

HOUSE OF ASSEMBLY
LAID ON THE TABLE

15 Nov 2018

ANNUAL REPORT 2017 / 18



**Small Business
Commissioner**

SOUTH AUSTRALIA

INFORM | MEDiate | ADVOCATE



Government of
South Australia

**Published by the
Small Business
Commissioner**

September 2018
Annual Report 2017-18
This report is available at
www.sasbc.sa.gov.au

**Authorised by the
Small Business
Commissioner**

Ground Floor, 99 Gawler Place
Adelaide, South Australia 5000

Telephone: 08 8303 2026
Toll Free: 1800 072 722
Facsimile: 08 8303 0943
Email: sasbc@sa.gov.au
Website: www.sasbc.sa.gov.au

ABN: 34 643 517 562



**Small Business
Commissioner**
SOUTH AUSTRALIA
INFORM | MEDIATE | ADVOCATE



To:

Hon David Pisoni MP

Minister for Industry and Skills

This annual report is to be presented to Parliament to meet the statutory reporting requirements of the *Public Sector Act 2009* and meets the requirements of Premier and Cabinet Circular PC013 Annual Reporting.

This report is verified to be accurate for the purposes of annual reporting to the Parliament of South Australia.

Submitted by:

John Chapman

Small Business Commissioner

A handwritten signature in black ink, appearing to read 'John Chapman', with a long horizontal line extending to the right.

28 September 2018





TABLE OF CONTENTS

Message from The Small Business Commissioner	2
Operations of The Office of The Small Business Commissioner	4
Agency Role and Functions	4
Dispute Resolution	12
Information Services	18
Legislation	23
<i>Small Business Commissioner Act 2011</i>	23
<i>Building and Construction Industry Security of Payment Act 2009</i>	25
<i>Retail and Commercial Leases Act 1995</i>	29
Other Legislative Responsibilities	34
Inquiries and Submissions	36
Inquiries	36
Submissions	38
Stakeholder Engagement	40
Regional Engagement	42
Presentations by the Commissioner	43
Whyalla Support for Small Businesses	45
Small Business Friendly Council Initiative	46
Audited Financial Statements 2017-18	48



MESSAGE FROM THE SMALL BUSINESS COMMISSIONER

The 2017-18 year saw a considerable expansion of the operations of the Office of the Small Business Commissioner (OSBC). Of particular note, we began implementing two significant election policy initiatives following the change of government in March 2018.

The first policy initiative is designed to assist primary producers when dealing with resource companies (where necessary) to ensure that their rights are effectively represented with the assistance of an independent statutory authority.

Work is underway to develop an Industry Code of Conduct under the *Fair Trading Act 1987*, which will enable me to fully and effectively implement dispute resolution processes to resolve land access issues. I will have the necessary authority to monitor, investigate and enforce non-compliance with the Code.

The second policy initiative is the implementation of legislation to further formalise farm debt mediation. This legislation, which will be similar to that in the eastern states, is currently before State Parliament.

The farm debt mediation scheme will require lending institutions to undertake a formal process of mediation prior to foreclosure action on a primary producer. While I have considerable legislative powers under the *Fair Trading (Farming Industry Dispute Resolution Code) Regulations 2013* to resolve

disputes in this area, a farmer must lodge a formal complaint for the alternative dispute resolution process to commence under this scheme. The new approach will make it compulsory for any creditor to follow a process designed to allow mediation with the farmer prior to foreclosure action being taken.

Legislative amendments to the *Retail and Commercial Leases Act 1995* and the *Building and Construction Industry Security of Payment Act 2009* were introduced on 5 July 2017 and progressed through the House of Assembly to the Legislative Council. However, both Bills lapsed when Parliament was dissolved for the 2018 State election.

A review of the State and Territory Security of Payment Acts was undertaken for the Federal Government by Mr John Murray AM and the "Murray Review" was released in May 2018. It contains 86 recommendations. I recommended to the State Government that consultation be undertaken to consider which recommendations should be adopted, in addition to the changes proposed to Parliament in 2017. That consultation will commence early in the 2018-19 financial year.

Further details on the changes to the *Retail and Commercial Leases Act 1995* and the *Building and Construction Industry Security of Payment Act 2009* can be found on page 25 through to 28.

In August 2017 the passage in Parliament of the *Local Government (Mobile Food Vendor) Amendment Bill 2016* involved an amendment which requires my office to deal with disputes between food vendors where a mobile food truck is involved.

Each of the 68 South Australian Councils is required to produce guidelines that set out the permit and location purpose for mobile food trucks. Food businesses that wish to make a complaint about the rules may lodge a complaint with me. There is a structured dispute resolution process under the Act to assist parties in resolving disputes. Further details can be found on page 35.

More broadly, our work with local Councils intensified during the year with the formal launch of the Small Business Friendly Council Initiative in Whyalla in August 2017. The Initiative is designed to bring Councils closer to their local businesses. I commend the 19 councils that had signed up to the program as at 30 June 2018. Further details can be found on page 46.

On a negative note, I must highlight my ongoing frustration with the impact that road, transport and other major infrastructure works have on small businesses.

In the past three years, my office has received or investigated cases related to such projects as the closure of South Road due to the structural



Staff of the Office of the Small Business Commissioner were visited by the new Minister for Industry and Skills, Hon David Pisoni MP, not long after his appointment

failure of the tram/cycle overpass, the replacement of the Jetty Road Glenelg tram tracks, the Bank Street rejuvenation, work on South and Port Roads as part of the Torrens-to-Torrens project and the O-Bahn tunnel affecting Hackney Road.

It is time for all arms of government to address this matter in a more constructive manner. Simply saying to businesses that there is no compensation is unacceptable. Government has a role to cause no harm to its constituents and when I see cases where businesses are literally driven into the ground by project disruption – well, it is just not right.

While I have had some success navigating solutions with various agencies, including local government, it has been sporadic to say the least. With the expected extension of the South Road expansion project from the Torrens River to Darlington, these problems will continue to multiply.

We must rethink our approach, consider small business impacts as part of the planning process and find ways of minimising or eliminating those impacts. If that can't be done, appropriate levels of compensation should be negotiated.

The former and current State Governments both rejected a draft policy I prepared that would have enabled a process to be developed to require agencies to properly consider small business impacts, take action to mitigate the impacts and, in cases where financial losses occur, provide recompense. A number of options are available to effectively provide fair treatment for small businesses and these include rental assistance, payroll tax or other tax relief, interest free loans, assistance to relocate and compulsory acquisition. Further details can be found on page 14.

In terms of activity and outcomes, the OSBC continued a steady path, with 323 cases closed and a success rate of 57%, slightly up on the previous year. The number of enquiries declined marginally by 6% to 3284 but website traffic increased by 12% to 34 531.

The case resolution success rate was affected to a degree by the number of “unsuccessful” cases involving road or infrastructure works. While the businesses provided full financial details showing the impact on their income and the State Government considered these cases, it maintained its position that no compensation was payable.

Further commentary on statistical information is set out at on page 12.

During the year, many small businesses expressed concern at the difficulty obtaining skilled staff, particularly in regional areas. There has been a considerable drop off in trainee and apprenticeships in recent years and this needs to be reversed.

South Australia needs a viable training system to support small business, and this has motivated me to accept an interim position on the TAFE SA Board. TAFE SA is facing substantial operational changes to meet the new Government's policy objectives in skills development.

I would like to take this opportunity to thank the new Minister for Industry and Skills, Hon David Pisoni MP, and his staff for their commitment to our office and for recognising the significant value of small business to the South Australian economy. I similarly thank the Ministers for Small Business in the previous Government, Hon Jay Weatherill MP and Hon Martin Hamilton-Smith MP, and their staff.

I would also like to thank my dedicated team, who deal with a multitude of complex enquiries and cases on a daily basis.

John Chapman
Small Business Commissioner

OPERATIONS OF THE OFFICE OF THE SMALL BUSINESS COMMISSIONER

AGENCY ROLE AND FUNCTIONS

The Small Business Commissioner is an independent statutory authority created by the South Australian Government to help small businesses resolve disputes with other businesses, landlords or local or State Government bodies.

With a strong legislative framework, the OSBC is well placed to service, support and advocate for the needs of small business. It provides information and tailored, industry-specific support to improve business management and decision-making.

The OSBC also processes, holds and administers security bonds for retail and commercial leasing and manages matters in relation to security of payment in the building and construction industry and the late payment of government debts.

The Commissioner provides independent recommendations to the Government on issues affecting small business and makes representations or submissions for relevant inquiries to the Minister for Industry and Skills, other relevant Ministers, government agencies, or State or Federal Parliaments.

The functions of the Commissioner are to:

- receive and investigate complaints by, or on behalf of, small businesses regarding their commercial dealings with other businesses and to facilitate resolution of such complaints through measures considered appropriate by the Commissioner, such as mediation or making representations on behalf of small businesses;
- on request, assist small businesses in their dealings with local and State Government bodies;
- disseminate information to assist small businesses in making decisions relevant to their commercial dealings with other businesses and their dealings with local and State Government bodies;
- administer Part 3A (Industry Codes) of the *Fair Trading Act 1987* and the *Australian Consumer Law (SA)* to the extent that responsibility for that administration is assigned to the Commissioner under the *Fair Trading Act 1987*;
- monitor, investigate and advise the Minister about:
 - non-compliance with industry codes that may adversely affect small businesses; and
 - market practices that may adversely affect small businesses.
- report to the Minister on matters affecting small businesses at the request of the Minister;
- report to the Minister on any aspect of the Commissioner's functions at the request of the Minister or on the Commissioner's own initiative;
- take any other action considered appropriate by the Commissioner for the purpose of facilitating and encouraging the fair treatment of small businesses in their commercial dealings with other businesses, or assisting small businesses in their dealings with local or State Government bodies; and
- carry out any other functions conferred on the Commissioner by or under the *Small Business Commissioner Act 2011* or other legislation.

KEY STRATEGIES

- Providing an efficient and effective dispute resolution process for South Australian small businesses
- Delivering relevant information sessions to small businesses, both metropolitan and regional
- Delivering high-quality customer service through a cross-trained and resilient team
- Developing legislative amendments and policy changes to support changes to the *Building and Construction Industry Security of Payment Act 2009* and the *Retail and Commercial Leases Act 1995*

LEGISLATION ADMINISTERED BY THE AGENCY

- *Small Business Commissioner Act 2011*
- *Retail and Commercial Leases Act 1995*
- *Retail and Commercial Leases Regulations 2010*
- *Building and Construction Industry Security of Payment Act 2009*
- *Building and Construction Industry Security of Payment Regulations 2011*
- *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*
- *Fair Trading (Franchising Industry Dispute Resolution Code) Regulations 2015*
- *Fair Trading (Building and Construction Industry Dispute Resolution Code) Regulations 2017*

The Small Business Commissioner has a role or responsibilities for parts of the following legislation

- *Fair Trading Act 1987*
- *Late Payment of Government Debts (Interest) Act 2013*
- *Late Payment of Government Debts (Interest) Regulations 2014*
- *Work Health and Safety Act 2012*
- *Work Health and Safety Regulations 2012*
- *Local Government Act 1999*

ORGANISATION OF THE AGENCY

The OSBC organisational chart can be accessed on the OSBC website at https://www.sasbc.sa.gov.au/files/959_org_chart_2.pdf

AGENCY PROGRAMS AND INITIATIVES AND THEIR EFFECTIVENESS AND EFFICIENCY

Program name	Indicators of performance/ effectiveness/efficiency	Results
Dispute Resolution	Number of enquiries received	3284
	Number of new cases	279
	Number of cases closed	323 - 298 prior to mediation - 25 through formal mediation
Information Sessions to Small Businesses	Attendance at events	27 events held in Adelaide and regions, totalling 536 attendees
	Attendees' rating of events	98% of attendees indicated they were happy with the information provided
	Overall attendee comments and feedback	Feedback is sought from all attendees. Feedback provided is analysed for quality control and improvement

AGENCY PERFORMANCE MANAGEMENT AND DEVELOPMENT SYSTEMS

Performance management and development systems

Assessment of effectiveness and efficiency

Performance Development Planning (PDP)

9.6 FTE's participated in PDPs, with 100% target met.

WORK HEALTH, SAFETY AND REHABILITATION PROGRAMS OF THE AGENCY AND THEIR EFFECTIVENESS

Work health, safety and rehabilitation programs

Effectiveness

WHS Training

All staff participated in the required WHS training as dictated by the Department of State Development (DSD). WHS Officers are trained in accordance with the department's requirements.

WHS Staff Awareness

All staff are provided with information (at staff meetings and/or via email) in relation to WHS incidents, updates, reporting requirements and other relevant information.

The OSBC displays appropriate signage in the office in relation to emergency procedures and WHS information and representatives.

WHS Reporting

WHS Officers attend regular meetings and report to the OSBC as required (at staff meetings and/or via email).

Work Health and Safety and Return to Work Performance	2017-18	2016-17	% Change (+ / -)
Workplace injury claims	0	0	-
Total new workplace injury claims	0	0	-
Fatalities	0	0	-
Seriously injured worker*			
Significant injuries (where lost time exceeds a working week, expressed as frequency rate per 1000 FTE)	0	0	-
Work health and safety regulation	0	0	-
Number of notifiable incidents (<i>WHS Act 2012, Part 3</i>)	0	0	-
Number of provisional improvement, improvement and prohibition notices (<i>WHS Act 2012 Sections 90, 191 and 195</i>)	0	0	-
Return to work costs			
Total gross workers compensation expenditure (\$)	\$0	\$0	-
Income support payments – gross (\$)	\$0	\$0	-

*Number of claimants assessed during the reporting period as having a whole person impairment of 30% or more under the *Return to Work Act 2014 (Part 2 Division 5)*

FRAUD DETECTED IN THE AGENCY

Category / nature of fraud	Number of instances
Nil	0

Strategies Implemented to Control and Prevent Fraud

In line with DSD's policy on Fraud, Corruption, Misconduct and Maladministration, the OSBC is committed to the prevention, detection and control of fraud, corruption, misconduct and maladministration in connection with the activities of the office and/or by its employees.

OSBC employees are expected to comply with their obligations at law, as set out in the policy.

Strategies used within the OSBC include:

- a two-step approval process for all invoices via the Basware online system, with final approval as per the financial delegations set out in the Financial Instruments approved by the Minister; and
- a number of measures implemented to reduce the risk of fraud in relation to the Retail Bonds Management System.

WHISTLE-BLOWERS' DISCLOSURE

Number of occasions on which public interest information has been disclosed to a responsible officer of the agency under the *Whistle-blowers' Protection Act 1993*.

- Nil

EXECUTIVE EMPLOYMENT IN THE AGENCY

Executive classification	Number of executives
SAES	1

CONSULTANTS

The following is a summary of external consultants engaged by the agency during the year, the nature of work undertaken and the total cost.

Consultants	Purpose	Value
All consultancies below \$10 000 each	Nil	\$0
Consultancies above \$10 000 each	Nil	\$0
Total all consultancies	Nil	\$0



CONTRACTORS

The following is a summary of external contractors that have been engaged by the agency, the nature of work undertaken and the total cost of the work undertaken.

Contractor	Purpose	Value
Deloitte Risk Advisory Pty Ltd	Audit of Retail Bonds Management System	\$34 052 (ex gst)
SRA Information Technology Pty Ltd	Retail Bonds Management System Support	\$10 500 (ex gst)
Ennovative Pty Ltd	Salesforce System Support	\$3300 (ex gst)

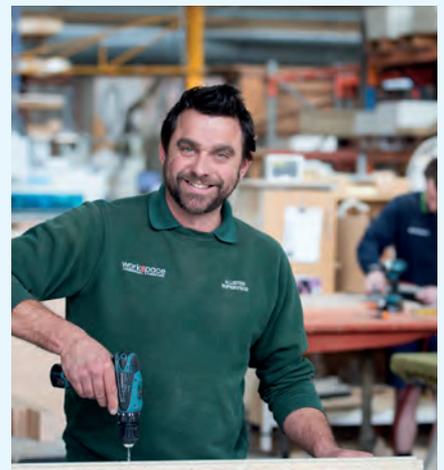
FINANCIAL PERFORMANCE OF THE AGENCY

The following is a brief summary of the overall financial position of the agency. Full audited financial statements for 2017-18 are attached to this report.

2017-18	Actual \$000
Operating Expenditure	2078
Operating Revenue	2103
Net Result	25
Investing Expenditure	(66)
Investing Receipts	0
Net Investing	(66)
FTEs	9.6

The actuals for the year ended 30 June 2018 show a \$0.025 million favourable net cost of services, mainly attributable to the increase in the amount expensed against the Retail Shop Leases Fund on behalf of the Small Business Commissioner for the additional once off cost to support the implementation of the new Retail Bonds Management System.

The investing expenditure is related to the new Retail Bonds Management System (\$0.66 million).





IN RELATION TO FEEDBACK TO THE HANDLING OF A DISPUTE I HAD WITH A CLIENT. I WAS ABSOLUTELY BLOWN AWAY WITH THE HELP AND GUIDANCE I RECEIVED. I WAS VERY HAPPY WITH THE OUTCOME ALTHOUGH I STILL DON'T BELIEVE I HAD DONE ANYTHING WRONG IN RELATION TO THE JOB. I RECEIVED GREAT ADVICE AND A DIFFERENT PERSPECTIVE IN RELATION TO THE DISPUTE. I DIDN'T KNOW THIS OFFICE EXISTED. THE ONLY SUGGESTION I WOULD MAKE WOULD BE GETTING THE WORD OUT FOR THE HELP YOU CAN PROVIDE WITH MEDIATION OR JUST ADVICE. I DO HOPE I DON'T NEED THIS HELP AGAIN BUT ITS GREAT TO KNOW THERE IS SOMEONE A SOLE TRADER CAN CALL WITHOUT INCURRING LEGAL COSTS TO RECEIVE HELP AND GUIDANCE."

JONO, JSR PLUMBING

SUMMARY OF COMPLAINTS BY SUBJECT

Public complaints received by the OSBC

Category of complaints by subject	Number of instances
Advice provided	3

Complaint Outcomes

Nature of complaint or suggestion	Services improved or changed as a result of complaints or consumer suggestions
A client was dissatisfied upon receiving a formal demand for information (Section 12 Notice) under the <i>Small Business Commissioner Act 2011</i> from the OSBC.	The client's complaint was acknowledged and he was invited to lodge his issues with the Ombudsman SA. No further communication was received.
A client was dissatisfied with the conduct of the OSBC and the mediation process.	The OSBC addressed the client's concerns in a formal response and reviewed its mediation processes.
A client was dissatisfied with the information they received in relation to their retail lease enquiry.	The client was advised that the OSBC does not provide legal advice. The Commissioner provided formal correspondence in response to their concerns.

The OSBC requests feedback from attendees at events, which is reviewed and used to shape future events and programs. Feedback and comments also are received via social media.

The OSBC is developing a document outlining its policy on handling compliments, complaints and feedback. This is currently in draft form and is expected to be completed and made available on the OSBC website in the new financial year.

FREEDOM OF INFORMATION

The purpose of the *Freedom of Information Act 1991* (FOI Act) is to promote openness and accountability within the South Australian Government and facilitate public participation in government decision making.

The FOI Act gives members of the public a legally enforceable right to access documents - subject to certain exemptions - held by South Australian Government Agencies, local government authorities, statutory and regulatory bodies and South Australian Universities. The FOI Act also gives a person the right to apply to have their personal records amended if the information is incomplete, incorrect, out-of-date or misleading.

Due to the specialised nature of the work the OSBC manages, and to protect its clients, an exemption to the *Freedom of Information Act 1991* was gazetted on 18 December 2014.

The OSBC received six Freedom of Information requests in 2017-18.

DISPUTE RESOLUTION

The OSBC's core business is to ensure a fair and competitive operating environment for South Australian small businesses. A no or low-cost dispute resolution service is offered to businesses in dispute with another business or local or State Government.

The OSBC Case Officers provide expert and experienced advice to assist small businesses to quickly and efficiently resolve matters that might prevent them from operating effectively.

At any one time, the OSBC has approximately 80-100 active disputes under management.

There are three distinct phases in the resolution of a dispute by the Case Team:

- Initial Assistance (Enquiries)
- Pre-mediation (Formal Case)
- External Mediation

Information about each phase can be found on the OSBC website.

ENQUIRIES

During 2017-18, the OSBC received 3284 enquiries covering the *Small Business Commissioner Act 2011*, the *Retail and Commercial Leases Act 1995* and the *Building and Construction Industry Security of Payment Act 2009*, and general small business enquiries.

The number of total enquiries declined by 6% this financial year. There was a 78% rise in the number of enquiries raised under the *Building and Construction Industry Security of Payment Act 2009* which is expected given the work the OSBC has done in this area. The table below shows the number of enquiries based on the legislation to which they relate:

	2016-17	2017-18	Variance
<i>Small Business Commissioner Act 2011</i>	1573 (45%)	1608 (49%)	2%
<i>Retail and Commercial Leases Act 1995</i>	1333 (38%)	1112 (34%)	-17%
<i>Building and Construction Industry Security of Payment Act 2009</i>	49 (1%)	87 (3%)	78%
Other jurisdictions	521 (15%)	477 (14%)	-8%
TOTAL	3476	3284	-6%

FORMAL CASES

During 2017-18, the OSBC took on 279 new cases and closed 323 cases. The "success rate" of cases closed increased slightly to 58% in 2017-18 compared to 55% in 2016-17. The number of cases closed with a "successfully resolved" outcome was 186, an increase of 23% from the previous year.

Results of Cases Closed

Cases closed	2016-17	2017-18	Variance
Successfully resolved	151 (55%)	186 (58%)	23%
Assistance provided	65 (24%)	74 (23%)	14%
Unsuccessful	58 (21%)	63 (19%)	9%
TOTAL	274	323	18%

NOTE: 60 cases remained open past 30 June 2018.

Results of Disputes Successfully Resolved

Of the 186 cases closed with a “successfully resolved” outcome:



166

**Disputes
successfully
resolved prior
to mediation**



20

**Disputes
successfully
resolved at
mediation**

Overall, the success rate for closed cases was pleasing. It is to be noted that the function of the OSBC is squarely set in the alternative dispute resolution space. 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 OSBC’s impartial role can sometimes become a factor if clients have unrealistic expectations of the services that it 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 bound to a pre-determined position that they are simply unable to conceive of giving any ground (which good faith bargaining tends to require).

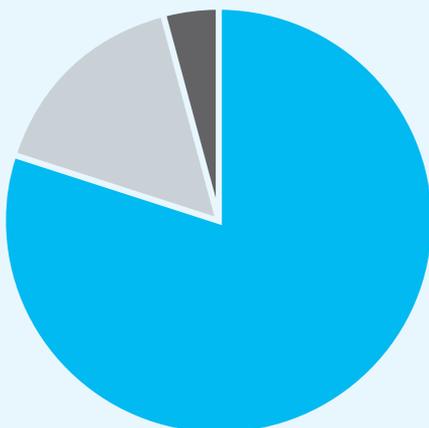
There are also occasions where clients insist on a winner-take-all outcome. In such cases the OSBC is often unable to fulfil such unrealistic expectations.

FORMAL MEDIATIONS

Formal mediations are conducted at the final stage of the dispute resolution process. In 2017-18 the OSBC conducted 25 formal mediations over 25 mediation days.

Of these:

-  20 (80%) were successfully resolved
-  4 (16%) were not successful but assistance was provided
-  1 (4%) mediation was awaiting an outcome at the time of writing this report



As part of the dispute resolution process, the Case Team escalates cases that have reached the formal mediation stage to an appropriate mediator. Factors such as the nature of the dispute, the expertise required and any specific requirements for the parties will determine which mediator is assigned to a particular case. The chart provided indicates that this approach has been highly effective.

In June 2017, the Commissioner settled a revised panel of nine mediators. They are:

- Ruth Beach
- Deb Black, Blackforrest Conflict Resolution
- Jon Clarke, Jon Clarke Advisory
- Colin Fullerton, Fullerton Consulting
- Steve Georgiadis, Pathways CBS Pty Ltd
- Ian Nosworthy, Cowell Clarke
- Greg Rooney
- Alison Shaw, Shaw Mediation Australia
- Brenton Trenorden, Brenton Trenorden Dispute Resolution

Their combined expertise and experience includes small business, commercial contracts, farming, retail leasing, franchising and building and construction.

All mediators must have demonstrated at least two years’ experience in mediation and at least five years’ experience in a professional commercial environment.

SIGNIFICANT CASES

South Road Closure Due to Structural Issues with the Tram/Cycle Overpass

The Commissioner was asked by the then Minister for Transport and Infrastructure, Hon Stephen Mullighan MP, to work with businesses to analyse the impact of the unexpected closure of South Road between Anzac Highway and Cross Road in January 2017.

Eleven businesses submitted detailed information which was analysed and presented to Minister Mullighan. The Commissioner's recommendations were accepted in full.

Glennelg Tram Track Replacement

The Commissioner presented a number of claims for compensation from small businesses due to the disruption caused by the replacement of the Jetty Road tram tracks in May and June 2017. Traders reported drops in takings of between 20% and 90%.

While the Government has a policy that there is no compensation for disruption caused by road and other transport works, the Commissioner took the view that the claims were justified due to concerns about the lack of notice given to traders.

He liaised with the Jetty Road Traders Committee, the City of Holdfast Bay and the Department of Planning, Transport and Infrastructure (DPTI).

On 9 October 2017 he met with the then Minister for Transport and Infrastructure, the Hon Stephen Mullighan MP, and the then DPTI CEO, Mr Michael Deegan, and was given a commitment that feedback would be provided within a month. However, no response was received before to the State election in March 2018.

The new State Government subsequently declined to provide any assistance to the Jetty Road traders.

The new Government did review a draft policy on Road, Transport and other Major Works Affecting Small

Business Policy prepared by the Commissioner but elected not to proceed.

The draft policy focused on improving engagement with small businesses earlier in the design and contract development process, and would allow for feedback to be taken into account to determine the best times to undertake such works so as to minimise the impact.

The policy also outlined a framework which required agencies to properly consider small business impacts, take action to mitigate the impacts and in cases where financial losses due to loss of customers or access, provide recompense. A number of options are available to effectively provide fair treatment by government for small businesses, including rental assistance; payroll tax or other tax relief; interest free loans; assistance to relocate; and compulsory acquisition.



An empty South Road during the time work was being undertaken

Financial Institution Inappropriately Closes Access to a Small Business Bank Account

The Directors of a business that was experiencing financial difficulties placed the business into voluntary administration.

More than a month later, the financial institution for the business under administration unilaterally closed off access to the accounts of an associated business that was not part of the administration, without warning or explanation. Suddenly this associated business, which employed a large number of people and turned over a significant amount of stock, had no access to finance and therefore a cash flow crisis.

The Directors and management of the associated business went to great lengths to seek to unfreeze its account, including providing a statement from the administrators of the business in administration. A staff member and a Director even opened a personal bank account to allow the payment of staff wages.

The bank account was eventually released, but at a great operational cost to the business. Its reputation had been damaged, it had lost key staff, and there were financial costs – including those to obtain expert advice.

When assistance was sought, the OSBC arranged for formal mediation. The matter was not resolved at the mediation. Afterwards, the Commissioner became aware that the representatives of the financial institution had not negotiated in good faith. The Commissioner then corresponded with the CEO of the financial institution, resulting in negotiations resuming.

The financial institution reaffirmed its position that there would be no further negotiations because it had acted within its “policy guidelines”.

The Commissioner then sought a copy of the policy guidelines. When the request was refused, a formal legal request under Section 12 of the *Small Business Commissioner Act 2011* was served on the CEO, and almost immediate engagement from the highest levels of the financial institution commenced.

The Commissioner personally conducted a further meeting between the parties. The financial institution apologised to the business and the OSBC for the position it had adopted in these matters. After more than 12 months and the involvement of 6 case-managers from the financial institution, the matter was finally and satisfactorily resolved between the parties.

Electricity Meter Installation Delay

The OSBC was contacted by Radio 5AA presenter Leon Byner about an issue one of his callers was having with the installation of an electricity meter to a new business premises.

Discussions with the claimant established that the installation request had been lodged with the energy company prior to work beginning on the shop fit-out but progress had stalled. It was also established that a complaint had been lodged with the relevant local government agency.

The OSBC Senior Case Officer made contact with the Operations Manager of that agency, who advised that a conciliation date had been scheduled for hearing in five days. The Officer requested that the matter be expedited because of the delays already experienced. The shop was ready to commence trading.

Advice received from the Operations Manager of the agency revealed that the energy company had installed the meter the day after the OSBC’s intervention and had made a goodwill payment to the claimant.

This is a good example of cooperation between government agencies resulting in a positive outcome for a small business owner.



Jetty Road during the replacement of the tram tracks

Bank Street Redevelopment

The Commissioner was approached by Bank Street traders worried about the detrimental impact the Market to Riverbank Project was having on their businesses.

The construction works commenced in April 2017 and were completed by December 2017.

The Commissioner visited the site on a number of occasions and was concerned to find:

- pedestrians being expected to walk over dirt in the middle of winter, creating significant risks
- pedestrian traffic being streamed to dead ends
- barrier placement creating risks for pedestrians
- access to shops being restricted, causing confusion
- an apparent lack of urgency from workers.

The Commissioner then met with Renewal SA, which convened a meeting with traders and the City of Adelaide. At that meeting the Commissioner advised that while it was the Government's policy not to pay compensation for the impact of such works, he was prepared to put cases forward for special consideration if they were supported by appropriate financial information.

Renewal SA and the City of Adelaide worked with the traders, including initiating special marketing and other initiatives to support them.

Failed Market Venture

The OSBC was contacted by several small business owners after a market-style event was cancelled just a week before it was to be held. They were seeking a refund of stallholder fees paid in full in advance.

The OSBC contacted the organiser to learn that the event had been cancelled for financial reasons and negotiated an offer for a percentage of prepayments to be repaid to all registered stallholders. Those who did not wish to accept this offer had the option to seek full reimbursement via the legal avenues available to them.

The offer was accepted by 88% of stallholders.

The Commissioner urges all businesses to do background checks on event organisers before making payments and to be wary of entering into agreements where full payment is required in advance.

Food Mall Dispute

The OSBC was approached by small businesses operating in a city food mall that had been taken over by

new owners/lessors. They raised a number of issues in relation to the new landlord taking over the premises and impacts upon their ability to trade. There had been a significant drop in consumers and sales.

The operators had attempted to contact the agent and landlord directly without any success.

The Commissioner made immediate contact with the new lessors and managed to achieve some short-term changes to benefit the stall operators. The OSBC then implemented its full dispute resolution processes, with the agent and lessor engaging cooperatively. The parties all agreed to attend mediation at the OSBC.

During the mediation, the lessor came to understand the traders' situations and made separate offers to each one. This enabled the tenants to terminate their leases on terms that were acceptable to them and gave the lessor vacant possession. Overall, this was the optimal outcome for this matter and the food stall operators were highly appreciative of the OSBC's assistance.

Repair of Equipment Purchased Interstate

The OSBC was contacted by a small business owner about recurring faults with machinery purchased from an interstate seller.

Although the machinery was still under warranty, and the problem had occurred seven months previously, the seller requested \$7000 to cover transport and accommodation for a technician. It claimed that the contract of sale stated that servicing and repairs would require specialised technicians to be flown to South Australia at the business's expense.

The OSBC was able to negotiate an outcome by having the parties



Severe disruption along Bank Street during the works to upgrade the thoroughfare

agree to a local technician attending if there were future issues, along with direct contact with the overseas manufacturer for technical support.

The Commissioner urges all businesses to be aware of such clauses in contracts prior to signing, as they can be deemed to be legally binding.

Farm Debt

A farmer, supported by a Rural Financial Counsellor, sought the Commissioner's assistance after a financial institution advised him that when his business loan expired it would be seeking immediate and full repayment of the banking facility – a sum in excess of \$400,000.

It also advised that hefty penalty payments were to be levied and that it would transfer any outstanding debt to a collection agency if payment was not made.

Given the buoyant state of the farmer's operations and the prospects for his product, he was surprised by these events. Through the Counsellor, he sought entry into a debt mediation process – a practice commonly used to resolve issues between farmers and their financiers – but the financial institution was reluctant to do so.

The Commissioner advised the financial institution that he was considering activating the Farming Industry Dispute Resolution Code, one of five specialist Codes available to him pursuant to the *Fair Trading Act 1987*.

This Code can require parties to enter into a mandatory alternative dispute resolution process (most often mediation) on a no or low-cost basis. This process is overseen by the OSBC.

The financial institution then agreed to negotiations without the

Commissioner needing to activate the Code. As a result, the farmer was able to re-finance with an alternative institution in an affordable and structured manner.

The existence of the Code allowed the breathing space necessary for these parties to identify and reach a fair outcome.

Coombs Barei

Coombs Barei, an Adelaide-based construction company, was placed into voluntary administration on 30 October 2017.

The Commissioner attended the first creditors meeting on 9 November 2017 and liaised with administrators Duncan Powell, who indicated that the company was facing a shortfall of up to \$6.5 million. There were a large number of unsecured creditors, including a subcontractor who had provided extensive concreting works on a Renewal SA housing project.

The Commissioner subsequently met with the subcontractor, who stated that he had raised concerns with Renewal SA about the financial viability of Coombs Barei and that he had asked Renewal SA to ensure that subcontractors would be paid by the company when progress payments had been made by Renewal SA.

As a result, the Commissioner is undertaking extensive investigations into the process of the approval of the pre-qualification of Coombs Barei, as well as the matters raised by the subcontractor. At the time of writing, he is awaiting further information from Renewal SA prior to finalising his report.

The Commissioner is increasingly concerned about the level of scrutiny and diligence undertaken in the selection of contractors for building and construction projects funded by the State Government.

Previously he has undertaken inquiries into the failure of Elite Australia Pty Ltd, which was contracted to provide the grandstands for the 2016 Clipsal Adelaide 500, and BJ Jarrad Pty Ltd, which was contracted by SA Water on a water main replacement on Kangaroo Island.

Both companies failed, leaving contractors unpaid. In the case of BJ Jarrad, a final dividend of 3.5 cents in the dollar was declared in February 2018, some 42 months after the collapse of the company.

In both cases, the Commissioner recommended compensation be paid to the subcontractors due to the failure of the relevant agencies to undertake appropriate due diligence and/or adequately monitor the contract and payment to subcontractors.

The former State Government rejected the first recommendation to compensate the businesses. However, it did approve the Chief Procurement Officer (CPO) undertaking further development of a framework which assists agencies to manage financial risk and due diligence at the point of contract establishment, and recommended the processes be led by the CPO in consultation with the State Procurement Board, the Department of Treasury and Finance, the Commissioner and other key agencies with large contract spend in the building and construction industry.

INFORMATION SERVICES

During the year, the OBSC made many improvements to its information services and developed new ways to engage and provide information to South Australian businesses.

In addition to increasing its database by 200%, the OSBC introduced webinar events, developed a YouTube Channel and expanded the range of material provided in its shopfront.

INFORMATION SESSIONS

Twenty-seven information sessions were delivered in eight metropolitan and regional locations during the year, allowing the OSBC to engage with 536 business people in person. Of these, 17 also were offered as webinars, which were recorded and later published on the OSBC YouTube Channel.

Sessions were delivered in conjunction with a number of stakeholders, including the Polaris Centre, Adelaide Hills Council, the Mount Barker District Council and Regional Development Australia – Barossa.

Topics included:

- Simple Steps to Safety
- Government Cash for Small Business
- Cyber Security for Small Business
- Dispute Resolution for Small Business
- Protecting Your IP
- Retail and Commercial Leasing for Small Business

Some were delivered in partnership with government departments, including SafeWork SA and RevenueSA.

The OSBC also partnered with the Federal Office of the Australian Competition and Consumer Commission to provide an information session and webinar on the new laws relating to the Country of Origin Food Labelling requirements, which came into effect on 1 July 2018.

The OSBC's 'BizLink' program, which brings various Federal, State and local government departments together to provide information on services available to business start-ups, also continued during the year. A seminar was held in the CBD and Bizlink Expos were held in Nuriootpa and Hahndorf as part of the Mount Barker District Council and Adelaide Hills Council May Business Month.



27

Information sessions



536

business people engaged



17

webinars offered



John Chapman welcoming attendees to Cyber Security for Small Business Information Session with guest speakers Nick Kervin, Lead Partner of the BDO IT Advisory Division, Nathan Morelli, Manager, ICT Assurance, Department for Education and Child Development and Alex Nehmy, Enterprise Information Security Manager at SA Power Networks



John Chapman with State Member for Kavel, Dan Cregan at BizLink Small Business Expo held in Hahndorf which was held as part of the May Small Business Month



John Chapman (centre) with guest speakers Andrew Heard and Mark Lieberenz, Partners at Heard Phillips Chartered accountants who presented Keeping Your Business on Track



OSBC staff member James Rock (right) with Jim Sinclair from SafeWork SA presenting Simple Steps to Safety Information Session



John Chapman with guest speakers for the Employing a Trainee or Apprentice Information Session Troy Aitken, Executive Officer, Apprentice Employment Network SA and David Nagy, General Manager, Group Training and Recruitment Services, Maxima.

HOLDEN CLOSURE AND SKILLS EVENTS

With the impending closure of Holden’s Elizabeth manufacturing plant, the OSBC ran a series of events designed to link Holden’s skilled workforce with small business owners. The last event was held in August 2017, with 20 business owners and representatives attending.

With the closure looming, it was pleasing to see the plant achieve a quality rating of 98.3% – it’s highest ever. For the fourth month in a row it was the best performing manufacturing operation in the General Motors global network.

Senior HR Manager Jamie Getgood, outlined how one worker had moved into the aged care area and had transformed and improved many of the care functions to reflect modern manufacturing principles. A number of other ex-employees have started their own small business.

Holden took a deliberately flexible approach, allowing workers to leave early with a significant portion of their redundancy package as a commitment to ensuring the best possible outcomes for its workers.

The work of the State Government to assist workers to transition to small business through the Automotive Transformation team in the Department of State Development is appreciated.



John Chapman with David Martin Senior Manager at Holden and Veronica Priestly who completed her Certificate III in Electrotechnology apprenticeship in August 2017



John Chapman with Brian Peel, Director Academy IT and his son James who was a supervisor at Holden



Mike O'Reilly from O'Reilly Communications and Small Business Commissioner John Chapman at the tour of the Holden Factory



John Chapman with Cath Duncan and Julianne Kuhlmann from AsiaAus Leaders, at the tour of the Holden Factory



Brendan Liddy, Quality Operations Manager at Holden outlines the high quality KPI's which the Elizabeth team were delivering on the production line

PUBLICATIONS

The OSBC continued to update its publications and distributed more than 2200 information packs to small businesses during the year. Material was also provided to all members of State Parliament to assist them in informing constituents about the services that the OSBC provides.

The *“We’re Here to Help Small Business”* brochure, which provides a summary of the key roles of the OSBC, was again included in ReturnToWork SA’s annual bulk mail delivery to 50 000 South Australian businesses.

The *“Industry Codes”* brochure was updated to include the Building and Construction Industry Code, which provides greater powers for the Commissioner to compel people in the building and construction industry to mediate.

The *“Retail and Commercial Leases Guide”* was also updated. In response to a request, copies of the guide were provided to Associate Professor David Brown from the Adelaide Law School to use in his Commercial Leasing classes.

The OSBC also worked with the Legal Services Commission to update its *“How to Recover Debt”* brochure, which now includes information about how the OSBC can assist small businesses with this process.

SOCIAL MEDIA PLATFORMS

Social media is an increasingly effective and efficient tool for engaging with the small business community.

The OSBC uses a variety of platforms, particularly Facebook, to engage and inform about its own events and services as well as those provided by other government departments, Councils and industry associations.

The OSBC YouTube Channel has been welcomed by small business people who do not have time to attend information sessions or research information they need.



JUST A BRIEF NOTE TO THANK YOU AND
YOUR TEAM FOR ALL THE WORK YOU PUT INTO
WHAT LOOKED TO ME TO BE A LOST CAUSE.
A TESTAMENT TO YOUR TENACITY AND FOLLOW
UP. MANY THANKS. A GREAT EXAMPLE OF THE
VALUE OF WHAT YOU DO AND STAND FOR.”

ANONYMOUS

WEBSITE

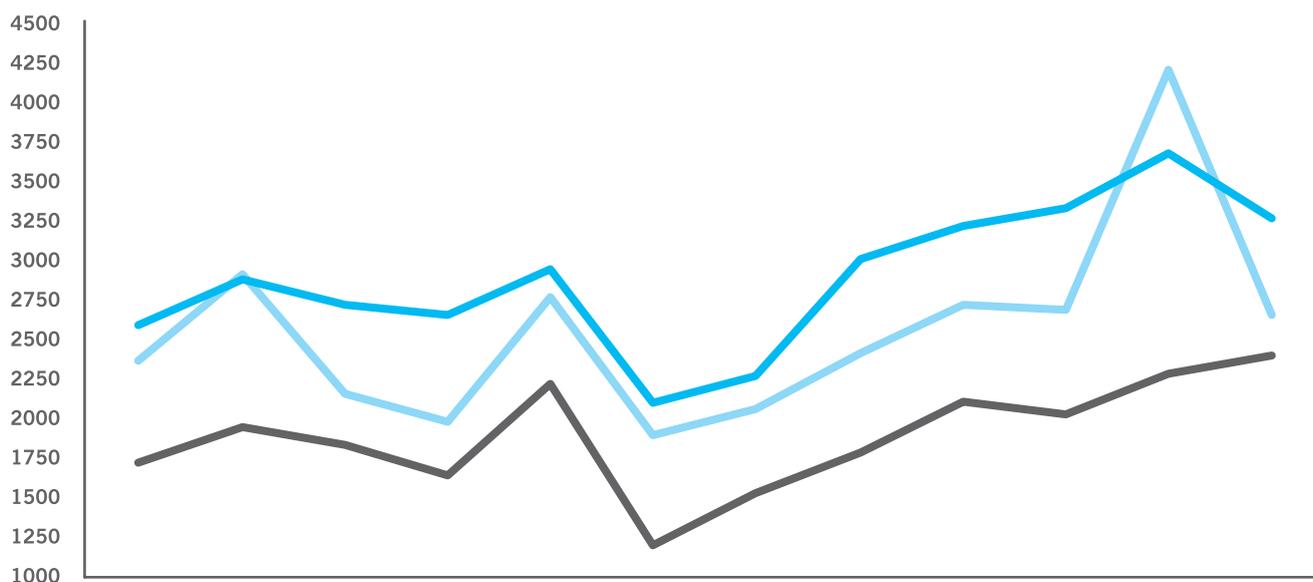
The OSBC website continues to be the main entry point for submitting enquires, lodging retail and commercial bonds and registering for events. There were 34 531 session to the website this financial year. This is a 12% increase from the last financial year and shows steady traffic growth across the year, reflecting similar patterns from previous reporting periods.

The external home page was updated to improve its user friendliness and provide an aesthetically cleaner layout and modern design. The website also was integrated with YouTube to allow access to videos and webinar recordings.

Internally, the website was updated to allow it to integrate with other platforms, such as Salesforce. Enquires made online are now directly fed to Salesforce, saving time and reducing the risk of errors and double handling.

Sessions to the OSBC website

2015-16	22 652
2016-17	30 711
2017-18	34 531



Year	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	TOTAL
2015-16	1721	1936	1825	1643	2212	1200	1529	1786	2103	2026	2278	2393	22,652
2016-17	2354	2904	2148	1971	2765	1891	2051	2403	2708	2677	4186	2653	30,711
2017-18	2584	2869	2703	2646	2941	2094	2264	2993	3210	3319	3662	3246	34,531
Monthly Variance	230	-35	555	675	176	203	213	590	502	642	-524	593	

LEGISLATION

SMALL BUSINESS COMMISSIONER ACT 2011

Prosecution under Section 12 of the *Small Business Commissioner Act 2011*

In early 2018, the Commissioner commenced a prosecution of Hansen Yuncken Leighton Contractors (HYLC), the joint venture builders of the new Royal Adelaide Hospital (NRAH).

The prosecution under Section 12 of the *Small Business Commissioner Act 2011* relates to a formal and legal request for information the Commissioner issued to HYLC. He was seeking the information in response to requests by three subcontractors for the repayment of their retention payments, which HYLC had refused to return.

HYLC did not provide the information as requested and accordingly legal proceedings commenced.

The case was heard in the Adelaide Magistrates Court on 12 April 2018 and 28 May 2018 and will be subject to a further hearing on 23 July 2018.

Should the HYLC partners be convicted of failing to supply the requested information, they face a fine of up to \$20 000.

It is not appropriate to comment further while this case is continuing.



I DON'T THINK I EMPHASIZED HOW IMPRESSED WE WERE WITH THE MEDIATOR. SHE WAS ABLE TO KEEP US FOCUSED AND ON TRACK AT THE SAME TIME AS BEING ABLE TO GRASP ALL OF THE FACTS AND FIGURES SO QUICKLY. WE REALLY DO APPRECIATE HER EFFORTS THROUGHOUT THE DAY. PERHAPS YOU CAN PASS ON OUR ADMIRATION AND ALSO OUR THANKS TO THE BOTH OF YOU FOR ENCOURAGING US TO GO AHEAD WITH MEDIATION."

HELEN ROGERS

STATISTICS UNDER THE SMALL BUSINESS COMMISSIONER ACT 2011

How were enquiries made?													Total 2017-18	Total 2016-17	Variance
2017						2018									
	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun			
Email	11	17	5	12	13	9	21	9	21	17	7	19	161	141	14%
Phone	92	87	120	85	70	79	88	91	95	109	119	101	1136	1237	-8%
Online form	4	0	1	23	3	2	0	2	12	14	23	23	107	13	723%
Fax	0	0	0	0	0	0	0	0	0	0	0	0	0	2	-100%
Walk-in	15	14	21	17	15	10	29	20	13	7	15	10	186	169	10%
Letter	1	3	0	0	0	0	1	0	2	0	0	0	7	5	40%
Direct contact	1	3	0	2	1	0	0	0	0	0	3	1	11	6	83%
TOTAL	124	124	147	139	102	100	139	122	143	147	167	154	1608	1573	2%

Subject matter													Total 2017-18	Total 2016-17	Variance
2017						2018									
	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun			
Building*	0	0	0	0	0	0	1	7	5	0	0	0	13	n/a	n/a
Farming	2	2	6	2	1	2	4	3	0	2	2	2	28	14	100%
Franchising	1	1	2	3	3	1	3	1	4	1	5	2	27	28	-4%
Local government	0	1	2	0	0	1	0	0	3	0	1	3	11	12	-8%
Small business issue	77	64	67	82	47	39	63	50	56	43	91	77	756	1 047	-28%
State Government	6	4	4	4	2	2	1	1	4	3	4	1	36	44	-18%
Motor vehicle	0	2	4	4	1	2	4	4	8	6	12	10	57	37	54%
Mobile Food Vendors*	0	0	0	0	0	0	0	0	0	1	0	0	1	n/a	n/a
Newsagent	0	1	0	0	0	0	0	1	0	0	0	0	2	2	0%
Other	0	1	3	1	1	2	2	7	3	1	5	14	40	18	122%
No selection	38	48	59	43	47	51	61	48	60	90	47	45	637	371	72%
TOTAL	124	124	147	139	102	100	139	122	143	147	167	154	1608	1573	2%

* New option added 2017-18

BUILDING AND CONSTRUCTION INDUSTRY SECURITY OF PAYMENT ACT 2009

The *Building and Construction Industry Security of Payment Act 2009* aims to provide a quick method of adjudication of disputed payments in the building construction industry and supply chain.

On 5 July 2017, the then Minister for Small Business, Hon Martin Hamilton-Smith MP, introduced the *Building and Construction Industry Security of Payment (Review) Amendment Bill 2017* into Parliament.

The Bill was the culmination of a formal review of the Act by former District Court Judge Alan Moss and subsequent consultations conducted by the Commissioner. It included clauses to effect the following:

- the insertion of an offence and penalty provision for intimidation, harassment, coercion or otherwise applying undue pressure to a person seeking payment under the legislation;
- the insertion of a provision to enable the Commissioner to publish adjudications;
- an amendment to Section 4 to clarify the Christmas shutdown period;
- the formal allocation of responsibility for the administration of the Act to the Commissioner and the setting out the Commissioner's functions in some detail; and
- an amendment of the current Authorised Nominating Authorities authorisation regime, which will put in place some light-handed rigour and oversight to the existing arrangements that provided open ended "licences" when the legislation was enacted in December 2011.

The legislation passed the House of Assembly on 31 October 2017 but did not proceed to completion in the Legislative Council before the Parliament rose on 30 November 2017 for the last time prior to the 2018 State election.

On 21 May 2018, the Federal Government released the National Review of Security of Payment Laws undertaken by Mr John Murray AM. The aim was to improve consistency in security of payment legislation and enhance protections to ensure subcontractors get paid on time for work they have done, regardless of which State or Territory they operate in.

The "Murray Review" contained 86 recommendations, including a large number relating to amendment to various State and Territory Security of Payment Acts. A number of the recommendations picked up South Australia's proposed legislative amendments, including making it an offence to intimidate, harass or coerce a party from using the security of payment process.

Another recommendation is to make security of payment laws nationally consistent with what is commonly known as the "East Coast Model", which is based on the NSW legislation. South Australia's legislation was originally modelled on the NSW Act.

The OSBC will consult with key industry stakeholders on the "Murray Review" prior to submitting its recommendations to the Minister.

New Building and Construction Industry Code under the *Fair Trading Act 1987*

The former State Government agreed to the development of a Building and Construction Dispute Resolution Industry Code under the *Fair Trading Act 1987* to provide for alternative dispute resolution services. This Code is similar in structure to the existing Codes and provides the Commissioner with greater options to quickly inquire into and resolve disputes, including the ability to compel parties to exchange information, attend meetings, answer questions and undertake alternative dispute resolution.

The Regulations to enact the Code were made in December 2017.

Good Behaviour Code for Building and Construction Industry

The former Government also approved "*the development of a policy, in conjunction with the Industry Participation Advocate, which in effect will be a 'good behaviour' test for principal contractors who bid for government projects of \$4 million and above for the metropolitan area and \$1 million and above for regional areas*".

This proposal sought to apply the persuasive power inherent in major government procurement activity to drive positive behaviour as an industry standard. Consultation on a draft policy took place in December 2017.

The Code is not being progressed at this time, with the Government expressing a desire to prioritise changes to the *Building and Construction Industry Security of Payment Act 2009* with full consideration of the previously mentioned Murray Review.

Other initiatives to assist small businesses in the building and construction sector.

Additional funding for the OSBC in the 2016-17 budget provided for the appointment of a Senior Officer to support subcontractors, suppliers and industry groups on invoice payment and other issues of concern. It is important that there is also an ongoing program to promote the *Building and Construction Industry Security of Payment Act 2009* and educate the industry, due to its ever-changing nature and population.

New participants regularly enter the industry, for example, when a recently qualified tradesman sets up their own small business as a contractor. It is typically these types of businesses that require education about the industry and the protections that can be afforded to them by this legislation.

Claims under the *Building and Construction Industry Security of Payment Act 2009*

In 2017-18, the OSBC assisted contractors and subcontractors with 87 enquiries in relation to the Security of Payment legislation and provided advice in relation to the procedures in order to make claims under the Act.

In total, 67 claims worth a total of \$74 184 897.65 were made through adjudication mechanisms within the Act. Of these, 27 resulted in an award to the claimant. The total amount awarded was \$6 582 195.36

APPROVED AUTHORISED NOMINATING AUTHORITIES

The following organisations are approved Authorised Nominating Authorities with regard to the Act.

ABC Dispute Resolution Services

Web: www.abcdrs.com.au
Phone: 1300 857 383
Fax: 1300 857 384
Email: contactus@abcdrs.com.au

Adjudicate Today

Web: www.adjudicate.com.au
Phone: 1300 760 297
Fax: 1300 760 220
Email: sa@adjudicate.com.au

Australian Solutions Centre

Web: www.solutionscentre.com.au
Phone: 1300 722 624
Fax: 1300 722 924
Email: info@solutionscentre.com.au

Resolution Institute

Web: www.resolution.institute
Phone: 1800 651 650
Fax: 02 9251 3733
Email: nominations@resolution.institute

Master Builders Association of South Australia

Web: www.mbasa.com.au
Phone: 1800 067 466
Fax: 08 8231 5240
Email: buildsa@mbasa.com.au

Nominator

Web: www.nominator.com.au
Phone: 08 8267 4800
Fax: 08 8239 0728
Email: contact@nominator.com.au

RICS Dispute Resolution Service

Web: www.ricsdrs.com.au
Phone: 1300 953 459
Fax: 1300 953 529
Email: drsaus@rics.org

TOTAL AMOUNT CLAIMED VS AWARDED

		2015-16	2016-17	2017-18
ABC Dispute Resolution Services	<i>Claimed</i>	\$37 273 034.11	\$14 782.75	\$467 792.45
	Awarded	\$3 021 397.23	\$14 782.75	\$221 054.73
Able Adjudication*	<i>Claimed</i>	\$0	\$6 600.00	-
	Awarded	\$0	\$0	-
Adjudicate Today	<i>Claimed</i>	\$36 872 825.47	\$11 032 806.09	\$10 740 287.98
	Awarded	\$16 739 413.81	\$796 583.03 ⁽¹⁾	\$1 508 798.65 ⁽⁴⁾
Australian Solutions Centre	<i>Claimed</i>	\$0	\$408 627.12	\$0
	Awarded	\$0	\$17 325.90	\$0
Resolution Institute	<i>Claimed</i>	\$121 412.50	\$630 770.15	\$49 048 746.61
	Awarded	\$35 420.00	\$117 588.09	\$3 401 862.69 ⁽⁵⁾
Master Builders Association of SA	<i>Claimed</i>	\$0	\$40 108.70	\$84 418.68
	Awarded	\$0	\$0 ⁽²⁾	\$850.41
Nominator	<i>Claimed</i>	\$0	\$0	\$0
	Awarded	\$0	\$0	\$0
RICS Dispute Resolution Services	<i>Claimed</i>	\$31 595 981.21	\$29 963 982.47	\$13 843 651.93
	Awarded	\$12 864 465.69	\$0 ⁽³⁾	\$1 449 628.88
TOTAL	<i>Claimed</i>	\$105 863 253.29	\$42 097 677.28	\$74 184 897.65
	Awarded	\$32 660 696.73	\$1 006 279.77	\$6 582 195.36

*Able Adjudication's ANA resources were absorbed into the Australian Solutions Centre ANA and it was de-authorised as an ANA on Friday 21 October 2016.

(1) An application for a claim of \$3 838 385.49 was determined to be invalid.

(2) An awarded amount for a claim of \$19 000 hasn't been released due to non-payment of the adjudicator's fee.

(3) An application for a claim of \$29 963 982.47 was settled and withdrawn one week prior to completion of determination.

(4) 3 claims lodged with Adjudicate Today totalling \$326 301.08 were withdrawn under s27 of the *SA Building and Construction Industry Security of Payment Act 2009*.

2 claims lodged with Adjudicate Today totalling \$7 099 294.80 were claimed in 2017-18 but not settled until 2018-19.

25 claims totalling \$433 078.12 were settled prior to adjudication.

5 claims totalling \$123 320.00 were either timed out or invalid.

(5) 3 claims totalling \$32 050 594.83 were invalid.

Number of Adjudications Received

	2015-16	2016-17	2017-18
ABC Dispute Resolution Services	1	4	6
Able Adjudication*	0	1	-
Adjudicate Today	30	15	50
Australian Solutions Centre	0	7	0
Resolution Institute	1	2	8
Master Builders Association of SA	0	2	2
Nominator	0	0	0
RICS Dispute Resolution Services	6	1	1
TOTAL	38	32	67

*Able Adjudication's ANA resources were absorbed into the Australian Solutions Centre ANA and it was de-authorised as an ANA on Friday 21 October 2016.

STATISTICS UNDER THE BUILDING AND CONSTRUCTION SECURITY OF PAYMENT ACT 2009

Number of enquiries													Total 2017-18	Total 2016-17	Variance
2017							2018								
	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun			
Enquiries	9	4	12	7	4	6	11	10	5	3	9	7	87	49	78%
TOTAL	9	4	12	7	4	6	11	10	5	3	9	7	87	49	78%

How were enquiries made?													Total 2017-18	Total 2016-17	Variance
2017							2018								
	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun			
Email	1	1	1	0	0	0	2	0	0	0	0	1	6	2	200%
Phone	8	3	10	7	3	4	7	8	4	2	8	6	70	47	49%
Walk-in	0	0	1	0	0	1	1	1	0	0	0	0	4	0	-
Online Form	0	0	0	0	0	1	1	1	1	1	1	0	6	0	-
Fax	0	0	0	0	1	0	0	0	0	0	0	0	1	0	-
TOTAL	9	4	12	7	4	6	11	10	5	3	9	7	87	49	78%

RETAIL AND COMMERCIAL LEASES ACT 1995

On 5 July 2017, the *Retail and Commercial Leases (Miscellaneous) Amendment Bill 2017* was introduced into the House of Assembly by the then Minister for Small Business, Hon Martin Hamilton-Smith MP.

The amending Bill followed extensive consultation on a formal review undertaken by former District Court Judge Alan Moss.

The final legislative amendments approved by the former Government are outlined as follows.

1. Make it express within the Act (at Section 4 and at Regulation 4) that it is possible for a retail shop lease to move in and out of the application of the Act; for example, a lease might move out of the Act when rent increases above the threshold, or move back in if the threshold is increased (as held in Victoria).
2. Place a duty upon the Valuer-General to recommend increases to the threshold to the Minister every five years (i.e. fixed term reviews).
3. Make it express in the Act (and the Regulations if appropriate) that “rent” and the quantum of the rental threshold are each exclusive of GST.
4. Make it express in the Act (subject to Recommendation 7) that any retail shop lease with a rental below the rental threshold (as varied from time to time) will be deemed a “small business” (and will remain within the scope of the Act), regardless of whether or not that retail shop is part of a larger franchise, brand or group.
5. Amend the Act to allow (by regulation) a list of classes of leases and licences provided by government and local government to be excluded from the Act.
6. Extend the power to exempt leases and licences from the Act (currently by the Minister or the Magistrates Court) to include the Commissioner.
7. Make it express that for the purposes of Section 4(2)(c) of the Act that the term “public company” has the same meaning as in Section 9 of the *Corporations Act 2001* (essentially that a public company is a company other than a proprietary company).

This concept is to be extended to ensure that companies that are incorporated overseas, or companies incorporated in Australia but controlled by overseas registered companies, do not enjoy the protections of the Act.

These provisions are to prevail over any entity that would otherwise be deemed to be a “small business” pursuant to Recommendation 4 above.
8. Amend section 12 of the Act to make it clear that:
 - a Disclosure Statement must be provided to the lessee before any binding agreement can be made
 - the Disclosure Statement must be signed by the lessor, or agent of the lessor, and served upon the lessee
 - the Disclosure Statement must be signed by the lessee or his or her agent
 - there is no requirement to provide a Disclosure Statement before the exercise of a right of renewal.
9. As a public deterrent, include a new penalty (\$8400) for a breach of these provisions (at Section
10. Amend Sections 14 and 16 of the Act to delete all references to “stamped”, “stamping” or “stamp duty”.
11. Insert provisions (pursuant to Section 15(3)(e)) that will require a lessor to return a bank guarantee to the lessee within 60 days after the lessee has performed all lease obligations secured by the bank guarantee.
12. Amend Section 20B(3)(b) of the Act by deleting the words “with the consent of the lessor and the period of holding over does not exceed 6 months”, or otherwise as necessary to make it certain that any period of “holding over”:
 - does not imply a new lease term
 - will allow either party to terminate any period of “hold over”.
13. Pursuant to Section 20K, provide the Commissioner with the power to certify exclusionary clauses in leases, including the ability for the Commissioner to be able to recover a modest fee for the occasional provision of such a service.
14. Clarify the jurisdiction over actions for distress for rent under the *Landlord and Tenant Act 1936*, to expressly place such actions under the jurisdiction of the Magistrates Court rather than the District or Supreme Court.
15. As well as proposing additional penalties of \$8400 for breaches of Proposal 11 above, it is proposed to increase the 11 existing penalties within the Act (broadly aligned with CPI increases of 68.4% between 1995 and 2015) with one exception.



16. That exception will be to substantially increase one maximum penalty (for failure to provide the prospective tenant with a copy of the lease at the pre-negotiation stage) from \$500 to \$8400. The (prospective) lease is an important document in the decision-making process of the lessee (the tenant). It is this document which, once executed, will govern almost every aspect of the relationship between the lessee and the lessor for five, 10 or in some cases 30 or more years. In short, the (prospective) lease document, together with the Disclosure Statement are the critical documents upon which:

- the lessee will make his/her decision
- the entire legal relationship between the parties is governed and underpinned.

The legislation passed the House of Assembly on 28 September 2017 but did not proceed to completion in the Legislative Council before the Parliament rose on 30 November 2017 for the last time prior to the 2018 State election.

At the end of the financial year, the State Government was still considering its position in relation to the original Bill.

ADMINISTRATION OF RETAIL AND COMMERCIAL BOND LODGEMENTS AND REFUNDS

During the year the OSBC processed 804 lodgements to the value of \$1 268 039.60 and 546 refunds to the value of \$898 460.18, which is split between lessee \$488 584.29 and lessor/agent \$409 875.89.

A total of 173 Notice of Claim letters were sent to lessors, lessees and agents during the year. Of these, seven were disputed.

Retail bonds system

All retail and commercial security bonds must be lodged with the Commissioner as per the *Retail and Commercial Leases Act 1995*.

In the previous financial year the OSBC began a procurement process to engage a business to develop a new Retail Bond Management System to replace the existing system which was running on aging software.

SRA Information Technology, a locally based South Australian business, was chosen to develop the new system which commenced on 1 July 2017. The new system is sustainable, secure and resilient, meets the risk demands of the OSBC and conforms to government security standards.

LODGEMENTS

	Processed	Total Amount
2015-16	815	\$1 288 988.71
2016-17	767	\$1 327 107.77
2017-18	804	\$1 268 039.60

REFUNDS

	Processed	Lessee Amount	Lessor/Agent Amount	Total Amount
2015-16	535	\$522 485.85	\$380 797.81	\$903 283.66
2016-17	535	\$549 518.52	\$315 041.69	\$864 560.21
2017-18	546	\$488 584.29	\$409 875.89	\$898 460.18

STATISTICS UNDER THE *RETAIL AND COMMERCIAL LEASES ACT 1995*

How were enquiries made?													Total 2017-18	Total 2016-17	Variance
2017						2018									
	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun			
Email	7	5	2	0	2	1	2	1	2	3	1	2	28	47	-40%
Phone	96	100	86	81	69	44	72	111	80	61	117	99	1016	1238	-18
Online form	0	1	0	0	1	1	1	0	4	9	6	7	30	4	650%
Fax	0	1	0	0	0	0	0	0	0	0	0	0	1	0	-
Walk-in	2	6	3	1	3	2	2	3	5	3	3	2	35	43	-19%
Letter	0	0	0	0	0	0	0	0	0	1	1	0	2	1	100%
TOTAL	105	113	91	82	75	48	77	115	91	77	128	110	1112	1333	-17%

Who made the inquiry?													Total 2017-18	Total 2016-17	Variance
2017						2018									
	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun			
Lessee	32	33	25	6	21	11	15	31	23	15	31	17	260	437	-41%
Lessor	8	8	3	1	3	2	8	7	11	6	17	7	81	125	-35%
Sub lessee	0	1	1	0	0	1	1	1	1	0	2	0	8	9	-11%
Franchisee	0	0	0	0	0	0	0	0	1	0	0	0	1	5	-80%
Franchisor	0	0	0	0	0	0	0	0	0	0	0	0	0	1	-
Real estate agent	8	5	2	2	2	3	8	10	4	7	5	4	60	111	-46%
Solicitor	0	1	1	0	0	0	0	1	1	0	1	1	6	18	-67%
Assignee	0	0	0	0	0	1	0	0	0	0	1	0	2	2	0%
Assignor	0	0	0	0	0	0	0	0	1	0	0	0	1	2	-50%
Other	1	5	1	0	0	2	2	1	3	2	1	1	19	43	-56%
No selection	56	60	58	73	49	28	43	64	46	47	70	80	674	580	16%
TOTAL	105	113	91	82	75	48	77	115	91	77	128	110	1112	1333	-17%

Subject matter													Total 2017-18	Total 2016-17	Variance
2017						2018									
	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun			
Assignment	3	1	0	3	1	0	3	2	1	0	3	3	20	26	-23%
Bond security	44	47	33	21	12	12	25	42	36	27	40	38	377	508	-26%
Disclosure statements	0	0	0	0	0	0	1	2	0	0	1	1	5	9	-44%
End of lease negotiations	3	5	5	2	5	4	7	4	4	2	16	2	59	56	5%
Term of lease	0	4	7	7	2	1	5	6	9	8	9	6	64	44	45%
Outgoings	9	12	12	6	7	8	6	8	4	5	12	7	96	101	-5%
Pre-lease negotiations	1	6	9	7	3	7	2	7	7	2	5	4	60	70	-14%
Rent	6	9	3	4	11	1	4	7	3	9	10	10	77	75	3%
Repairs & maintenance	5	5	6	8	5	1	2	11	4	3	10	8	68	125	-46%
Termination	8	11	6	16	15	4	10	10	5	7	11	18	121	154	-21%
Other	12	7	10	7	14	7	7	15	10	4	9	10	112	95	18%
No selection	14	6	0	1	0	3	5	1	8	10	2	3	53	70	-24%
TOTAL	105	113	91	82	75	48	77	115	91	77	128	110	1112	1333	-17%

Details of the Lease													Total 2017-18	Total 2016-17	Variance
2017						2018									
	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun			
Shopping centre	0	0	0	0	0	0	0	0	0	0	0	0	0	3	-
Strip	0	0	0	0	0	0	0	0	0	0	2	0	2	0	-
Standalone	0	0	1	0	0	0	0	0	0	0	5	0	6	6	0%
No selection & other	105	113	90	82	75	48	77	115	91	77	121	110	1104	1324	-17%
TOTAL	105	113	91	82	75	48	77	115	91	77	128	110	1112	1333	-17%

Action taken in Response													Total 2017-18	Total 2016-17	Variance
2017						2018									
	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun			
Advice given	79	95	58	58	49	30	53	91	67	59	99	77	815	1010	-19%
Referred to external agency	0	3	4	1	1	2	1	0	0	1	1	0	14	17	-18%
Directed to solicitor/agent/other	3	5	6	4	11	0	4	4	5	5	6	7	60	89	-33%
Invited to lodge formal dispute	1	2	13	14	9	6	10	7	10	2	6	10	90	38	137%
Sent out information	22	8	7	2	5	8	8	11	4	3	8	11	97	157	-38%
Directed to publications	0	0	2	3	0	0	0	0	1	0	0	0	6	9	-33%
Directed to application forms	0	0	1	0	0	1	0	1	0	0	0	1	4	10	-60%
Other	0	0	0	0	0	1	1	1	1	1	3	0	8	2	300%
No selection	0	0	0	0	0	0	0	0	0	0	1	1	2	1	50%
Converted to a formal case*	0	0	0	0	0	0	0	0	3	6	4	3	16	n/a	n/a
TOTAL	105	113	91	82	75	48	77	115	91	77	128	110	1112	1333	-17%

* New option added 2017-18

OTHER LEGISLATIVE RESPONSIBILITIES

FARM DEBT MEDIATION

Legislation to introduce a Farm Debt Mediation scheme in South Australia was introduced into State Parliament on 6 June 2018 and passed the House of Assembly on 21 June 2018.

The legislation is designed to provide protection and financial security for farmers by enforcing a mandatory mediation process before a creditor is able to foreclose on a farming operation.

The OSBC has previously dealt with a number of complaints from primary producers against their financial institutions with considerable success. That said, currently in South Australia a farming operation can be forcibly foreclosed without any form of negotiation. This can have a severe impact, as the farm may also be the family home.

In the second reading speech to Parliament, the Minister for Primary Industries and Regional Development, Hon Tim Whetstone

MP, stated that “the bill improves the protections in place for South Australian farmers, building on the existing voluntary South Australian Farm Finance Strategy and the Farming Industry Dispute Resolution Code under the Fair Trading Act 1987. This bill brings South Australia up to date with other states where farm debt mediation legislation has been operating successfully—in New South Wales, Victoria, and Queensland since 1994, 2011 and 2016 respectively”.

It is well recognised that the mediation process conducted by a neutral, independent and qualified mediator provides an opportunity for all parties to negotiate in a structured manner. The process is designed to allow the parties to reach a mutually agreeable outcome and can also detail how future issues between the parties will be managed.

It is intended that the cost of mediation will be consistent with other disputes and will be set at \$195 per party per day.

Subject to its passage through Parliament, the legislation will be administered by the Commissioner, who will arrange for mediations to take place as required under the legislation.

ACCESS TO FARMING LAND BY RESOURCE/MINING ENTITIES

The OSBC is implementing the Government's election policy to assist primary producers when dealing with resource companies that are seeking access to farm land.

The policy seeks to ensure that the rights of primary producers are effectively represented and they are appropriately supported by an independent statutory body.

The program will be supported by the development of detailed material which can be provided to farmers and other primary producers so they can understand their rights and obligations when mining and other resource companies seek land access.

Extensive consultation on the development of this material will be undertaken with the Department of Primary Industries and Regions SA and the Department for Energy and Mining.

The OSBC is undertaking the process of developing a specific Industry Code of Conduct by regulation under

the *Fair Trading Act 1987*. Such a Code will enable the Commissioner to fully and effectively implement alternative dispute resolution processes to resolve land access issues. He will have the authority to monitor, investigate and enforce non-compliance.

The Code will effectively support the existing structure of alternative dispute resolution undertaken by the Commissioner. There are five other Industry Codes developed under the *Fair Trading Act 1987* and under the control of the Commissioner: Farming, Newsagency, Motor Vehicle, Franchising, and Building and Construction.

The Codes are "activated" by the Commissioner in accordance with strict guidelines and have been used to ensure parties exchange information, answer questions, attend meetings, or attend a formal mediation. Civil penalties can apply for breaches of the Code.

The formal mediation process costs \$195 per party per day, which is consistent with the fee structure in the other Codes.

Consultation with stakeholders on the proposed Code will be undertaken early in 2018-19.

LOCAL GOVERNMENT ACT 1999 MOBILE FOOD VENDORS

The Commissioner has been given a number of new responsibilities in relation to monitoring local government's application of new legislative provisions relating to mobile food vendors (commonly known as food trucks).

The amendments to the *Local Government Act 1999* passed in July 2017 provide for a review function on individual council rules relating to locational issues of these trucks.

The Commissioner is required to provide advice to a Council if a food business complains about the impact of the Council's approved locations for food trucks. If the Council chooses to reject the Commissioner's advice, it will be required to provide reasons.

If the Commissioner remains unsatisfied with the Council's response, he will have the power to direct the Council to make appropriate changes to the rules. If the Council fails to comply, it will face a fine of up to \$5000.

The OSBC is working closely with the Local Government Association to ensure smooth implementation of the new requirements.



Food Trucks in Victoria Square

INQUIRIES AND SUBMISSIONS

INQUIRIES

ECONOMIC AND FINANCE COMMITTEE ON CONTINUATION OF INQUIRY INTO PRIMARY PRODUCERS – CODES

The Economic and Finance Committee released its final report *“From the Paddock to the Plate – A Fair Return for Producers”* on 28 November 2017.

The terms of the inquiry covered options for enhancing and supporting South Australian primary producers in competitively supplying to retailers, to ensure future local processing and manufacturing in the horticultural, viticultural and agricultural sectors.

The Commissioner made two submissions to the inquiry, including suggesting research into input costs, value chains, pricing transparency and contractual arrangements. The submissions also covered legislative options that could be used to assist primary producers in being paid fairly for their products, including the potential for a State-based mandatory code to fill the gap caused by inconsistencies between the Horticultural Code of Conduct (Horticultural Code) and the Food and Grocery Code of Conduct (Grocery Code).

The Commissioner also appeared before the Committee on 24 May 2017.

The report included 13 recommendations, of which four related to the role of the Commissioner.

1. The Committee recommends that Primary Industries and Regions SA assist the Small Business Commissioner in promoting and advertising the services and functions offered by the Commissioner directly to the State’s small primary producers including farmers. The Committee further recommends that this be achieved through the establishment of formal relationships with South Australia’s Agriculture Bureaus.
2. The Committee recommends that the functions of the Small Business Commissioner be expanded, with appropriate additional funding, to include an Advice Unit, which would allow primary producers to lodge offers of agreement with the Unit on a confidential basis and to obtain advice on whether the terms of the agreement are fair.
3. The Committee recommends amending the ‘Starting a Business’ section of the sa.gov.au website to include relevant information on the benefits of forming co-operatives, including the benefits they have in increasing the market power of producers. In addition, the Committee recommends that the website should include information about how co-operatives can help producers operate in larger supply chains.
11. In the absence of Commonwealth reform to the Grocery Code of Conduct, the South Australian Government should institute a state-based mandatory Code or add to the *Fair Trading (Farming Industry Dispute Resolution Code) Regulations 2013 (SA)* within the Small Business Commissioner’s current jurisdiction, to fill the gap caused by the inconsistencies between the Horticulture Code of Conduct and the Grocery Code of Conduct.

The State Government is currently considering a Whole of Government response to the recommendations.

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION (ACCC) DAIRY INQUIRY INTERIM REPORT

In November 2017 the ACCC released its interim findings and recommendations in relation to an inquiry it had conducted into the dairy industry. The report contained 8 recommendations:

1. Processors and farmers should enter into written contracts for milk supply that are signed by the farmer.
2. All processors should simplify their contracts where possible, including by minimising the number of documents and clearly indicating which documents contain terms and conditions of milk supply.
3. Milk supply contracts should not include terms which unreasonably restrict farmers from switching between processors.
4. The industry should establish a process whereby an independent body can administer mediation and act as a binding arbitrator or expert in relation to contractual disputes between farmers and processors.
5. Farmers should ensure that have properly considered the legal and financial implications of contracts with processors.

6. Processors should publish information identifying how their pricing offers apply to individual farm production characteristics to enable better farm pricing forecasts.
7. The Voluntary Dairy Code should be strengthened.
8. A mandatory code of conduct within the *Competition and Consumer Act 2010* should be considered for the dairy industry.

The Commissioner lodged a submission in response to the inquiry which supported all of the recommendations except Recommendation 4. He suggested that an existing body could deal with dispute resolution.

The Commissioner also recommended that Unfair Contract Term laws be extended to cover dairy contracts in response to Recommendation 5.

The submission recommended that a specific section be included in the mandatory code to ensure that contracts in other parts of the dairy supply chain (eg milk delivery contractors) were covered.



MAY I SAY A HUGE
THANK YOU TO YOU
JOHN, JAMES AND
THE TEAM YOU
ACHIEVED WHAT I
COULD NOT OVER
2 MONTHS FOR
FRUSTRATION.
REALLY IMPRESSIVE
SERVICE I AM REALLY
STUCK FOR WORDS
ON WHAT TO SAY. MAY
I WISH YOU AND THE
TEAM ALL THE BEST
FOR CHRISTMAS AND
THE NEW YEAR”

ANONYMOUS

SUBMISSIONS

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION (ACCC) ON PLATINUM EQUITY'S PROPOSED ACQUISITION OF OFFICEMAX

The Commissioner was approached by an Adelaide business concerned at the proposed acquisition by Platinum Equity of stationery supplier OfficeMax.

Platinum Equity already owns Staples Office Supplies and the proposed acquisition would likely have meant that Platinum Equity would “become the biggest force in Australia’s business-to-business office supplies market” (Australian Financial Review 20 April 2017).

The Commissioner formed the view that the proposed merger, which could lead to Platinum Equity holding as much as 90% of the business market, would lead to a monopoly situation in the business-to-business stationery market in Australia due to:

- excessive market concentration
- the creation of significant barriers for entry of new competitors
- there being no countervailing power in the market
- that any vigorous and effective competitors could become unviable.

A submission was lodged with the ACCC as part of its review process in September 2017.

On 30 November 2017 the ACCC announced that it would not oppose the proposed acquisition of OfficeMax by Platinum Equity, saying:

“Following extensive market inquiries and analysis of documents and data, the ACCC has decided not to oppose this transaction. The ACCC believes the transaction will lessen competition but doesn’t reach the threshold of causing a substantial lessening of competition.”

ROYAL COMMISSION INTO MISCONDUCT IN THE BANKING, SUPERANNUATION AND FINANCIAL SERVICES INDUSTRY

The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry was established on 14 December 2017 by the Governor-General.

The Commissioner, the Honourable Kenneth Hayne AC QC, was authorised to submit an interim report no later than 30 September 2018, and will provide a final report by 1 February 2019.

In his submission, the Small Business Commissioner stated that banks and financial institutions need to take a more positive role in dealing with genuine disputes with small business. He suggested that Government may need to intervene legislatively if banks and financial institutions fail to do so voluntarily, perhaps under a Small Business Banking Code of Conduct. The submission stated that banks and financial institutions need to be consistent and fair in their approach to small business, and to take into account the fact that there is usually a massive imbalance of power, either real or perceived.

Six case studies were provided to illustrate points raised in the submission.

MINING ACT REVIEW

On 8 September 2017, the Department of the Premier and Cabinet provided 82 recommendations to the then Minister for Mineral Resources and Energy for proposed amendments to the *Mining Act 1971*. These were based on community and expert feedback and submissions.

The Review Team sought urgent feedback from the Commissioner on the recommendations.

The Commissioner broadly supported the recommendations, noting that there are a number of benefits arising from the recommendations which would create a better environment for farmers and small businesses, including:

- cutting unnecessary red tape;
- better protecting landowners; and
- increasing transparency in South Australia’s mining and agriculture industries.

Notwithstanding this, the Commissioner advised the Review Team that he was unable to fully support the recommendations until he had received a copy of the draft Bill and had been given the opportunity to consider and comment on it.

LABOUR HIRE BILL 2017

The State Government introduced the *Labour Hire Bill 2017* into Parliament on 10 August 2017. The Bill sought to put in place a legislative regime to monitor and manage labour hire companies.

However, concerns emerged from small businesses shortly after the Bill's release, with a government Member of Parliament contacting the Commissioner on behalf of a constituent.

The drafting of the Bill appeared to capture a large range of businesses which traditionally would not be regarded as labour hire.

For example, the definition:

6 – Meaning of labour hire services

- (1) A person provides **labour hire services** if, in the course of carrying on a business, the person supplies, to another person, a worker to do work.

The Commissioner formed the view that, for example, a plumbing business that sends a “worker” (employee) to “fix a leaking pipe” at a third party business or other premise would be captured by the legislation

Other examples that were raised included mobile auto mechanics; a corporate health service that “supplies” a nurse to deliver flu vaccinations; an IT professional setting up computer systems; an

auditing accountant; a translator supplied to assist migrant workers; and a first aid attendant at a sporting event.

The Commissioner made a submission to the then Deputy Premier, Hon John Rau MP, outlining his concerns and also the need to exempt group training schemes that provide apprentices and trainees to host employers.

At a subsequent meeting with the then Deputy Premier, discussion centred on a series of options provided by the Commissioner for amendments to the Bill to address the concerns.

A series of amendments were made to the original definition of the meaning of labour hire services, with the option of using regulatory arrangements to ensure businesses which would not normally be regarded as “labour hire” were excluded.

The legislation was passed by the Parliament on 28 November 2017.



THANK-YOU FOR
THE WORK YOU HAVE
DONE WITH THIS
CASE AND THE GREAT
OUTCOME THAT HAS
BEEN REACHED....
I KNOW 100% THAT
IF IT WASN'T FOR
BOTH YOURSELF
AND JOHN CHAPMAN
THIS WOULD NOT
HAVE HAPPENED AND
I WOULD BE A FEW
THOUSAND DOLLARS
OUT OF POCKET
FOR SURE!”

ANONYMOUS

STAKEHOLDER ENGAGEMENT

The OSBC is a strong supporter of local small business events, which it promotes and attends where it can.

During 2017-18 the OSBC was represented at a number of events and business expos including:

- Meet the Buyer (Office of the Industry Advocate)
- Job Ex (Department of the Premier and Cabinet)
- Transforming Business 2017 (RDA Barossa)
- Find Your Place In the Digital Space (nbn Australia)
- SA Migrant Small Business Expo (Community Corporate)
- Allied Health Business Event (Allied Health Connection)
- Northern Region Small Business Summit (Institute of Public Accountants)
- Grow Your Business Expo (City of Marion)
- Gawler Small Business Expo (Gawler Business Development Group)

JOBEX – JOBS IN EMERGING INDUSTRIES

JobEx – Jobs in Emerging Industries was billed as the largest free employment and careers exhibition in SA. It was held in Adelaide (attracting 8162 people), Port Augusta (1160) and Murray Bridge (823) in November 2017.

The OSBC attended all three events, which showcased more than 120 of the State's leading businesses, their career pathways and job opportunities in emerging industries. It included the launch of the I Work for SA campaign, which promotes working within the public sector.

The five growing industry sectors represented at the event were defence and ship building, health and research, IT and hi-tech, energy and mining, and tourism, food and wine.

Speakers included SA's Chief Advisor on Innovation, Dr Tom Hajdu, and Chartered Professional Engineer Emilio De Stefano.

FAMILY BUSINESS AUSTRALIA HALL OF FAME INDUCTION

The OSBC has a close relationship with Family Business Australia's SA Chapter (FBASA) and supports its work assisting small family businesses in the State.

FBASA invited the OSBC to host its annual Hall of Fame Induction on 19 September 2017, which would honour Bremerton Wines.

The FBA Hall of Fame recognises the achievements of family-owned SA business and the contribution they make to the community and economy. State inductees are eligible to enter into the National Family Business Awards for consideration for the Distinguished Family Business of the Year Award.

The Commissioner spoke at the event, which was held in the Small Business Centre Boardroom and was attended by many bodies within the wine industry as well as key members of the FBASA.



OSBC staff member Jackie Stringer with former Premier of SA Hon Jay Weatherill at JobEx in Adelaide



OSBC staff member Mike Goutziemanis with Office of the Industry Advocate staff member Keiden Smith at the JobEx in Murray Bridge

SOUTH AUSTRALIAN MIGRANT SMALL BUSINESS EXPO 2017

The OSBC attended the South Australian Migrant Small Business Expo, which was held on 13 November 2017 at the Adelaide Town Hall.

This free annual community event aims to assist migrants by educating them and connect them with others who have followed similar paths.

The 2017 Expo was attended by over 150 delegates (30% of whom were existing business owners) from 41 different cultural backgrounds including German, Indian, UK, Australian, Romanian, Latvian, Russian, Hindu, Portuguese, Chinese, Persian, Brazilian, Dutch, Filipino, Mexican, Singaporean, Malaysian, Pakistani, Argentinian, Afghan, Iraqi, Iranian, Sri Lankan, Indonesian, Nepalese, Serbian, Egyptian, Venezuelan, Scottish, Italian, Sudanese, Greek, Bangladeshi, Burmese, Spanish, Ethiopian and Congolese.

The OSBC also attended the Multicultural Women's Business Breakfast, held the morning of the Expo, at which Lady Mayoress Genevieve Theseira-Haese was the guest speaker.



OSBC staff member Susie Sammut at the City of Marion Grow Your Business Expo



OSBC staff member Erin Gossert at the Edge – A Forum for Small Business held at the ARC Campbelltown



John Chapman congratulating Family Business Australia SA Hall of Fame Inductee Bremerton Wines. Left to right Craig Wilson, Rebecca Wilson, Debbie Reed (FBA SA Chair), Lucy Wilson, Mignonne Wilson and John Chapman



OSBC staff member Jackie Stringer with a client at the SA Migrant Small Business Expo at the Adelaide Town Hall.

REGIONAL ENGAGEMENT

RIVERLAND MEETINGS

In April 2018, the Commissioner visited the Riverland and discussed the development of the Small Business Friendly Council initiative with senior representatives from the Renmark-Paringa, Berri-Barmera and Loxton-Waikerie Councils.

Meetings also were held with a number of small businesses, including Mallee Estate wines, which is undertaking an expanding export program to China, and Yates Electrical, which is working closely with Chinese partners to expand a solar farm development in Australia.



John Chapman with the local Member of Parliament, Tim Whetstone MP in Renmark

BUSINESS SA REGIONAL VOICE PROGRAM

The Commissioner continued a partnership with Business SA to promote the services of the OSBC in regional areas.

The Business SA Regional Voice meetings with small business owners provide direct feedback on issues of concern or areas of improvement in service delivery or policy improvement.

The Commissioner or senior OSBC staff attended events in Whyalla, Loxton, Waikerie, Kingscote, Mt Gambier, Barossa Valley (Rowland Flat) and Murray Bridge.

PASKEVILLE FIELD DAYS

The OSBC attended the bi-annual Paskeville field days and had a small display in the Grain Producers SA marquee. This provided the opportunity to discuss issues with rural producers and advise of the assistance which is available to them, including the special dispute resolution powers under the *Fair Trading (Farming Industry Dispute Resolution Code) Regulations 2013* (Farming Code).

The Commissioner met with a number of Members of Parliament and farmers during a scheduled meeting session at the event.



One of the many paths to the displays at Paskeville



John Chapman with Jim Markeas, Mallee Estate Director and Winemaker at Mallee Estate Wines in Renmark



Grain Producers SA Policy Officer Trudy Huczko and Business Manager Belinda Ryan at the Paskeville display



John Chapman with OSBC staff member Brenton Williams at Paskeville Field Days

PRESENTATIONS BY THE COMMISSIONER

Adelaide Business Hub Lunch	West Lakes
Adjudicate Today Annual Adjudication Seminar	Sydney
Ai Group SA Branch Advisory Council Meeting	Wayville
Air Conditioning and Mechanical Contractors Association	Thebarton
ASIC and CPA Presentation	Adelaide
Australian Subcontractors Association Presentation to Members	Torrensville
BDO State Survey Launch	Adelaide
Business Breakfast, Barossa RDA	Gawler
Business Breakfast with Rachel Sanderson, Member for Adelaide	Walkerville
Business SA Regional Voice	Loxton Kangaroo Island Riverland West (Waikerie) Whyalla Barossa
Business SA Presentation to Regional Chambers of Commerce	Adelaide
Eyre Peninsula Local Government Association	Whyalla
FBA Hall of Fame	Adelaide
Kangaroo Island Seminar	Kingscote
Legal Services Commission	Adelaide
LGA Regional Councils Meeting	Adelaide
Master Builders Association	Adelaide
Master Builders Association Seminar	Adelaide
Northern Region Small Business Summit	Alberton
Resolution Institute	Adelaide
Rural Business Support Annual Stakeholder Breakfast Event	Adelaide
SA Migrant Small Business Expo	Adelaide
Small Business Friendly Council presentation	Mallala
Southern and Hills LGA Meeting	Stirling
Transforming Business 2017	Barossa Valley
Unley Business Awards	Unley
Water Industry Alliance AGM	Adelaide
Xero Panel Discussion	Adelaide



WHYALLA SUPPORT FOR SMALL BUSINESSES

A new future for Whyalla was secured with the September 2017 sale of the Arrium assets and Whyalla Steelworks to the GFG Alliance led by Mr Sanjeev Gupta.

For the 16 months prior, the Commissioner had worked closely with Arrium's administrators, KordaMentha, and dozens of Whyalla businesses caught by the administration process. He continues to work with Whyalla businesses, the Whyalla Council and the Chamber of Commerce post the sale.

It is a promising outcome but the Commissioner has cautioned that the Whyalla production remains at the whim of international commodity markets.

The challenge for the many small businesses which provide services and goods to the steelworks is now to identify opportunities to diversify their business base. There are some major developments happening in the north of the State, with the Solar Reserve Project at Port Augusta and BHP expanding its mining operations after being on hold for a few years.

The message for these businesses is the need to look beyond the smoke stack of the steel works to ensure they are not reliant on just one customer.



Whyalla Chamber of Commerce Awards night Business of the year recipients. Left to right Ron Hay, Chamber of Commerce Chairman and Kate Head from Head Catering and John Chapman

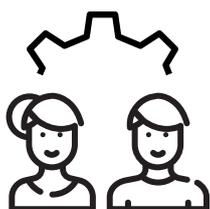


Partners from KordaMentha visited the OSBC to speak with staff about the administration of the Arrium Group of companies including the Whyalla Steelworks. Left to right Scott Langdon, Sebastian Hams, John Chapman and Mark Mentha

SMALL BUSINESS FRIENDLY COUNCIL INITIATIVE

This year the OSBC established the Small Business Friendly Local Council Initiative (the Initiative) to bring small businesses closer to their local councils.

The Initiative was launched in Whyalla in August 2017 by the Member for Giles, Eddie Hughes MP (representing the then Minister for Small Business, Hon Martin Hamilton-Smith MP) and Mayor of Whyalla, Lyn Breuer and is supported by the Local Government Association.



19

**councils
joined by
30 June
2018**

The OSBC provided every Council in South Australia with an invitation to join the Initiative and consider signing the Charter Agreement which sets out details of the program. Nineteen Councils had joined the program as at 30 June.

A Council can be instrumental in shaping the business environment in a city or regional centre through design and planning to make it welcoming, promote tourism and develop supporting infrastructure or pave the way for developments and supporting infrastructure.

The Charter Agreement requires a commitment by a Council to small business and regular consultation which will build an understanding of their needs, goals and the challenges which they face.

The Charter requires a commitment to customer service – a real commitment to be accessible to

small businesses and at the same time educate small business on their regulatory obligations and work with them to achieve compliance in a manner which is transparent and simple.

The program encourages Council to remove unnecessary regulation and think about impacts on business (and indeed the wider community) when enacting new regulations. This can also include working with other local councils on initiatives and reviewing policies which cause difficulties.

Councils are encouraged to develop activities which can be undertaken to support local business. For example, the local Christmas Pageant is a very real example of an event which brings the community into the city centre and marks the start of the Christmas retail season.



The City of Whyalla was the first Council to join the Initiative at its launch event in August 2017. Left to right Chris Cowley, City of Whyalla CEO, John Chapman, Eddie Hughes MP, local Member of Parliament, Lyn Bruer, Mayor of Whyalla and Sam Johnson, Mayor of Port Augusta



Signing of the Small Business Friendly Council Initiative for the City of Holdfast Bay. Left to right Stephen Patterson, Mayor of Holdfast Bay, Justin Lynch, Council CEO, Virginia Miller, Business Development Partner and John Chapman

Paying small business on time is another priority. Undisputed accounts should be paid within 30 days or less. The State Government is committed to this policy and indeed has legislation in place to support this.

All this means that cash flow for businesses is improved and that is good for the local economy.

Recognising local businesses when procuring goods and services is critical in both metropolitan and regional areas by both State and Federal Governments. The LGA is to be commended for its recent initiatives in that regard with the Industry Advocate Ian Nightingale.

Councils are encouraged to show good links into the local business groups. These groups are vital to giving realistic and thoughtful feedback from a business perspective.

Councils which sign up to the program will need to identify initiatives which they can implement which will benefit both the council and business including procurement. The Local Government Association (LGA) has been undertaking some great work in this area on behalf of their members.

Some of the LGA's initiatives include the tourism economy, engagement with China, and minerals and energy development.

If a dispute arises between a council and local business, the goal is to make sure effective dispute

resolution mechanisms are in place. The OSBC is always available to assist in that regard as one of our core roles is to help business and other parties including local government, navigate complex disputes through alternative dispute resolution processes including mediation which is at low or no cost.

For many councils, this charter will simply reinforce what they do. For others there will be an opportunity to make a positive change.



Signing of the Small Business Friendly Council Initiative for Tumby Bay District Council. Left to right Trevor Smith, Council CEO, John Chapman and Sam Telfer, Mayor of Tumby Bay.

For official use only

Government of South Australia
Auditor-General's Department

Our ref: A18/352, A18/042

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

27 September 2018

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

Dear Mr Chapman

**Audit of the Small Business Commissioner and
 the Retail Shop Leases Fund for the year to 30 June 2018**

We have completed the audit of your accounts for the year ended 30 June 2018. Three key outcomes from the audit are the:

- 1 Independent Auditor's Report on your agency's financial report
- 2 opinion 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 audit did not identify any significant matters requiring management attention, we will not issue any audit management letters.

For official use only

What the audit covered

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

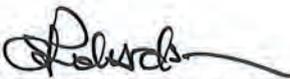
Our audit covered the principal areas of the agency's financial operations and included test reviews of systems, processes, internal controls and financial transactions. Some notable areas were:

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

We concluded that the financial report was prepared in accordance with the financial reporting framework in this respect.

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

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 financial report of the Small Business Commissioner for the financial year ended 30 June 2018.

Opinion

In my opinion, the accompanying financial report gives a true and fair view of the financial position of the Small Business Commissioner as at 30 June 2018, its financial performance and its cash flows for the year then ended in accordance with the Treasurer's Instructions issued under the provisions of the *Public Finance and Audit Act 1987* and Australian Accounting Standards.

The financial report comprises:

- a Statement of Comprehensive Income for the year ended 30 June 2018
- a Statement of Financial Position as at 30 June 2018
- a Statement of Changes in Equity for the year ended 30 June 2018
- a Statement of Cash Flows for the year ended 30 June 2018
- notes, comprising significant accounting policies and other explanatory information
- a Certificate from the Small Business Commissioner and the Manager, Business Services.

Basis for opinion

I conducted the audit in accordance with the *Public Finance and Audit Act 1987* and Australian Auditing Standards. My responsibilities under those standards are further described in the 'Auditor's responsibilities for the audit of the financial report' section of my report. I am independent of the Small Business Commissioner. The *Public Finance and Audit Act 1987* establishes the independence of the Auditor-General. In conducting the audit, the relevant ethical requirements of APES 110 Code of Ethics for Professional Accountants have been met.

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

Responsibilities of the Small Business Commissioner 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 issued under the provisions of the *Public Finance and Audit Act 1987* and the Australian Accounting Standards, and for such internal control as management determines is necessary to enable the preparation of the financial report that gives a true and fair view and is free from material misstatement, whether due to fraud or error.

Auditor's responsibilities for the audit of the financial report

My objectives are to obtain reasonable assurance about whether the financial report as a whole is free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with Australian Auditing Standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of this financial report.

As part of an audit in accordance with Australian Auditing Standards, I exercise professional judgement and maintain professional scepticism throughout the audit. I also:

- identify and assess the risks of material misstatement of the financial report, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control
- obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances
- evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the Small Business Commissioner
- evaluate the overall presentation, structure and content of the financial report, including the disclosures, and whether the financial report represents the underlying transactions and events in a manner that achieves fair presentation.

My report refers only to the financial report described above and does not provide assurance over the integrity of electronic publication by the entity on any website nor does it provide an opinion on other information which may have been hyperlinked to/from the report.

I communicate with the Small Business Commissioner about, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that I identify during the audit.



Andrew Richardson

Auditor-General

27 September 2018

Small Business Commissioner
Certification of the Financial Statements
for the year ended 30 June 2018

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

- 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
- present a true and fair view of the financial position of the Small Business Commissioner as at 30 June 2018 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

27th September 2018



Enza Pullino
Manager, Business Services

27th September 2018

Small Business Commissioner (SBC)

Financial Statements

For the year ended 30 June 2018

Small Business Commissioner
Statement of Comprehensive Income
for the year ended 30 June 2018

	Note	2018 \$'000	2017 \$'000
<u>Expenses</u>			
Employee benefits	3	1 235	1 179
Supplies and services	4	680	461
Depreciation and amortisation	5	163	121
Total expenses		2 078	1 761
<u>Income</u>			
Recoveries	6	239	195
Resources received free of charge	7	14	-
Mediation income		3	4
Total income		256	199
Net cost of providing services		(1 822)	(1 562)
<u>Revenues from SA Government</u>			
Revenues from SA Government	8	1 847	1 540
Total net revenues from SA Government		1 847	1 540
Net result		25	(22)
Total comprehensive result		25	(22)

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

The above Statement of Comprehensive Income should be read in conjunction with the accompanying notes.

Small Business Commissioner Statement of Financial Position as at 30 June 2018

	Note	2018 \$'000	2017 \$'000
<u>Current assets</u>			
Cash and cash equivalents	9	862	702
Receivables	10	44	24
Total current assets		906	726
<u>Non-current assets</u>			
Property, plant and equipment	12	302	417
Intangible assets	13	165	146
Total non-current assets		467	563
Total assets		1 373	1 289
<u>Current liabilities</u>			
Payables	14	70	55
Employee benefits	15	123	126
Total current liabilities		193	181
<u>Non-current liabilities</u>			
Payables	14	23	18
Employee benefits	15	243	201
Total non-current liabilities		266	219
Total liabilities		459	400
Net assets		914	889
<u>Equity</u>			
Retained earnings		914	889
Total equity		914	889

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

Unrecognised contractual commitments 16

Contingent assets and liabilities 17

The above Statement of Financial Position should be read in conjunction with the accompanying notes.

Small Business Commissioner
Statement of Changes in Equity
for the year ended 30 June 2018

	Retained earnings	Total equity
	\$'000	\$'000
Balance at 30 June 2016	911	911
Net result for 2016-17	(22)	(22)
Total comprehensive result for 2016-17	(22)	(22)
Balance at 30 June 2017	889	889
Net result for 2017-18	25	25
Total comprehensive result for 2017-18	25	25
Balance at 30 June 2018	914	914

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

The above Statement of Changes in Equity should be read in conjunction with the accompanying notes.

Small Business Commissioner
Statement of Cash Flows
for the year ended 30 June 2018

		2018	2017
		(Outflows)	(Outflows)
		Inflows	Inflows
	Note	\$'000	\$'000
<u>Cash flows from operating activities</u>			
Cash outflows			
Employee benefit payments		(1 196)	(1 105)
Payments for supplies and services		(667)	(470)
Cash used in operations		(1 863)	(1 575)
Cash inflows			
Recoveries from Retail Shop Leases Fund		239	195
Mediation receipts		3	-
Cash generated from operations		242	195
Cash flows from SA Government			
Receipts from SA Government	8	1 847	1 540
Cash generated from SA Government		1 847	1 540
Net cash provided by operating activities		226	160
<u>Cash flows from investing activities</u>			
Cash outflows			
Purchase of property, plant and equipment		(66)	(668)
Cash used in investing activities		(66)	(668)
Net cash used in investing activities		(66)	(668)
Net increase / (decrease) in cash and cash equivalents		160	(508)
Cash and cash equivalents at the beginning of the reporting period		702	1 210
Cash and cash equivalents at the end of the reporting period	9	862	702

The above Statement of Cash Flows should be read in conjunction with the accompanying notes.

Small Business Commissioner

Notes to and forming part of the financial statements

for the year ended 30 June 2018

1 Basis of financial statements

1.1 Reporting entity

The Small Business Commissioner (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 controls the operations of the Retail Shop Leases Fund through his statutory responsibility to administer the *Retail and Commercial Leases Act 1995*.

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

1.2 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 *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. Australian Accounting Standards and Interpretations that have recently been issued or amended but are not yet effective, have not been adopted by the Commissioner for the period ending 30 June 2018.

1.3 Basis of preparation

The financial statements have been prepared based on a 12 month period and presented in Australian currency. The historical cost convention is used unless a different measurement basis is specifically disclosed in the note associated with the item measured on a different basis.

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

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.

Significant accounting policies are set out in the notes.

1.4 Taxation

The Commissioner is not subject to Income Tax. The Commissioner is liable for Payroll Tax, Fringe Benefits Tax (FBT) and Goods and Services Tax (GST). Income, expense and assets are recognised net of the amount of GST. GST collections and payments are carried out by the Department of State Development on behalf of the Commissioner.

Small Business Commissioner

Notes to and forming part of the financial statements

for the year ended 30 June 2018

2 Objectives

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.

The objectives of the Commissioner are:

- 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 responsible 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*
- Disputes resolution body for *Late Payment of Government Debts (Interest) Act 2013*.

Small Business Commissioner
Notes to and forming part of the financial statements
for the year ended 30 June 2018

3 Employee benefits

	2018	2017
	\$'000	\$'000
Salaries and wages	929	907
Long service leave	45	44
Annual leave	93	79
Skills and experience retention leave	5	2
Employment on-costs - superannuation *	105	94
Employment on-costs - other	58	53
Total employee benefit expenses	1 235	1 179

* The superannuation employment on-cost charge represents the Commissioner's contributions to superannuation plans in respect of current services of current employees.

Key management personnel

Key management personnel include the responsible Minister and the Commissioner who have the responsibility for the strategic direction and management of the office.

The compensation detailed below excludes salaries and other benefits for which the Minister receives. Aggregate compensation of the Minister will be disclosed in the Whole of Government Consolidated Financial Report.

	2018	2017
	\$'000	\$'000
Compensation		
Salaries and other short term employee benefits	263	265
Post-employment benefits	24	24
Total compensation	287	289

The post-employment benefits relate to superannuation.

Remuneration of employees

The number of employees whose remuneration received or receivable falls within the following bands:

	2018	2017
	Number	Number
\$279 001 - \$289 000	1	-
\$289 001 - \$299 000	-	1
Total number of employees	1	1

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, superannuation contributions, fringe benefits tax and any other salary sacrifice benefits. The total remuneration received by the employee for the year was \$0.287 million (2017: \$0.289 million).

Small Business Commissioner
Notes to and forming part of the financial statements
for the year ended 30 June 2018

4 Supplies and services

	2018	2017
	\$'000	\$'000
Marketing	199	151
Accommodation and service costs	153	86
Office administration expenses	118	82
Communications and information technology expenses	115	47
Travel and related expenses	41	44
Accounting and audit fees	18	28
Mediation fees	22	13
Staff related expenses	14	7
Contractors	-	3
Total supplies and services	680	461

Marketing expenditure increased in 2018 for increased advertising and printing for information services.

Accommodation expenditure increased in 2018 due to the full year rental expense incurred for new accommodation. The new lease arrangement had a rent-free period in 2017, as part of the negotiated contract.

5 Depreciation and amortisation

	2018	2017
	\$'000	\$'000
Depreciation and amortisation		
Buildings and leasehold improvements	116	107
Intangible assets	47	14
Total depreciation and amortisation	163	121

All non-current assets, having a limited useful life, are systematically depreciated / amortised over their useful lives in a manner that reflects the consumption of their service potential.

Lease incentives in the form of leasehold improvements are capitalised as an asset and depreciated over the remaining term of the lease or estimated useful life of the improvement, whichever is shorter.

Small Business Commissioner
Notes to and forming part of the financial statements
for the year ended 30 June 2018

5 Depreciation and amortisation (continued)

Useful lives

Depreciation / amortisation is calculated on a straight line basis over the estimated useful life of the asset as follows:

Class of asset	Useful life (years)
Leasehold improvements	Life of lease
Intangible / software	1-5

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.

Revision of accounting estimates

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.

The increase in depreciation for building and leasehold improvements is related to the new shopfront fit-out capitalised in 2018. The increase in amortisation of intangible assets is related to the acquisition of a new retail bonds management system in 2017.

6 Recoveries

	2018	2017
	\$'000	\$'000
Retail Shop Leases Fund administration fees	239	195
Total recoveries	239	195

The increase in fees relates to an additional once off cost in 2018 to support the implementation of the new Retail Bonds Management System.

7 Resources received free of charge

	2018	2017
	\$'000	\$'000
Services received free of charge	14	-
Total resources received free of charge	14	-

On the 21 November 2016, approval was given by Cabinet to cease the intra-government charging model for services provided by Shared Services SA (SSSA) to general government sector agencies. As a result of this change, effective from 2018, SSSA is directly appropriation funded for the services provided by SSSA to general government agencies. Under AASB 1004, *Contributions*, the contribution of services provided by SSSA to government agencies are disclosed in the financial statements as income because the fair value of the services can be reliably measured and the services would have been purchased if they had not been donated. A corresponding expense is recognised in the financial statements within office administration expenses (refer note 4).

Small Business Commissioner
Notes to and forming part of the financial statements
for the year ended 30 June 2018

8 Revenues from SA Government

	2018 \$'000	2017 \$'000
Revenues from SA Government		
Intra government transfers	1 847	1 540
Total revenues from SA Government	1 847	1 540
Net revenues from SA Government	1 847	1 540

Relates to transfers for operational funding received via the Department of State Development.

9 Cash and cash equivalents

	2018 \$'000	2017 \$'000
Cash at bank	862	702
Total cash and cash equivalents	862	702

Cash is measured at nominal amounts.

10 Receivables

	2018 \$'000	2017 \$'000
<u>Current</u>		
Receivables	1	3
Prepayments	43	21
Total current receivables	44	24
Total receivables	44	24

Interest rate and credit risk

Receivables arise in the normal course of selling goods and services to other government agencies and to the public. Receivables are normally settled within 30 days after the issue of an invoice or the goods / services have been provided under a contractual arrangement. Receivables, prepayments and accrued revenues are non-interest bearing.

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. Other than as recognised in the allowance for doubtful debts, it is not anticipated that counterparties will fail to discharge their obligations. The carrying amount of receivables approximates net fair value due to being receivable on demand. There is no concentration of credit risk.

Categorisation of financial instruments and risk exposure information - refer note 19.

Small Business Commissioner
Notes to and forming part of the financial statements
for the year ended 30 June 2018

11 Non-current assets

Revaluation

All non-current tangible assets are valued at fair value and revaluation of non-current assets or group of assets is only performed when its fair value at the time of acquisition is greater than \$1 million and estimated useful life is greater than three years.

The Commissioner does not have a class of assets greater than \$1 million, therefore no revaluation is required.

12 Property, plant and equipment

	2018	2017
	\$'000	\$'000
<u>Buildings and leasehold improvements</u>		
Buildings and leasehold improvements at fair value	524	524
Accumulated depreciation	(222)	(107)
Total buildings and leasehold improvements	302	417
Total property, plant and equipment	302	417

Acquisition and recognition

Non-current assets are initially recorded at cost, plus any incidental cost involved with the acquisition. Non-current assets are subsequently measured at fair value less accumulated depreciation which gives rise to a new fair value.

Where assets are acquired at no cost, or minimal cost, they are recorded at fair value in the Statement of Financial Position.

However, if the assets are acquired at no or nominal cost as part of a restructure of administrative arrangements then the assets are recognised at book value (i.e. the amount recorded by the transferor public authority immediately prior to the restructure).

All non-current tangible assets with a value equal to or in excess of \$10 000 are capitalised.

Small Business Commissioner
Notes to and forming part of the financial statements
for the year ended 30 June 2018

12 Property, plant and equipment (continued)

Reconciliation of property, plant and equipment

The following table shows the movement of property, plant and equipment during 2017-18:

	Buildings and leasehold improvements	Total
	\$'000	\$'000
Carrying amount at the beginning of the period	417	417
Depreciation and amortisation	(115)	(115)
Carrying amount at the end of the period	302	302

13 Intangible assets

	2018	2017
	\$'000	\$'000
<u>Intangibles / software</u>		
Computer software	262	196
Accumulated amortisation	(97)	(50)
Total intangible assets	165	146

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, 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 *Intangible Assets* are expensed.

Where subsequent expenditure on intangible assets cannot be attributed to existing intangible assets the expenditure is not capitalised but is classified as expenditure.

The department has no contractual commitments for the acquisition of intangible assets.

Impairment

There were no indications of impairment of intangible assets at 30 June 2018.

Small Business Commissioner
Notes to and forming part of the financial statements
for the year ended 30 June 2018

13 Intangible assets (continued)

Reconciliation of intangible assets

The following table shows the movement of intangible assets during 2017-18:

	Intangibles / software	Intangibles work in progress	Total
	\$' 000	\$'000	\$' 000
Carrying amount at the beginning of the period	146	-	146
Acquisitions	31	36	67
Capitalisation	36	(36)	-
Amortisation	(48)	-	(48)
Carrying amount at the end of the period	165	-	165

14 Payables

	2018 \$'000	2017 \$'000
<u>Current</u>		
Accrued expenses	51	36
Employment on-costs ^	19	19
Total current payables	70	55
<u>Non-current</u>		
Employment on-costs ^	23	18
Total non-current payables	23	18
Total payables	93	73

^ Employment on-costs include payroll tax and superannuation contributions. 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 reporting date relates to any contributions due but not yet paid to the South Australian Superannuation Board.

As a result of an actuarial assessment performed by the Department of Treasury and Finance, the proportion of long service leave taken as leave has increased from 40% in 2017 to 41% in 2018 and the average factor for the calculation of employer superannuation on-cost has changed from the 10.1% in 2017 rate to 9.9% in 2018. These rates are used in the employment on-cost calculation. The net financial effect of the changes in the current financial year is immaterial.

Interest rate and credit risk

Payables are measured at nominal amounts. Creditors and accruals are raised for all amounts owing but unpaid. Sundry creditors are normally settled within 30 days from the date the invoice is first received. Employment on-costs are settled when the respective employee benefits that they relate to are discharged. All payables are non-interest bearing. The carrying amount of payables represents fair value due to the amounts being payable on demand.

Small Business Commissioner

Notes to and forming part of the financial statements

for the year ended 30 June 2018

15 Employee benefits

	2018 \$'000	2017 \$'000
<u>Current</u>		
Accrued salaries and wages	19	18
Annual leave	89	96
Long service leave	4	5
Skills and experience retention leave	11	7
Total current employee benefits	123	126
<u>Non-current</u>		
Long service leave	243	201
Total non-current employee benefits	243	201
Total employee benefits	366	327

Employee benefits accrue 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

Current long service leave reflects the portion of leave expected to be settled within the next 12 months based on the average long service leave taken annually over the previous 2 years.

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.

AASB 119 *Employee Benefits* contains the calculation methodology for long service leave liability.

The actuarial assessment performed by the Department of Treasury and Finance has provided a basis for the measurement of long service leave and is based on actuarial assumptions on expected future salary and wage levels, experience of employee departures and periods of service.

AASB 119 *Employee Benefits* 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 for 2018 remains unchanged 2.5%.

The net financial effect of the changes in the current financial year is a decrease in the long service liability is immaterial. The impact on future periods is impracticable to estimate as the long service leave liability is calculated using a number of demographical and financial assumptions – including 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 the salary inflation rate at 3% for annual leave and skills and experience retention leave liability.

Small Business Commissioner
Notes to and forming part of the financial statements
for the year ended 30 June 2018

16 Unrecognised contractual commitments

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

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

Commitments in relation to operating leases contracted for at the reporting date but not recognised as liabilities are payable as follows:

Operating lease commitments

Office as lessee

	2018	2017
	\$'000	\$'000
Within one year	146	133
Later than one year but not later than five years	243	365
Total operating lease commitments	389	498

Representing:

Cancellable operating leases	15	25
Non-cancellable operating leases	374	473
Total operating lease commitments	389	498

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 4 years and 8 months and having the right of renewal. A motor vehicle is leased from SAFA through their agent LeasePlan Australia, with lease periods of up to three years. This is cancellable without notice.

Office accommodation commitments relate to entities within the SA Government.

Commitments for the payment of other contracts and grant agreements in existence at the reporting date but not recognised as liabilities are payable as follows:

Other commitments

	2018	2017
	\$'000	\$'000
Within one year	9	113
Total other commitments	9	113

Amounts disclosed include commitments arising from agreements with SRA Information Technology and Deloitte for the Retail Bonds Management System.

17 Contingent assets and liabilities

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.

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

Small Business Commissioner

Notes to and forming part of the financial statements

for the year ended 30 June 2018

18 Related party transactions

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

Related parties of the Commissioner include all key management personnel and their close family members; all Cabinet Ministers and their close family members; and all public authorities that are controlled and consolidated into the whole of government financial statements and other interests of the Government.

Significant transactions with government related entities

The Commissioner is funded principally via a transfer of funds from the Department of State Development on behalf of SA Government (refer note 8).

The Commissioner has recovered \$0.2 million from the Retail Shop Lease Fund in 2017-18, for part of the cost of administering Part 10 of the *Retail and Commercial Leases Act 1995*. Quantitative information about the transaction and balance are disclosed at note 6.

19 Financial risk management / financial instruments

Financial risk management

Risk management is managed by the Commissioner's corporate services section and the Commissioner's risk management policies are drafted in accordance with the relevant Treasurer's Instructions. *Risk Management Policy Statement* issued by the Premier and Treasurer, and the Australian Standard ISO 31000 - 2009 *Risk Management Principles and Guidelines*.

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

Liquidity risk

Liquidity risk arises where the office is unable to meet its financial obligations as they fall due. The Commissioner is funded principally via a transfer of funds from the Department of State Development on behalf of 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. The Commissioner settles undisputed accounts within 30 days from the date of the invoice or date the invoice is first received. In the event of a dispute, payment is made 30 days from resolution. The Commissioner's exposure to liquidity risk is insignificant based on past experience and current assessment of risk.

The carrying amount of financial liabilities recorded in the table below represents The Commissioner's maximum exposure to financial liabilities.

Credit risk

Credit risk arises when there is the possibility of the office's debtors defaulting on their contractual obligations resulting in financial loss to the Commissioner. The Commissioner measures credit risk on a fair value basis and monitors risk on a regular basis.

The Commissioner has minimal concentration of credit risk. The Commissioner has policies and procedures in place to ensure that transactions occur with customers with appropriate credit history. The Commissioner does not engage in high risk hedging for its financial assets.

There are no impaired financial assets at 30 June 2018.

Small Business Commissioner
Notes to and forming part of the financial statements
for the year ended 30 June 2018

19 Financial risk management / financial instruments (continued)

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 respective financial asset / financial liability note.

Refer to the table below for the carrying amounts of each of the following categories of financial assets and liabilities: held-to-maturity investments; loan and receivables; and financial liabilities measured at cost.

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

Category of financial asset and financial liability	Note	2018	2017
		Carrying amount / fair value \$'000	Carrying amount / fair value \$'000
Financial assets			
Cash	9	862	702
Loans and receivables ⁽¹⁾⁽²⁾	10	1	3
Total financial assets		863	705
Financial liabilities			
Financial liabilities at cost ⁽¹⁾	14	31	36
Total financial liabilities		31	36

⁽¹⁾ The receivable and payable amounts disclosed here exclude amounts relating to statutory receivables and payables (e.g. 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, they would be excluded from the disclosure. The standard defines contract as enforceable by law.

⁽²⁾ The receivables amount disclosed here excludes prepayments. Prepayments are not financial assets defined in AASB 132 *Financial Instruments: Presentation* 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.

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.

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* and section 72(2) of the *Retail and Commercial Leases Act 1995*, I have audited the financial report of the Retail Shop Leases Fund for the financial year ended 30 June 2018.

Opinion

In my opinion, the accompanying financial report gives a true and fair view of the financial position of the Retail Shop Leases Fund as at 30 June 2018, its financial performance and its cash flows for the year then ended in accordance with the Treasurer's Instructions issued under the provisions of the *Public Finance and Audit Act 1987* and Australian Accounting Standards.

The financial report comprises:

- a Statement of Comprehensive Income for the year ended 30 June 2018
- a Statement of Financial Position as at 30 June 2018
- a Statement of Changes in Equity for the year ended 30 June 2018
- a Statement of Cash Flows for the year ended 30 June 2018
- notes, comprising significant accounting policies and other explanatory information
- a Certificate from the Small Business Commissioner and the Manager, Business Services.

Basis for opinion

I conducted the audit in accordance with the *Public Finance and Audit Act 1987* and Australian Auditing Standards. My responsibilities under those standards are further described in the 'Auditor's responsibilities for the audit of the financial report' section of my report. I am independent of the Retail Shop Leases Fund. The *Public Finance and Audit Act 1987* establishes the independence of the Auditor-General. In conducting the audit, the relevant ethical requirements of APES 110 Code of Ethics for Professional Accountants have been met.

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

Responsibilities of the Small Business Commissioner 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 issued under the provisions of the *Public Finance and Audit Act 1987* and the Australian Accounting Standards, and for such internal control as management determines is necessary to enable the preparation of the financial report that gives a true and fair view and is free from material misstatement, whether due to fraud or error.

Auditor's responsibilities for the audit of the financial report

My objectives are to obtain reasonable assurance about whether the financial report as a whole is free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with Australian Auditing Standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of this financial report.

As part of an audit in accordance with Australian Auditing Standards, I exercise professional judgement and maintain professional scepticism throughout the audit. I also:

- identify and assess the risks of material misstatement of the financial report, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control
- obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances
- evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the Small Business Commissioner
- evaluate the overall presentation, structure and content of the financial report, including the disclosures, and whether the financial report represents the underlying transactions and events in a manner that achieves fair presentation.

My report refers only to the financial report described above and does not provide assurance over the integrity of electronic publication by the entity on any website nor does it provide an opinion on other information which may have been hyperlinked to/from the report.

I communicate with the Small Business Commissioner about, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that I identify during the audit.



Andrew Richardson

Auditor-General

27 September 2018

Retail Shop Leases Fund
Certification of the Financial Statements
for the year ended 30 June 2018

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 Retail Shop Leases Fund
- present a true and fair view of the financial position of the Retail Shop Leases Fund as at 30 June 2018 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.



John Chapman
Small Business Commissioner

27th September 2018



Enza Pullino
Manager, Business Services

27th September 2018

Retail Shop Leases Fund

Financial Statements

For the year ended 30 June 2018

Retail Shop Leases Fund
Statement of Comprehensive Income
for the year ended 30 June 2018

	Note	2018 \$'000	2017 \$'000
<u>Expenses</u>			
Administration	3	239	195
Total expenses		239	195
<u>Income</u>			
Interest and investment	4	418	482
Total income		418	482
Net result		179	287
<u>Other comprehensive income</u>			
Items that will be reclassified subsequently to net result when specific conditions are met:			
Gain / (loss) on revaluation of investments recognised directly in equity	5	59	(70)
Total other comprehensive income		59	(70)
Total comprehensive result		238	217

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

The above Statement of Comprehensive Income should be read in conjunction with the accompanying notes.

Retail Shop Leases Fund
Statement of Financial Position
as at 30 June 2018

	Note	2018 \$'000	2017 \$'000
<u>Current assets</u>			
Cash and cash equivalents	6	339	566
Receivables	7	306	323
Investments	8	992	1 028
Total current assets		1 637	1 917
<u>Non-current assets</u>			
Investments	8	8 702	7 813
Total non-current assets		8 702	7 813
Total assets		10 339	9 730
<u>Current liabilities</u>			
Security bonds lodged	9	967	931
Payables	10	5	15
Total current liabilities		972	946
<u>Non-current liabilities</u>			
Security bonds lodged	9	6 931	6 586
Total non-current liabilities		6 931	6 586
Total liabilities		7 903	7 532
Net assets		2 436	2 198
<u>Equity</u>			
Investments market value reserve		161	102
Retained earnings		2 275	2 096
Total equity		2 436	2 198

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

Unrecognised contractual commitments	11
Contingent assets and liabilities	12

The above Statement of Financial Position should be read in conjunction with the accompanying notes.

Retail Shop Leases Fund
Statement of Changes in Equity
for the year ended 30 June 2018

	Note	Investments market value reserve \$'000	Retained earnings \$'000	Total equity \$'000
Balance at 30 June 2016		172	1 809	1 981
<u>Net result for 2016-17</u>		-	287	287
Loss taken to equity		(70)	-	(70)
Total comprehensive result for 2016-17		(70)	287	217
Balance at 30 June 2017		102	2 096	2 198
<u>Net result for 2017-18</u>		-	179	179
Gain taken to equity	5	59	-	59
Total comprehensive result for 2017-18		59	179	238
Balance at 30 June 2018		161	2 275	2 436

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

The above Statement of Changes in Equity should be read in conjunction with the accompanying notes.

Retail Shop Leases Fund
Statement of Cash Flows
for the year ended 30 June 2018

		2018 (Outflows) Inflows \$'000	2017 (Outflows) Inflows \$'000
<u>Cash flows from operating activities</u>	Note		
Cash outflows			
Administration		(239)	(195)
Bond refunds		(896)	(861)
Cash used in operations		(1 135)	(1 056)
Cash inflows			
Interest received		435	336
Bonds lodged		1 267	1 327
Cash generated from operations		1 702	1 663
Net cash provided by operating activities		567	607
<u>Cash flows from investing activities</u>			
Cash outflows			
Purchase of investments		(794)	(329)
Cash used in investing activities		(794)	(329)
Net cash used in investing activities		(794)	(329)
Net (decrease) / increase in cash and cash equivalents		(227)	278
Cash and cash equivalents at the beginning of the period		566	288
Cash and cash equivalents at the end of the period	6	339	566

The above Statement of Cash Flows should be read in conjunction with the accompanying notes.

Retail Shop Leases Fund

Notes to and forming part of the financial statements

for the year ended 30 June 2018

1 Basis of financial statements

1.1 Reporting entity

The Retail Shop Leases Fund (the Fund) is established under the *Retail and Commercial Leases Act 1995* (the Act). 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.

1.2 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 Fund is a not-for-profit entity. Australian Accounting Standards and Interpretations that have recently been issued or amended but are not yet effective, have not been adopted by the Fund for the period ending 30 June 2018.

1.3 Basis of preparation

The financial statements have been prepared based on a 12 month operating cycle and presented in Australian currency. The historical cost convention is used unless a different measurement basis is specifically disclosed in the note associated with the item measured on a different basis.

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

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.

Significant accounting policies are set out in the notes.

1.4 Taxation

The Fund is not subject to Income Tax. The Fund is liable for Goods and Services Tax (GST). Income, expenses and assets are recognised net of the amount of GST. GST collections and payments are carried out by the Department of State Development (DSD) on behalf of the Fund.

2 Objectives and activities

The Fund consists of amounts received by the Small Business Commissioner (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 responsible Minister.

The Fund's main source of income is interest derived and distributions 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.

Retail Shop Leases Fund
Notes to and forming part of the financial statements
for the year ended 30 June 2018

3 Administration expenses

	2018	2017
	\$'000	\$'000
Administration costs	239	195
Total administration expenses	239	195

Reimbursements to the Small Business Commissioner, for part of the cost of administering Part 10 of the *Retail and Commercial Leases Act 1995*. The increase in fees is related to additional once off costs in 2018 to support the implementation of the new Retail Bonds Management System.

4 Interest and investment income

	2018	2017
	\$'000	\$'000
Interest and investment income	418	482
Total interest and investment income	418	482

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

5 Other comprehensive income

	2018	2017
	\$'000	\$'000
Gain / (loss) on revaluation from investments	59	(70)
Total other comprehensive income	59	(70)

Gain / loss from investments relate to changes in the market value of investments held with the Public Trustee. These investments are classified as available for sale financial assets.

6 Cash and cash equivalents

	2018	2017
	\$'000	\$'000
Cash at bank	339	566
Total cash and cash equivalents	339	566

Cash is measured at nominal amounts.

Retail Shop Leases Fund
Notes to and forming part of the financial statements
for the year ended 30 June 2018

7 Receivables

	2018 \$'000	2017 \$'000
<u>Current</u>		
Accrued interest	306	323
Total receivables	306	323

8 Investments

	2018 \$'000	2017 \$'000
<u>Current</u>		
Investments	992	1 028
Total current investments	992	1 028
<u>Non-current</u>		
Investments	8 702	7 813
Total non-current investments	8 702	7 813
Total investments	9 694	8 841

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 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 2018 the Fund held investments in common funds in the following proportions:

Capital Stable	64.05%
Balanced	22.97%
Cash Common Fund	9.92%

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.

Retail Shop Leases Fund
Notes to and forming part of the financial statements
for the year ended 30 June 2018

9 Security bonds lodged

	2018 \$'000	2017 \$'000
<u>Current</u>		
Bonds lodged	967	931
Total current security bonds lodged	967	931
<u>Non-current</u>		
Bonds lodged	6 931	6 586
Total non-current security bonds lodged	6 931	6 586
Total security bonds lodged	7 898	7 517

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

10 Payables

	2018 \$'000	2017 \$'000
<u>Current</u>		
Unclaimed bonds	5	15
Total current payables	5	15

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

11 Unrecognised contractual commitments

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

12 Contingent assets and liabilities

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

13 Related party transactions

Related parties of the Fund include all key management personnel and their close family members; all Cabinet Ministers and their close family members; and all public authorities that are controlled and consolidated into the whole of government financial statements and other interests of the Government.

Retail Shop Leases Fund

Notes to and forming part of the financial statements

for the year ended 30 June 2018

13 Related party transactions (continued)

Significant transactions with government related entities

The Fund has reimbursed \$239 000 to the Small Business Commissioner during 2018 (2017: \$195 000), for part of the cost of administering Part 10 of the *Retail and Commercial Leases Act 1995*. Quantitative information about the transaction and balance are disclosed at note 3.

Key management personnel

Refer to the Small Business Commissioner's financial statements for details of the remuneration of the Commissioner.

14 Financial risk management / financial instruments

Financial risk management

Risk management is managed by the office and the Fund risk management policies are in accordance with the *Risk Management Policy Statement* issued by the Premier and the Treasurer, relevant Treasurer's Instructions and the *Australian Risk Management Principles and Guidelines*.

The Fund's exposure to financial risk (liquidity risk, credit risk and market risk) is low due to the nature of the financial instruments held.

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 the respective financial asset / financial liability note.

The carrying amounts are detailed below of each of the following categories of financial assets and liabilities:

- Held-to-maturity investments;
- Receivables; and
- Financial liabilities measured at cost.

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, fixed interest and property. 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.

Retail Shop Leases Fund
Notes to and forming part of the financial statements
for the year ended 30 June 2018

14 Financial risk management / financial instruments (continued)

Category of financial asset and financial liability	Note	2018 Carrying amount / fair value (\$'000)	2017 Carrying amount / fair value (\$'000)
Financial assets			
Cash	6	339	566
Receivables ⁽¹⁾	7	306	323
Investments	8	9 694	8 841
Total financial assets		10 339	9 730
Financial liabilities			
Security bonds lodged	9	7 898	7 517
Payables ⁽¹⁾	10	5	15
Total financial liabilities		7 903	7 532

⁽¹⁾ The receivable and payable amounts disclosed here exclude amounts relating to statutory receivables and payables (e.g. 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, they would be excluded from the disclosure. The standard defines contract as enforceable by law.

⁽²⁾ 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.

Retail Shop Leases Fund

Notes to and forming part of the financial statements

for the year ended 30 June 2018

15 Impact of standards and statement not yet implemented

AASB 9 Financial Instruments

The revision to AASB 9 *Financial Instruments* applies to reporting periods beginning on or after 1 Jan 2018. AASB 9 *Financial Instruments* provides the principles for the classification, measurement, recognition, de-recognition and disclosure associated with financial assets and liabilities. The key changes include simplified requirements for classification and measurement of financial assets and a revised impairment loss model to recognise impairment losses earlier, as opposed to the current approach that recognised impairment only when incurred.

The funds invested with the Public Trustee are currently classified as Available for Sale at Fair Value through Other Comprehensive Income (FVOCI). On adoption of AASB 9 *Financial Instruments*, these investments will continue to be measured at fair value, however the gain / loss on revaluation of investment will be reported through the Net Result. The effect on the 2017-18 net result if the statements had been operational for 2017-18 would have been an increase in net result of \$59 000.

16 Events after the reporting period

There are no known events after balance date that affect the Fund.



**Office of the
Small Business
Commissioner**

Ground Floor, 99 Gawler Place
Adelaide, South Australia 5000

Telephone: 08 8303 2026
Toll Free: 1800 072 722
Facsimile: 08 8303 0943
Email: sasbc@sa.gov.au
Website: www.sasbc.sa.gov.au

ABN: 34 643 517 562



**Small Business
Commissioner**
SOUTH AUSTRALIA
INFORM | MEDIATE | ADVOCATE