	1	3	1	5	2	4	7	1	43
Not Specified	17	6	17	23	11	11	1	8	8	5	9	2	118
<b>TOTAL</b>	<b>141</b>	<b>108</b>	<b>103</b>	<b>80</b>	<b>78</b>	<b>75</b>	<b>70</b>	<b>91</b>	<b>132</b>	<b>135</b>	<b>138</b>	<b>134</b>	<b>1,285</b>

### *Retail and Commercial Leases Act 1995*

How were enquiries made?	2015						2016						Total 2015/16
	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	
Email	1	4	3	3	5	2	1	2	1	2	4	8	36
Phone	152	110	118	84	93	101	85	130	105	109	111	117	1,315
Online Form	2	2	1	0	1	0	2	1	1	2	0	0	12
Walk in	4	1	5	2	1	1	1	1	3	5	5	0	29
<b>TOTAL</b>	<b>159</b>	<b>117</b>	<b>127</b>	<b>89</b>	<b>100</b>	<b>104</b>	<b>89</b>	<b>134</b>	<b>110</b>	<b>118</b>	<b>120</b>	<b>125</b>	<b>1,392</b>

**Retail and Commercial Leases Act 1995 continued**

Who made the Enquiry?	2015						2016						Total 2015/16
	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	
Lessee	46	45	44	31	36	25	11	42	32	43	31	38	424
Lessor	12	16	19	14	8	16	6	19	13	14	10	22	169
Sub Lessee	2	0	0	1	0	0	0	1	3	0	0	0	7
Real estate Agent	24	14	13	2	10	15	12	14	12	13	15	22	166
Solicitor	3	1	0	0	2	0	0	2	3	3	2	0	16
Assignee	0	0	1	0	0	0	0	0	0	0	0	0	1
Other	10	4	4	9	2	4	0	6	3	5	5	1	53
No Selection	62	37	46	32	42	44	60	50	44	40	57	42	556
<b>TOTAL</b>	<b>159</b>	<b>117</b>	<b>127</b>	<b>89</b>	<b>100</b>	<b>104</b>	<b>89</b>	<b>134</b>	<b>110</b>	<b>118</b>	<b>120</b>	<b>125</b>	<b>1,392</b>

Details of the Lease	2015						2016						Total 2015/16
	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	
Shopping Centre	0	1	1	0	0	0	0	0	1	0	0	1	4
Strip	0	0	0	0	0	0	0	1	2	0	0	0	3
Standalone	1	0	0	0	1	1	0	1	1	0	1	1	7
No Selection & Other	158	116	126	89	99	103	89	132	106	118	119	125	1,378
<b>TOTAL</b>	<b>159</b>	<b>117</b>	<b>127</b>	<b>89</b>	<b>100</b>	<b>104</b>	<b>89</b>	<b>134</b>	<b>110</b>	<b>118</b>	<b>120</b>	<b>125</b>	<b>1,392</b>

Subject matter	2015						2016						Total 2015/16
	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	
Assignment	2	2	2	2	3	2	2	4	3	3	1	3	29
Bond Security	59	32	42	24	33	53	36	35	39	30	45	45	473
Disclosure Staements	3	0	0	0	1	1	1	1	1	0	1	1	10
End of Lease Negotiations	3	3	2	1	10	5	8	3	5	5	0	5	50
Term of lease	7	9	8	1	3	3	6	6	6	4	3	5	61
Outgoings	11	13	19	15	7	13	7	12	9	11	9	10	136
Pre Lease Negotiations	14	9	8	2	6	4	1	13	5	14	10	6	92
Rent	10	3	5	4	6	6	9	7	13	8	10	7	88
Repairs & Maintenance	19	20	9	12	7	6	9	26	11	12	11	9	151
Termination	12	13	14	7	11	7	4	15	8	18	13	21	143
Other	14	9	10	4	9	2	3	10	7	8	16	12	104
Not Specified	5	4	8	17	4	2	3	2	3	5	1	1	55
<b>TOTAL</b>	<b>159</b>	<b>117</b>	<b>127</b>	<b>89</b>	<b>100</b>	<b>104</b>	<b>89</b>	<b>134</b>	<b>110</b>	<b>118</b>	<b>120</b>	<b>125</b>	<b>1,392</b>

### *Retail and Commercial Leases Act 1995 continued*

Action taken in Response	2015						2016						Total 2015/16
	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	
Advice Given	111	83	90	57	65	74	59	88	81	70	77	88	938
Referred to External Agency	9	3	4	4	7	7	5	6	5	6	8	7	71
Directed to Solicitor/Agent/Other	23	7	11	10	12	11	11	18	6	20	16	10	155
Invited to Lodge Formal Dispute	5	4	3	1	6	6	7	8	7	4	8	12	71
Sent out Information	10	16	16	14	7	6	4	12	9	11	8	9	122
Directed to Publications	0	0	0	2	1	0	0	2	2	5	0	4	16
Directed to Application Forms	1	3	3	1	2	0	3	0	0	2	2	0	17
Other	0	1	0	0	0	0	0	0	0	0	1	0	2
<b>TOTAL</b>	<b>159</b>	<b>117</b>	<b>127</b>	<b>89</b>	<b>100</b>	<b>104</b>	<b>89</b>	<b>134</b>	<b>110</b>	<b>118</b>	<b>120</b>	<b>125</b>	<b>1,392</b>

### *Building and Construction Security of Payment Act 2009*

Details	2015						2016						Total 2015/16
	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	
Enquiries	11	8	12	2	3	4	2	5	5	9	2	5	68
<b>TOTAL</b>	<b>11</b>	<b>8</b>	<b>12</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>2</b>	<b>5</b>	<b>5</b>	<b>9</b>	<b>2</b>	<b>5</b>	<b>68</b>

How were enquiries made?	2015						2016						Total 2015/16
	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	
Email	2	2	1	0	0	0	0	1	0	2	0	1	9
Phone	8	6	10	2	3	4	2	4	5	7	2	4	57
Walk-in	1	0	1	0	0	0	0	0	0	0	0	0	2
<b>TOTAL</b>	<b>11</b>	<b>8</b>	<b>12</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>2</b>	<b>5</b>	<b>5</b>	<b>9</b>	<b>2</b>	<b>5</b>	<b>68</b>



## 2.2.2 Dispute Resolution Case Studies



### BUSINESS TO BUSINESS DISPUTE

#### Summary

A South Australian wine grower owned a highly specialised piece of machinery which had continually malfunctioned. Over 6 years, the manufacturer carried out a number of repairs with no permanent resolution.

#### Background

The specialised vineyard machinery was only used for two months of each year, around harvest. The grower had owned the machinery for a number of years, however each year it continually malfunctioned.

Over the years, the manufacturer carried out many repairs on the machinery, however the grower maintained that the machinery was a “lemon”.

The parties approached the Office of the Small Business Commissioner to mediate the issues, with both parties undertaking the mediation in good faith.

#### Outcome

After a negotiation, the manufacturer took back the problematic machinery as a “trade-in” on new updated and fully functioning machinery. The new machinery performed a greater number of specialised tasks within the vineyard and was provided with an extended warranty.

The “trade in” price was adjusted by the manufacturer to make the overall changeover price affordable and acceptable to the wine grower.



### SMALL BUSINESS DEALINGS WITH GOVERNMENT

#### Summary

A small business in the building industry was refused work due by a Government Department due to their National Police Certificate being provided by a private company not SA Police.

#### Background

A small business in the building industry wanted to undertake sub-contract work with a larger contractor who did repair and maintenance work for a Government Department. The small businessman was advised by the larger contractor that he needed a National Police Certificate (NPC) to be able to work on Government property. He presented an NPC which he had recently obtained from a private company. However, the larger contractor had been advised by the Government Department that it required an NPC issued by SAPOL. The small businessman contacted the Office of the Small Business Commissioner to query this apparent duplication in “red tape”.

A Case Officer conducted enquiries into the provision of NPCs by police forces and private companies. Those enquiries showed that all NPCs, however obtained, rely on information compiled in a national database (“CrimTrac”) maintained by the Federal Government.

#### Outcome

The Case Officer forwarded this information to the Department concerned, which then altered its policy and accepted the ‘privately obtained’ NPC.

The small businessman concerned was thereby able to commence working for the larger contractor on Government property without incurring the expense of further NPCs for himself and his employees.



## RETAIL AND COMMERCIAL LEASES ACT DISPUTE

### Summary

A lessee of an accommodation business was consistently behind in paying rent and was trying to sell the business. However, the business but was unable to obtain the lessor's assistance in negotiating with potential purchasers of the business.

### Background

The lessee had purchased the business some years earlier, but began to experience a downturn in the business which led to difficulties in making rent payments. The landlord was usually accommodating with allowing time to pay the rent, but it had become clear that the lessee would be unable to continue in the business and so must sell. Unfortunately, with the reduced income figures of the business, most interested buyers wanted to re-negotiate the rent with the landlord. After several 'lost opportunities' the lessee contacted the Office of the Small Business Commissioner for assistance.

The Commissioner wrote to the lessor and was able to encourage him to participate in a mediation conducted by an independent mediator (at no cost to the parties). The situation was ideally suited to mediation because the interests of the lessee and the lessor were very closely aligned. If the lessee went into receivership, the lessor would be left in a situation of having no rental income while trying to re-let the premises for a type of business that seemed to be likely to fail. On the other hand, if the landlord could assist in the process of selling the business, a new operator would come in and the landlord would continue to receive rent.

### Outcome

The mediation process assisted both the lessor and lessee to understand how their financial situations were closely linked. The parties subsequently agreed to terminate the lease on mutually acceptable terms.

## 2.3. Industry Codes of Conduct

In October 2015, the *Fair Trading (Franchising Industry Dispute Resolution Code) Regulations 2015* (Franchising Code) were proclaimed following approval by the State Government.

This became the fourth industry code to be developed under the *Fair Trading Act 1987*, with the farming, motor vehicle and newsagency sectors respectively covered by the:

- › *Fair Trading (Farming Industry Dispute Resolution Code) Regulations 2013*
- › *Fair Trading (Motor Vehicle Industry Dispute Resolution Code) Regulations 2014*
- › *Fair Trading (Newsagency Industry Dispute Resolution Code) Regulations 2014*

The Franchising Code has extensive coverage of participants in the franchising industry as follows:

- › Franchisor;
- › Franchisee;
- › An associate of a franchisor;
- › A person carrying on a business having a connection to a franchisor for a purpose relating to a franchise agreement;
- › A person carrying on a business having a connection to a franchisee;
- › A person who in the course of a business supplies goods or services to a franchisee or to a franchisor in connection with a franchise agreement.

The Franchising Code has been drafted in a manner which seeks to ensure that the dispute resolution process can effectively complement the mediation and dispute resolution processes enacted by the Federal Government under the new Federal Franchising Code which took effect on 1 January 2015.

Under each of the Codes, the Small Business Commissioner is required to be satisfied that the parties have made a reasonable attempt to resolve the dispute before accepting a matter under the Code.

The Codes and associated powers under the *Fair Trading Act 1987* provide the Commissioner with significant powers of enquiry. These powers are backed by civil penalties - up to \$4,000 for a body corporate and up to \$500 for a natural person. In addition, the Small Business Commissioner may proceed to prosecution in Court with penalties of up to \$10,000 for an individual and \$50,000 for a corporation.

## INDUSTRY CODE ACTIVATION

During 2015/16, the Small Business Commissioner activated the *Fair Trading (Motor Vehicle Industry Dispute Resolution Code) Regulations 2014* in a case involving an Adelaide Car Dealer and a multi-national manufacturer. Further details of this case are outlined in the Commissioner's report earlier in this document.

## FARM DEBT

During the year, the State Opposition through the Leader in the Upper House, Hon David Ridgway MLC, introduced the *Farm Debt Mediation Bill 2015* into State Parliament to allow for Farm Debt Mediation, similar to legislation in NSW and Victoria. The Bill passed the Legislative Council on 18 May 2016.

The Small Business Commissioner did not support the Bill as he is of the belief that the existing *Fair Trading (Farming Industry Dispute Resolution Code) Regulations 2013* provides sufficient powers (including penalties) to assist in activating the alternative dispute resolution process between a person engaged in the business of primary production and a business involved in the supply of goods or services to persons engaged in the business of primary production (eg financial institutions including banks).

The State Government has opposed the Bill, which at the end of the financial year remained in the House of Assembly ready for debate.

## PROPOSED CODE FOR BUILDING AND CONSTRUCTION SECTOR

The Small Business Commissioner has proposed the development of a fifth Code to cover the Building and Construction Industry. This recommendation to the State Government is contained in the Commissioner's response to the Moss Review into the *Building and Construction Industry Security of Payment Act 2009*.

Consultation on this recommendation and other proposed changes to improve payment to subcontractors in this important industry sector is underway, and will conclude in August 2016. See item 3.1 for further information.

## 2.4. Information Services

The *Small Business Commissioner Act 2011* stipulates the following in relation to Information Services:

Section 5 – Functions

(1) *The functions of the Commissioner are –*

*(c) to disseminate information to small businesses to assist them in making decision relevant to their commercial dealings with other businesses and their dealings with State and Local Government bodies.*

The Office of the Small Business Commissioner seeks to provide information to small businesses on a number of topics in the form of marketing and communication through social media, written publications, print advertising, online services and events and information sessions.

Through a range of methods, the Office has been seeking to increase the awareness of the services that can be provided to small businesses in the area of growth, management and compliance. Marketing through publications, social media and the website have been a key focus for the office.

**The Office has also continued to deliver its series of free information sessions to small businesses around metro and regional South Australia.**

## EVENTS

This financial year the Office delivered 19 successful events to small businesses which included five BizLink Seminars. The BizLink Seminar brings together key areas of Local, State and Federal government, including the Australian Tax Office, the Office of the Industry Advocate, the Fair Work Ombudsman and Revenue SA, to speak with small businesses about their services and advice they can provide and is our most popular events.

In October 2015, the Office travelled to Berri and delivered the BizLink Seminar to a group of local small businesses from the region.

The Small Business Commissioner met with a number of businesses and spoke with local groups about how the Office can better assist them with their small business needs and concerns. The Small Business Commissioner also spoke with a group of potential upcoming small business owners, students from Renmark High School who are participating in a business stream program.



**Small Business Commissioner John Chapman with students of the Renmark High School business program at the BizLink Seminar in Berri on 16 October 2015**

In addition, the Office held information sessions with:

- › the Office of the Coordinator General in relation to his role in assisting small businesses;
- › SafeWork SA with the event titled 'Keeping Your Business Safe';
- › the Australian Tax Office for an event in relation to their new app and the digital services they provide;
- › Ai Group, Industry Skills Fund Skills Advisor who provided information about the Federal Fund and how to access it.

The Office also partnered with GM Holden, to deliver a special event held at the Holden Factory at Elizabeth titled 'Working With Skills' which sought to bring small businesses together with skilled workers needing employment. The event also included a rare opportunity for attendees to tour the Holden Factory.



**Executive Director Manufacturing Australia & South East Asia, Holden Limited, Richard Phillips at the Working With Skills Event held at the Holden Elizabeth Plant on 12 April 2016**

Holden has set up a dedicated Transition Centre, which aims to prepare its workforce and employees in its supply chain for a successful job transition post-automotive manufacturing and help match employees and potential employers. The Small Business Commissioner saw an opportunity to connect employers with highly skilled employees. The event was attended by 38 people and was successful in developing some valuable networks.

The Office of the Small Business Commissioner and GM Holden plan to deliver this event again in the second half of 2016.

**The Office of the Small Business Commissioner reached over 300 small business people through our free events.**



**BizLink Seminar in Berri on 16 October 2015**

## PUBLICATIONS

### Retail and Commercial Leasing Guide

In October 2015 the Office finalised the development of the Retail and Commercial Leases Guide. The Guide was publicly announced by the Minister for Small Business in March 2016.

The Retail and Commercial Leases Guide provides a simplified straight forward explanation of what Lessors and Lessees can expect when entering a lease agreement as well as their rights and obligations under the *Retail and Commercial Leases Act 1995* (the Act). The guide contains useful information about the Act, what to do before signing a lease and things to consider in a lease agreement. The Guide which is published in hard copy is also available online on the Office of the Small Business Commissioners website.



### Services and Overview Brochure

The Services and Overview Brochure is a quick and easy guide to the services of the Office of the Small Business Commissioner. The brochure was first developed in 2013 and has since had many updates as the services of the Office have evolved. The current version was completed in February 2016 and includes information about the Office in relation to our dispute resolution service, legislative responsibilities, Industry codes and Advocacy and Information Services provided by the Office.

The Brochure is provided to all attendees at events held by the Office as well as other events including, Meet the Buyer, Small Business Migrant Expo, Connecting SA

Business events as well as other events attended by staff and the Commissioner. The Brochure is published in hard copy is also available online on the Office of the Small Business Commissioners website.

### Over 1100 of the Services and Overview Brochures were distributed to the community in 2015/16.

The Brochure is currently undergoing a review which is expected to be completed in August 2016.

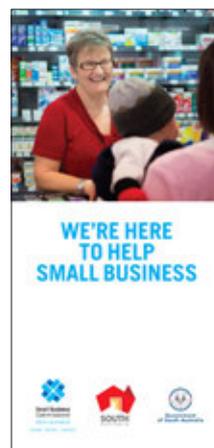
### 'We're Here to Help Small Business' Brochure

The Office developed a small DL sized brochure that briefly explains the services that the Office provides.

The flier was first developed in June 2015 to be included in a bulk mail delivery being arranged by ReturnToWork SA which would be distributed to over 40,000 small businesses in order to provide them with information in relation to the new ReturnToWork SA Scheme. The mail out was delivered over a 6 week period from the first week of July till mid August 2015.

The DL flier was reviewed and a new version was produced in April 2016 in preparation for another mail out with ReturnToWork SA to be delivered over June and July 2016.

### The flier is also provided to attendees at events and to stakeholders and clients at various functions.

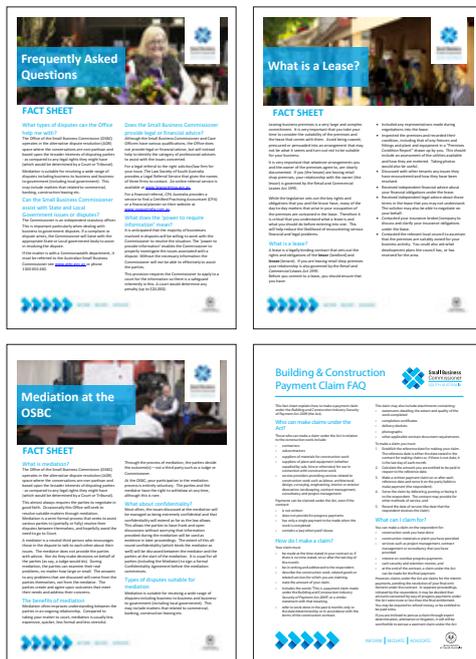


## Fact Sheets

The Office of the Small Business Commissioner has developed a number of fact sheets that are provided to attendees at events and are available online on the Office of the Small Business Commissioners website. The fact sheets are a valuable resource for small businesses to be able to access clear and concise information in relation to a certain matter or service provided by the Office of the Small Business Commissioner.

The following fact sheets are currently available.

- › What is a Lease?
- › Office of the Small Business Commissioner Frequently Asked Questions
- › Mediations at the Office of the Small Business Commissioner
- › Services for Small Business
- › Commencing a Small Civil Claim
- › Building and Construction Security of Payment
- › Retail and Commercial Bonds



## SOCIAL MEDIA AND ENGAGEMENT

Finding creative ways to deliver our services to small businesses has been a key focus of the Office of the Small Business Commissioner. By utilising a number of methods, the office has been able to connect with the community in ways it never has before. The first enewsletter was delivered to a database of clients on 1 August 2015. The newsletter has been delivered at the beginning of every month since then and provides information to small business on key current issues, news and events.

Social media has been a new development for the office with the Office of the Small Business Commissioner Facebook page being launched on 1 August 2015. It has experienced significant growth since its launch.

The Facebook page allows for busy small business people to contact the office, keep up to date with events and obtain information quickly.

**It also provides a method of advertising the services of the Office as well as the events and information session we provide.**



THANK YOU FOR YOUR  
PROMPT ASSISTANCE  
AND INTERVENTION.  
THIS WOULDN'T HAVE  
HAPPENED WITHOUT YOU.

CAROL COULTIER, SPY BUSINESS

## WEBSITE

With a number of busy small businesses needing to access information in a timely and flexible way, the Office of the Small Business Commissioner website continues to be one of our key areas of focus as we explore new ways to deliver information to South Australian small businesses.

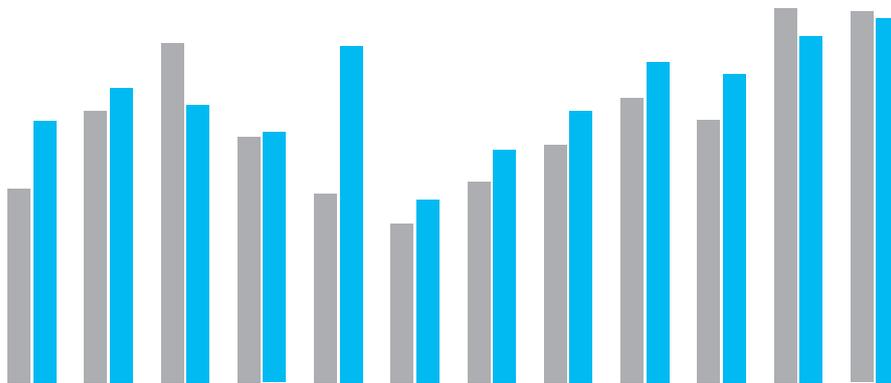
The website remains the main entry point for the lodgement of enquires and disputes to the Office as well as the method used to receive and maintain booking for events.

The home page received significant improvement with the addition of a Translation Service for visitors with English as a second language. The Translation Service section of the website provides key information about the services provided by the Office in the 10 languages of Vietnamese, Italian, Greek, Chinese Simplified, Chinese Traditional, Arabic, Khmer, Korean, Serbian and Dari.

Another area that was improved this financial year was the Authorised Nominating Authorities (ANA) section. The Small Business Commissioner, under the responsibilities of the *Building and Construction Industry Security of Payment Act 2009*, and in order to improve transparency across this industry has, from 1 July 2015, commenced the practice of publishing information in relation to adjudications prepared under the Act. A summary of the results are published each quarter and are analysed in more details in section '3.1 *Building and Construction Industry Security of Payment Act 2009*' of this document.

**The total visit to the website in 2015/16 was 22,652.**

## VISITS TO THE OFFICE OF THE SMALL BUSINESS COMMISSIONER WEBSITE



Year	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Total
2014/15	1274	1785	2230	1614	1240	1044	1320	1561	1867	1728	2460	2436	20,559
2015/16	1721	1936	1825	1643	2212	1200	1529	1786	2103	2026	2278	2393	22,652

## 2.5. Consultants

The Office of the Small Business Commissioner complies with the Procurement processes of the Department of State Development. No contracts have met the requirements to be published on the SA Tenders Website.

External Contractors/Consultants	Details	2015/16
Alan Moss	Review of the <i>Retail and Commercial Leases Act 1995</i> and the <i>Building and Construction Security of Payment Act 2009</i>	\$4,750
Thomson Geer	Legal advice relating to the Whyalla small business concerns	\$12,861
Brett & Watson Pty Ltd	Review of the Retail Bond Fund Investment Strategy	\$3,000
<b>Total</b>		<b>\$20,611</b>



IT CERTAINLY IS 'WINNER, WINNER,  
CHICKEN DINNER!!!' THANK YOU SO MUCH  
FOR YOUR ASSISTANCE WITH THIS, I DON'T  
BELIEVE WE WOULD HAVE REACHED THIS  
POINT WITHOUT YOUR HELP.

**MICHELLE BUTLER, DUFFY'S BAKERY**





## 3

# LEGISLATION

The Small Business Commissioner has responsibilities under all or parts of the following legislation:

- › *Small Business Commissioner Act 2011*
- › *Retail and Commercial Leases Act 1995*
- › *Fair Trading Act 1987*
- › *Building and Construction Industry Security of Payment Act 2009*
- › *Work Health and Safety Act 2012 (SA)*
- › *Farming Industry Dispute Resolution Code Regulations 2013*
- › *Newsagency Industry Dispute Resolution Code Regulations 2014*
- › *Motor Vehicle Industry Dispute Resolution Code Regulations 2014*
- › *Late Payment of Government Debts (Interest) Act 2013*

### **3.1. Building and Construction Industry Security of Payment Act 2009**

The *Building and Construction Industry Security of Payment Act 2009* (the Act) is designed to facilitate prompt payment of subcontractors through an adjudication process. The Office of the Small Business Commissioner has responsibility for the administration of the Act.

#### **REVIEW OF THE BUILDING AND CONSTRUCTION INDUSTRY SECURITY OF PAYMENT ACT 2009**

Under the legislation, there was a requirement for a review of the Act to be undertaken at the completion of the first three years of operation.

Former Youth and District Court Judge Alan Moss was engaged by the Office of the Small Business Commissioner to undertake the review. The Moss Review was tabled in Parliament on 12 May 2015.

At 30 June 2016 the State Government had not yet made any decisions concerning the recommendations set out in the Moss Review.

In March 2016 the new Minister for Small Business, the Hon Martin Hamilton-Smith, requested that the Small Business Commissioner prepare a Consultation Paper on the proposed changes to the Act and other initiatives to improve payment to subcontractors in the building and construction industry following extensive consultation with key stakeholders.

The Consultation Paper proposes changes in a three stage approach. It is anticipated that the expeditious implementation of stage one will result in a significant improvement in the operation of the Act and principal contractor behaviour. A heavier regulatory approach could be implemented by the Government under stage two, and possibly stage three, if the changes made under stage one fail to improve conduct in the industry and payment to subcontractors.

The Consultation Paper was released for comment on 17 June 2016 with a closing date for submissions of 19 August 2016.

At the conclusion of the consultation period, the Small Business Commissioner will review the feedback and prepare a briefing for the Minister for Small Business' consideration, with a view to bringing recommendations back to Cabinet in the latter part of 2016.

### **CLAIMS UNDER THE BUILDING AND CONSTRUCTION SECURITY OF PAYMENT ACT 2009**

In 2015/16, the Office assisted contractors and subcontractors with 68 enquiries in relation to the Security of Payment legislation and as part of that, provided advice on how to make a claim under the Act.

A total of \$105,863,253.29 was claimed through adjudication mechanisms under the Act in the 2015/16. Of this amount, the total amount awarded to claimants was \$29,639,299.50.

*NOTE: As at 30 June 2016, up to \$37,311,843.00 was either "in progress" or "pending release", meaning that some or all of that amount could be awarded to claimants in due course.*

### **In total, 38 claims were made under the legislation. Of those 38 claims, 21 resulted in an award to the claimant.**

Claims made under the Security of Payment process ranged from \$2,129.70 through to \$37,273,034 (for a matter that remained pending at 30 June 2016).

Noting the claim for more than \$37 million that was pending at 30 June 2016, the difference between the amounts claimed and the sums awarded was \$38,950,919.68 .

The reasons for this significant difference are varied, and include the fact that during the 2015-16 year, there were 4 claims made that exceeded \$10 million. Other factors include the variation of costs sought vs actual costs incurred in the estimation process; the withdrawal of applications; full payment by the respondent before adjudication; and settlement being made by the respondent.

On 16 February 2016, the Minister for Small Business, the Hon Martin Hamilton-Smith, authorised ABC Dispute Resolution Services as an Authorised Nominating Authority to nominate adjudicators for the purposes of the Act.

The appointment of ABC Dispute Resolution Services during this financial year brings the total number of approved Authorised Nominating Authorities under the Act to 8.

## NUMBER OF ADJUDICATIONS

	2014/2015	2015/2016
<b>ABC Dispute Resolution Services*</b>	-	1
<b>Able Adjudication</b>	4	0
<b>Adjudicate Today</b>	20	30
<b>Australian Solutions Centre</b>	1	0
<b>Resolution Institute</b>	12	1
<b>Master Builders Association of SA</b>	0	0
<b>Nominator</b>	0	0
<b>RICS Dispute Resolution Services</b>	2	6
<b>TOTAL</b>	<b>39</b>	<b>38</b>

\*ABC received ANA status from the Minister for Small Business on 26 February 2016.

## TOTAL AMOUNT CLAIMED VS AWARDED

		2014/2015	2015/2016
<b>ABC Dispute Resolution Services*</b>	Claimed	-	\$37,273,034
	Awarded	-	Pending release
<b>Able Adjudication</b>	Claimed	\$64,977.48	\$0
	Awarded	\$52,307.08	\$0
<b>Adjudicate Today</b>	Claimed	\$15,781,991.50	\$36,872,825.47
	Awarded	\$2,485,312.63	\$16,739,413.81
<b>Australian Solutions Centre</b>	Claimed	\$19,279.57	\$0
	Awarded	\$11,891.15	\$0
<b>Resolution Institute</b>	Claimed	\$2,710,285.32	\$121,412.50
	Awarded	\$1,298,476.16	\$35,420.00
<b>Master Builders Association of SA</b>	Claimed	\$10,768.90	\$0
	Awarded	\$0	\$0
<b>Nominator</b>	Claimed	\$0	\$0
	Awarded	\$0	\$0
<b>RICS Dispute Resolution Services</b>	Claimed	\$14,180,100.78	\$31,595,981.21
	Awarded	\$679,841.09	\$12,864,465.69
<b>TOTAL</b>	Claimed	\$32,767,403.55	\$105,863,253.29
	Awarded	\$4,527,828.11	\$29,639,299.50

\*ABC received ANA status from the Minister for Small Business on 26 February 2016.

The following organisations are approved Authorised Nominating Authorities under the Act.

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**ABC Dispute Resolution Services**

Web: [www.abcdrs.com.au](http://www.abcdrs.com.au)  
Phone: 1300 857 383  
Fax: 1300 857 384  
Email: [contactus@abcdrs.com.au](mailto:contactus@abcdrs.com.au)



**Resolution Institute**

Web: [www.iama.org.au](http://www.iama.org.au)  
Phone: 1800 724 262  
Fax: 08 8280 9763  
Email: [sa.chapter@iama.org.au](mailto:sa.chapter@iama.org.au)



**Able Adjudication**

Web: [www.ableadjudication.com.au](http://www.ableadjudication.com.au)  
Phone: 1300 922 303  
Fax: 1300 922 308  
Email: [info@ableadjudication.com.au](mailto:info@ableadjudication.com.au)



**Master Builders Association of South Australia**

Web: [www.mbasa.com.au](http://www.mbasa.com.au)  
Phone: 1800 067 466  
Fax: 08 8231 5240  
Email: [buildsa@mbasa.com.au](mailto:buildsa@mbasa.com.au)



**Adjudicate Today**

Web: [www.adjudicate.com.au](http://www.adjudicate.com.au)  
Phone: 1300 760 297  
Fax: 1300 760 220  
Email: [sa@adjudicate.com.au](mailto:sa@adjudicate.com.au)



**Nominator**

Web: [www.nominator.com.au](http://www.nominator.com.au)  
Phone: 08 8267 4800  
Fax: 08 8239 0728  
Email: [contact@nominator.com.au](mailto:contact@nominator.com.au)



**Australian Solutions Centre**

Web: [www.solutionscentre.com.au](http://www.solutionscentre.com.au)  
Phone: 1300 722 624  
Fax: 1300 722 924  
Email: [ascorp@bigpond.net.au](mailto:ascorp@bigpond.net.au)



**RICS Dispute Resolution Service**

Web: [www.ricsdrs.com.au](http://www.ricsdrs.com.au)  
Phone: 1300 953 459  
Fax: 1300 953 529  
Email: [drsaus@rics.org](mailto:drsaus@rics.org)

### 3.2. Retail and Commercial Leases Act 1995

Responsibility for the administration of the *Retail and Commercial Leases Act 1995* (the Act) was assigned to the Office of the Small Business Commissioner in November 2012. Under the Act, all security bonds taken by Lessors are required to be lodged with the Small Business Commissioner. The Retail Shop Leases Fund is also assigned to the Office of the Small Business Commissioner.

Retail and commercial leasing matters continue to form a substantial percentage of the enquiries raised with the Office of the Small Business Commissioner, as evidenced in the figures set out below:

<i>Small Business Commissioner Act 2011</i>	<b>41.00%</b>
<i>Retail and Commercial Leases Act 1995</i>	<b>44.42%</b>
<i>Building and Construction Industry Security of Payment Act 2009</i>	<b>2.17%</b>
Other	<b>12.41%</b>

The Office's dedicated team of Case Officers, including a specialist Retail Bonds Officer, provide assistance and information to the general business community regarding these enquiries. Online information and forms are available through the Office of the Small Business Commissioner's website.

#### ADMINISTRATION OF THE RETAIL AND COMMERCIAL LODGEMENTS AND REFUNDS

In 2015/16 the office has processed 815 lodgements to the value of \$1,288,988.71 and 535 refunds to the value of \$903,283.66 which is split between Lessee \$522,485.85 and Lessor/Agent \$380,797.81.

A total of 229 Notice of Claim letters were sent to landlords, lessees and agents this financial year. Of those letters distributed to these groups, 11 were disputed.



**Lodgements Processed**



**Lodgement Value**

<b>2014/2015</b>	737	\$1,220,458.60
<b>2015/2016</b>	815	\$1,288,988.71



**Lessee Amount**



**Lessor/Agent Amount**

<b>2014/2015</b>	\$425,851.30	\$327,806.29
<b>2015/2016</b>	\$522,485.85	\$380,797.81



**Refunds Processed**



**Refunds Value**

<b>2014/2015</b>	485	\$753,657.59
<b>2015/2016</b>	535	\$903,283.66

## REVIEW OF THE RETAIL AND COMMERCIAL LEASES ACT 1995

The State Government committed to undertake a review of the Act in December 2013. The review was undertaken by former Youth and District Court Judge Alan Moss. The Moss Review was noted by Cabinet on 16 May 2016, and released for public consultation on 24 May 2016.

The Moss Review put forward a total 20 recommendations as follows:

- › The threshold for the application of the Act should continue to be determined by the amount of the rental and not by the lettable area. The SBC should monitor the marketplace and make recommendations for the alteration of the threshold amount (if necessary) every 2 years.
- › The rental threshold amount should be exclusive of GST.
- › A shop leased for an amount under the rental threshold should be considered a small business, even if it is part of a larger franchise, brand or group.
- › Certain classes of small business which rent premises from the State Government or Local Government should be excluded from the Act by regulation. The power of the Minister and the Magistrates Court to exempt leases and licences from the Act should be revoked, and should instead lie with the SBC (with a possible appeal to SACAT).
- › The term ‘public company’ should have the same meaning as under the *Corporations Act 2001* (Cth).
- › The Act should provide for the mandatory registration of leases, however, the requirement to provide a survey to affect registration should not apply under the Act.
- › Shopping centre incentives should remain confidential.

› Section 12 of the Act should be amended to make it clear that:

- The disclosure statement must be provided to the lessee before any binding agreement can be made;
  - The disclosure statement should be signed by the lessor, or agent of the lessor, and served upon the lessee;
  - The disclosure statement should be signed by the lessee or his or her agent;
  - There need not be a disclosure statement required before exercising a right of renewal.
- › Independent condition reports (including photographs) at the beginning and end of a lease should not be made mandatory.
- › The Act should not provide a pro-forma lease, nor should the cost of lease preparation be capped. References to ‘stamping’ and ‘stamp duty’ in sections 14 and 16 of the Act should be deleted.



**BOTH YOUR ASSISTANCE AND THE  
“LAWHANDBOOK” HAVE PROVED  
TO BE EXTREMELY VALUABLE. MY  
SINCERE THANKS ONCE AGAIN.**

ANONYMOUS



- › There should be no change to land tax provisions.
- › Security should be by way of three months' rental.
- › All bank guarantees provided as security by lessees should be held by the SBC.
- › Section 20B(3)(b) of the Act should be amended by deleting the words "with the consent of the lessor and the period of holding over does not exceed 6 months" to ensure that holding over does not imply a new term and will allow either party to terminate the hold over.
- › The SBC should have the power to certify exclusionary clauses under section 20K of the Act.
- › The Act should be amended to provide a legislative pathway for an orderly exit from a lease by a failing business.

- › The *Landlord and Tenant Act 1936* should be amended to place the jurisdiction over actions for distress for rent with the Magistrates Court.
- › The role of the SBC should be expanded to include the right to mediate and, if necessary, determine disputes under the Act up to \$100,000, with a possible appeal to SACAT. The jurisdiction of the Magistrates Court to deal with matters under \$100,000 should be revoked. In the alternative, the jurisdiction to determine such disputes should lie with SACAT.
- › No amendment to the Act should be undertaken until the effect of the Commonwealth unfair contracts legislation is clearly understood.
- › Penalties under the Act should be increased.

The closing date for submissions commenting on the recommendations set out in the Moss Review was 26 August 2016.

At the conclusion of the consultation period, the Small Business Commissioner will review the feedback and prepare a briefing for the Minister for Small Business' consideration, with a view to bringing recommendations back to Cabinet in the latter part of 2016.





## 4

# MANAGEMENT OF HUMAN RESOURCES

Staff of the Office of the Small Business Commissioner, with the exception of the Small Business Commissioner, are employees of the Department of State Development and as such are reported in the figures provided in the Department of State Development Annual Report.

# INQUIRIES

## 5.1. Inset Electricity

The State Government's Inquiry into Inset (or Embedded) Electricity Networks was announced by the former Minister for Small Business, the Hon Tom Koutsantonis MP, on 18 December 2012. The Minister said:

*"The objective of this Inquiry is to gain a clear understanding of the ways in which inset or embedded electricity networks operate in South Australia.*

*The review will look at arrangements and the different methods used to determine the power prices charged to business operators as well as any anti-competitive behaviour.*

*This Inquiry will consider whether there has been any inappropriate use of the imbalance of bargaining power to the detriment of small business tenants, and provide recommendations on how to prevent this occurring in future."*

Shortly after the Inquiry was announced, regulatory responsibility for inset schemes was transferred from the Essential Services Commission of South Australia (ESCOSA) to the national Australian Energy Regulator (AER).

### **Since that time, investigations undertaken by the Office of the Small Business Commissioner into embedded networks in this State have continued.**

The Australian Energy Market Commission (AEMC) released the final rule relating to embedded networks on 17 December 2015 after a lengthy period of consultation. The rule seeks to reduce barriers to consumer access to competitive offers from retailers and support competition in the provision of electricity and demand side services.

The final rule determination makes it easier for embedded network customers to choose an alternative electricity supplier, while remaining part of the embedded network. It is expected to provide a clear, understandable and transparent framework for embedded networks.

The AEMC has recommended separate but supporting changes to state and territory legislation and the AER's network exemption guideline, and a review of the National Energy Retail Rules (NERR) for embedded network customers, with the aim of further decreasing barriers to embedded network customers accessing retail market offers.

The final rule specifies that the new version of the NERR will start on 1 December 2017.

The Small Business Commissioner is now in a position to take steps to complete the report to the Minister for Small Business, as the work undertaken by the AEMC has been finalised and the final rule has been released.

The Small Business Commissioner is currently investigating a complaint made by a lessee in relation to the supply of electricity to three of his tenancies through the lessor's embedded network. The lessee asserts that the lessor is profiting from on-selling electricity to customers of the embedded network. The lessee has asked that he be provided with transparent information relating to the lessor's electricity charges, and options for the supply of electricity to his tenancies. The Small Business Commissioner is currently working with the lessor and the AER in order to resolve the complaint.

## EMERGING ISSUES

### 6.1. Automatic Renewal/Roll Over Contracts

During 2015/16 the Office of the Small Business Commissioner received a significant number of enquires which in turn resulted in disputes relating to automatic renewal / roll over contract issues.

These agreements usually related to advertising companies offering print, online and televisual advertising in commercial locations. In most cases the cancellation requirements are not disclosed to the customer upon signing the contract and it is therefore left to the customer to read the fine print terms and conditions on the back of the contract.

**As an example, to cancel a 2 year contract the customer was required to seek cancellation in writing (in some cases to a specified email address) prior to the first anniversary of the 2 year term expiring.**

Businesses are usually targeted by a sales representative cold-calling the premises without prior contact, and due to time constraints small business owners are either not given the opportunity, or do not have the time to read and fully comprehend the terms and conditions of the agreement.

In other cases, businesses are contacted via telephone and verbal agreements are entered into with discussions being recorded to form a contract. In such cases it is even more difficult for the small business owner to remember the cancellation process as a copy of the recording is not provided to the customer until a dispute arises.

The *Small Business and Unfair Contract Terms Bill 2015* was passed by federal parliament earlier this year and comes into force from 12 November 2016. It aims to protect small businesses by amending the unfair contract terms provisions of the Australian Consumer Law (ACL) and *Australian Securities and Investments Commission Act* (ASIC Act) to cover 'small business contracts'. This will make Australia the only major jurisdiction in the world where protections of this type will apply to business to business contracts.

Whilst these laws will help in protecting small businesses, the Small Business Commissioner strongly recommends that all South Australia small businesses take the time to undertake proper due diligence by comprehensively reading all aspects of contracts before signing, or verbally agreeing to any agreement. This may include seeking professional advice from either legal or financial advisors or contacting the Office of the Small Business Commissioner for general advice.

### 6.2 The Community Network

On 30 November 2015, the ACCC instituted proceedings in the Federal Court (with the support of all Australian Small Business Commissioners) against Multimedia International Services Pty Ltd, trading as The Community Network (TCN), for allegedly engaging in unconscionable conduct, misleading or deceptive conduct, making false or misleading representations and wrongly accepting payments from small businesses.

This prosecution resulted in Multimedia International Services Pty Ltd having to pay penalties totalling \$230,000 for breaches of the Australian Consumer Law (ACL) in its dealings with certain small businesses.

The Community Network sells digital advertising services to small businesses throughout Australia. The advertising is presented on branded LCD screens at various sites such as fitness centres, newsagencies, shopping centres and hospitals.

The Court found that The Community Network had engaged in unconscionable conduct in its dealings with one small business, including by refusing to release it from its contract for advertising services when The Community Network was not providing those advertising services, then pursuing the business for non-payment, threatening legal action and engaging debt collectors.

The Court also declared that The Community Network made false or misleading representations to two other small businesses and wrongly accepted payments from them.

Like most State Small Business Commissioners, the Office of the Small Business Commissioner (SA) had pushed for proceedings to be taken against The Community Network because the Office had received numerous complaints from small businesses that The Community Network was requiring payments to be continued under its contracts, despite not providing the digital advertising services promised. Some small businesses had also complained that they were misled by the failure to clearly disclose the effect of an automatic renewal term.

This was an important case, because it makes it clear that businesses like The Community Network must comply with the Australian Consumer Law in their dealings with small businesses.



I FIRMLY BELIEVE WITHOUT  
YOUR INVOLVEMENT AND  
ASSISTANCE WE WOULD NOT  
HAVE PROGRESSED THIS FAR  
AND NOW I AM CONFIDENT YOU  
HAVE PROVIDED US WITH THE  
BEST POSSIBLE SHOT AT FAIR  
RESOLUTION.

SHARON MARTIN, GENERAL MANAGER, ADELAIDE ROCKFORD





# STAKEHOLDER ENGAGEMENT

Stakeholders engaged in the period from 1 July 2015 to 30 June 2016 included:

ACCC	Dillons Newsagency	Motor Trade Association
Adelaide City Council	DSE Civil	Nu Vision
Adjudicate Pty Ltd	Earthnote	Ottaway Engineering
ADX Building Supplies	Efic	Peter Page Holden
AiGroup	Environment Protection Authority	Poly-tech
Angelika Seafood	Equal Opportunity Commission	Primary Producers SA
Annabel Digance MP	Ewings Contractors	Property Council of Australia
Aquest Engineering	Fair Work Ombudsman	Queensland Building and Construction Commission
Australian Energy Regulator	Family Business Australia	Regional Development Australia
Australian Fertiliser Services Association	German European Chamber of Commerce	Renew Adelaide
Australian Hotels Association	Grain Producers SA	Retail and Shop Leases Committee
Australian Human Rights Commission	Green Williamson	ReturnToWorkSA
Australian Industrial Transformation Institute	GTE Training Mount Gambier	RI Engineering
Australian Institute of Company Directors	Hon John Darley MLC	Royal Institution of Chartered Surveyors
Australian Newsagents Federation	Haylock Marine Services	SA Power Networks
Australian Securities and Investments Commission	Housing Industry Association	SA Tourism Industry Council
Australian Sub-Contractors Association	ICE Engineering	SA Water
Australian Taxation Office	Institute of Public Accountants	Safework SA
Avid Engineering	Intellectual Property Consultants	Shopping Centre Council of Australia
Basetec Services Pty Ltd	Jane Lomax-Smith	Senator Nick Xenophon
Borehole Wireline	Katrine Hildyard MP	TAFE SA
Brett & Watson Pty Ltd	Law Society of SA	Tim Whetstone MP
Business SA	Local Government Association	Tom Kenyon MP
CBCH Crane Hire	Maaric Industrial Services	Training and Skills Commission
CFMEU	Makris Group	Veolia
Churchill Fellows Association	Master Builders Association	VUCA
City of Onkaparinga	Maxima	Working Women's Centre
Commissioner for Consumer and Business Services	McGrath Nicol	Whyalla Chamber of Commerce
Council for International Trade and Commerce SA	MGF Consulting Group	Whyalla Hose and Fittings
Council Solutions	Mitch Williams MP	
CPA Australia	Montebello Strategies	

## 7.1. Appearances and Presentations

### APPEARANCES

The Small Business Commissioner and his staff attended a variety of events organised by local councils, state government and other groups which were attended by a number of small business people.

Event	Location	Event	Location
Transforming Employment Dispute Resolution Workshop	<b>Adelaide</b>	Access to Global Markets Forum	<b>Adelaide</b>
South Australian Award for Excellence – Newsagents Awards Night	<b>Adelaide</b>	Meet the Buyer	<b>Elizabeth</b>
Annual Economic Outlook Breakfast 2015	<b>Adelaide</b>	SA Ausmumpreneur Lunch	<b>Parliament House</b>
SAYES Class of 2014 Graduation	<b>Adelaide</b>	Heads Up Business Breakfast	<b>Adelaide</b>
Small Business Expo	<b>Golden Grove</b>	Country cabinet	<b>Port Augusta</b>
CCF SA Industry Breakfast	<b>Thebarton</b>	Northern Economic Plan Launch	<b>Adelaide</b>
Meet the Buyer	<b>South East</b>	AHA President's Christmas Lunch	<b>Adelaide</b>
SafeWork Event	<b>Norwood</b>	SAYES Class of 2015 Graduation	<b>Adelaide</b>
Premier's Council for Woman 50/50 Vision Launch	<b>Adelaide</b>	2016 Murraylands Training & Employment Apprentice and Trainee of the Year Awards	<b>Adelaide</b>
Premier's Annual Business Luncheon	<b>West Lakes</b>	Business SA Networking	<b>Adelaide</b>
BDO Psychology @ Work Breakfast	<b>Adelaide</b>	KordaMentha OneWhyalla Committee	<b>Whyalla</b>
eNVles Venture Dorm Powered By Mega Awards Ceremony	<b>Adelaide</b>	SA Young Entrepreneurs Event	<b>Norwood</b>
2015 Australian eChallenge Awards Dinner: Family Business Australia	<b>Adelaide Oval</b>	HIA Adelaide Brighton Cement Industry Outlook Breakfast	<b>Adelaide</b>
FWO Small Business Forum	<b>Melbourne</b>	AICD Roundtable Lunch	<b>Adelaide</b>
SA Tourism Awards	<b>Adelaide</b>	AusIndustry Group Training Welcome Reception	<b>Adelaide</b>
Meet the Buyer	<b>Adelaide</b>		



Small Business Commissioner John Chapman with the Premier, Jay Weatherill and Federal Member for Port Adelaide, Hon Mark Butler MP at the Premier's Annual Business Luncheon in October 2015



Small Business Commissioner John Chapman with SA entrepreneur of the Year winner Luke Patton at the SAYES Class of 2014 Graduation in April 2016



Small Business Commissioner John Chapman with the SA Ausmumpreneur's at Parliament House in March 2016



Business Port Augusta Chairman, David Versteeg and Member for Stuart, Dan van Holst Pellekaan MP at the Business Port Augusta Breakfast in September 2015



Small Business Commissioner John Chapman attended the Safework SA Breakfast with Glenn Farrell, Manager, Work Place Support Team, SafeWork SA in Norwood in October 2015

## PRESENTATIONS

In addition to dealing with many small business owners in relation to disputes, the Small Business Commissioner met with many groups and delivered presentations on the services that the Office provides as well as number of key small business issues.

Event	Location	Event	Location
Governance Institute of Australia Forum	<b>Adelaide</b>	Business SA - Connecting SA Business Series	<b>Mount Gambier</b>
Rotary Club of Campbelltown	<b>Athelstone</b>	Institute of Public Accountants	<b>Morphettville</b>
Australian Fertiliser Service State Meeting	<b>Naracoorte</b>	CEO Connect Business Breakfast	<b>Mount Barker</b>
SAMEAC Eco Committee	<b>Adelaide</b>	Members of Parliament Briefing	<b>Adelaide</b>
Western Business Leaders Lunch	<b>Grange</b>	SA Infrastructure Conference - Construction Contractors Federation	<b>Adelaide</b>
National Electrical and Communications Association	<b>Adelaide</b>	SA Migrant Small Business Expo	<b>Woodville</b>
Equal Opportunity Commission	<b>Adelaide</b>	Regional Summit	<b>Mount Gambier</b>
Business SA - Connecting SA Business Series	<b>Barossa Valley</b>	Regions in Focus Roadshow	<b>Mount Gambier</b>
Unley Business Breakfast	<b>Unley</b>	Yorke Peninsula Small Business Forum	<b>Maitland</b>
Mount Barker Business Breakfast	<b>Mount Barker</b>	Senate Inquiry into Building Industry	<b>Adelaide</b>
Port Augusta Business Breakfast	<b>Port Augusta</b>	Presentation to State Opposition	<b>Adelaide</b>
Small Business Forum in Clare	<b>Clare</b>	Industry Leaders Group Meeting	<b>Clare</b>
Tea Tree Gully Business Breakfast	<b>Tea Tree Gully</b>		



Small Business Commissioner John Chapman joined Tea Tree Gully Business Enterprise Centre Manager Mike Norman and ANZ's Area Manager Andrew Ferrier for a special breakfast for local business owners this morning at the Tea Tree Gully Golf Club in March 2016



Small Business Commissioner John Chapman and with Mayor of Mount Barker Ann Ferguson at the Mount Barker Business Breakfast held in February 2016



Small Business Commissioner John Chapman was guest speaker at the Western Business Leaders Lunch held in Grange in August 2015. Pictured with City of Charles Sturt Mayor, Angela Evans and CEO of Maxima, David Cockram



Small Business Commissioner John Chapman with Business SA CEO, Nigel McBride at the Business SA CEO Connect Business Breakfast at Barossa Novotel in November 2015



Small Business Commissioner John Chapman speaking at the Unley Business Breakfast in December 2015



Small Business Commissioner John Chapman with attendees at the Industry Leaders Group Meeting held in Clare in February 2016

## MEDIA APPEARANCES

The Small Business Commissioner advocates for small business by speaking to the media and publishing articles in the Adelaide Advertiser on matters that effect South Australian small businesses.

### Commentary Articles in the Adelaide Advertiser 2015/16

- › nbn roll-out promises to deliver more opportunities
- › Big win for small business as contract threshold raises
- › We Can't Afford to be Further Penalised
- › Give the little guy a fair go against the big end of town

### Radio Interviews

- › Wednesday 15 July 2015 - 891 ABC
- › Wednesday 14 October 2015 - ABC Riverland Radio
- › Wednesday 14 October 2015 - ABC Radio Interview
- › Wednesday 28 October 2015 - Italian Radio
- › Friday 4 March 2016 – 5AA Leon Byner
- › Friday 17 June 2016 – ABC Regional Radio
- › Monday 20 June 2016 - 891 ABC
- › Tuesday 21 June 2016 - ABC Regional Radio

## 7.2. Regional Engagement

The Small Business Commissioner has undertaken a number of regional visits in 2015/16. Connecting with local people in the regions is one of the priorities for the Office of the Small Business Commissioner and opportunities to travel to the regions are taken as much as possible.

The Small Business Commissioner was invited by the Minister for Small Business to attend the Regions in Focus Roadshows with the Minister for Regional Development, Hon Geoff Brock. In June 2016 the Roadshows were held in Barossa and Lyrup and the Small Business Commissioner attended and spoke with local small business groups. The Roadshows will continue in the next financial year with plans to travel to Port Augusta, Mount Gambier, Strathalbyn, Kangaroo Island, Port Pirie and Port Lincoln.

In October 2015, the Office of the Small Business Commissioner arranged for 10 State and Federal government agency representatives to travel to Berri to deliver the BizLink Seminar. The Small Business Commissioner met with many local groups in the region.

In May 2016, the Small Business Commissioner attended and spoke at the Regional Summit in Mount Gambier along with many other small business people and State Ministers.



Small Business Commissioner John Chapman attended and spoke at the Regional Summit in Mount Gambier which was also attended by Minister for Employment, Hon Kyam Maher MLC, Minister for Agriculture, Food and Fisheries, Hon Leon Bignell MP, Minister for Regional Development, Hon Geoff Brock MP and Minister for Education and Child Development, Hon Susan Close MP in May, 2016

## WHYALLA SUPPORT FOR SMALL BUSINESS

At the request of the Premier and the Treasurer, the Small Business Commissioner was asked to urgently visit Whyalla in April 2016 to meet with small businesses following the appointment of Korda Mentha to replace Grant Thornton as administrators of Arrium. Arrium was reported to have debts of \$4 billion.

These developments placed significant stress on contractors/suppliers to Arrium/One Steel who were already working on a 62 day payment cycle.

It is estimated there are 750 businesses in Whyalla, with most linked either directly or directly to the operations of Arrium.

The Commissioner accompanied the Minister for Regional Development Hon Geoff Brock during the initial visit and over the two day period met with more than 30 parties concerned about their financial situation.

The Commissioner engaged financial and banking specialist lawyer Michael Barrett from Thomson Geer to provide urgency advice to the contractors on their rights and responsibilities. This and this included two on the ground visits to Whyalla to meet with affected parties.

The Small Business Commissioner noted that most immediate and concerning issue facing contractors/suppliers was cash flow. Most businesses are awaiting payments for goods and/or services provided from January 2016 through to 7 April 2016.

One business flagged it could fold as early as the end of the following week unless it received some cash. Many others were flagging 2 May 2016 as a critical date as the second of the month is the normal payment date for Arrium under the 62 day cycle.

Over the ensuing weeks, the Small Business Commissioner undertook a series of visits to the region including with the Treasurer, Hon Tom Koutsantonis on 22 April 2016 and the Premier Hon Jay Weatherill. Further visits were made with the Hon Tom Koutsantonis and Minister for Regional Development Hon Geoff Brock on 2 and 3 May 2016.

The Small Business Commissioner also met on a regular basis with the administrators, Korda Mentha, who were proactive in responding to requests for information and communication with suppliers/contractors.

The Commissioner was closely involved in the development of a \$10 million interest free loan/grant assistance package for small businesses which was announced by the State Government on 2 May 2016.

The State Government also implemented a financial support service through accounting firm Hood Sweeney, which has a strong Whyalla presence.

The Small Business Commissioner convened a number of forums which covered topics including legal, taxation, employment responsibilities, defence procurement as well as the role of the Office of the Small Business Commissioner.

The Commissioner also worked closely with the CEOs of SA Health and Department of Communities and Social Inclusion to ensure support services including mental health services were available.

The State Government has expressed strong commitment to businesses throughout Whyalla and the Commissioner appreciates the strong support he has received from the Whyalla City Council, Whyalla Chamber of Commerce and Regional Development Australia Whyalla and Eyre Peninsula.



**WE APPRECIATE EVERY EFFORT  
YOUR TEAM HAVE MADE AND ARE  
EXTREMELY APPRECIATIVE TO HAVE  
HAD SUCH A POSITIVE OUTCOME.**

**NOI BOYCE, CEO, YOUR FREIGHT AGENT**

**ON THE GROUND IN WHYALLA**



Small Business Commissioner John Chapman with Treasurer Hon Tom Koutsantonis and Member for Giles, Mr Eddy Hughes MP in Whyalla April 2016



Small Business Commissioner John Chapman, Minister for Development, Hon Geoff Brock MP and Member for Giles, Mr Eddy Hughes MP meeting with Arrium contractors in Whyalla April 2016



Small Business Commissioner John Chapman caught up with Steve Savaidis from Delmac Power Equipment during a visit to Whyalla June 2015



Small Business Commissioner, John Chapman with Premier Jay Weatherill in Whyalla May 2016



Small Business Commissioner, John Chapman being interviewed by the media in Whyalla April 2016



Whyalla Steelworks



David Bruce, Director and Jarrod Starkey, General Manager of Whyalla Hose and Fittings



Michael Barrett from Thomson Geer talking with Arrium contractors in Whyalla April 2016



## 8

# PUBLIC COMPLAINTS

The Office of the Small Business Commissioner maintains a register of compliments and complaints which are received in writing via the Small Business Commissioner website or email. The Commissioner reviews all compliments and complaints that are made to the Office. In 2015/16 two formal complaints were received by the Office.

## 9

# FREEDOM OF INFORMATION (FOI)

The *Freedom of Information Act 1991* gives the public a legal right to:

- › request access to documents held by State Government agencies, Government Ministers, Local Councils or State Universities
- › request the amendment of documents about you which are incomplete, incorrect, out-of-date or misleading
- › seek a review of a decision made by a State Government agency, Government Minister, Local Council or University.

Due to the specialised nature of the work that the Office of the Small Business Commissioner manage, and to protect our clients, an exemption to the FOI Act was gazetted on 18 December 2014.

# 10

## FINANCIAL STATEMENTS

### Small Business Commissioner

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# Small Business Commissioner Independent Auditor's Report

**For official use only**



**Government of South Australia**  
Auditor-General's Department

*Our ref: A16/352; A16/042*

29 September 2016

Mr J Chapman  
Small Business Commissioner  
Ground Floor  
99 Gawler Place  
ADELAIDE SA 5000

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DX 56208  
Victoria Square  
Tel +618 8226 9640  
Fax +618 8226 9688  
ABN 53 327 061 410  
audgensa@audit.sa.gov.au  
www.audit.sa.gov.au

Dear Mr Chapman

## **Audit of the Small Business Commissioner and the Retail Shop Leases Fund for the year to 30 June 2016**

We have completed the audit of your accounts for the year ended 30 June 2016. Three key outcomes from the audit are the:

- 1 Independent Auditor's Report on your agency's financial reports
- 2 opinions on your financial controls
- 3 audit management letters.

### **1 Independent Auditor's Report**

We are returning the financial statements for the Small Business Commissioner and the Retail Shop Leases Fund, with the Independent Auditor's Reports. These reports are unmodified.

### **2 Opinion on financial controls**

In my opinion, the controls exercised by the Small Business Commissioner and the Retail Shop Leases Fund in relation to the receipt, expenditure and investment of money, the acquisition and disposal of property and the incurring of liabilities are sufficient to provide reasonable assurance that the financial transactions of the Small Business Commissioner and the Retail Shop Leases Fund have been conducted properly and in accordance with law.

### **3 Audit management letters**

As the audits did not identify any significant matters requiring management attention, we will not issue any audit management letters.

## Small Business Commissioner Independent Auditor's Report Continued

### For official use only

#### What the audit covered

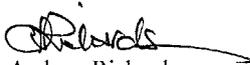
Our audit covered the principal areas of the agency's financial operations and included test reviews of systems, processes, internal controls and financial transactions. Some notable areas were:

- employee benefits expenses
- supplies and services expenses
- cash
- investments
- security bonds lodged.

Our audits meet statutory audit responsibilities under the *Public Finance and Audit Act 1987* and the Australian Auditing Standards.

I would like to thank the staff and management of your agency for their assistance during this year's audit.

Yours sincerely

  
Andrew Richardson  
**Auditor-General**

enc

# Small Business Commissioner Independent Auditor's Report Continued

## INDEPENDENT AUDITOR'S REPORT



Government of South Australia  
Auditor-General's Department

Level 9  
State Administration Centre  
200 Victoria Square  
Adelaide SA 5000  
DX 56208  
Victoria Square  
Tel +618 8226 9640  
Fax +618 8226 9688  
ABN 53 327 061 410  
audgensa@audit.sa.gov.au  
www.audit.sa.gov.au

### To the Small Business Commissioner

As required by section 31(1)(b) of the *Public Finance and Audit Act 1987*, I have audited the accompanying financial report of the Small Business Commissioner for the financial year ended 30 June 2016. The financial report comprises:

- a Statement of Comprehensive Income for the year ended 30 June 2016
- a Statement of Financial Position as at 30 June 2016
- a Statement of Changes in Equity for the year ended 30 June 2016
- a Statement of Cash Flows for the year ended 30 June 2016
- notes, comprising a summary of significant accounting policies and other explanatory information
- a Certificate from the Small Business Commissioner and the Manager, Business Services.

### The Small Business Commissioner's responsibility for the financial report

The Small Business Commissioner is responsible for the preparation of the financial report that gives a true and fair view in accordance with the Treasurer's Instructions promulgated under the provisions of the *Public Finance and Audit Act 1987* and Australian Accounting Standards, and for such internal control as the Small Business Commissioner determines is necessary to enable the preparation of the financial report that is free from material misstatement, whether due to fraud or error.

### Auditor's responsibility

My responsibility is to express an opinion on the financial report based on the audit. The audit was conducted in accordance with the requirements of the *Public Finance and Audit Act 1987* and Australian Auditing Standards. The auditing standards require that the auditor comply with relevant ethical requirements and that the auditor plan and perform the audit to obtain reasonable assurance about whether the financial report is free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial report. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial report, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation of the financial report that gives a true and fair view in order to design audit procedures that are appropriate in the circumstances.

## Small Business Commissioner Independent Auditor's Report Continued

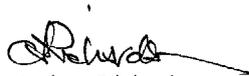
An audit also includes evaluating the appropriateness of the accounting policies used and the reasonableness of accounting estimates made by the Small Business Commissioner, as well as evaluating the overall presentation of the financial report.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

My report refers only to the financial statements described above and does not provide assurance over the integrity of publication of the financial report on the Small Business Commissioner's website nor does it provide an opinion on any other information which may have been hyperlinked to/from these statements.

### **Opinion**

In my opinion, the financial report gives a true and fair view of the financial position of the Small Business Commissioner as at 30 June 2016, its financial performance and its cash flows for the year then ended in accordance with the Treasurer's Instructions promulgated under the provisions of the *Public Finance and Audit Act 1987* and Australian Accounting Standards.



Andrew Richardson  
**Auditor-General**  
29 September 2016

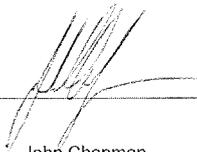
# Small Business Commissioner Independent Auditor's Report Continued

## Small Business Commissioner Certification of the Financial Statements

We certify that the attached general purpose financial statements for the Small Business Commissioner:

- comply with relevant Treasurer's instruction issued under section 41 of the *Public Finance and Audit Act 1987* and relevant Australian Accounting Standards;
- are in accordance with the accounts and records of the authority; and
- present a true and fair view of the financial position of the Small Business Commissioner as at 30 June 2016 and the results of its operations and cash flows for the financial year.

We certify that the internal controls employed by the Small Business Commissioner for the financial year over its financial reporting and its preparation of the general purpose financial statements have been effective throughout the reporting period.



John Chapman  
Small Business Commissioner  
26<sup>th</sup> September 2016



Jackie Stringer  
Manager, Business Services  
25<sup>th</sup> September 2016

## Small Business Commissioner Statement of Comprehensive Income for the year ended 30 June 2016

		<b>2016</b>	<b>2015</b>
<b>Expenses</b>	<b>Note</b>	<b>\$'000</b>	<b>\$'000</b>
Employee benefits	4	1,103	1,435
Supplies and services	5	483	613
Depreciation and amortisation	6	10	10
Other	7	-	4
<b>Total expenses</b>		<b>1,596</b>	<b>2,062</b>
<b>Income</b>			
Recoveries	8	195	351
Other	9	7	2
<b>Total income</b>		<b>202</b>	<b>353</b>
<b>Net cost of providing services</b>		<b>(1,394)</b>	<b>(1,709)</b>
<b>Revenues from SA Government</b>			
Revenues from SA Government	10	2,164	1,686
<b>Net revenues from SA Government</b>		<b>2,164</b>	<b>1,686</b>
<b>Net result</b>		<b>770</b>	<b>(23)</b>
<b>Total comprehensive result</b>		<b>770</b>	<b>(23)</b>

The net result and total comprehensive result are attributable to the SA Government as owner.

The above statement should be read in conjunction with the accompanying notes.

## Small Business Commissioner Statement of Financial Position

As at 30 June 2016

	Note	2016 \$'000	2015 \$'000
<b>Current assets</b>			
Cash	11	1,210	121
Receivables	12	19	352
<b>Total current assets</b>		<b>1,229</b>	<b>473</b>
<b>Non-current assets</b>			
Intangible assets	13	16	26
<b>Total non-current assets</b>		<b>16</b>	<b>26</b>
<b>Total assets</b>		<b>1,245</b>	<b>499</b>
<b>Current liabilities</b>			
Payables	14	69	138
Employee benefits	15	142	102
<b>Total current liabilities</b>		<b>211</b>	<b>240</b>
<b>Non-current liabilities</b>			
Payables	14	11	10
Employee benefits	15	112	108
<b>Total non-current liabilities</b>		<b>123</b>	<b>118</b>
<b>Total liabilities</b>		<b>334</b>	<b>358</b>
<b>Net assets</b>		<b>911</b>	<b>141</b>
<b>Equity</b>			
Retained earnings		911	141
<b>Total equity</b>		<b>911</b>	<b>141</b>

The total equity is attributable to the SA Government as owner.

Unrecognised contractual commitments 16

The above statement should be read in conjunction with the accompanying notes.

## Small Business Commissioner Statement of Changes in Equity for the year ended 30 June 2016

	Note	Retained Earnings \$'000	Total \$'000
<b>Balance at 30 June 2014</b>		<b>163</b>	<b>163</b>
Prior period adjustment		1	1
<b>Restated balance at 30 June 2014</b>		<b>164</b>	<b>164</b>
Net result for 2014-15		(23)	(23)
<b>Total comprehensive result for 2014-15</b>		<b>(23)</b>	<b>(23)</b>
<b>Balance at 30 June 2015</b>		<b>141</b>	<b>141</b>
<b>Restated balance at 30 June 2015</b>		<b>141</b>	<b>141</b>
Net result for 2015-16		770	770
<b>Total comprehensive result for 2015-16</b>		<b>770</b>	<b>770</b>
<b>Balance at 30 June 2016</b>		<b>911</b>	<b>911</b>

All changes in equity are attributable to the SA Government as owner.

The above statement should be read in conjunction with the accompanying notes.

## Small Business Commissioner Statement of Cash Flows

for the year ended 30 June 2016

		2016 Inflows (Outflows) \$'000	2015 Inflows (Outflows) \$'000
<b>Cash flows from operating activities</b>	<b>Note</b>		
<b>Cash outflows</b>			
Employee benefit payments		(1,058)	(1,442)
Payments for supplies and services		(552)	(608)
<b>Cash used in operations</b>		<b>(1,610)</b>	<b>(2,050)</b>
<b>Cash inflows</b>			
Recoveries from Retail Shop Leases Fund		529	-
Other recoveries		6	72
<b>Cash generated from operations</b>		<b>535</b>	<b>72</b>
<b>Cash flows from SA Government</b>			
Receipts from SA Government	10	2,164	1,686
<b>Cash generated from SA Government</b>		<b>2,164</b>	<b>1,686</b>
<b>Net cash provided by / (used in) operating activities</b>		<b>1,089</b>	<b>(292)</b>
<b>Net increase / (decrease) in cash</b>		<b>1,089</b>	<b>(292)</b>
Cash at 1 July		121	413
<b>Cash at 30 June</b>	11	<b>1,210</b>	<b>121</b>

## Notes to and forming part of the financial statements

<b>Note 1</b>	Objectives of the Small Business Commissioner
<b>Note 2</b>	Summary of significant accounting policies
<b>Note 3</b>	New and revised accounting standards and policies
<b>Note 4</b>	Employee benefits expenses
<b>Note 5</b>	Supplies and services
<b>Note 6</b>	Depreciation and amortisation expense
<b>Note 7</b>	Other expenses
<b>Note 8</b>	Recoveries
<b>Note 9</b>	Other income
<b>Note 10</b>	Revenues from SA Government
<b>Note 11</b>	Cash
<b>Note 12</b>	Receivables
<b>Note 13</b>	Intangible assets
<b>Note 14</b>	Payables
<b>Note 15</b>	Employee benefits
<b>Note 16</b>	Unrecognised contractual commitments
<b>Note 17</b>	Contingent assets and liabilities
<b>Note 18</b>	Transferred functions
<b>Note 19</b>	Financial instruments / financial risk management
<b>Note 20</b>	Events after reporting period

## NOTE 1

### OBJECTIVES OF THE SMALL BUSINESS COMMISSIONER

The Small Business Commissioner (the Commissioner) is committed to helping build the best possible environment in which small business can flourish, now and in the future.

- › Provides no or low cost dispute resolution services for businesses
- › Develops, promotes and enforces Industry Codes of Conduct (under the *Fair Trading Act 1987*)
- › Provides a range of information services
- › Acts as an Advocate for the sector
- › Performs inquiries on behalf of the Small Business Minister or own motion
- › Administers the *Small Business Commissioners Act 2011* and operates within relevant sections of the *Fair Trading Act 1987*
- › Administers the *Retail and Commercial Leases Act 1995*
- › Oversees the *Building and Construction Industry Security of Payments Act 2009*
- › Responsibilities under the *Work Health and Safety Act 2012* (SA)
- › Dispute resolution body for *Late Payment of Government Debts (Interest) Act 2013*

## NOTE 2

### SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

#### a) Statement of compliance

These financial statements have been prepared in compliance with section 23 of the *Public Finance and Audit Act 1987*.

The financial statements are general purpose financial statements. The accounts have been prepared in accordance with relevant Australian Accounting Standards (Reduced Disclosure Requirements) and comply with Treasurer's Instructions and Accounting Policy Statements promulgated under the provisions of the *Public Finance and Audit Act 1987*.

The Commissioner has applied Australian Accounting Standards that are applicable to not-for-profit entities, as the Commissioner is a not-for-profit entity.

#### b) Basis of preparation

The preparation of the financial statements requires:

- › the use of certain accounting estimates and requires management to exercise its judgement in the process of applying the Commissioner's accounting policies. The areas involving a higher degree of judgement or where assumptions and estimates are significant to the financial statements are outlined in the applicable notes;
- › accounting policies are selected and applied in a manner which ensures the resulting financial information satisfies the concepts of relevance and reliability, thereby ensuring the substance of the underlying transactions or other events are reported;
- › compliance with Accounting Policy Statements issued pursuant to Section 41 of the *Public Finance and Audit Act 1987*. In the interest of public accountability and transparency the accounting policy statements require the following note disclosures, which have, if applicable, been included in these financial statements:
  - (a) expenses incurred as a result of engaging consultants;
  - (b) employee targeted voluntary separation package information;
  - (c) employees whose normal remuneration is equal to or greater than the base executive remuneration level (within \$10 000 bandwidths) and the aggregate of the remuneration paid or payable or otherwise made available, directly or indirectly by the entity to those employees.

The Commissioner's Statement of Comprehensive Income, Statement of Financial Position and Statement of Changes in Equity have been prepared on an accrual basis and are in accordance with the historical cost

convention, except for certain assets that were valued in accordance with the valuation policy applicable.

The Statement of Cash Flows has been prepared on a cash basis.

The financial statements have been prepared based on a 12 month period and presented in Australian currency.

The accounting policies set out below have been applied in preparing the financial statements for the year ended 30 June 2016 and the comparative information presented.

### **c) Reporting entity**

The Commissioner is a government agency of the State of South Australia, established pursuant to the *Small Business Commissioner Act 2011*.

The financial statements and accompanying notes include all the controlled activities of the Commissioner.

The Commissioner does not control any other entity and has no interests in unconsolidated structured entities.

The Commissioner has not entered into any contractual arrangements which involve the sharing of control or significant influence over another entity.

### **d) Transferred functions**

There were no transferred functions during the 2015-16 financial year.

### **e) Comparative information**

The presentation and classification of items in the financial statement are consistent with prior periods except where specific accounting standards and/or accounting policy statements have required a change.

Where presentation or classification of items in the financial statements has been amended, comparative figures have been adjusted to conform to changes in presentation or classification in these financial statements unless impracticable.

The restated comparative amounts do not replace the original financial statements for the preceding period.

### **f) Rounding**

All amounts in the financial statements and accompanying notes have been rounded to the nearest thousand dollars (\$000).

### **g) Taxation**

The Commissioner is not subject to income tax. The Commissioner is liable for payroll tax, fringe benefits tax, goods and services tax (GST). GST collections and payments are carried out by the Department of State Development (DSD) on behalf of the Commissioner.

### **h) Events after the reporting period**

Adjustments are made to amounts recognised in the financial statements, where an event occurs after 30 June and before the date the financial statements are authorised for issue, where those events provide information about conditions that existed at 30 June.

Note disclosure is made about events between 30 June and the date the financial statements are authorised for issue where the events relate to a condition which arose after 30 June and which may have a material impact on the results of subsequent years.

### **i) Income**

Income is recognised to the extent that it is probable that the flow of economic benefits to the Commissioner will occur and can be reliably measured.

Income has been aggregated according to its nature and has not been offset unless required or permitted by a specific accounting standard or where offsetting reflects the substance of the transaction or other event.

Revenues from SA Government are recognised when the Commissioner obtains control over the funding. Control over the funding is normally obtained upon receipt.

### **j) Expenses**

Expenses are recognised to the extent that it is probable that the flow of economic benefits from the Commissioner will occur and can be reliably measured.

Expenses have been aggregated according to their nature and have not been offset unless

required or permitted by a specific accounting standard, or where offsetting reflects the substance of the transaction or other event.

The following are specific recognition criteria:

*Employee benefit expenses*

Employee benefits expenses include all costs related to employment including wages and salaries, non-monetary benefits and leave entitlements. These are recognised when incurred.

*Superannuation*

The amount charged to the Statement of Comprehensive Income represents the contributions made by the Commissioner to the superannuation plan in respect of current services of current Commission staff. The Department of Treasury and Finance centrally recognises the superannuation liability in the whole-of-government financial statements.

*Depreciation and amortisation*

All non-current assets, having a limited useful life, are systematically amortised over their useful lives in a manner that reflects the consumption of their service potential. Amortisation is used in relation to intangible assets such as software, while depreciation is applied to tangible assets such as property, plant and equipment.

Assets' residual values, useful lives and amortisation methods are reviewed and adjusted if appropriate, on an annual basis.

Changes in the expected useful life or the expected pattern of consumption of future economic benefits embodied in the asset are accounted for prospectively by changing the time period or method, as appropriate, which is a change in accounting estimate.

Amortisation is calculated on a straight line basis over the estimated useful life of the asset

as follows:

Class of Asset	Useful Life (Years)
Intangible / Software	1 - 5

**k) Current and non-current classification**

Assets and liabilities are characterised as either current or non-current in nature. Assets and liabilities that are to be sold, consumed or realised as part of the normal operating cycle even when they are not expected to be realised within twelve months after the reporting date have been classified as current assets or current liabilities. All other assets and liabilities are classified as non-current.

**l) Assets**

Assets have been classified according to their nature and have not been offset unless required or permitted by a specific accounting standard, or where offsetting reflects the substance of the transaction or other event.

*Cash*

Cash is measured at nominal value.

*Receivables*

Receivables include amounts receivable from administrative services and other accruals.

Receivables arise from the partial or full recovery of costs associated with the Commissioner providing mediation services to assist in dispute resolution between small businesses and provision of management resources to the Retail Shops Lease Fund. Receivables are generally settled within 30 days after the issue of an invoice or the goods/services have been provided under a contractual arrangement.

Collectability of receivables is reviewed on an ongoing basis. An allowance for doubtful debts is raised when there is objective evidence that the Commissioner will not be able to collect the debt. Bad debts are written off when identified.

### *Intangible assets*

An intangible asset is an identifiable non-monetary asset without physical substance. Intangible assets are measured at cost. Following initial recognition, intangible assets are carried at cost less any accumulated amortisation and any accumulated impairment losses.

The useful lives of intangible assets are assessed to be either finite or indefinite. The Commissioner only has intangible assets with finite lives. The amortisation period and the amortisation method for intangible assets is reviewed on an annual basis.

The acquisition of or internal development of software is capitalised only when the expenditure meets the definition criteria (identifiability, control and the existence of future economic benefits) and recognition criteria (probability of future economic benefits and cost can be reliably measured) and when the amount of expenditure is greater than or equal to \$10 000.

All research and development costs that do not meet the capitalisation criteria outlined in AASB 138 are expensed.

### **m) Liabilities**

Liabilities have been classified according to their nature and have not been offset unless required or permitted by a specific accounting standard, or where offsetting reflects the substance of the transaction or other event.

#### *Payables*

Payables include accrued expenses, and employment on-costs.

Accrued expenses represent goods and services provided by other parties during the period that are unpaid at the end of the reporting period and where an invoice has not been received.

All payables are measured at their nominal amount, are unsecured and are normally settled within 30 days from the date of the invoice or date the invoice is first received.

Employee benefits on-costs include payroll tax, Return to Work SA levies and superannuation contributions in respect to outstanding liabilities for salaries and wages, long service leave, annual leave and skills and experience retention leave.

The Commissioner makes contributions to several State Government and externally managed superannuation schemes. These contributions are treated as an expense when they occur. There is no liability for payments to beneficiaries as they have been assumed by the respective superannuation schemes. The only liability outstanding at balance date relates to any contributions due but not yet paid to the South Australian Superannuation Board or external schemes.

#### *Leases*

The determination of whether an arrangement is or contains a lease is based on the substance of the arrangement.

The Commissioner has entered into operating leases in relation to premises and motor vehicles for its administrative and operating activities.

#### *Operating Leases*

Operating lease payments are recognised as an expense in the Statement of Comprehensive Income on a straight-line basis over the lease term. The straight-line basis is representative of the pattern of benefits derived from the leased assets.

#### *Employee Benefits*

These benefits accrue for employees as a result of services provided up to the reporting date that remain unpaid. Long-term employee benefits are measured at present value and short-term employee benefits are measured at their nominal amounts.

#### Salaries and Wages, annual leave, skills and experience retention leave and sick leave

The liability for salaries and wages is measured as the amount unpaid at the reporting date at remuneration rates current at reporting date.

The annual leave liability and the skills and experience retention leave liability is expected to be payable within 12 months and is measured at the undiscounted amount expected to be paid.

No provision has been made for sick leave as all sick leave is non-vesting and the average sick leave taken in future years by employees is estimated to be less than the annual entitlement for sick leave.

#### Long service leave

The liability for long service leave is measured as the present value of expected future payments to be made in respect of services provided by employees up to the end of the reporting period using the projected unit credit method.

The estimated liability for long service leave is based on actuarial assumptions over expected future salary and wage levels, experience of employee departures and periods of service. These assumptions are based on employee data over SA government entities.

Expected future payments are discounted using market yields at the end of the reporting period on government bonds with durations that match, as closely as possible, the estimated future cash outflows.

#### **n) Unrecognised contractual commitments and contingent assets and liabilities**

Commitments include operating, capital and outsourcing arrangements arising from contractual or statutory sources and are disclosed at their nominal value.

Contingent assets and contingent liabilities are not recognised in the Statement of Financial Position, but are disclosed by way of a note and, if quantifiable, are measured at nominal value.

Unrecognised contractual commitments and contingencies are disclosed net of the amount of GST recoverable from, or payable to the Australian Taxation Office. If GST is not payable to, or recoverable from the Australian Taxation Office, the commitments and contingencies are disclosed on a gross basis.

#### **NOTE 3**

#### **NEW AND REVISED ACCOUNTING STANDARDS AND POLICIES**

The Commissioner did not voluntarily change any of its accounting policies during 2015-16.

AASB 16 Leases will apply for the first time to the 30 June 2020 financial report.

The standard will require the Commissioner to recognise all leased items in the statement of financial position as assets representing the value of items leased and as liabilities representing the expected future lease payments.

## NOTE 4

### EMPLOYEE BENEFITS EXPENSES

	2016	2015
	\$'000	\$'000
Salaries and wages	842	1,047
Long service leave	39	125
Annual leave	79	99
Skills and experience retention leave	6	2
Employment on-costs - superannuation	87	98
Employment on-costs - other	50	64
<b>Total employee benefit expenses</b>	<b>1,103</b>	<b>1,435</b>

	2016	2015
	Number	Number
The number of employees whose remuneration received or receivable falls within the following bands:		
\$245 001 - \$255 000	-	1
\$275 001 - \$285 000	1	-
\$475 001 - \$485 000	-	1
<b>Total number of employees</b>	<b>1</b>	<b>2</b>

One employee received remuneration equal to or greater than the base executive remuneration level during the year. Remuneration of employees reflects all costs of employment including salaries and wages, TVSPs / early terminations, superannuation contributions, fringe benefits tax and any other salary sacrifice benefits. The total remuneration received by employees for the year was \$0.284 million (\$0.728 million).

## NOTE 5

### SUPPLIES AND SERVICES

	2016 \$'000	2015 \$'000
Accommodation and service costs	197	197
Accounting and audit fees	21	41
Business training and development support	(9)	129
Communications and information technology expense	40	39
Contractors	38	41
Mediation fees	17	2
Marketing	75	47
Staff related expenses	13	15
Travel and related expenses	38	18
Office administration expenses	53	84
<b>Total supplies and services</b>	<b>483</b>	<b>613</b>

The total supplies and services amount disclosed includes GST amounts not recoverable from the ATO due to the Commissioner not holding a valid tax invoice or payments related to third party arrangements.

The Business Training and Development Support Program concluded in 2015. The credit balance disclosed in 2016 relates the recovery of funds that were overcharged by program recipients in 2015.

The Commissioner did not engage the services of any consultants during 2015-16.

## NOTE 6

### DEPRECIATION AND AMORTISATION EXPENSE

	2016 \$'000	2015 \$'000
<b>Amortisation</b>		
Intangible assets	10	10
<b>Total amortisation</b>	<b>10</b>	<b>10</b>
<b>Total depreciation and amortisation</b>	<b>10</b>	<b>10</b>

## NOTE 7

### OTHER EXPENSES

	2016 \$'000	2015 \$'000
Allowance for doubtful debts	-	4
<b>Total Other Expenses</b>	<b>-</b>	<b>4</b>

## NOTE 8

### RECOVERIES

	2016 \$'000	2015 \$'000
Retail Shop Leases Fund administration fees	191	338
Other administration fees	4	13
<b>Total recoveries</b>	<b>195</b>	<b>351</b>

## NOTE 9

### OTHER INCOME

	2016 \$'000	2015 \$'000
Mediation fee revenues	3	2
Other	4	-
<b>Total other income</b>	<b>7</b>	<b>2</b>

## NOTE 10

### REVENUES FROM SA GOVERNMENT

	2016 \$'000	2015 \$'000
Intra government transfers	2,164	1,686
<b>Total revenues from SA Government</b>	<b>2,164</b>	<b>1,686</b>

Relates to appropriations for operational funding received via the Department of State Development. The transfer in 2016 includes \$0.625 million for the fitout of new premises which will occur during 2016.

## NOTE 11

### CASH

	2016 \$'000	2015 \$'000
Cash at bank	1,210	121
<b>Total cash</b>	<b>1,210</b>	<b>121</b>

Cash at bank does not earn interest. The carrying amount of cash represents fair value.

## NOTE 12

### RECEIVABLES

	2016 \$'000	2015 \$'000
<b>Current</b>		
Receivables	2	5
Prepayments	17	13
Less: Allowance for doubtful debts	-	(4)
Accrued recoveries from Retail Shop Leases Fund	-	338
<b>Total current receivables</b>	<b>19</b>	<b>352</b>
<b>Total receivables</b>	<b>19</b>	<b>352</b>

## NOTE 13

### INTANGIBLE ASSETS

	2016 \$'000	2015 \$'000
<b>Intangibles / software</b>		
Computer software	51	51
Accumulated amortisation	(35)	(25)
<b>Total intangible assets</b>	<b>16</b>	<b>26</b>

## Reconciliation of Intangible assets

The following table shows the movement of Intangible Assets during 2015-16.

	Intangibles / Software \$'000	Total intangibles / Software \$'000
Carrying amount at the beginning of the financial year	26	26
Amortisation	(10)	(10)
<b>Carrying amount at the end of the financial year</b>	<b>16</b>	<b>16</b>

## NOTE 14

### PAYABLES

	2016 \$'000	2015 \$'000
<b>Current</b>		
Accrued expenses	50	124
Employment on-costs	19	14
<b>Total current payables</b>	<b>69</b>	<b>138</b>
<b>Expected to be paid more than 12 months after reporting date</b>		
Employment on-costs	11	10
<b>Total expected to be paid more than 12 months after reporting date</b>	<b>11</b>	<b>10</b>
<b>Total payables</b>	<b>80</b>	<b>148</b>

As a result of an actuarial assessment performed by the Department of Treasury and Finance, the percentage of the proportion of long service leave taken as leave has changed from the 2015 rate 37% to 40% and the average factor for the calculation of employer superannuation cost on-cost has also changed from the 2015 rate 10.3% to 10.2%. These rates are used in the employment on-cost calculation. The net financial effect of the changes in the current financial year is immaterial.

## NOTE 15

### EMPLOYEE BENEFITS

	2016 \$'000	2015 \$'000
<b>Current</b>		
Accrued salaries and wages	13	-
Annual leave	68	80
Long service leave	55	20
Skills and experience retention leave	6	2
<b>Total current employee benefits</b>	<b>142</b>	<b>102</b>
<b>Non-current</b>		
Long service leave	112	108
<b>Total non-current employee benefits</b>	<b>112</b>	<b>108</b>
<b>Total employee benefits</b>	<b>254</b>	<b>210</b>

AASB 119 requires the use of the yield on long term Commonwealth Government bonds as the discount rate in the measurement of the long service leave liability. The yield on long term Commonwealth Government bonds has decreased to 2.0% in 2016 from 3% in 2015.

This change in the bond yield, which is used as the rate to discount future long service leave cash flows, results in an increase in the reported long service leave liability.

The net financial effect of these changes in the current financial year is an increase in the long service leave liability of \$13,104 and employee on-cost expense of \$1,183. The impact on future periods is impracticable to estimate as the long service leave liability is calculated using a number of assumptions – a key assumption is the long-term discount rate.

The actuarial assessment performed by the Department of Treasury and Finance left the salary inflation rate at 4% for long service leave liability and 3% for annual leave and skills, experience and retention leave liability. As a result, there is no net financial effect resulting from changes in the salary inflation rate for long service leave liability

## NOTE 16

### UNRECOGNISED CONTRACTUAL COMMITMENTS

	2016	2015
	\$'000	\$'000
<b>Operating lease commitments</b>		
Commitments in relation to operating leases contracted for at the reporting date but not recognised as liabilities are payable as follows:		
Within one year	146	195
Later than one year but not later than five years	539	801
Later than five years	-	475
<b>Total operating lease commitments</b>	<b>685</b>	<b>1,471</b>
Representing:		
Cancellable operating leases	11	26
<b>Non-cancellable operating leases</b>	<b>674</b>	<b>1,445</b>
	<b>685</b>	<b>1,471</b>

The Commissioner's operating leases relate to office accommodation and motor vehicles. Office accommodation is leased from the Department of Planning, Transport and Infrastructure. The lease is non-cancellable with a term of four years and eight months with the right of renewal. A motor vehicle is leased from SAFA through their agent LeasePlan Australia, with a lease period of three years. This is cancellable without notice.

Office accommodation commitments relate to entities within the SA Government.

## NOTE 17

### CONTINGENT ASSETS AND LIABILITIES

The Small Business Commissioner is not aware of any contingent assets and liabilities at reporting date.

## NOTE 18

### TRANSFERRED FUNCTIONS

There were no transferred functions during the 2015-16 financial year.

## NOTE 19

### FINANCIAL INSTRUMENTS / FINANCIAL RISK MANAGEMENT

#### Financial risk management

Risk management is managed by the Commissioner's corporate services section and Commissioner's risk management policies are in accordance with the Risk Management Policy Statement issued by the Premier and Treasurer and the principles established in the Australian Standard Risk Management Principles and Guidelines.

The Commissioner exposure to financial risk (liquidity, credit and market) is insignificant based on past experience and current assessment of risk.

The Commissioner is funded principally from appropriation by the SA Government. The Commissioner works with the Department of Treasury and Finance to determine the cash flows associated with its Government approved program of work and to ensure funding is provided through SA Government budgetary processes to meet the expected cash flows.

There have been no changes in risk exposure since the last reporting period.

### Categorisation of financial instruments

Details of the significant accounting policies and methods adopted including the criteria for recognition, the basis of measurement, and the basis on which income and expenses are recognised with respect to each class of financial asset, financial liability and equity instrument are disclosed in Note 2 Summary of Significant Accounting Policies.

Category of financial asset and financial liability	Statement of Financial Position line item	Note	Carrying amount	Fair value	Carrying amount	Fair value
			2016	2016	2015	2016
			\$'000	\$'000	\$'000	\$'000
<b>Financial assets</b>						
Cash	Cash	11	1,210	1,210	121	121
Loans and receivables	Receivables <sup>(1)(2)</sup>	12	2	2	1	1
<b>Total financial assets at cost</b>			<b>1,212</b>	<b>1,212</b>	<b>122</b>	<b>122</b>
<b>Financial liabilities</b>						
Financial liabilities at cost	Payables <sup>(1)</sup>	14	50	50	124	124
<b>Total financial liabilities at cost</b>			<b>50</b>	<b>50</b>	<b>124</b>	<b>124</b>

(1) Receivable and payable amounts disclosed here exclude amounts relating to statutory receivables and payables. In government, certain rights to receive or pay cash may not be contractual and therefore in these situations, the requirements will not apply. Where rights or obligations have their source in legislation such as levy receivables, payables, tax equivalents, commonwealth tax etc they would be excluded from the disclosure. The standard defines contract as enforceable by law.

(2) Receivable amount disclosed here excludes prepayments. Prepayments are not financial assets as defined in AASB 132 as the future economic benefit of these assets is the receipt of goods and services rather than the right to receive cash or another financial asset.

#### Fair value

The Commissioner does not recognise any financial assets or financial liabilities at fair value.

## NOTE 20

### EVENTS AFTER REPORTING PERIOD

As at the date of this report there are no known or material events that have occurred after the reporting period.

# Retail Shop Leases Fund Independent Auditors Report

## INDEPENDENT AUDITOR'S REPORT



Government of South Australia  
Auditor-General's Department

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### To the Small Business Commissioner

As required by section 31(1)(b) of the *Public Finance and Audit Act 1987* and section 72(2) of the *Retail and Commercial Leases Act 1995*, I have audited the accompanying financial report of the Retail Shop Leases Fund for the financial year ended 30 June 2016. The financial report comprises:

- a Statement of Comprehensive Income for the year ended 30 June 2016
- a Statement of Financial Position as at 30 June 2016
- a Statement of Changes in Equity for the year ended 30 June 2016
- a Statement of Cash Flows for the year ended 30 June 2016
- notes, comprising a summary of significant accounting policies and other explanatory information
- a Certificate from the Small Business Commissioner and the Manager, Business Services.

### The Small Business Commissioner's responsibility for the financial report

The Small Business Commissioner is responsible for the preparation of the financial report that gives a true and fair view in accordance with the Treasurer's Instructions promulgated under the provisions of the *Public Finance and Audit Act 1987* and Australian Accounting Standards, and for such internal control as the Small Business Commissioner determines is necessary to enable the preparation of the financial report that is free from material misstatement, whether due to fraud or error.

### Auditor's responsibility

My responsibility is to express an opinion on the financial report based on the audit. The audit was conducted in accordance with the requirements of the *Public Finance and Audit Act 1987* and Australian Auditing Standards. The auditing standards require that the auditor comply with relevant ethical requirements and that the auditor plan and perform the audit to obtain reasonable assurance about whether the financial report is free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial report. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial report, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation of the financial report that gives a true and fair view in order to design audit procedures that are appropriate in the circumstances.

## Retail Shop Leases Fund Independent Auditors Report Continued

An audit also includes evaluating the appropriateness of the accounting policies used and the reasonableness of accounting estimates made by the Small Business Commissioner, as well as evaluating the overall presentation of the financial report.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

My report refers only to the financial statements described above and does not provide assurance over the integrity of publication of the financial report on the Small Business Commissioner's website nor does it provide an opinion on any other information which may have been hyperlinked to/from these statements.

### **Opinion**

In my opinion, the financial report gives a true and fair view of the financial position of the Retail Shop Leases Fund as at 30 June 2016, its financial performance and its cash flows for the year then ended in accordance with the Treasurer's Instructions promulgated under the provisions of the *Public Finance and Audit Act 1987* and Australian Accounting Standards.



Andrew Richardson  
**Auditor-General**  
29 September 2016

## Retail Shop Leases Fund Independent Auditors Report Continued

### Retail Shop Leases Fund Certification of the Financial Statements

We certify that the attached general purpose financial statements for the Retail Shop Leases Fund:

- comply with relevant Treasurer's Instructions issued under Section 41 of the *Public Finance and Audit Act 1987* and relevant Australian Accounting Standards;
- are in accordance with the accounts and records of the Authority; and
- present a true and fair view of the financial position of the Retail Shop Leases Fund as at 30 June 2016 and the results of its operations and cash flows for the financial year.

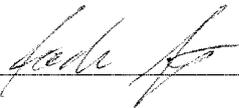
We certify that the internal controls employed by the Retail Shop Leases Fund for the financial year over its financial reporting and its preparation of the general purpose financial statements have been effective throughout the reporting period.



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John Chapman  
Small Business Commissioner

28<sup>th</sup> September 2016



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Jackie Stringer  
Manager, Business Services

28<sup>th</sup> September 2016

## Retail Shop Leases Fund Statement of Comprehensive Income

for the year ended 30 June 2016

		2016	2015
Expenses	Note	\$'000	\$'000
Administration	4	190	339
<b>Total expenses</b>		<b>190</b>	<b>339</b>
Income			
Interest and investment	5	361	289
<b>Total income</b>		<b>361</b>	<b>289</b>
<b>Net result</b>		<b>171</b>	<b>(50)</b>
<b>Other comprehensive income</b>			
Items that will be reclassified subsequently to net result when specific conditions are met:			
(Loss) / Gain on revaluation of investments recognised directly in equity	6	(64)	73
<b>Total comprehensive result</b>		<b>107</b>	<b>23</b>

The net result and total comprehensive result are attributable to the SA Government as owner.

The above statement should be read in conjunction with the accompanying notes.

## Retail Shop Leases Fund Statement of Financial Position

As at 30 June 2016

	Note	2016 \$'000	2015 \$'000
<b>Current assets</b>			
Cash	7	288	402
Receivables	8	177	119
Investments	9	4,027	3,733
<b>Total current assets</b>		<b>4,492</b>	<b>4,254</b>
<b>Non-current assets</b>			
Investments	9	4,555	4,618
<b>Total non-current assets</b>		<b>4,555</b>	<b>4,618</b>
<b>Total assets</b>		<b>9,047</b>	<b>8,872</b>
<b>Current liabilities</b>			
Security bonds lodged	10	883	789
Payables	11	14	360
<b>Total current liabilities</b>		<b>897</b>	<b>1,149</b>
<b>Non-current liabilities</b>			
Security bonds lodged	10	6,169	5,849
<b>Total non-current liabilities</b>		<b>6,169</b>	<b>5,849</b>
<b>Total liabilities</b>		<b>7,066</b>	<b>6,998</b>
<b>Net assets</b>		<b>1,981</b>	<b>1,874</b>
<b>Equity</b>			
Investments market value reserve		172	236
Retained earnings		1,809	1,638
<b>Total equity</b>		<b>1,981</b>	<b>1,874</b>

**The total equity is attributable to the SA Government as owner.**

Unrecognised contractual commitments	12
Contingent assets and liabilities	13

The above statement should be read in conjunction with the accompanying notes.

## Retail Shop Leases Fund Statement of Changes in Equity

for the year ended 30 June 2016

	Investments Market Value Reserve	Retained Earnings	Total
Note	\$'000	\$'000	\$'000
<b>Balance at 30 June 2014</b>	<b>163</b>	<b>1,688</b>	<b>1,851</b>
Net result 2014-15	-	(50)	(50)
Gains taken to equity	73	-	73
<b>Total comprehensive result 2014-15</b>	<b>73</b>	<b>(50)</b>	<b>23</b>
<b>Balance at 30 June 2015</b>	<b>236</b>	<b>1,638</b>	<b>1,874</b>
<b>Net result 2015-16</b>	-	171	171
Loss taken to equity	6 (64)	-	(64)
<b>Total comprehensive result 2015-16</b>	<b>(64)</b>	<b>171</b>	<b>107</b>
<b>Balance at 30 June 2016</b>	<b>172</b>	<b>1,809</b>	<b>1,981</b>

All changes in equity are attributable to the SA Government as owner.

The above statement should be read in conjunction with the accompanying notes.

## Retail Shop Leases Fund Statement of Cash Flows

for the year ended 30 June 2016

		2016 Inflows (Outflows) \$'000	2015 Inflows (Outflows) \$'000
<b>Cash flows from operating activities</b>	<b>Note</b>		
<b>Cash outflows</b>			
Administration		(528)	(1)
Bond refunds		(856)	(753)
<b>Cash used in operations</b>		<b>(1,384)</b>	<b>(754)</b>
<b>Cash inflows</b>			
Interest received		303	263
Bonds lodged		1,262	1,286
<b>Cash generated from operations</b>		<b>1,565</b>	<b>1,549</b>
<b>Net cash provided by operating activities</b>		<b>181</b>	<b>795</b>
<b>Cash flows from investing activities</b>			
<b>Cash outflows</b>			
Purchase of investments		(295)	(1,340)
<b>Cash used in investing activities</b>		<b>(295)</b>	<b>(1,340)</b>
<b>Net cash used in investing activities</b>		<b>(295)</b>	<b>(1,340)</b>
<b>Net decrease in cash</b>		<b>(114)</b>	<b>(545)</b>
Cash as at 1 July		402	947
<b>Cash as at 30 June</b>	7	<b>288</b>	<b>402</b>

The above statement should be read in conjunction with the accompanying notes.

## Notes to and forming part of the financial statements

<b>Note 1</b>	Objectives of Retail Shop Leases Fund
<b>Note 2</b>	Summary of significant accounting policies
<b>Note 3</b>	New and revised accounting standards and policies
<b>Note 4</b>	Administration expenses
<b>Note 5</b>	Interest and investment income
<b>Note 6</b>	Other comprehensive income
<b>Note 7</b>	Cash
<b>Note 8</b>	Receivables
<b>Note 9</b>	Investments
<b>Note 10</b>	Security bonds lodged
<b>Note 11</b>	Payables
<b>Note 12</b>	Unrecognised contractual commitments
<b>Note 13</b>	Contingent assets and liabilities
<b>Note 14</b>	Financial instruments / financial risk management
<b>Note 15</b>	Events after the reporting period

## NOTE 1

### OBJECTIVES OF RETAIL SHOP LEASES FUND

The Retail Shop Leases Fund (the Fund) consists of amounts received by the Commissioner by way of security bonds, and other amounts paid into the Fund under the Retail and Commercial Leases Act 1995 (the Act). Income derived from investment of the Fund may be applied towards the costs of administering the Act, enforcing the Act and education of lessors and lessees about their statutory and contractual rights and obligations as approved by the Minister for Small Business.

The Fund's main source of income is interest derived from the investment of Fund assets in accordance with subsection 100(4) of the Act. Fund assets mainly represent the investment of security bonds received in accordance with subsection 19(5)(b) of the Act.

## NOTE 2

### SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

#### a) Statement of compliance

These financial statements have been prepared in compliance with section 23 of the *Public Finance and Audit Act 1987*.

The financial statements are general purpose financial statements. The accounts have been prepared in accordance with relevant Australian Accounting Standards (Reduced Disclosure Requirements) and comply with Treasurer's Instructions and accounting policy statements promulgated under the provisions of the *Public Finance and Audit Act 1987*.

The Fund has applied Australian Accounting Standards that are applicable to not-for-profit entities, as the Retail Shop Leases Fund is a not-for-profit entity

#### b) Basis of preparation

The preparation of the financial statements requires:

- › the use of certain accounting estimates and requires management to exercise its judgment in the process of applying the Fund's accounting policies. The areas involving a higher degree of judgment or where assumptions and estimates are significant to the financial statements are outlined in the applicable notes;
- › accounting policies are selected and applied in a manner which ensures that the resulting financial information satisfies the concepts of relevance and reliability, thereby ensuring that the substance of the underlying transactions or other events are reported;
- › compliance with Accounting Policy Statements issued pursuant to section 41 of the *Public Finance and Audit Act 1987*.

The Fund's Statement of Comprehensive Income, Statement of Financial Position and Statement of Changes in Equity have been prepared on an accrual basis and are in accordance with the historical cost convention, except for certain assets that were valued in accordance with the applicable valuation policy.

The Statement of Cash Flows has been prepared on a cash basis.

The financial statements have been prepared based on a 12 month operating cycle and presented in Australian currency.

The accounting policies set out below have been applied in preparing the financial statements for the year ended 30 June 2016 and the comparative information presented.

#### c) Reporting entity

The Fund is established under the *Retail and Commercial Leases Act 1995*. The financial statements are required by Section 72(1) of the Act and include income, expenses, assets and liabilities which the Small Business Commissioner manages on behalf of the SA Government.

The Fund does not control any other entity and has no interest in unconsolidated structured entities.

#### **d) Transferred functions**

During the 2015-16 financial period no administrative restructures occurred.

#### **e) Comparative information**

The presentation and classification of items in the financial report are consistent with prior periods except where specific accounting standards and / or accounting policy statements have required a change.

Where presentation or classification of items in the financial statements have been amended, comparative figures have been adjusted to conform to changes in presentation or classification in these financial statements unless impracticable.

The restated comparative amounts do not replace the original financial statements for the preceding period.

#### **f) Rounding**

All amounts in the financial statements and accompanying notes have been rounded to the nearest thousand dollars (\$'000).

#### **g) Taxation**

The Fund is not subject to income tax. The Fund is liable for payroll tax, fringe benefits tax and goods and services tax (GST). GST collections and payments are carried out by the Department of State Development (DSD) on behalf of the Fund.

#### **h) Income**

Income is recognised to the extent that it is probable that the flow of economic benefits to the Fund will occur and can be reliably measured.

Income has been aggregated according to its nature and has not been offset unless required or permitted by a specific accounting standard, or where offsetting reflects the substance of the transaction or other event.

##### *Interest and investment income*

Interest includes interest earned on the Fund's bank accounts and investments held with the Public Trustee.

#### **i) Expenses**

Expenses are recognised to the extent that it is probable that the flow of economic benefits from the Fund will occur and can be reliably measured.

Expenses have been aggregated according to their nature and have not been offset unless required or permitted by a specific accounting standard, or where offsetting reflects the substance of the transaction or other event.

##### *Administration*

During the year resources from the Small Business Commissioner are made available to support the operations and administration of the Fund. Costs are recharged to the Fund.

#### **j) Current and non-current classification**

Assets and liabilities are characterised as either current or non-current in nature. Assets and liabilities that are sold, consumed or realised as part of the normal operating cycle even when they are not expected to be realised within 12 months after the reporting date have been classified as current assets or current liabilities. All other assets and liabilities are classified as non-current.

#### **k) Assets**

Assets have been classified according to their nature and have not been offset unless required or permitted by a specific accounting standard, or where offsetting reflects the substance of the transaction or other event.

##### *Cash*

Cash is measured at nominal value.

##### *Receivables*

Receivables include amounts receivable from interest accruals.

##### *Other financial assets*

Investments represent funds deposited with the Public Trustee. These investments have been designated as available for sale financial assets as they are held with the intention to dispose of the asset if required to ensure sufficient cash flow to meet bond repayments. Investments are made by way of notional unit holdings in a selection of common funds managed by the Public Trustee.

The proportion of unit holdings is dependent upon the investment strategy adopted.

As at 30 June 2016 the Fund held investments in common funds in the following proportions:

Capital Stable	11.20%
Balanced	40.84%
Cash Common Fund	47.96%

Investments are measured at fair value in accordance with unit prices at balance date as advised by the applicable fund manager.

Investments are classified as either current or non-current. Those to be rolled over within 12 months are classified as current investments.

Due to the classification of investments as available for sale, gains or losses are recognised in the investments market value reserve until the investments are sold.

#### **I) Liabilities**

Liabilities have been classified according to their nature and have not been offset unless required or permitted by a specific accounting standard, or where offsetting reflects the substance of the transaction or other event.

##### *Payables*

Payables include creditors and unclaimed bonds.

Creditors represent the amounts owing for goods and services received prior to the end of the reporting period that are unpaid at the end of the reporting period. Creditors include all unpaid invoices received relating to the normal operations of the Fund.

All payables are measured at their nominal amount and are normally settled within 30 days from the date of the invoice or date the invoice is first received.

##### *Security Bonds Lodged*

Security Bonds are received to ensure a retailer on cessation of a retail shop lease complies with all statutory compliance under the act. Bonds lodged are recognised as a liability on receipt.

Unclaimed security bonds consist of bonds that have been refunded to the bond holder and remain unrepresented for greater than three months.

#### **NOTE 3**

##### **NEW AND REVISED ACCOUNTING STANDARDS AND POLICIES**

The Fund did not voluntarily change any of its accounting policies during 2015-16.

## NOTE 4

### ADMINISTRATION EXPENSES

	2016	2015
	\$'000	\$'000
Administration costs	190	339
<b>Total administration expenses</b>	<b>190</b>	<b>339</b>

Reimbursements to the Small Business Commissioner, for the cost of administering Part 10 of the *Retail and Commercial Leases Act 1995*.

The Administration costs to the Fund were reduced in 2016 due to the forecast decrease in interest revenue from the Fund. The Small Business Commissioner has received funding over the forward estimates to reduce the draw on the Retail Shop Leases Fund.

## NOTE 5

### INTEREST AND INVESTMENT INCOME

	2016	2015
	\$'000	\$'000
Interest and investment income	361	289
<b>Total interest and investment income</b>	<b>361</b>	<b>289</b>

Interest and investment income includes interest earned on the Fund's bank accounts and investments held with the Public Trustee.

## NOTE 6

### OTHER COMPREHENSIVE INCOME

	2016	2015
	\$'000	\$'000
(Loss) / Gain on revaluation from investments	(64)	73
<b>Total other comprehensive income</b>	<b>(64)</b>	<b>73</b>

Gains from investments relate to changes in the value of investments held with Public Trustee, these investments are classified as available for sale financial assets.

## NOTE 7

### CASH

	2016	2015
	\$'000	\$'000
Cash at bank	288	402
<b>Total cash</b>	<b>288</b>	<b>402</b>

#### *Interest rate risk*

Deposits at call with the Treasurer earn a floating interest rate, based on daily bank deposit rates. The carrying amount of cash represents fair value.

## NOTE 8

### RECEIVABLES

	2016	2015
	\$'000	\$'000
Receivables	-	4
Accrued interest	177	115
<b>Total receivables</b>	<b>177</b>	<b>119</b>

## NOTE 9

### INVESTMENTS

	2016	2015
	\$'000	\$'000
<b>Current</b>		
Investments	4,027	3,733
<b>Total current investments</b>	<b>4,027</b>	<b>3,733</b>
<b>Non-current</b>		
Investments	4,555	4,618
<b>Total non-current investments</b>	<b>4,555</b>	<b>4,618</b>
<b>Total investments</b>	<b>8,582</b>	<b>8,351</b>

## NOTE 10

### SECURITY BONDS LODGED

	2016 \$'000	2015 \$'000
<b>Current</b>		
Bonds lodged	883	789
<b>Total current security bonds lodged</b>	<b>883</b>	<b>789</b>
<b>Non-current</b>		
Non-current bonds lodged	6,169	5,849
<b>Total non-current security bonds lodged</b>	<b>6,169</b>	<b>5,849</b>
<b>Total security bonds lodged</b>	<b>7,052</b>	<b>6,638</b>

## NOTE 11

### PAYABLES

	2016 \$'000	2015 \$'000
Unclaimed Bonds	14	22
Accrued Expenses	-	338
<b>Total payables</b>	<b>14</b>	<b>360</b>

Accrued expenses include the administration fee payable to the Small Business Commissioner for the cost of administering Part 10 of the *Retail and Commercial Leases Act 1995*.

## NOTE 12

### UNRECOGNISED CONTRACTUAL COMMITMENTS

The Fund has no commitments contracted for at the reporting date but not recognised as liabilities.

## NOTE 13

### CONTINGENT ASSETS AND LIABILITIES

The Small Business Commissioner is not aware of any contingent assets or liabilities at reporting date.

## NOTE 14

### FINANCIAL INSTRUMENTS / FINANCIAL RISK MANAGEMENT

#### Financial risk management

Risk management is managed by the Commissioner's corporate services section and Commissioner's risk management policies are in accordance with the Risk Management Policy Statement issued by the Premier and Treasurer and the principles established in the Australian Standard Risk Management Principles and Guidelines.

The Fund is exposure to financial risk (liquidity, credit and market) is insignificant based on past experience and current assessment of risk. There have been no changes in risk exposure since the last reporting period.

### Categorisation of financial instruments

Details of the significant accounting policies and methods adopted including the criteria for recognition, the basis of measurement, and the basis on which income and expenses are recognised with respect to each class of financial asset, financial liability and equity instrument are disclosed in Note 2 Summary of Significant Accounting Policies.

#### *Financial Assets*

Cash and receivables are recorded at carrying amount which approximates net fair value.

Investments represent funds held by the Public Trustee. The Public Trustee has invested in collective investment vehicles for the purpose of gaining exposure to Australian and international equities. The managers of such vehicles have invested in a variety of financial instruments, including derivatives, which expose the Fund to investment risks, including market, credit, interest and currency risk. These investments are valued by the Public Trustee at reporting date and recognised at fair value. All significant inputs required to measure fair value of investments are observable, and accordingly included in Level 2.

#### *Financial Liabilities*

Payables are recorded at carrying amounts which approximates fair value. Security bonds are held on behalf of third parties. The carrying amount of all security bonds is considered to be a reasonable estimate of net fair value.

#### **(a) Ageing analysis of financial assets**

There are no financial assets past due.

#### **(b) Maturity analysis of financial assets and financial liabilities**

The following table discloses the maturity analysis of financial assets and financial liabilities.

	Carrying amount (\$'000)	Contractual Maturities		
		< 1 year (\$'000)	1-5 years (\$'000)	> 5 years (\$'000)
<b>2016</b>				
<b>Financial assets</b>				
Cash	288	288	-	-
Investments	8,582	4,027	4,555	-
Receivables <sup>(1)</sup>	177	177	-	-
<b>Total Financial assets</b>	<b>9,047</b>	<b>4,492</b>	<b>4,555</b>	<b>-</b>
<b>Financial liabilities</b>				
Payables <sup>(1)</sup>	14	14	-	-
Other financial liabilities	7,052	883	6,169	-
<b>Total Financial liabilities</b>	<b>7,066</b>	<b>897</b>	<b>6,169</b>	<b>-</b>
<b>2015</b>				
<b>Financial assets</b>				
Cash	402	402	-	-
Investments	8,351	3,733	4,618	-
Receivables <sup>(1)</sup>	119	119	-	-
<b>Total Financial assets</b>	<b>8,872</b>	<b>4,254</b>	<b>4,618</b>	<b>-</b>
<b>Financial liabilities</b>				
Payables <sup>(1)</sup>	22	22	-	-
Other financial liabilities	6,638	789	5,849	-
<b>Total Financial liabilities</b>	<b>6,660</b>	<b>811</b>	<b>5,849</b>	<b>-</b>

(1) Receivable and payable amounts disclosed here exclude amounts relating to statutory receivables and payables (eg Commonwealth, State and Local Government taxes, fees and charges; Auditor-General's Department audit fees). In government, certain rights to receive or pay cash may not be contractual and therefore in these situations, the requirements will not apply. Where rights or obligations have their source in legislation such as levies, tax and equivalents etc they would be excluded from the disclosure. All amounts recorded are carried at cost (not materially different from amortised cost).

## NOTE 15

### EVENTS AFTER THE REPORTING PERIOD

There are no known events after balance date that effect the fund.