



Annual REPORT 2018/19



**Small Business
Commissioner**
SOUTH AUSTRALIA



Government
of South Australia

MEET THE TEAM



Staff of the Office of the Small Business Commissioner.



**Published by
the Small Business Commissioner**

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www.sasbc.sa.gov.au

**Authorised by
the Small Business Commissioner**

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To:

Hon Vickie Chapman MP
Deputy Premier
Attorney-General

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 flourish extending to the right.

30 September 2019



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WE HELP
THOUSANDS OF
SOUTH AUSTRALIAN
BUSINESSES
EVERY YEAR.”

Message from The Small Business Commissioner	2
Operations of The Office of The Small Business Commissioner	6
Role and Functions	6
Dispute Resolution	12
Legislation	18
<i>Small Business Commissioner Act 2011</i>	18
<i>Building and Construction Industry Security of Payment Act 2009</i>	30
<i>Retail and Commercial Leases Act 1995</i>	33
<i>Farm Debt Mediation Act 2018</i>	40
<i>Fair Trading (Mining and Resources Industry Land Access Dispute Resolution Code) Regulation 2018</i>	40
<i>Local Government Act 1999</i>	41
<i>Work Health and Safety Act 2012</i>	43
Inquiries and Submissions	44
Inquiries	44
Submissions	44
Engagement with the Community	48
Information Services	48
Regional Engagement	52
Small Business Friendly Council Initiative	54
Other Relevant Information	56
Audited Financial Statements 2018/19	60

MESSAGE

from the Small Business
Commissioner



Cash flow is pivotal to business success, yet small businesses continue to suffer at the hands of their larger counterparts in terms of delays in payment for goods and services provided.

To make small businesses wait 90 days or more for payment is simply unacceptable. They should not be banks for big business.

I note that the Federal Government is now seeking to enshrine better payment terms for small business as part of new tender arrangements and is developing a national large business reporting framework to encourage fairer, faster payment times and terms for small business.

The Business Council of Australia has implemented a voluntary payment code for its big business members but there is no mandatory reporting requirement in terms of payment performance and the take up by members has been lukewarm.

Clearly it is time for a legislative approach that forces big businesses not only to implement better payment terms, but also to report on their performance.

The State Government has now mandated that interest will be automatically paid on outstanding payments to suppliers that exceed standard 30-day terms, subject to the account not being disputed, the calculated interest penalty being above \$10 and the amount of the invoice being under \$1 million.

Importantly, the Government itself has signed an agreement with the Council of Australian Governments (COAG) that it will now pay its bills in 20 days.

I would suggest, as a first step, that a new and legislated standard be applied to the private sector, with 30 days as a maximum payment period. The State Government should pursue this area with vigour through COAG to implement national legislation to force bigger businesses to improve their payment terms.

I am pleased to report that the poor behaviour of two large construction firms in relation to their dealings with my Office over complaints by subcontractors came to a conclusion in the Adelaide Magistrates Court in November 2018.

The prosecution of the Hansen Yuncken Leightons Contractors (HYLC) joint venture, builder of the new Royal Adelaide Hospital (nRAH), was a salient reminder to all businesses that when my Office requests information under Section 12 of the *Small Business Commissioner Act 2011*, the request should be taken very seriously.

HYLC chose to disengage from communication with my Office, preferring lengthy arguments through its legal representatives. My formal request for information arose after complaints from three subcontractors that the return of their retentions was being held up because of delays in completing the nRAH.

Subcontractors are often required to lodge substantial cash bonds or bank guarantees as retentions that head contractors claim are necessary to ensure completion of work and to cover any defects.

However, HYLC ultimately failed to provide the requested information.

The end result was that it faced a criminal prosecution and a fine of up to \$20,000. In November 2018 the HYLC joint venture partners, Hansen Yuncken and CPB Contractors (formerly Leightons), pleaded guilty, were fined \$1800 each and paid my full legal costs.

Put simply, the behaviour of HYLC towards the valid concerns of the three subcontractors was unacceptable.

I expect all businesses to respond fairly and positively to my Office when disputes arise.

I would urge other head contractors in the building and construction sector to take serious note of any requests they receive as my Office tries to help subcontractors and suppliers get paid in a timely manner.

Further details on this matter can be found on page 18.

Following my comments in the 2017/18 annual report, there is some progress in terms of the State and local governments improving their engagement with small businesses when undertaking road or other infrastructure works.

A number of local councils have engaged with my Office in the preplanning stages to seek guidance on the best way to work with businesses that are likely to be affected by the works.

Early consultation with the decision-makers (ie business owners and landlords) is vitally important and I note that the State Government has improved its processes in this area: the Department of Planning, Transport and Infrastructure (DPTI) having developed guidelines to improve engagement with small businesses.

It is hoped that such early work will lead to better outcomes and lesser and more manageable impacts on the businesses. I will continue to advocate for compensation for businesses where the impacts are significant.

This will require a reset of current capital works policies and it is my strong view that those responsible for such projects should allocate a small percentage of the total project cost to a pool of funds that can be used to provide redress where the impacts are significant and can't be avoided as the project rolls out.

Governments already make significant allowances for unknown variations that may arise, and a "Fair Treatment for Small Business" fund would not be a significant extra burden.

My Office is finalising a document that will assist the State and local governments in developing best practice business engagement when planning and delivering significant new road projects.

Another related area of disruption is that due to new high-rise construction in central Adelaide. After a long period of relatively low construction, there has been an escalation in recent years of new apartment building projects.

This is to be welcomed, but my Office has been called in on a number of occasions to assist small businesses that have lost access to parking or have been affected by dirt and mud or noise from the construction site or falling objects from the project.

We are working with the City of Adelaide and relevant State Government agencies to identify better ways of enforcing building permit terms, including working within prescribed hours.

For example, when an accommodation business is adjacent to a building project, there is a very reasonable expectation that the builder will adhere to the hours set down in the permit, so as not to unduly affect residents.

As the financial year drew to a close, the State Government was preparing to introduce to Parliament amendments to the *Retail and Commercial Lease Act 1995* (the RCL Act). The changes follow a long period of consultation and an independent review of the RCL Act. Further details can be found on page 33.

Work continued throughout the year on proposed changes to the *Building and Construction Industry Security of Payment Act 2009* (the SOP Act) following the release of a national review of all security of payment acts.

These changes are designed to strengthen the SOP Act, which provides an adjudication process for disputed payment claims in the building industry. It is hoped that amending legislation will be introduced in the 2019/20 financial year. Further details can be found on page 30.

The difficulties for subcontractors and suppliers in the building sector, and the gaps in some State Government procurement processes, were highlighted in my investigation into the failure of Coombs Barei Constructions Pty Ltd.

On page 20, I go into some detail of the failure by RenewalSA to undertake proper financial due diligence of the company prior to, and during, engagement in a number of home building projects.

A detailed report was prepared on the collapse of Coombs Barei (in liquidation). This highlighted the failures within RenewalSA and made a series of recommendations for change to provide greater protection for subcontractors and suppliers down the chain.

The State Government has rejected my request that the subcontractors on the RenewalSA/Coombs Barei projects be compensated through ex-gratia payments. This is disappointing, to say the least.

The Government has, however, provided my report to the SA Productivity Commission (SAPC) which is undertaking a two-stage review into procurement. It is due to provide its final report by the end of 2019.

It is hoped that the SAPC will recommend changes that will improve the management of all government procurement processes and, in particular, provide greater opportunities for small businesses and important protections when there are failures.

I would like to thank the Minister for Innovation and Skills, the Hon David Pisoni MP, and his staff for the ongoing support of my Office and its activities. As a result of a refocus of business support activities within the Government, ministerial responsibility

for the Office of the Small Business Commissioner transferred to the Deputy Premier and Attorney-General, the Hon Vickie Chapman MP, on 1 July 2019.

I would also like to acknowledge the commitment of every staff member in my Office. Their dedication to working to resolve disputes and help small business is second to none. Thank you!

Finally, thanks to every small business in South Australia. You are the economy and the future of the State, and you deserve to be recognised for your efforts and commitment.



John Chapman
Small Business Commissioner

“

THANK YOU SO MUCH
FOR YOUR PATIENCE
AND INTEREST IN
THIS MATTER – THESE
CORPORATIONS GET
AWAY WITH MURDER
AND IT'S GREAT TO
KNOW SUPPORT IS
THERE FOR SMALL
BUSINESSES. YOUR
HELP IS VERY MUCH
APPRECIATED.”

CHRIS



OPERATIONS

of the Office of
The Small Business
Commissioner

ROLE AND FUNCTIONS

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

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

The Office of the Small Business Commissioner (OSBC) supports and advocates for small business, providing information and tailored, industry-specific services to improve business management and decision-making.

The OSBC 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. It also facilitates negotiations between farmers and creditors in relation to issues around farm debt and with farmers and resources companies in relation to access to farming land.

In accordance with the *Small Business Commissioner Act 2011*:

- (1) The functions of the SBC are:
 - (a) 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; and
 - (b) to assist small businesses on request in their dealings with State and local government bodies; and
 - (c) to disseminate information to small businesses to assist them in making decisions relevant to their commercial dealings with other businesses and their dealings with State and local government bodies; and
 - (d) to 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*; and
 - (e) to monitor, investigate and advise the Minister about—
 - (i) non-compliance with industry codes that may adversely affect small businesses; and
 - (ii) market practices that may adversely affect small businesses; and
 - (f) to report to the Minister on matters affecting small businesses at the request of the Minister; and
 - (g) to 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; and
 - (h) to 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 State or local government bodies
 - (i) any other functions conferred on the Commissioner by or under this or any other Act.
- (2) The Commissioner is to perform the functions with a view to the development and maintenance in South Australia of relationships between small businesses and other businesses, and small businesses and State and local government bodies, that are based on dealings conducted fairly and in good faith.

CHANGES TO THE STRUCTURE

During 2018/19 there were no changes to the OSBC'S structure and objectives as a result of internal reviews or machinery-of-government changes. However, from 1 July 2019 the OSBC will move administratively from the Department for Innovation and Skills to the Attorney-General's Department.

MINISTERIAL RESPONSIBILITIES

During 2018/19, the Minister responsible for the *Small Business Commissioner Act 2011* was the Hon David Pisoni MP, Minister for Innovation and Skills. From 1 July 2019, this responsibility will move administratively to the Hon Vickie Chapman MP, Deputy Premier and Attorney-General.

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*

ORGANISATION STRUCTURE

The organisational structure for the OSBC can be accessed on the website at www.sasbc.sa.gov.au/about_us/our_services.

LEGISLATION ADMINISTERED

The OSBC has obligations and functions under the following Acts:

- *Small Business Commissioner Act 2011*
- *Small Business Commissioner Regulations 2012*
- *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*
- *Farm Debt Mediation Act 2018*
- *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*
- *Fair Trading (Mining And Resources Industry Land Access Dispute Resolution Code) Regulations 2018*

The SBC 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*

PERFORMANCE ACTIVITIES

PROGRAMS AND INITIATIVES AND THEIR EFFECTIVENESS AND EFFICIENCY

Program name	Indicators of performance/ effectiveness/efficiency	Results
Dispute Resolution	Number of enquiries received	3383
	Number of new cases	262
	Number of cases closed	260 - 233 prior to mediation - 27 through formal mediation
Information Sessions to Small Businesses	Attendance at events	14 events held in Adelaide and regions, totalling 369 attendees in person and via webinar
	Attendees' rating of events	97% 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

PERFORMANCE MANAGEMENT AND DEVELOPMENT SYSTEMS

Performance management and development systems	Assessment of effectiveness and efficiency
Performance Development Planning (PDP)	10 FTEs participated in PDPs, with 90% target met. *One staff member commenced on 17 June 2019 but PDP not completed by 30 June.

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 WHS training as required by the Department for Innovation and Skills. 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.
WHS Reporting	The OSBC displays appropriate signage in the office in relation to emergency procedures and WHS information and representatives. 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	2018/19	2017/18	% 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			
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)

**before third-party recovery

EXECUTIVE EMPLOYMENT

Executive classification	Number of executives
SAES	1

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WE'RE HERE
TO HELP SMALL
BUSINESS

INFORM | MEDIATE | ADVOCATE

FINANCIAL PERFORMANCE

The following is a brief summary of the overall financial position of the agency. Full audited financial statements for 2018/19 are attached to this report.

Statement of Comprehensive Income	2018/19 Budget	2018/19 Actual	Variation	2017/18 Actual
Operating Expenditure	2215	2007	208	2080
Operating Revenue	198	230	-32	258
Net cost of providing services	-2017	-1777	240	-1822
Net Revenue from SA Government	1859	1859	-	1847
Net result	-158	82	-240	25
Total Comprehensive Result	-158	82	-240	25
FTE's	11	10.4	-	10.6

Statement of Financial Position	2018/19 Budget	2018/19 Actual	Variation	2017/18 Actual
Current assets	906	1203	-297	906
Non-current assets	306	309	-3	467
Total assets	1212	1512	-300	1373
Current liabilities	193	250	-57	193
Non-current liabilities	266	266	-	266
Total liabilities	459	516	-57	459
Net assets	753	996	-243	914
Equity	753	996	-243	914

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 with a State or local government agency.

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 Office has 60-80 active disputes under management.

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

- Initial assistance (enquiries)
- Pre-mediation (formal case)
- External mediation (formal mediation)

Further information about each phase can be found on the OSBC website.

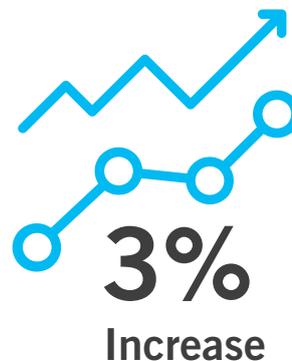
It is to be noted that the function of the OSBC is squarely set in the alternative dispute resolution space. Conversations are non-partisan and based upon the broader interests of disputing parties, rather than any legal rights that might be determined by a court or tribunal.

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).



During 2018/19
we received:

3383
Enquiries



ENQUIRIES

During 2018/19, the OSBC received 3383 enquiries – a 3% increase on the previous year – covering the *Small Business Commissioner Act 2011*, the *Retail and Commercial Leases Act 1995*, the *Building and Construction Industry Security of Payment Act 2009*, the *Farm Debt Mediation 2018*, the *Local Government Act 1999*, and general small business enquiries.

The table below shows the number of enquiries based on the legislation to which they relate.

Enquiries by Act	2018/19	2017/18
<i>Small Business Commissioner Act 2011</i>	1659 (49%)	1608 (49%)
<i>Retail and Commercial Leases Act 1995</i>	1187 (35%)	1112 (34%)
<i>Building and Construction Industry Security of Payment Act 2009</i>	132 (4%)	87 (3%)
<i>Farm Debt Mediation Act 2018</i>	42 (1.3%)	N/A
<i>Local Government Act 1999</i>	15 (0.4%)	N/A
Other jurisdictions	348 (10.3%)	477 (14%)
TOTAL	3383	3284

FORMAL CASES

During 2018/19, the OSBC handled 262 new formal cases, of which 27 subsequently went to formal mediation. 56 were still ongoing as at 30 June 2019. There are three category outcomes when a formal case is closed: successfully resolved, assistance provided, and unsuccessful.

As the table below shows, the OSBC dealt with 20% fewer formal cases than in the previous year, with a 3% increase in “success rate”; that is, the percentage of cases closed with a successfully resolved outcome compared to the total number of cases closed for the year. Of the 158 cases closed with a “successfully resolved” outcome, 140 were resolved prior to mediation and 19 at mediation.

Results of Cases Closed	2018/19	2017/18
Successfully resolved	158 (61%)	186 (58%)
Assistance provided	63 (24%)	74 (23%)
Unsuccessful	39 (15%)	63 (19%)
TOTAL	260	323



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I ALSO WANTED TO SAY THANK YOU FOR
BEING SO VERY HELPFUL AND EFFICIENT.
I DON'T THINK I HAVE EVER CONTACTED
AN ORGANISATION AND FELT SOMEONE WAS
HONESTLY TRYING TO BE OF ASSISTANCE
AS MUCH AS I HAVE THIS MORNING
WHEN TALKING TO YOU. PLEASE PASS MY
FEEDBACK ON TO YOUR SUPERIOR AS YOU
GAVE ME GREAT CUSTOMER SERVICE AND IT
SHOULD BE ACKNOWLEDGED!”

MEGAN

Results of Disputes Successfully Resolved

Of the 158 cases closed with a “successfully resolved” outcome:



139
Disputes
successfully
resolved prior
to mediation

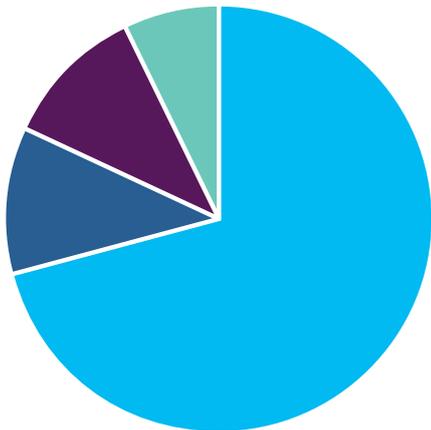


19
Disputes
successfully
resolved at
mediation

FORMAL MEDIATIONS

Formal mediations are conducted at the final stage of the dispute resolution process. In 2018/19, the OSBC conducted 27 formal mediations over 28 mediation days. Of these:

-  19 (71%) were successfully resolved
-  3 (11%) were not successful but assistance was provided
-  3 (11%) were unsuccessful – the parties did not come to an agreement
-  2 (7%) mediations were awaiting an outcome as at 30 June 2019.



As part of the dispute resolution process, the Case Team prepares cases that have reached the formal mediation stage for 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 current ongoing panel of mediators commenced on 1 July 2017, with an additional mediator added in January 2019.

The 10 members on the panel are:

- Ms Deb Black – Blackforrest Consulting
- Mr Colin Fullerton – Fullerton Consulting
- Mr Greg Rooney – Greg Rooney
- Mr Ian Nosworthy – Cowell Clarke Lawyers
- Mr Steve Georgiadis – Pathways CBS Pty Ltd
- Ms Ruth Beach – Ruth Beach
- Ms Alison Shaw – Shaw Mediation
- Mr Jonathon (Jon) Clarke – Jon Clarke Advisory
- Mr Brenton Trenorden – The Trenorden Family
- Dr Andrew Cannon – Cannon Consulting

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

CASE STUDIES

Activation of the Building and Construction Industry Dispute Resolution Code

The OSBC was approached by a small business that had engaged a contractor to do building work on its premises. It raised a number of issues in relation to the quality of workmanship and the fact that the work had only been partly completed. It had attempted to resolve the matter directly with the contractor without success.

The SBC contacted the contractor, who initially responded. However, communications deteriorated over time to the point that he was no longer engaging. The SBC elected to activate one of the six Industry Codes under the *Fair Trading Act 1987* – in this case, the Building and Construction Industry Dispute Resolution Code. Under that Code, the SBC was able to mandate that the parties attend a formal mediation in an attempt to resolve the outstanding issues.

A mediation was conducted, and both parties attended in good faith. During the mediation, the parties discussed the matter in depth and the small business came to understand that the contractor had been experiencing issues within his personal life.

The parties were able to reach a settlement agreement at mediation. The contractor agreed to pay compensation for the quality of work, that would need to be repaired by an alternative company.

Overall, this was a great example of the SBC activating one of the Industry Codes, including the extra powers that go with that. It resulted in a successful outcome.

Failure to make payments to a supplier

A small retail shop in regional South Australia found itself in quite substantial debt to one of its major suppliers, which was part of a large multi-national company that usually adopted a quite strict approach to late payment and outstanding debts.

The shop owner worked long hours and the running of the business was unsophisticated – particularly in relation to computers and emails. It ran on very tight margins, even before the discovery of the debt.

The supplier had allowed the debt to accumulate over more than two years without having pursued payment. That changed when its credit-controller demanded the shop pay around \$100,000 within a week.

In the first instance, the SBC wrote urgently to the CEO of the supplier and asked it to place a hold on its debt recovery while the OSBC undertook initial investigations.

Those investigations revealed that the shop had two accounts with the supplier. It made payments on one account as required but was unaware of the others as the invoices were going into a “spam” folder of a second email address.

Further investigations revealed that the supplier’s representatives were not particularly proactive in communications with the shop. Put simply, the supplier could have done more to prevent the debts mounting up.

The SBC made a direct appeal to the CEO for some leniency to be exercised in the circumstances.

To the supplier’s credit, it recognised that both parties could have done better and offered the trader a long-term payment regime. The shop remains in business and is steadily repaying the debt.

Small business issue with standard of work

The OSBC was contacted by a small business that had engaged a specialist company to repair a roller door at its premises.

It reported that the cost for the work was substantially higher than it had been told prior to the work being undertaken, and that the repairs had not resolved the problems.

The OSBC facilitated good-faith negotiations between the parties and was able to help fashion an agreement that included a substantial reduction in the roller-door company’s invoice.

OSBC’s intervention, as well as the parties’ desire to reach a resolution, resulted in the parties being able to move on in their business dealings by way of a successful resolution.

Small business issue with a work vehicle

A small business owner had received a substantial quote from a vehicle dealer to address recurring issues with his work vehicle’s turbocharger, as well as oil leaks from the main seal. As the vehicle’s warranty period had only recently lapsed, the complainant was seeking to have the costs waived.

Discussions with the dealer confirmed that the warranty had lapsed and that negotiations between the parties had stalled. Through the SBC’s intervention, negotiations recommenced with both the dealer and the vehicle manufacturer.

The SBC highlighted sections of Australian Consumer Law relating to a product being fit for purpose past the warranty date. The manufacturer subsequently agreed to repair the main seal leak for free, to pay 50% of the labour costs and to provide a 75% discount for parts for repair of the turbocharger.

As a result, a successful resolution was reached via the negotiation process through the OSBC.



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JOHN ON BEHALF OF THE BARMERA CLUB AND
WIDER COMMUNITY I WOULD LIKE TO THANK YOU
& YOUR DEPARTMENT ON THE INTERVENTION
RESOLVING THE ISSUE WITH SA POWER
NETWORKS RE REMOVAL OF LIGHT POLE IN FRONT
OF OUR CLUB CAUSING ISSUES WITH OUR NEW
ENTRANCE AND CREATING A FAIR BETTER LOOK.
IT IS PLEASING IN THESE TIMES TO KNOW THAT
DEPARTMENTS LIKE YOURS ARE APPROACHABLE
FOR HELP, TO ASSIST SMALL COUNTRY
COMMUNITIES WHO ARE STRIVING FOR BETTER
FACILITIES FOR THE AREA WITH LIMITED
BUDGETS. ANY SAVING IS HUGE TO US AND WILL
BE BETTER USED ELSEWHERE. AGAIN THANK YOU
VERY MUCH.”

PETER

LEGISLATION

SMALL BUSINESS COMMISSIONER ACT 2011

PROSECUTION UNDER SECTION 12 OF THE SMALL BUSINESS COMMISSIONER ACT 2011

Hansen Yuncken/Leighton Contractors (HYLC) Joint Venture

As reported in the 2017/18 report, in early 2018 the SBC commenced a prosecution of the Hansen Yuncken Leighton Contractors (HYLC) joint venture builders of the new Royal

Adelaide Hospital (nRAH). HYLC is a joint venture between Hansen Yuncken, and CPB Contractors (formerly known as Leighton Contractors).

The prosecution under Section 12 of the *Small Business Commissioner Act 2011* (the SBC Act) related to a formal and legal request for information issued to HYLC by the SBC.

In May 2017, the joint venture partners were requested to provide information under Section 12 of the SBC Act following complaints from three subcontractors seeking the return of their retention monies. Subcontractors are often required to lodge substantial cash bonds or bank guarantees as retentions that head contractors claim are necessary to ensure completion of work and to cover any defects.

After initial discussions and exchange of correspondence, HYLC refused to provide information, including details of all the subcontractors working on the project. The SBC then issued a formal request under the SBC Act.

The SBC was concerned about the impacts of possible or delayed repayment of retentions. Given the size of the nRAH project, it was possible that the 160 subcontractors had many millions of dollars outstanding.

This in itself created a broader risk to the building industry if expected cash or guarantee returns were not achieved as a result of either collapse of the HYLC joint venture or further project delays.

There was a considerable risk to many small businesses both directly and indirectly from this matter.



Hansen Yuncken Office on Fullarton Road.



Construction in progress on the now completed new Royal Adelaide Hospital.

RAH build faces threat of criminal action

RENATO CASTELLO

THE builders of the Royal Adelaide Hospital are facing criminal charges over claims they impeded an investigation by the state's small business commissioner.

Commissioner John Chapman, through the Crown Solicitor's office, is prosecuting Hansen Yuncken and CPB Contractors (formerly Leighton Contractors) in the Adelaide Magistrates Court.

In a summons, obtained by *The Advertiser*, the companies are accused of failing to give "specified" information in their possession to Mr Chapman in breach of the Small Business Commissioner's Act — an offence that carries a maximum \$20,000 fine.

Under the Act the commissioner can require companies

The Advertiser article from 3 May 2018 regarding the SBC's prosecution of nRAH builders HYLIC.

The SBC took the view that by gaining a full understanding of the situation he would be able to fulfil his responsibilities in advising the then Minister for Small Business and the State Government of mechanisms which could be put in place, if necessary, to assist businesses affected. For example, previous work by the SBC in relation to the Arrium Administration had, in part, led to the State Government developing a \$9.6 million Whyalla Small Business Loan Fund, allowing businesses directly connected to Arrium to obtain three-year interest-free loans.

The SBC's concerns were further increased on 8 May 2017 by an article on Page 5 of *The Australian* headlined: "Hospital's builders set to walk off the job and sue". This reported that the builder was considering "walking away" from the project one month before completion, and launching legal action against the project consortium, SA Health Partnership.

HYLC did not provide the information as requested in accordance with the Act and accordingly legal proceedings commenced.

The penalty for not complying with the legal request can involve a criminal prosecution and a fine of up to \$20,000.

The case was first listed in the Adelaide Magistrates Court on 12 April 2018. Five adjournments later, it was completed on 7 November 2018.

At the last hearing, HYLIC pleaded guilty to charges of failing to provide the SBC with details relating to subcontractor arrangements. Each partner was fined \$1800 plus victim of crime levy and court costs.

The partners also agreed to pay all costs incurred by the SBC in prosecuting the matter. Magistrate Kym Millard accepted the guilty plea but did not record a conviction after considering the matter and submissions by the partners of the impact a conviction would have on their future bids for government work.

All three subcontractors who originally approached the SBC had their retentions returned in mid 2018.

Hospital's builders set to walk off job and sue

EXCLUSIVE

SA Health | 14-05-17

Builders of the \$2.3 billion Royal Adelaide Hospital are considering walking away from the project one month shy of its completion and launching last-minute legal action against project consortium SA Health Partnership.

The builders would seek several hundreds of millions of

dollars in compensation, a move which could draw in the Weather-ill Labor government, SA sources close to building joint venture Hansen Yuncken Leighton Contractors.

The extraordinary move, which would mean a new builder is appointed for the final handover is the latest in a controversial project that is now \$640 million over budget, 15 months late, marred by court action and the deaths of two workers on site and notoriously

named the world's third-most-expensive building.

The 800-bed hospital became technically complete on March 15, allowing the South Australian government 90 days to bed down problems with the building, train staff and stock equipment before it opens for business.

Defects at the heart of a legal tussle between the builder and government included leaking cooling pipes, incorrect room sizes, sewer pipes in a data equipment

room and a lower-than-required ceiling height for loading docks.

Health Minister Jack Snelling has said the new hospital would open by mid-year, depending on the onset of flu season, and has been happy for the builder to wear the government's \$1m-a-day service payment until commercial acceptance. The dispute is estimated to have saved the South Australian government \$400m in finance payments, despite delays. Project consortium SA Health

Partnership, which has a 35-year contract with the government to finance, design, build, maintain and provide non-clinical services such as cleaning, has been in mediation with HYLIC since February, after Premier Jay Weatherill intervened to end costly court hostilities between the builder and the government.

HYLC said yesterday it had been excluded from negotiations between SAHP and the government which prompted the hos-

pital's technical completion, and the builder would not be pressured into its contract rights and claims being removed.

Hansen Yuncken chairman David Deslich said completing the new hospital project was a priority and the company had always worked with its clients to resolve commercial differences.

"However, we will not be pressured into the removing of our contract rights or the builder's claims," he said.

"All of the previous safety and defect impediments publicised late last year have now been resolved.

"As with all major projects of this size and complexity there are unresolved commercial issues that were the subject of an earlier mediation process (late last year); these matters are ongoing between the builder and project company.

The new hospital project has taken its toll on the 90-year-old Sydney-based builder Hansen

Yuncken, which lost \$297m last financial year on its half of the joint venture, and contributed to a \$57m annual loss for the company in 2015-16. That compared with three previous healthy full-year profits of between \$7m and \$18m.

A spokeswoman for CMHC, the parent of CPB Contractors and the other half of the joint venture, declined to comment.

Mr Snelling said the dispute was between SAHP and its subcontractor HYLIC.

The Australian article from 8 May 2017 regarding early reports of the builder 'walking away'.

INSOLVENCIES

Coombs Barei Constructions Pty Ltd (Coombs Barei)

The SBC has become increasingly concerned about the level of scrutiny and diligence observed in the selection of head contractors for building and construction projects undertaken with funding by the State Government.

Previously inquiries have been undertaken 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 for 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 company's collapse in July 2014.

The situation is not isolated to South Australia. Similar issues were raised in 2018 in relation to government-funded construction projects in New South Wales.

The collapse of Coombs Barei in 2017 provided a further reminder of the consequences of the financial failure of a head contractor and of the capacity of the State Government to take steps when contracting that would protect both its own interests and that of subcontractors.

The SBC was approached by a contractor who had been engaged

by Coombs Barei to work on a RenewalSA/Housing SA (HSA) project. He was owed more than \$140,000 as a result of Coombs Barei's failure.

The SBC sought all documentation from RenewalSA in relation to the engagement of Coombs Barei. After investigation, a detailed report prepared for the then Minister for Industry and Skills concluded there had been a failure by RenewalSA (which was undertaking all aspects of the administration of the HSA program "1000 homes in 1000 days") to conduct proper due-diligence of Coombs Barei, both as part of the pre-qualification stage and at the stage of the acceptance of tender.

There was a further failure to follow up when concerns about Coombs Barei's financial situation were emerging publicly. Specifically:

- The pre-qualification process did not involve a robust assessment of financial information and did not seek adequate explanations for the failure to provide financial data requested.
- When Coombs Barei declined to provide information that would have enabled RenewalSA to verify claims, RenewalSA implicitly accepted this and did not require the company to provide that information in order to be qualified.
- Detailed follow ups were not undertaken at tender assessment stage in relation to financial stability, which again would have allowed the difficulties being experienced by Coombs Barei

ASIC urged to examine troubled SA builder

EXCLUSIVE
RENATO CASTELLO

THE nation's corporate watchdog has been asked to investigate the directors of failed builder Coombs Barei Constructions for insolvent trading, an offence that carries up to five years' jail.

South Australian Small Business Commissioner John Chapman told *The Advertiser* he had contacted the Australian Securities and Investments Commission in response to the newspaper's reports that the Hindmarsh builder, which collapsed last month with \$6.5 million in debts, was failing to pay its tradies and suppliers.

"I raised concerns with ASIC that there was possible insolvent trading taking place and that ASIC should do whatever they can to intervene. I also raised that with one of the ASIC commissioners," he said.

"It was pretty obvious based on the stories there seemed to be problems paying people – that usually indicates in the building industry there may be bigger issues."

Under the Corporations Act, company directors found guilty of trading while insolvent can face civil penalties of up to \$200,000 or criminal penalties with a maximum \$220,000 fine or up to five years in jail.

Mr Chapman said the SA Crown Solicitor's office was also considering if there were grounds to prosecute Coombs Barei, whose directors are Adelaide United shareholders Tony Basile and George Charalabidis, for breaches of the Small Business Commissioner Act.

The Advertiser article on 10 November 2017 regarding the SBC's investigation into Coombs Barei.



Coombs Barei Construction Office at Hindmarsh.



A report by the Small Business Commissioner into RenewalSA's engagement of the failed builder Coombs Barei received prominent coverage in the Adelaide Advertiser in June 2019.

The State Government has responded that it will not consider providing ex-gratia payments to the small businesses affected.

The report called on the Government to promptly address the processes and procedures it undertakes when assessing companies prior to their selection as head contractors on building and construction projects.

Specific recommendations covering the development of a whole-of-government policy to ensure subcontractors, suppliers and service providers are treated fairly by head contractors and that the Government takes greater responsibility for failure of oversight where appropriate were made.

The State Government agreed to refer the report to the SA Productivity Commission inquiry into procurement, and the Treasurer has requested that the State Procurement Board review the draft policy "Fairness for Subcontractors, Suppliers and Service Providers on State Government Projects".

to be identified. Follow ups at the time the contracts were entered into would have disclosed that Coombs Barei was, as the administrator found, probably insolvent.

- RenewalSA did not avail itself of the opportunity when making progress payments to enforce conditions of its contracts requiring the production of information from Coombs Barei.

The SBC found that Coombs Barei should never have been accepted as pre-qualified by RenewalSA because of its failure to provide adequate financial information.

The SBC noted that not all risks of financial failure can be avoided. However, he said it was incumbent on the State Government to undertake appropriate due diligence of the parties it contracts for all works, particularly those contracts which by their nature involve subcontracting to many other parties.

This scrutiny would have benefited the Government, in ensuring the work was performed, as well as subcontractors who had entered into arrangements with Coombs Barei and been disadvantaged.

The SBC's report recognised that while subcontractors and suppliers had a responsibility to undertake their own due diligence

when entering into contractual arrangements with head contractors appointed by government, the selection by government of a head contractor affords confidence and creates a perception (rightly or wrongly) that a government would not have engaged a head contractor that is either insolvent or experiencing significant financial difficulties.

In the Coombs Barei case, a number of subcontractors and suppliers have been substantially impacted. Indirectly, they are affected by the failure of the State Government through RenewalSA to take reasonable efforts to establish, and later verify, Coombs Barei's ongoing capacity to meet its obligations.

In response to the two earlier reports by the SBC into the failures of Elite Australia Pty Ltd and BJ Jarrad Pty Ltd while working on government projects, the then State Government did not accept recommendations concerning compensation.

In the Coombs Barei report, the SBC stated that governments have a role to cause no harm. In this case avoidable harm had been caused to a number of small businesses and appropriate redress should have been undertaken.

A formal request to the Treasurer, the Hon Rob Lucas MLC was made in relation to compensation to the affected subcontractors.

Ottoway Engineering and Fabrication

The SBC was approached by two small businesses that had been significantly impacted by the decision by the directors of ACN 125 531 428 Pty Ltd (formerly Ottoway Engineering Pty Ltd) and ACN 126 470 942 Pty Ltd (formerly Ottoway Fabrication Pty Ltd) to place the companies into administration. These companies were part of a larger conglomerate, Adelaide-based E & A Limited.

The two small businesses were owed substantial amounts for work or services provided to Ottoway Fabrication.

The SBC liaised with the administrators, Pitcher Partners, on a range of matters.

Three creditor meetings were held for each company, the first on 20 July 2018, the second on 4 September 2018 and the third on 28 September 2018.

A separate Deed of Company Arrangement (DOCA) was put forward on each company by the directors Stephen Young and Mark Vartuli. The returns to unsecured creditors under the proposed arrangements ranged from 17.5 cents to 27.6 cents for Ottoway Engineering and 27.9 cents to 31.2 cents for Ottoway Fabrication.

At the second creditors' meeting in Whyalla, a number of creditors

expressed their concern that the amounts being offered were insufficient.

The meetings were adjourned as both the Australian Taxation Office (ATO) and the Australian Securities and Investments Commission (ASIC) had requested clarification of, or further information relating to, the administration and the second creditors' report.

As a result, the SBC wrote to the companies' bankers, National Australia Bank, and the administrators seeking a reconsideration of the contribution by the parties which would result in an increased payment to unsecured creditors.

On 21 September 2018, the administrators released their third report, which identified that the directors of the Ottoway companies had provided some additional funding to a new DOCA, while the secured creditors had also foregone a further amount.

This contribution adjusted the returns to unsecured creditors from Ottoway Engineering from between 17.5 and 27.6 cents to 25 cents for creditors with debts of \$20,000 or less and between 12.8 and 17.6 cents for creditors with debts over \$20,000 under a DOCA. The revised offer was largely due to the intervention of the

ATO, which indicated that the first DOCA provided preferential treatment to creditors.

The new DOCA for Ottoway Fabrication provided for between 32.6 and 34.3 cents, which was a modest improvement on the previous 27.9 cents to 31.2 cents.

The DOCAs were unanimously approved at meetings held in Adelaide and Whyalla on 28 September 2018.

Ottoway creditors wait on new report

**CAMERON ENGLAND
BUSINESS EDITOR**

BUSINESSES owed money by Ottoway Engineering and Ottoway Fabrication, which went bust in July with debts of more than \$45 million, will be kept waiting as the administrators prepare a new creditors' report.

The State's small business commissioner, John Chapman, attended creditors' meetings in Adelaide and Whyalla yesterday, and said the meetings heard that new creditors' reports would be produced after the corporate regulator ASIC asked that some matters be clarified.



Creditors were to vote on a deed of company arrangement which would have delivered them 17.5c-27.6c in



Ottoway Fabrication building in Whyalla

York Civil

The collapse of York Civil in August 2018 highlighted the continued risk facing unsecured creditors in the building and construction sector.

The company was founded in 1991 and offered a range of engineering, construction and project management services. At the time of its failure, it was operating in South Australia, Western Australia and New South Wales.

York Civil was engaged in a number of joint ventures, including the Torrens to Torrens (T2T) project and the North Terrace Tram Track extension.

The administrators, Ferrier Hodgson, were appointed on 6 August 2018 and they closed the company a week later, after negotiations to sell it stalled.

Ferrier Hodgson stated that the underlying causes of failure were:

- a number of joint venture projects (including with international joint venture partners) placing a strain on the company's financial position and management / administration time

- an inability to generate increased project margins from revenue growth and to meet the overhead costs associated with the larger business footprint
- resultant trading losses of \$14.6 million for 2017/18 (in addition to losses of \$1.7 million for 2016/17), culminating in net assets deteriorating from \$21.2 million at 30 June 2017 to \$6.5 million at 30 June 2018
- a deterioration in the company's cash position from an overdraft of \$2.6 million at 30 June 2017 to an overdraft of \$10 million at the date of appointment of the administrators
- cash calls on joint ventures which could not be met
- a dispute with a major client in relation to an \$11 million debt which was due to go to arbitration.

The administrators were of the opinion that the company may have been insolvent from 31 May 2018.

In the second report to creditors, they confirmed that it was unlikely there would be any return to unsecured creditors.

A vote to liquidate the company was passed unanimously on 10 September 2018.

Housing Industry Failures

There were seven publicly reported failures of home builders in South Australia during 2018/19.

The most recent, Coast to Coast Homes, impacted the State Government directly through potential claims made under the home owners warranty scheme, which it underwrites.

The Commissioner for Consumer Affairs, Dini Soulio, convened a meeting of key stakeholders in May 2019 to investigate ways in which the licensing and regulatory regimes could be used to provide greater protection for home owners, subcontractors and suppliers.



York Civil Building at Regency Park.

ROADWORKS IMPACTING SMALL BUSINESS

The Department of Planning, Transport & Infrastructure (DPTI) has made some progress in addressing the concerns of the SBC, and others, about engagement with small businesses when major road or other infrastructure works are being undertaken.

DPTI has developed guidelines to ensure engagement takes place at an early point of the project planning and that there is ongoing contact with the businesses during the project.

The SBC accepted a request from DPTI to brief two short-listed bidders on a major government road project on his expectations in relation to their management of the project and its impacts on small businesses.

The discussion included comprehensive and effective consultation and consideration of individual business needs, including pedestrian and vehicle access, parking, deliveries and waste collection.

The OSBC has been involved in four significant projects in the last financial year, which have impacted on small business.

Oaklands Rail Underpass, Oaklands Park

The OSBC worked with DPTI following a complaint from a business that street access to his business premises was being restricted unreasonably.

Following discussions, DPTI identified a solution to assist the small business during construction and the matter was satisfactorily resolved.

Gawler Place, Adelaide CBD

Planning for the \$16.85 million upgrade of Gawler Place between North Terrace and Grenfell Street involved extensive consultation by the City of Adelaide with businesses and the OSBC.

The SBC emphasised the importance of maintaining access to businesses and providing clear and clean pathways for pedestrian traffic. Works commenced in February 2019 and were continuing at 30 June 2019.

The OSBC did not receive any complaints from traders during this financial year.

King William Road, Hyde Park

The Unley Council engaged with the OSBC during the early planning phases of the program to replace the pavers and upgrade the streetscape on King William Road in Hyde Park.

The SBC emphasised the need for early engagement with small businesses along the premier shopping strip to fully understand their business and customer needs. Discussions also covered the works plan and managing the impacts of the program on small business.

The project generated considerable concerns from a number of traders, particularly the decision, supported by the Traders Association, to close the street for four weeks to concentrate the impact of the works.

The OSBC continues to work with Unley Council on issues as they arise.



The Right Hon Sandy Verschoor - Lord Mayor of Adelaide turns the first sod on the \$16.85 million Gawler Place project in January 2019.

Victoria Square to South Terrace Tram Track Replacement, Adelaide CBD

The OSBC was contacted by a major business on King William Street following a DPTI announcement that the tram tracks between Victoria Square and South Terrace were to be replaced.

The Office worked with DPTI and the construction managers, PTP Alliance, in the planning stages to ensure the needs of the businesses (and others) were taken into account. This included weekly meetings.

Work on this project commenced in June 2019 and was due to be completed in July 2019.



South Road, Torrens to Torrens project.



Small Business Commissioner John Chapman joined 891 ABC Adelaide's Ali Clarke and David Bevan in November 2018 to discuss the issues surrounding roadwork impacts on small business.



Following the tabling of the Office of the Small Business Commissioner's 2017/18 Annual Report in Parliament, the Adelaide Advertiser highlighted the Small Business Commissioner's call for Governments to do more to help small businesses who lose customers and access to their business from road and other projects.



Small Business Commissioner John Chapman being interviewed by Channel 10 in September 2018 on the impact that roadworks has on small businesses.

LATE PAYMENT OF ACCOUNTS

The SBC remains concerned at the delays in payments to small businesses from larger and more powerful entities.

In November 2018, amendments to the *Late Payment of Government Debts Act 2013* came into effect. These require government agencies to pay interest on all outstanding accounts provided they are not disputed, the interest payment is over \$10, and the invoice is under \$1 million.

The Department of Treasury and Finance reported 1414 cases of late payment across government agencies, with \$104 503.00 in interest being paid for the 2018/19 financial year. This information is published on the State Government's Shared Services Payment website:

<https://www.sharedservices.sa.gov.au/ap-govt-payment-performance>.

The State Government has committed to improving its 30 day payment terms, with a new target of paying 80% of accounts within 20 days from date of invoice as part of an agreement with the Council of Australian Governments (COAG).

The building and construction sector remains an area of concern, as continual disputation arises.

One of the most significant examples of payment delays occurred in late 2018 and early 2019, involving GFG Alliance, the owner of the Whyalla Steelworks, nearby iron ore mines and One Steel.

A number of small businesses raised concerns about delays in

payments that were past their due date in December 2018. The SBC raised the matter with GFG and was assured that payment terms had not changed. However, more businesses complained in early February 2019.

The SBC again raised the matter with GFG and called on the State Government to insist on improving payment terms and conditions for small business as part of its proposed agreement to provide a \$50 million grant to GFG. The issue was raised a third time in April 2019.

On 12 April 2019, the SBC travelled to Whyalla to meet GFG Alliance's Executive Chairman, Sanjeev Gupta, to outline concerns that businesses were not being paid in accordance with the agreed terms.



Small Business Commissioner, John Chapman and Executive Chairman of GFG, Sanjeev Gupta in Whyalla prior to meeting with subcontractors and suppliers in April 2019.

Whyalla suppliers, Gupta at odds over pa

EXCLUSIVE

MICHAEL WYVEN

British industrialist Sanjeev Gupta's GFG Alliance is delaying payments to suppliers and contractors to its Whyalla steelworks and threatening their viability, South Australia's small business commissioner John Chapman says.

But GFG has rejected claims that tenders from small businesses were being rejected because they will not agree to payment terms of 120 days.

A company spokeswoman

said it did not have any SA small business vendors engaged on 120-day payment terms, although some were on 90-day terms.

"I note that depending on the size of the vendor and service being offered, our payment terms vary from 90 days to less than 30 days," a GFG spokeswoman said.

"Further, this is the range of payment terms that vendors were subject to when the business was owned by Arrium. GFG has not amended or changed these terms since it acquired the business."

But Mr Chapman said, "I don't believe anything beyond 30 days is appropriate. Why should small businesses be the bank for big

businesses? They can't afford to have payments delayed; 30 days is the generally accepted norm and in this day and age of electronic payments there's no reason why it can't be done earlier.

"I've had complaints out of Whyalla in relation to GFG and we're making inquiries through the company.

"I am being told that tenders from business are being rejected because they will not agree to payment terms of 120 days from the notice of invoice. That just doesn't seem right to me and I hope that's a misconception and we're looking to clarify that with GFG as well."

SA Industry and Commerce Minister David Pisoni stressed the importance of contractors' prompt payment in starting a new relationship with a large

He said the Market expected a likelihood of GFG "to pay them within the terms agreed to be seven, 14 or 30 d

Mr Gupta took over led steelworks in the industrial city of Whyalla north of Adelaide, last

The billionaire's takeover of the steel city last week Morrison and Premier Marshall to detail

The Australian article from 8 May 2017 regarding payment terms for Whyalla businesses.

Mr Gupta made it clear that the steelmaking business was continuing to run at a significant loss and, as such, he was funding the operation, and its future redevelopment, through cashflow from his other interests.

He advised that while he would attempt to ensure that payments were made by the due dates, there were likely to be delays on a semi-regular basis in the next 24 to 30 months as the plant was redeveloped. He also met with about 60 suppliers and contractors to outline the scenario.

This lack of certainty has delivered another blow to Whyalla businesses supplying to GFG, which are experiencing significant cashflow issues as they struggle to pay staff entitlements, suppliers and their bankers.

A number of businesses approached the SBC seeking assistance to negotiate the extension of payment terms on interest-free loans that had been provided by the former State Government in 2016 and 2017.

The SBC wrote to the Treasurer, the Hon Rob Lucas MLC, advising of these concerns, and at a subsequent meeting in May 2019 the Treasurer agreed to implement a process for the South Australian Government Finance Authority (SAFA) to review each request and provide a recommendation for his consideration.

LABOUR HIRE TASK FORCE

Legislation to provide for monitoring and management of labour hire companies in South Australia was passed by Parliament in 2017.

The OSBC raised a number of concerns about the wide scope of the legislation prior to it being finalised, suggesting that it would capture a range of businesses that traditionally would not be regarded as labour hire.

The State Government gave notice in November 2018 that it would seek to repeal the legislation in response

to concerns raised by a number of small businesses and industry representative groups.

The Government stated the legislation would simultaneously apply to a range of businesses that were not intended to be captured, while failing to address the exploitation of workers.

The Government did not proceed with the repeal process, following opposition in the Legislative Council. It did, however, establish a taskforce that included Consumer and Business Services, the Small Business Commissioner, Return To Work SA, SafeWork SA and Revenue SA to review existing laws.

The taskforce determined that these laws are sufficient to deal with issues that have been raised in relation to the labour hire sector.

ENQUIRIES UNDER THE SMALL BUSINESS COMMISSIONER ACT 2011

How were enquiries made?															
	2018						2019						Total 2018/19	Total 2017/18	Variance
	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun			
Email	13	6	6	8	12	7	7	1	7	15	7	9	98	161	-39%
Phone	119	107	83	105	109	87	99	95	109	71	102	88	1174	1136	3%
Online form	20	20	17	19	18	19	14	20	19	13	24	13	216	107	102%
Fax	0	0	0	0	0	0	0	0	0	0	0	0		-	-
Walk-in	12	10	9	13	15	14	18	14	13	7	16	16	157	186	-16%
Letter	0	0	0	0	0	0	0	0	1	1	0	1	3	7	-57%
Direct contact	2	1	4	0	3	1	0	0	0	0	0	0	11	11	-
TOTAL	166	144	119	145	157	128	138	130	149	107	149	127	1659	1608	3%

Subject matter															
	2018						2019						Total	Total	Variance
	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	2018/19	2017/18	
Farming	5	1	8	2	8	2	3	1	0	4	5	2	41	28	46%
Franchising	3	2	1	2	1	0	1	0	1	3	2	0	16	27	-41%
Local Government	6	4	1	5	1	7	8	1	2	0	4	3	42	11	282%
Small Business Issue	105	97	74	96	115	95	90	97	111	68	104	81	1 133	756	50%
State Government	6	3	10	6	7	7	8	2	4	5	4	6	68	36	89%
Motor Vehicle	15	10	4	4	7	6	3	4	10	1	3	4	71	57	25%
Newsagent	0	0	0	0	1	0	0	0	2	0	0	0	3	2	50%
Other	17	13	10	15	7	1	3	13	2	9	3	4	97	40	143%
Late Payment of Accounts	0	0	0	0	0	0	0	0	0	0	2	1	3	-	-
Starting a Small Business	2	6	5	5	5	7	9	9	10	8	13	14	93	-	-
Building	0	0	0	0	0	0	0	0	0	0	0	0	-	13	-
Mobile Food Vendor	0	0	0	0	0	0	0	0	0	0	0	0	-	1	-
No Selection	7	8	6	10	5	3	13	3	7	9	9	12	92	637	-86%
TOTAL	164	138	114	140	152	121	129	121	139	99	136	113	1659	1608	3%

BUILDING AND CONSTRUCTION INDUSTRY SECURITY OF PAYMENT ACT 2009

ASSISTING SMALL BUSINESSES IN THE BUILDING AND CONSTRUCTION SECTOR INITIATIVE

The intent of the *Building and Construction Industry Security of Payment Act 2009* (the SOP Act) is to ensure that a person or business carrying out construction work or supplying related goods and services under a building or construction contract is entitled to receive, and able to recover, progress payments for carrying out that work, or supplying those goods and services without delay.

The SOP Act is designed to maintain cash flow down the contractual chain. It also provides a mechanism for the rapid adjudication of payment disputes in the building and construction industry.

Additional funding for the OSBC in the 2017/18 budget provided limited funding to assist industry bodies to promote the SOP Act and educate building and construction industry participants in its use. Six industry associations have participated in this initiative, providing face-to-face interactive presentations in both metropolitan and regional locations, online access to presentations, information booklets and templates to assist people in understanding and using the SOP Act.

It is important that there is an ongoing program to promote the SOP Act and to educate the industry, due to its ever-changing nature and population.

New participants regularly enter the industry; for example, when a recently qualified tradesperson sets up a 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 them by this legislation.

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

Consultation on the best direction for improving the effectiveness of the SOP Act continued during the year. Amendments proposed to the Act by the former Government and passed in the House of Assembly in 2017 were placed on hold while the Government considered its response to the 86 recommendations set out in the “Review of Security of Payment Laws; Building Trust and Harmony” (the Murray Review), prepared for the Federal Government by John Murray AM.

The recommendations covered a wide range of areas, including issues outside the current Security of Payment regime, such as Unfair Contract Terms, Project Bank Accounts and Statutory Trusts.

The Murray Review recommendations drew on the “best” parts of the various State and Territory Acts. Many were based on the New South Wales legislative model, on which the South Australian legislation is based.

The Murray Review was a genuine attempt 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.

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.

The Federal Government tasked the Building Minister's Forum (BMF) to seek input from all jurisdictions.

The SBC provided advice and support on this matter to SA's Ministerial representative on the BMF – the Minister for Planning, Transport and Infrastructure, the Hon Stephan Knoll MP. In addition, the SBC is South Australia's representative on the Senior Officials Group, which is tasked to provide advice on suitable legislative models for cascading statutory trusts.

The SBC also undertook a six-week consultation process seeking the views of South Australian stakeholders on the Murray Review recommendations. On the whole, submissions were supportive. The key points of disagreement arose around the introduction of statutory trusts and a criminal offence regarding intimidation, harassment and coercion of an individual in relation to their use of the SOP Act.

Following the industry consultation, the then Minister for Industry and Skills, Hon David Pisoni MP, the Minister for Transport, Infrastructure and Local Government, the Hon Stephan Knoll MP, and the SBC met with key industry stakeholders to discuss the issues further.

In April 2019, the SBC finalised recommendations to the State Government taking into account feedback and input from the respective Ministers. These recommendations were still under consideration as at 30 June 2019.

CLAIMS UNDER THE BUILDING AND CONSTRUCTION INDUSTRY SECURITY OF PAYMENT ACT 2009

In 2018/19, the OSBC assisted contractors and subcontractors with 132 enquiries in relation to the Security of Payment legislation and provided advice in relation to the procedures in order to make claims under the SOP Act.

Under the SOP Act, contractors and subcontractors can make a claim for monies owing to them. These claims can be made with the Authorised Nominating Authorities, with the intent that they are resolved through the appointment of an adjudicator.

In total, 82 claims worth a total of \$130,997,591.84 were made through adjudication mechanisms within the SOP Act. Of these, 74 resulted in an award to the claimant. The total amount awarded was \$17,048,484.80.

APPROVED AUTHORISED NOMINATING AUTHORITIES

The following organisations are approved Authorised Nominating Authorities with regard to the SOP 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.rics.org
Phone: 1300 953 459
Fax: 1300 953 529
Email: drsAus@rics.org

Total Amount Claimed vs Awarded

		2018/19		2017/18	
		Adjudications	Amount	Adjudications	Amount
ABC Dispute Resolution Services	<i>Claimed</i>	2	\$212869.10	6	\$467792.45
	<i>Awarded</i>	2	\$151164.00	5	\$221054.73
Adjudicate Today	<i>Claimed</i>	64	\$32598646.51	50	\$10740287.98
	<i>Awarded</i>	59	\$10183194.38	15	\$1508798.65
Australian Solutions Centre	<i>Claimed</i>	1	\$166792.00	0	\$0
	<i>Awarded</i>	1	\$155822.70	0	\$0
Master Builders Association of SA	<i>Claimed</i>	0	\$0	2	\$84418.68
	<i>Awarded</i>	0	\$0	1	\$850.41
Nominator	<i>Claimed</i>	0	\$0	0	\$0
	<i>Awarded</i>	0	\$0	0	\$0
Resolution Institute	<i>Claimed</i>	13	\$90851012.22	8	\$49048746.61
	<i>Awarded</i>	11	\$6466779.58	5	\$3401862.69
RICS Dispute Resolution Services	<i>Claimed</i>	2	\$7168272.01	1	\$13843651.93
	<i>Awarded</i>	1	\$91524.14	1	\$1449 628.88
TOTAL	<i>Claimed</i>	82	\$130997591.84	67	\$74184897.65
	<i>Awarded</i>	74	\$17048484.80	27	\$6582195.36

ENQUIRIES UNDER THE *BUILDING AND CONSTRUCTION SECURITY OF PAYMENT ACT 2009*

How were enquiries made?

	2018						2019						Total 2018/19	Total 2017/18	Variance
	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun			
Email	1	1	1	1	2	0	1	2	0	1	3	0	13	6	117%
Phone	4	7	10	6	11	7	14	12	10	1	13	6	101	70	44%
Walk-in	1	0	1	1	0	1	0	0	0	0	0	2	6	4	50%
Online Form	0	0	0	2	3	2	1	0	0	0	2	2	12	6	100%
Fax	0	0	0	0	0	0	0	0	0	0	0	0		1	-
TOTAL	6	8	12	10	16	10	16	14	10	2	18	10	132	87	52%

RETAIL AND COMMERCIAL LEASES ACT 1995

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

In November 2018, the State Government approved drafting of amendments to the *Retail and Commercial Leases Act 1995*. These contained all of the changes in the Retail and Commercial Leases (Miscellaneous) Amendment Bill 2017 that passed in the House of Assembly in 2017 but were not considered by the Legislative Council prior to the 2018 election.

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

The State Government approved additional amendments, including to provide certainty in relation to long term leases; recognition of not-for-profit public companies; an increase in the amount that could be held as a bond; and recognition of the Emergency Services Levy as an outgoing.

The final legislative amendments approved were:

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 scope/application of the Act. For example, a lease might move out of the Act when rent increases above the rent payable threshold or move back in if that threshold is increased (as held in Victoria) save for the exemption below.
2. Make it express within the Act at section 4 and Regulation 4 that a registered lease, which at the time of registration falls outside of the rental threshold, shall remain outside the Act regardless of any increase to the threshold which would bring the lease within the scope of the Act.
3. Insert into the Act a duty for the Valuer-General to review and recommend increases to the rent payable threshold to the Minister every five years – i.e. fixed term reviews.
4. Make it express in the Act (and the Regulations if appropriate) that the quantum of the rent payable threshold and the amount of security bonds are both exclusive of GST.
5. Make it express in the Act that (subject to Proposals 8 and 9 below) any retail shop lease with a rental below the rent payable 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.
6. Amend the Act to allow (by regulation) a list of classes of leases and licences provided by Government and Local Government that are excluded from the Act.
7. Pursuant to section 77 of the Act (and if necessary Regulation 4), extend the power to grant an exemption to a lease or licence from any or all of the provisions of the Act (currently by the Minister or the Magistrates Court) to include the Small Business Commissioner.
8. Make it express 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) and a

body corporate whose securities are listed on a stock exchange outside Australia and the external Territories or a subsidiary of such a body corporate. These provisions are to prevail over any entity that would otherwise be deemed to be a “small business” pursuant to Proposal 5 above.

9. Make it express for the purposes of section 4(2)(c) of the Act that public companies limited by guarantee and registered with the Australian Charities and Not for Profit Commission (ACNC) are not excluded from the application of the Act.
10. 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 should be signed by the lessor, or agent of the lessor, and served upon the lessee
 - the Disclosure Statement should be signed by the lessee or his or her agent
 - there is no requirement to provide a Disclosure Statement before the exercise of a right of renewal
 - as a public deterrent, insert a new penalty of \$8,000 for a breach of these provisions (at section 12).
11. Amend sections 14 and 16 of the Act to delete any/all references to “stamped”, “stamping” and/or “stamp duty”.

12. Amend Section 19 of the Act to increase the security from an amount not exceeding four weeks' rent to an amount not exceeding 12 weeks' rent.
13. Insert provisions to require a lessor to return a bank guarantee to the lessee within 60 days after the lessee has performed all obligations secured by the bank guarantee. As a public deterrent, insert a new penalty of \$8,000 for a breach of these provisions.
14. 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 six months", or otherwise as necessary to make it certain that any period of "holding over":
- does not imply a new lease term
 - allows either the lessee or the lessor to terminate any period of "hold over".
15. Pursuant to section 20K of the Act, provide the Small Business Commissioner with the power to certify exclusionary clauses, and include the ability for the Small Business Commissioner to be able to recover a modest fee for the occasional provision of such a service.
16. Clarify the jurisdiction over actions for distress for rent to expressly place such actions under the jurisdiction of the Magistrates Court.
17. As well as proposing two additional penalties of \$8,000 for breaches as discussed at Proposals 10 and 13 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. That exception will be to substantially increase the maximum penalty for failure to provide the prospective tenant with a copy of the lease at the pre-negotiation stage from \$500 to \$8,000 (at section 11).
18. Amend the existing ambiguity in section 11 of the Act (copy of lease be provided at negotiation stage) to remove ambiguity between the heading of the section and its content, which only requires a prospective lessor to make a written copy of the lease (without commercial terms inserted) "available for inspection by a prospective lessee" – a significantly different requirement. In addition, add a further lessee protection measure such that at the same time as the lease is provided, the lessor is to provide the lessee with a copy of the most recent information brochure about retail and commercial leases as published by the Small Business Commissioner.
19. Increase the number of days for a Security Bond to be disputed by a lessor or lessee (pursuant to sections 20(4) and 20(5) of the Act) from the current seven days to 14 days.
20. Amend sections 20 and 36 of the Act to change "President of the Australian Institute of Valuers and Land Economists" to the "Chair of the Australian Property Institute".
21. Amend section 32(e) of the Act to include a reference to the Emergency Services Levy in outgoing statements.
22. Amend new proposed section 12(1) of the 2017 Bill, which relates to the requirement for the lessor to provide the lessee with a Disclosure Statement. The words "in duplicate" will need to be removed to ensure consistency with the new proposed section 12(4).

The Attorney-General introduced the Retail and Commercial Leases (Miscellaneous) Amendment Bill 2019 into Parliament on 3 July 2019. The OSBC will support the Attorney-General with the passage of the Bill through Parliament.



Workshopping the Retail and Commercial Leasing Act. Case and Education Manager James Rock outlines essential information tenants need to know at an OSBC information session. The key message was and is 'the lease is the lease!'



The Retail Shop Leases Advisory Committee met on Tuesday 12 February 2019 to discuss the draft Bill and provide advice through the Small Business Commissioner to the State Government.

ADMINISTRATION OF RETAIL AND COMMERCIAL BOND LODGEMENTS AND REFUNDS

During the year, the OSBC processed 776 lodgements to the value of \$1 190 348.53 and 612 refunds to the value of \$961 524.78, which is split between lessee \$601 734.10 and lessor/agent \$359 790.68.

194 Notice of Claim letters were sent to lessors, lessees and agents. Of these, 22 were disputed.

Lodgements

	Processed	Total Amount
2017/18	804	\$1268039.60
2018/19	776	\$1190348.53

Refunds

	Processed	Lessee Amount	Lessor/Agent Amount	Total Amount
2017/18	546	\$488584.29	\$409875.89	\$898460.18
2018/19	612	\$601734.10	\$359790.68	\$961524.78

ENQUIRIES UNDER THE THE RETAIL AND COMMERCIAL LEASES ACT 1995

How were enquiries made?															
	2018						2019						Total 2018/19	Total 2017/18	Variance
	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun			
Email	9	3	1	2	0	0	0	3	0	1	2	0	21	28	-25%
Phone	108	114	88	90	88	47	66	97	86	70	102	84	1 040	1 016	2%
Online form	7	14	6	11	8	5	8	8	4	6	9	5	91	30	203%
Fax	0	0	0	0	0	0	0	0	0	0	0	0	-	1	-100%
Walk-in	2	6	1	4	2	2	2	4	0	3	3	3	32	35	-9%
Letter	0	0	0	0	0	0	1	0	0	0	1	0	2	2	-
Direct contact	0	0	0	0	0	0	0	0	0	0	1	0	1	-	-
TOTAL	126	137	96	107	98	54	77	112	90	80	118	92	1 187	1112	7%

Who made the Enquiry?

	2018						2019						Total 2018/19	Total 2017/18	Variance
	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun			
Lessee	28	26	21	24	26	4	12	3	1	0	1	0	146	260	-44%
Lessor	6	14	8	5	6	4	2	1	0	0	1	0	47	81	-42%
Sub Lessee	0	1	1	0	0	2	0	0	0	0	0	0	4	8	-50%
Franchisee	0	0	0	0	0	0	0	0	0	0	0	0	-	1	-100%
Franchisor	0	0	0	0	0	0	0	0	0	0	0	0	-	0	-
Realestate Agent	8	8	11	6	5	1	7	4	0	0	0	0	50	60	-17%
Solicitor	1	1	0	2	0	0	0	0	0	0	0	0	4	6	-33%
Assignee	1	0	0	0	0	0	0	0	0	0	0	0	1	2	-50%
Assignor	0	0	0	0	0	0	0	0	0	0	0	0	-	1	-
Other	1	1	0	2	0	0	0	0	0	0	0	0	4	19	-79%
No Selection	81	86	55	68	61	43	56	104	89	80	116	92	931	674	38%
TOTAL	126	137	96	107	98	54	77	112	90	80	118	92	1 187	1 112	7%

Details of the Lease

	2018						2019						Total 2018/19	Total 2017/18	Variance
	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun			
Shopping Centre	1	0	0	0	0	1	0	0	0	0	0	1	3	0	-
Strip	0	0	1	0	0	0	0	0	1	0	0	0	2	2	-
Standalone	1	0	0	0	0	0	1	0	0	0	0	0	2	6	-67%
No Selection & Other	124	137	95	107	98	53	76	112	89	80	118	91	1 180	1 104	7%
TOTAL	126	137	96	107	98	54	77	112	90	80	118	92	1 187	1 112	7%

Subject matter

	2018						2019						Total 2018/19	Total 2017/18	Variance
	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun			
Assignment	2	3	0	3	3	0	0	0	2	1	2	2	18	20	-10%
Bond Security	47	48	35	35	26	26	32	44	23	33	56	42	447	377	19%
Disclosure Statements	5	0	0	0	0	0	0	0	0	0	1	0	6	5	20%
End of Lease Negotiations	10	8	13	3	9	1	5	8	7	7	7	5	83	59	41%
Term of lease	5	5	3	4	12	3	7	7	14	6	7	9	82	64	28%
Outgoings	7	13	7	11	7	3	9	9	12	3	10	8	99	96	3%
Pre Lease Negotiations	6	8	2	4	6	3	1	9	6	4	8	1	58	60	-3%
Rent	14	17	9	13	11	5	3	7	12	7	3	12	113	77	47%
Repairs & Maintenance	10	12	11	8	6	2	5	7	2	4	12	7	86	68	26%
Termination	5	11	7	12	10	6	8	10	6	6	5	3	89	121	-26%
Other	15	12	9	12	8	5	7	8	5	7	7	2	97	112	-13%
No Selection	0	0	0	2	0	0	0	3	1	2	0	1	9	53	-83%
TOTAL	126	137	96	107	98	54	77	112	90	80	118	92	1 187	1 112	7%



WE KEPT HITTING BRICK WALLS UNTIL YOU INTERVENED ON OUR BEHALF. I WOULD LIKE TO EXTEND MY SINCEREST APPRECIATION FOR YOUR EFFORTS IN RELATION TO THIS MATTER”

BEN

Action taken in Response															
	2018						2019						Total 2018/19	Total 2017/18	Variance
	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun			
Advice Given	94	98	66	78	73	37	45	86	62	60	99	71	869	815	7%
Referred to External Agency	3	1	2	0	2	0	2	3	1	0	0	1	15	14	7%
Directed to Solicitor / Agent / Other	2	8	5	5	4	4	3	4	6	7	5	2	55	60	-8%
Invited to Lodge Formal Dispute	9	14	13	8	7	3	13	5	6	4	3	7	92	90	2%
Sent out Information	12	7	6	9	7	6	4	6	12	6	7	5	87	97	-10%
Directed to Publications	0	0	1	2	0	0	1	1	1	0	0	0	6	6	-
Directed to Application Forms	1	1	0	0	0	0	0	0	0	0	0	0	2	4	-50%
Other	1	2	0	0	1	1	1	0	0	1	0	0	7	8	-13%
Converted to formal case	4	6	3	5	4	3	8	6	2	2	4	5	52	16	225%
No selection	0	0	0	0	0	0	0	1	0	0	0	1	2	2	-
TOTAL	126	137	96	107	98	54	77	112	90	80	118	92	1 187	1 112	7%

FAIR TRADING (MINING AND RESOURCES INDUSTRY LAND ACCESS DISPUTE RESOLUTION CODE) REGULATIONS 2018

FARM DEBT MEDIATION ACT 2018

The *Farm Debt Mediation Act 2018* (FDM Act) was proclaimed on 3 September 2018 after a swift passage through State Parliament in June 2018. The development of the FDM Act was part of an election commitment to help farmers and their creditors resolve issues around farm debts.

The OSBC expanded its resources with the appointment of a further Senior Case Officer to manage these complex disputes. The OSBC also developed a new Code to assist farmers when mining companies are seeking land access.

The FDM Act requires all financial institutions to follow set processes before they can proceed to take enforcement action against a farmer under a farm mortgage.

These processes generally include a formal alternative dispute resolution process, with an independent mediator appointed by the OSBC. The first request for assistance under this Act was lodged on 2 October 2018, with the mediation conducted on 14 November 2018.

In the full financial year, nine mediations were conducted under the FDM Act with eight resulting in a signed agreement and/or settlement deed. The other remained open at the end of the financial year.

Farmers have received valuable assistance and ongoing support from Rural Financial Counsellors (a service provided by Rural Business Support) in more than half of the mediations.

On 29 November 2018, regulations making the *Fair Trading (Mining and Resources Industry Land Access Dispute Resolution Code) Regulations 2018* (Code) under the *Fair Trading Act 1987* were introduced. The development of the Code was part of an election commitment to help farmers deal with resource companies seeking access to their land.

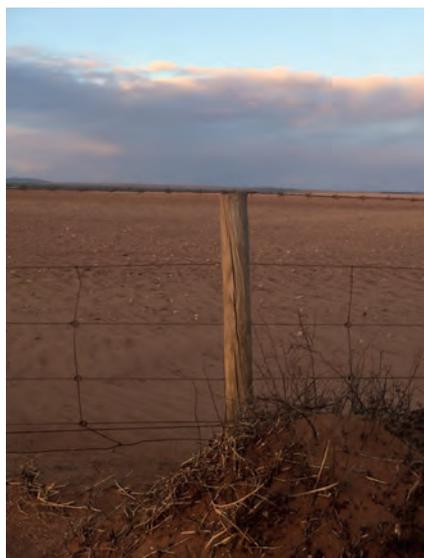
The Code is designed to help farmers and resource companies by providing mandatory alternative dispute resolution overseen by the SBC. The use of alternative dispute resolution processes under the Code is designed to help resolve land access disputes in a timely and cost effective way, without the need for court proceedings.

The Code covers disputes between a farmer and one or more mining or resource operators over access to land used by the farmer for the business of primary production.

Under the Code, the SBC has a variety of powers, including the power to require parties to attend meetings, exchange information, answer questions, and participate in the alternative dispute resolution process prescribed by the Code.

The Code operates in conjunction with the legal requirements under the *Mining Act 1971* and the *Petroleum and Geothermal Energy Act 2000*. The parties to a dispute will retain their legal rights under both Acts.

As at 30 June 2019, no request had been received to activate this Code.



LOCAL GOVERNMENT ACT 1999

Amendments to the *Local Government Act 1999* (the LG Act) passed in July 2017 provide the SBC with a review function on individual council rules relating to locational issues with mobile food vendors.

The legislation requires all councils in South Australia to set and publish rules relating to the location of mobile food vendors on public roads.

The SBC is responsible for providing advice back to a council if a business complains about the impact of the council's location of mobile food vendors.

If the council chooses to reject the SBC's advice, it is required to provide reasons. If the SBC remains unsatisfied with the council's response, he has 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 \$5 000.

The OSBC continued to work closely with the Local Government Association (LGA) as the new requirements took effect.

The LGA advised the State Government that the legislative powers of the SBC to direct a council to change its location rules were inappropriate.

The LG Act provides the SBC with considerable discretion on how to handle complaints made against councils and he adopted an approach of seeking to informally resolve matters in conjunction with the affected parties and the council.

At the time of writing, the State Government has commenced a consultation process on proposed changes to the LG Act which it expects will consider the relevant part of the LG Act relating to mobile food vendors.

The OSBC received its first complaint from a food business in October 2018. By the end of the financial year, 15 businesses had lodged complaints relating to mobile food vendors.

The SBC adopted a process of seeking to resolve the disputes outside of the legislative framework as an initial first step, and all councils fully co-operated.



Mobile food vendor in Port Augusta.



Mobile food vendor in the Adelaide CBD.

CASE STUDIES UNDER THE LOCAL GOVERNMENT ACT 1999

Port Adelaide Enfield Council

A café owner lodged a complaint about Roy Martin Park at Taperoo being made an approved location for mobile food vendors. The café is about a kilometre from the park, which has been upgraded and is now a popular venue for young families.

In this case, the SBC met with the café owners and the Port Adelaide Enfield Council.

While council reviewed its locational rules which defined six places, it also considered options on how to address the concerns of the café owners about the impact of a mobile coffee van on their business.

However, while the discussions were taking place, the van operators decided it was not viable for them to continue operating in the park location.

As a result, the SBC resolved to take no further action but indicated to the café owner that he could reopen the matter if a new mobile food vendor moved into the location.

Tumby Bay Council

A mobile food vendor complained that the Tumby Bay Council had not designated a mobile food location in the coastal hamlet of Port Neill, and was charging all vendors the maximum amount allowed under the LGA Act for a permit – \$2,000 per annum or \$200 per month.

The SBC visited Port Neill on 23 November 2018. He took into account that the location was serviced by a general store, hotel and caravan park kiosk.

He then met with the council's CEO, after earlier being provided with a copy of a petition opposing the placement of mobile food vendors in Tumby Bay and other letters opposing mobile food vendors.

The council had advertised its proposed Mobile Food Vendor rules in July 2018, seeking public comment. It received a number of submissions from businesses opposing mobile food vendors in the township.

The council advised that mobile food vendors could set up on council land (as opposed to a designated roadway under the LGA Act) for \$50 per day and could set up in prime locations (eg next to the jetty) if they chose to.

The SBC concluded that the council had taken steps to properly consider the impacts on existing businesses when it drafted the locational rules.

The mobile food vendor claimant was advised that the SBC was not prepared to request the council reconsider its rules under Section 225A of the LGA Act and that the SBC had no jurisdiction over the fees set by the council, as they were within legislated parameters.

City of Onkaparinga

In November 2018, the OSBC was contacted by a number of businesses in the Aldinga/Aldinga Beach area over concerns that the City of Onkaparinga had designated locations for mobile food vendors which were close to existing businesses.

After discussions with the council, it was agreed that a meeting with the traders would be held on 6 December 2018, which the SBC would attend.

At that meeting the traders outlined their concerns about what they saw as unfair competition from mobile vendors who paid no rates and taxes, could access free power, and would take the "cream" of the summer trade, which traders firmly stated was important to their business to survive the winter months.

It was agreed that one trader would represent the group and provide written submissions to the council.

The council made some minor amendments to its locational guidelines in response and advised that it would commence a comprehensive review and engagement process in June 2019 with the feedback provided to date being incorporated into the broader review and engagement process. All businesses that attended the meeting on 6 December 2018 were notified of the outcome.

To date there have been no further complaints from traders.

WORK HEALTH AND SAFETY ACT 2012

REVIEW OF CODES UNDER THE WORK HEALTH AND SAFETY ACT 2012

The SBC was requested to provide a response to a series of technical and administrative amendments to existing Codes of Practice in accordance with Section 274 3(b) of the *Work Health and Safety Act 2012* (the Act).

The affected Codes were:

- Work, Health and Safety Consultation, Cooperation and Coordination
- How to Manage Work Health and Safety Risks
- First Aid in the Workplace
- Managing Risks of Plant in the Workplace
- Construction Work
- Welding Processes
- Managing Risks of Hazardous Chemicals
- Preparation of Safety Data Sheets for Hazardous Chemicals
- Abrasive Blasting
- Managing the Work Environment and Facilities

The SBC recommended the Codes be approved by the responsible Minister, the Treasurer, the Hon Rob Lucas MLC, but sought clarification in relation to a formatting error and some confusing text.

“

AS A RESULT OF YOUR ASSISTANCE I AM HAPPY TO REPORT THAT THE SAMFS ATTENDED OUR GLYNDE PROPERTY THIS MORNING AND HAVE JUST ISSUED THE CERTIFICATION WE NEED TO ENABLE US TO RETAIN OUR INSURANCE COVERAGE.”

BEN

INQUIRIES AND SUBMISSIONS

INQUIRIES

COOMBS BAREI CONSTRUCTIONS PTY LTD (COOMBS BAREI)

The SBC has completed a body of work around the collapse of Coombs Barei in 2017 and the processes for the State Government for entering into contracts with companies at risk of financial trouble. More on this matter can be found on page 20.

The full report can be found on the OSBC website at www.sasbc.sa.gov.au/latest_news

SUBMISSIONS

AUTHORISATION SOUGHT BY COUNCIL SOLUTIONS FOR JOINT PROCUREMENT OF WASTE MANAGEMENT SERVICES

Council Solutions, on behalf of the cities of Adelaide, Charles Sturt, Marion and Port Adelaide Enfield sought authorisation from the Australian Competition and Consumer Commission (ACCC) in three separate applications to jointly procure:

1. kerbside waste collection services
2. waste processing and disposal services
3. ancillary waste services.

On 12 October 2018, the ACCC issued a determination granting authorisation for kerbside waste collection services until 30 June 2031. In November 2018, it issued determinations granting authorisation for both waste processing and disposal services and ancillary waste services until 30 June 2031.

The ACCC granted authorisation for all three streams as it was satisfied that the likely public benefits would outweigh the likely public detriment, despite submissions and evidence to the contrary from an alarming number of industry participants.

The SBC provided written submissions on a number of occasions at the invitation of the ACCC. He also attended one pre-decision conference on 27 August 2017 and another two on 22 October 2018.

The SBC raised concerns about the impact these tender processes would have on small business, especially in the long term, given the length of the authorisations.

In light of this, the SBC asked the ACCC (if it was minded to approve the applications) to conduct a review of the impact of the three authorisations in five years' time to determine whether the behaviour has delivered the benefits that have been promised and whether competition in the market has lessened. In doing so, the ACCC will have the benefit of hindsight and will be able

to determine whether the granting of these applications has had an adverse effect on small business.

This submission was misinterpreted by the ACCC, which stated that the SBC was arguing for a five-year term.

At a subsequent meeting with the ACCC it was agreed that this was not the case; rather the SBC was seeking to have a proper review undertaken while the contract was still in place to assess the benefits and costs. The ACCC responded that it could conduct a review on request and that a clarifying statement would be published on the ACCC website.

Ultimately, the ACCC approved the applications for the three separate contracts covering collection, processing and disposal, and ancillary waste services.

While this was a disappointment to some industry stakeholders, it was a better outcome than the original Council Solutions' proposal for a single long-term contract of up to 17 years covering all waste management streams.

FOOD AND GROCERY CODE

On 2 March 2018, the Assistant Minister to the Treasurer, Hon Michael Sukkar MP, announced a review of the Food and Grocery Code of Conduct and appointed Professor Graeme Samuel AC as the reviewer.

Professor Samuel sought comments from interested parties, which were used in the development of a draft

report released on 2 July 2018. The SBC provided his initial submission on 8 May 2018, and a further submission commenting on the draft report on 7 August 2018.

The SBC provided his submission commenting on the final report and recommendations on 4 December 2018. In that submission, he addressed two recommendations that relate to the report “From the Paddock to the Plate – a Fair Return for Producers”, prepared by the Economic and Finance Committee of the Parliament of South Australia, dated 28 November 2017.

Recommendation 1 of the Review states:

The Grocery Code should remain as a prescribed voluntary code.

The Government should consider introducing a targeted mandatory code for industry participants with significant market power that refuse to become signatories.

The SBC supported introducing a separate targeted mandatory code as it provides an opportunity to capture all participants in the industry, which will ensure protection for suppliers across the board.

Recommendation 7 of the Review states:

The ACCC should also consider adopting a collaborative approach with signatories, Code Arbiters and the Independent Reviewer to encourage more active compliance with the Grocery Code.

The SBC advised that he was unable to support Recommendation 7 without a specific reference to civil

penalties. The Commissioner is of the view that civil penalties under the Code are warranted and he concurs with the ACCC’s argument that the implementation of civil pecuniary penalties would act as a deterrent against contraventions of the Code.

The SBC reiterated the comments made in his previous submissions regarding the South Australian Committee’s recommendation that a state-based mandatory code be introduced in South Australia if the necessary federal reforms are not implemented. However, this would be subject to the consideration of the State Government.

The Government response to the Review of the Food and Grocery Code of Conduct, which was released on 27 March 2019, did not address the recommendations made by the SBC. It is now a matter for the State Government as to whether it will consider introducing a state-based mandatory code.

STATE CORONER’S RECOMMENDATIONS FOLLOWING FATALITY INVOLVING AN ELEVATING WORK PLATFORM

The State Coroner, Mark Johns, made a series of recommendations contained in his Inquest Findings, following a fatality involving an Elevated Work Platform (EWP).

Martyn Campbell, Executive Director SafeWork SA, advised the SBC that both SafeWork SA and the State Government were currently considering six recommendations outlined in the Inquest Findings. Mr Campbell invited the SBC to provide his views on the six recommendations made by Mr Johns in relation to how they may impact or improve safety on worksites.

The first recommendation proposed that an EWP document dated September 2016 be distributed

annually to all relevant building participants in South Australia, and links to an up-to-date version of the document be featured permanently on SafeWork SA’s website. It also proposed that the associated minimum standard of training be updated to include references to “clear lines of sight”.

The SBC supported this recommendation based on its implementation being reasonably practicable and the belief that such measures would assist in eliminating or minimising risks to people operating EWPs or being located nearby.

The second recommendation was for greater importance to be applied to the question of standardising scissor-lift controls by elevating it to the Council of Australian Governments (COAG) for the commissioning of a project to standardise controls in scissor lifts.

The SBC supported this recommendation on the basis that EWPs have been associated with death and serious injury and are frequently used on construction worksites and in other settings. The SBC expressed his view that EWPs should be managed as high-risk plant from a work health and safety perspective.

Until standardisation of controls in scissor-lifts is implemented, the Coroner recommended that a scissor-lift not be operated unless there is a “spotter” on the ground at all times to take steps to activate the emergency lowering mechanism if needed.

The SBC acknowledged that this recommendation would have a financial impact on the industry, however he also recognised that

safety must be prioritised. On balance, the SBC supported this recommendation.

The fourth recommendation asked that SafeWork, in consultation with Safe Work Australia, consider the balance within Work Health and Safety legislation between safety being managed by risk assessment as opposed to mandatory rules about what must occur in particular circumstances.

The SBC supported this recommendation and reiterated his view that EWP's should be managed as high-risk plant.

The fifth recommendation proposed that SafeWork SA investigate, consider and report upon world's best practice in secondary protection systems and options for reform to require all scissor-lifts in use in South Australia to have a secondary protection system.

The SBC supported this recommendation.

The sixth recommendation proposed that funding be provided via the Legal Services Commission to enable families to be legally represented in inquests for deaths in custody, and generally.

The SBC declined to comment on this recommendation on the basis that he did not believe this to be a matter within the scope of his role.

SA PRODUCTIVITY COMMISSION - REVIEW INTO PROCUREMENT IN SOUTH AUSTRALIA

Two submissions were provided to the SA Productivity Commission (SAPC) in response to its inquiry into SA Government procurement.

The initial submission expressed disappointment that the terms of reference for the review did not cover capital projects and prescribed agencies such as Return to Work Corporation of South Australia,

SA Housing Trust, SA Water and the Urban Renewal Authority (RenewalSA) given the extent of their procurement activities.

The submission urged the inclusion of capital projects given the impact this sector has on small business subcontractors and suppliers. In February 2019, the Government agreed to amend the terms of reference to include procurement in the building and construction sector.

The submission covered the following issues:

- payment terms and shortening time frames for payment;
- late and disputed payments and the impact on small business;
- unfair transfer of risk;
- poor due diligence and pre-qualification processes by State Government agencies;
- financial capacity of small businesses;
- accessing state government tenders and improvements which could be made;
- effective purchasing by bridging the gap between the State Government and business;
- the impact on small business of the aggregation of State Government contracts;
- development and management of whole of government contracts; and
- effectiveness of the Industry Participation Policy.

A second submission was made in response to the draft report issued by the SAPC on 25 March 2019.

The State Government has extended the terms of reference to include the building and construction sector and prescribed agencies and a second stage report will be released later in 2019.

Both submissions can be found on the SAPC website at <https://www.sapc.sa.gov.au/publications/submissions>

As the financial year concluded, a third submission addressing Stage 2 of the Productivity Commission's review, which covered government procurement in the building and construction sector and exempt agencies, was being prepared.

REVIEW OF TRAINING AND SKILLS DEVELOPMENT ACT 2008

A submission was provided to the review of the *Training and Skills Development Act 2008* which covered:

- Governance and regulation
- Promoting new apprenticeship and traineeship pathways
- Responsive legislation.

The submission specifically addressed options to reduce the regulatory burden of the process of registration and reregistration of employers who employ apprentices and trainees as well as roles and responsibilities for the management of training contracts.

Recommendations were also made in terms of ensuring the legislative framework was sufficiently flexible to respond to changes in the training sector.



HAIDE
TERS

GERALD HAYTERS
Tess

59

ENGAGEMENT WITH THE COMMUNITY

14
information sessions and webinars

369
attendees at events

97%
attendee satisfaction

INFORMATION SERVICES

One of the functions of the OSBC is to provide information in relation to starting and/or running a small business. The OSBC has continued to engage with the small business community in a variety of ways, including direct emailing, social media, the OSBC website, through intermediaries and in person via the Small Business Centre shopfront.

The OSBC also delivers a suite of information sessions in relation to a range of topical matters relevant to small businesses. These are presented in person as well as via webinars, with the aim of reaching regional communities.

INFORMATION SESSIONS

During 2018/19 the OSBC delivered 14 information sessions at the Small Business Centre. 258 people attended, while another 111 tuned in via webinar. These webinars were later published on the OSBC YouTube Channel, which has seen a slight increase in subscribers.

Topics included:

- Social Media for Small Business
- Bullying and Harassment for Small Business
- Retail and Commercial Leasing
- Exporting for Small Business

- Navigating Disputes in the Building and Construction Industry
- Understanding Employee Entitlements
- Protecting Your Business Brand.

The OSBC's BizLink program, which brings Federal, State and local government departments together to provide information on services available to business start-ups, continued during the year with one seminar being held in the CBD.



Export Adviser with TradeStart, Ariane Towse presented the Exporting for Small Business Information Session in March 2019.



Social Media for Small Business information session presented by the team at Boylen Designs in July 2018.

When asked for feedback, 97% of attendees said they were “happy with the information” they received.

“

SECOND SEMINAR
I’VE ATTENDED (FIRST
WAS IP) – BOTH
BRILLIANT”

SOCIAL MEDIA FOR
SMALL BUSINESS

“

EXCELLENT
PRESENTER AND
INFORMATION.
SOMETHING EVERY
SMALL BUSINESS
SHOULD KNOW”

BULLYING AND HARASSMENT
FOR SMALL BUSINESS

GREAT SERVICES
– WISH WE’D HAD
THIS INFORMATION
PRIOR STARTING OUR
BUSINESS.”

RETAIL AND COMMERCIAL
LEASING INFORMATION SESSION

“

THANK YOU FOR
ORGANISING SUCH
A LOVELY SEMINAR!
IT WAS SUCH A GOOD
TIME AND GOT MANY
INFO TO START NEW
SMALL BUSINESS.
THANKS HEAPS”

BIZLINK SEMINAR

VERY IMPRESSED
WITH THE EVENT AND
THE ORGANISATION
AND PRESENTATION
BY SASBC AND THE
OVERVIEW BY JOHN.”

PROTECTING YOUR
BUSINESS BRAND



BizLink Seminars speakers from the event held in September 2018.

PUBLIC EVENTS

During 2018/19 the OSBC was represented at a number of local small business events and expos, including:

- RDA Transforming Business 2018 (RDA Barossa)
- SA Migrant Small Business Expo (Community Corporate)
- Growing SA Conference
- Northern Region Small Business Summit (Institute of Public Accountants)
- Southern Adelaide Business Expo
- Gawler Small Business Expo (Gawler Business Development Group).

PUBLICATIONS

The OSBC has five official publications:

- We're Here to Help Small Business (DL) – a flyer summarising OSBC services
- Services and Overview (A4) – a brochure providing a more detailed overview of services
- Retail and Commercial Leasing Guide (A4) – comprehensive information for tenants and landlords about entering into a retail or commercial lease agreement
- Industry Codes (DL) – a flyer with information about the six industry Codes the OSBC administers
- Open to Business: Making Roadworks Work – a guide for government and businesses on reducing negative impacts of roadworks (in production).

A number of other flyers are produced, including:

- Farm Debt Mediation
- Small Business Friendly Council Initiative
- Mediation at the OSBC
- What is a Lease?
- Commencing a Minor Civil Claim.

These publications are made available at information sessions, expos and events, and from the Small Business Centre shopfront. Where possible, distribution also is coordinated with other government agencies. For example, We're Here to Help Small Business was again included in ReturnToWork SA's annual bulk mail delivery to 2000 businesses, with another 50000 receiving it via email.



Graduate Officer, Dali Pupovic at the 2018 SA Migrant Small Business Expo held at the ThinkLab at the University of Adelaide.



Staff member Susie Sammut (right) assisting a visitor to the Small Business Centre Shopfront.

SOCIAL MEDIA PLATFORMS

While the OSBC recognises that many small businesses are time poor in committing to social media, it acknowledges what a powerful tool this can be in delivering information.

Facebook remains the most successful platform, but an increase in interaction and the popularity of LinkedIn has recently been apparent. The OSBC uses these platforms to deliver information as well as engage with other government departments and share information which is relevant to small businesses.

WEBSITE

The OSBC website is the main entry point for submitting enquires, lodging retail and commercial bonds and registering for events. There were 36981 visits to the website in 2018/19 – a 9% increase on the previous year.

Updates during the year included a focus on translating pages to provide greater accessibility for non-English speaking users.

Visits to OSBC Website

During the year, the OSBC website was visited:

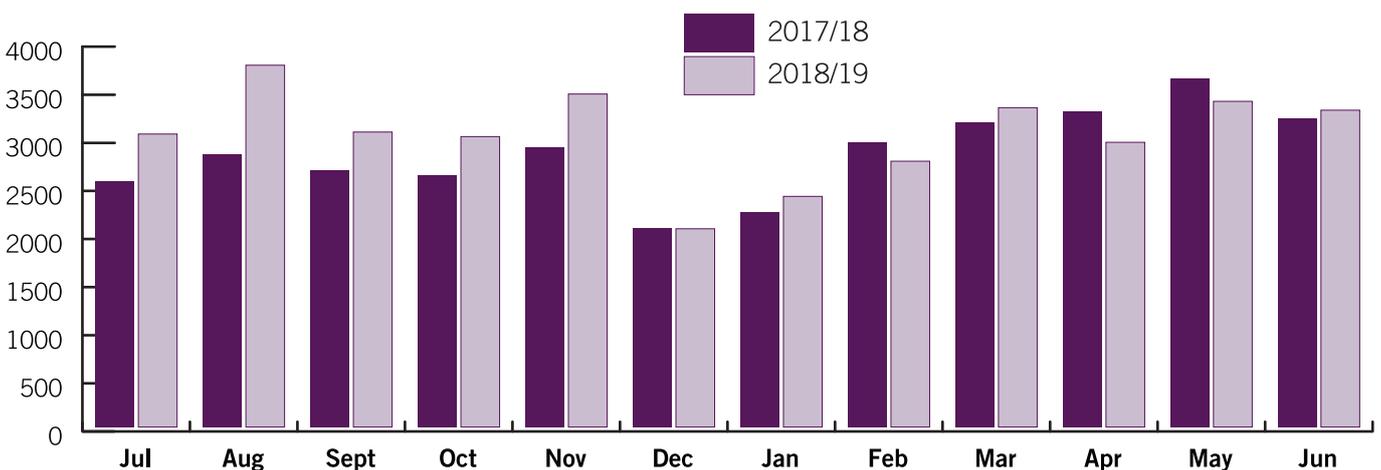


36981

Visits



VISITS TO THE OSBC WEBSITE



REGIONAL ENGAGEMENT

BUSINESS SA REGIONAL VOICE PROGRAM

The OSBC continued a partnership with Business SA to promote its services in regional areas.

The SBC or senior OSBC staff attended Business SA Regional Voice events in Port Pirie, Kadina, Mount Gambier, Whyalla, Port Lincoln, Waikerie, Loxton and Kangaroo Island. The meetings gave small business owners the chance to provide direct feedback on policies, issues of concern or areas needing improvement in service delivery.



Small Business Commissioner John Chapman speaks to business owners at Business SA's Regional Voice event at Murray Bridge.



Small Business Commissioner John Chapman spoke at Business SA's Regional Voice program in Port Lincoln. Pictured with Bob & Sue Taylor from Lincoln Glass and Aluminium.



Alex Flint from Employers Mutual, Lisa Robertson Chair of the Kadina Chamber of Commerce and Small Business Commissioner John Chapman joined Andrew McKenna from Business SA for the Regional Voice event at Wallaroo in May 2019.

REGIONAL FIELD DAYS

In 2018/19 the OSBC attended the Eyre Peninsula field days in Cleve in the Grain Producers SA marquee, and the Riverland field days in Barmera in the PIRSA marquee along with Safework SA and Grain Producers SA.

The OSBC provided information about its services, including the special dispute resolution powers under the *Fair Trading (Farming Industry Dispute Resolution Code) Regulations 2013 (Farming Code)* and the new responsibilities under the *Farm Debt Mediation Act 2018*.



Small Business Commissioner John Chapman attended a Business Breakfast at Dublin Clean Grain in the Adelaide Plains. Left to Right – Fraser Ellis State MP (Narungga), Belinda Cay – Co-Director of AgCommunicators, Anne Moroney RDA, Andrew Koch – Director Dublin Clean Grain, James Miller, CEO, Adelaide Plains Council, Jon Gee State MP (Taylor), John Chapman, Small Business Commissioner, Mayor Mark Wasley, Rowan Ramsey Federal MP (Grey).



Case and Education Manager James Rock (left) with Lynton Keen from Rural Business Support at the 2018 Riverland Field Days discussing the Farm Debt Mediation Scheme which provides assistance to farmers and creditors in reaching an agreement about current and future debt arrangements.



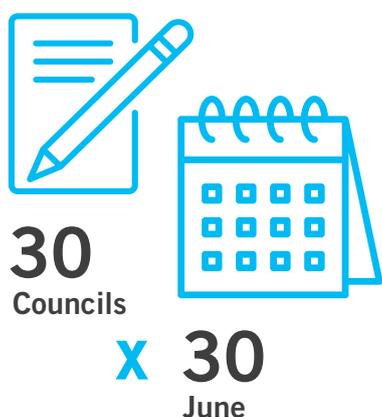
Small Business Commissioner John Chapman at the Eyre Peninsula Field Days in Cleve speaking with farmers visiting the Grain Producers SA tent and talking about his new responsibilities in relation to Farm Debt Mediation. Discussions included the Member for Hammond, Adrian Pederick MP and Member for Flinders, Peter Treloar MP.

SMALL BUSINESS FRIENDLY COUNCIL INITIATIVE

The Small Business Friendly Council (SBFC) Initiative has been developed with the support of the Local Government Association of South Australia to enhance engagement and simplify interactions between Councils and small businesses across South Australia.

Benefits include:

- supporting a Council's local economic area, including providing job opportunities
- meeting the needs of ratepayers by providing local goods and services
- creating the right environment to establish and grow a business.



NEW COUNCILS TO THE INITIATIVE

The OSBC welcomed the following councils to the SBFC Initiative in 2018/19:

- Mount Barker District Council
- District Council of Elliston
- City of Adelaide
- Adelaide Plains Council
- City of Charles Sturt
- Berri Barmera Council
- City of Port Lincoln
- City of Norwood Payneham & St Peters
- City of Prospect
- Renmark Paringa Council
- District Council of Loxton Waikerie

The SBC attended meetings in regional areas to promote the SBFC Initiative, including the Murraylands and Riverland Local Government Association meeting on 11 July 2018, and the Limestone Coast Local Government Association meeting on 8 February 2019. He also met with individual councils while in the area for Business SA's Regional Voice Event at Wallaroo on 8 May 2019.

SMALL BUSINESS FRIENDLY COUNCIL INITIATIVE INAUGURAL WORKSHOP

The OSBC held its inaugural SBFC Initiative Workshop on 24 October 2018. Mayors, Chief Executive Officers and Economic Development Managers from the participating 27 councils were invited.

Sean Holden of the LGA spoke about successful businesses contributing to community wellbeing. After providing an overview of local government in South Australia, he discussed the impact small business has on the South Australian economy and the benefits of being involved in the SBFC Initiative.

Chris Gregory of NBN Co gave a presentation on how the NBN Access Network can support the SBFC Initiative. He said that small and medium-sized businesses that are NBN-connected have a more diverse customer base, and are eight times more likely to create jobs and 14 times more likely to innovate.

Alison Hancock and Renee Mitchell from the City of Onkaparinga gave a presentation on the council's Thinking Pink initiative, which encourages a more flexible approach to development assessment and the watering down of red tape.



Small Business Friendly Council

The CEO of the City of Whyalla, Chris Cowell, spoke about the strategic vision for Whyalla as a vibrant, attractive city offering the community a diverse range of sustainable economic, social, environmental and cultural opportunities. He then discussed the City Transformation Framework, Renew Whyalla and the Alex Ramsay Community Hub.

The two-hour workshop was followed by networking, which gave participants an opportunity to have an informal discussion with their SBFC Initiative peers.

The OSBC intends to host these workshops on an annual basis in the future.



Whyalla City Council CEO Chris Cowley presented to local government participants at the 2018 Small Business Friendly Council Workshop.



Former Lord Mayor of Adelaide The Right Honorable Martin Haese and City of Adelaide Acting CEO, Beth Davidson-Park along with Small Business Commissioner John Chapman at the official signing ceremony for the City of Adelaide to join the Small Business Friendly Council Initiative in July 2018.



The City of Prospect became the 28th council to join the Small Business Friendly Council Initiative. City of Prospect Mayor David O'Loughlin and CEO Cate Hart made it official at the signing of their charter with Small Business Commissioner John Chapman in February 2019.



Participants at the Small Business Friendly Council workshop.

OTHER RELEVANT INFORMATION

CONTRACTS AND CONSULTANTS

CONSULTANTS

The following is a summary of external consultants engaged by the agency, the nature of work undertaken, and the actual payments made for the work undertaken during the financial year.

Consultancies	Purpose	\$ Actual payment
All consultancies below \$10,000 each - combined	-	\$0

Consultancies	Purpose	\$ Actual payment
All consultancies above \$10,000 each - combined	-	\$0

CONTRACTORS

The following is a summary of external contractors engaged by the agency, the nature of work undertaken, and the actual payments made for work undertaken during the financial year.

Contractors	Purpose	\$ Actual payment
All contractors below \$10,000 each - combined	-	\$0

Contractors above \$10,000 each	Purpose	\$ Actual payment
SRA Information technology Pty Ltd	Retail Bonds Management System Support	\$10,500 (ex GST)
Lovatt & Associates	Prepare documentation for the implementation of the Farm Debt Mediation Scheme	\$11,050 (ex GST)
Total		\$21,550 (ex GST)

RISK MANAGEMENT

FRAUD DETECTED IN THE AGENCY

Category / nature of fraud	Number of instances
Nil	0

Strategies implemented to control and prevent fraud

In line with the Department for Innovation and Skills 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 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
- a number of measures implemented to reduce the risk of fraud in relation to the Retail Bonds Management System.

WHISTLEBLOWERS' DISCLOSURE

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

- Nil

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 people 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 FOI Act was gazetted on 18 December 2014.

The OSBC received three Freedom of Information requests in 2018/19.

PUBLIC COMPLAINTS

NUMBER OF PUBLIC COMPLAINTS REPORTED

Category of complaints by subject	Number of instances
Advice given	2

Nature of complaint or suggestion	Services improved or changed as a result of complaints or consumer suggestions
<p>A claimant had a work vehicle that he claimed was not fit-for-purpose as it would not perform to its weight capacity. OSBC sought to negotiate an outcome between the parties.</p> <p>While not all of the claimant's issues were resolved, OSBC did assist him to restructure his finance on the vehicle and avoid its repossession.</p> <p>Upon closure of the matter, the claimant advised OSBC that he was not satisfied and would be lodging a complaint with the "relevant authority" regarding the OSBC's handling of the matter.</p>	<p>The claimant's complaint was acknowledged by SBC and he was provided with contact details for the Office of Public Integrity and the Ombudsman.</p>
<p>In 2015, the OSBC tried unsuccessfully to mediate a matter where a lessee had been in a long-standing dispute over the condition of the leased premises.</p> <p>In 2018, the matter was returned to OSBC by the court for further mediation. After protracted negotiations, the matter remained unresolved and was remitted to the court for formal hearing.</p> <p>The lessee formed the view that both OSBC and the mediator involved had acted in a biased manner. The lessee complained to the relevant Minister and also sought that the Minister intervene.</p>	<p>The lessee's complaint was acknowledged by SBC and he was provided with the contact details of both the Office of Public Integrity and the Ombudsman to escalate his complaint.</p>

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 has adopted a policy on handling compliments, complaints and feedback which is available on the OSBC website.



BRUNO IT'S MY PLEASURE AND THANK YOU FOR ACKNOWLEDGING JOHN CHAPMAN. JOHN IS THE SMALL BUSINESS COMMISSIONER. HE HAS DONE A REALLY FINE JOB IN THAT POSITION FOR SOME TIME. HE IS AT LOGGERHEADS WITH THE GOVERNMENT AND THE MINISTER, MR KNOLL ABOUT THE BUSINESS OF COMPENSATION WHICH BY THE WAY OCCURS IN OTHER JURISDICTIONS WHEN YOU GET COMPULSORY ACQUISITIONS, DAMAGES ETC. BUT DPTI IS A VERY HARD NUT TO CRACK IN THIS STATE FOR REASONS I THINK I HAVE EXPLAINED OVER TIME. BUT YOU COULDN'T GET A BETTER ADVOCATE. HE IS ALSO ACTING FOR SOMEBODY. DO YOU REMEMBER A COUPLE OF YEARS AGO IN SEPTEMBER WE HAD A BIG BLACKOUT, EVERYTHING WENT DARK. THIS PARTICULAR PERSON FOR WHOM HE IS ACTING IS OWED HUNDREDS OF THOUSANDS OF INSURANCE MONEY FOR DAMAGE AND LOSS FOR WHICH HE PAID PREMIUMS AND THE COMPANY IS STILL STUFFING AROUND ARGUING ABOUT HOW THIS AND WHY THAT AND WE NEED MORE INFORMATION. IT IS ALMOST TO THE POINT THAT THEY ARE DEMANDING A PHONE BOOK. IT IS RIDICULOUS AND I THINK IF INSURANCE COMPANIES DO NOT LIFT THEIR GAME WHAT DO WE HAVE TO DO – HAVE ANOTHER ROYAL COMMISSION INTO THEM. SURELY NOT. SURELY NOT. BUT WE ARE WATCHING. ANYWAY, I THINK IT IS GREAT THAT WE HAVE SOMEONE LIKE JOHN CHAPMAN.”

LEON BYNER, 5AA



Our ref: A19/352, A19/042

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27 September 2019

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 2019

We have completed the audit of your accounts for the year ended 30 June 2019. Two key outcomes from the audit are the:

- 1 Independent Auditor's Report on your agency's financial report
- 2 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.

The *Public Finance and Audit Act 1987* allows me to publish documents on the Auditor-General's Department website. The enclosed Independent Auditor's Reports and accompanying financial statements will be published on that website on Tuesday 15 October 2019.

2 Audit management letters

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

What the audit covered

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

For official use only

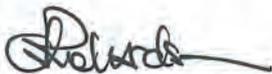
Our audit covered the principal areas of the agency's financial operations and included test reviews of systems, processes, internal controls and financial transactions. Some notable areas were:

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

We concluded that the financial reports were 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

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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 2019.

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 2019, 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 2019
- a Statement of Financial Position as at 30 June 2019
- a Statement of Changes in Equity for the year ended 30 June 2019
- a Statement of Cash Flows for the year ended 30 June 2019
- notes, comprising significant accounting policies and other explanatory information
- a Certificate from the Small Business Commissioner and the Acting 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, but not for the purpose of expressing an opinion on the effectiveness of the Small Business Commissioner's internal control
- 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.

A handwritten signature in black ink, appearing to read "Richardson", with a long horizontal line extending to the right.

Andrew Richardson

Auditor-General

27 September 2019

Small Business Commissioner
(SBC)

Financial Statements
for the year ended
30 June 2019

Small Business Commissioner
Certification of the Financial Statements
for the year ended 30 June 2019

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; and
- present a true and fair view of the financial position of the Small Business Commissioner as at 30 June 2019 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
26th September 2019



Rosanne Davies
A/Manager, Business Services
26 September 2019

Small Business Commissioner
Statement of Comprehensive Income
for the year ended 30 June 2019

	Note	2019	2018
		\$'000	\$'000
<u>Expenses</u>			
Employee benefits expenses	2.2	1 251	1 235
Supplies and services	3.1	576	663
Depreciation and amortisation	3.2	158	163
Grants and subsidies		22	19
Total expenses		2 007	2 080
<u>Income</u>			
Recoveries	4.2	208	241
Resources received free of charge	4.3	16	14
Mediation income		6	3
Total income		230	258
Net cost of providing services		(1 777)	(1 822)
<u>Revenues from SA Government</u>			
Revenues from SA Government	4.1	1 859	1 847
Total net revenues from SA Government		1 859	1 847
Net result		82	25
Total comprehensive result		82	25

The accompanying notes form part of these financial statements. The net result and total comprehensive result are attributable to the SA Government as owner.

Small Business Commissioner
Statement of Financial Position
as at 30 June 2019

	Note	2019 \$'000	2018 \$'000
<u>Current assets</u>			
Cash and cash equivalents	6.1	1 157	862
Receivables	6.2	46	44
Total current assets		1 203	906
<u>Non-current assets</u>			
Property, plant and equipment	5.1	186	302
Intangible assets	5.2	123	165
Total non-current assets		309	467
Total assets		1 512	1 373
<u>Current liabilities</u>			
Payables	7.1	121	70
Employee benefits	2.3	127	123
Provisions	7.2	2	-
Total current liabilities		250	193
<u>Non-current liabilities</u>			
Payables	7.1	22	23
Employee benefits	2.3	241	243
Provisions	7.2	3	-
Total non-current liabilities		266	266
Total liabilities		516	459
Net assets		996	914
<u>Equity</u>			
Retained earnings		996	914
Total equity		996	914

The accompanying notes form part of these financial statements. The total equity is attributable to the SA Government as owner.

Small Business Commissioner
Statement of Changes in Equity
for the year ended 30 June 2019

	Retained earnings \$'000	Total equity \$'000
Balance at 1 July 2017	889	889
<u>Net result for 2017-18</u>	<u>25</u>	<u>25</u>
Total comprehensive result for 2017-18	25	25
Balance at 30 June 2018	914	914
<u>Net result for 2018-19</u>	<u>82</u>	<u>82</u>
Total comprehensive result for 2018-19	82	82
Balance at 30 June 2019	996	996

The accompanying notes form part of these financial statements. All changes in equity are attributable to the SA Government as owner.

Small Business Commissioner
Statement of Cash Flows
for the year ended 30 June 2019

		2019 (Outflows) Inflows \$'000	2018 (Outflows) Inflows \$'000
<u>Cash flows from operating activities</u>	Note		
<i>Cash outflows</i>			
Employee benefit payments		(1 249)	(1 196)
Payments for supplies and services		(506)	(667)
Payments of grants and subsidies		(22)	-
Cash used in operations		(1 777)	(1 863)
<i>Cash inflows</i>			
Recoveries from Retail Shop Leases Fund		194	239
Other recoveries		13	-
Mediation receipts		6	3
Cash generated from operations		213	242
Cash flows from SA Government			
Receipts from SA Government	4.1	1 859	1 847
Cash generated from SA Government		1 859	1 847
Net cash provided by operating activities		295	226
<u>Cash flows from investing activities</u>			
<i>Cash outflows</i>			
Purchase of property, plant and equipment		-	(66)
Cash used in investing activities		-	(66)
Net cash used in investing activities		-	(66)
Net increase in cash and cash equivalents		295	160
Cash and cash equivalents at the beginning of the period		862	702
Cash and cash equivalents at the end of the period	6.1	1 157	862

The accompanying notes form part of these financial statements.

Small Business Commissioner
Notes to and forming part of the financial statements
for the year ended 30 June 2019

NOTES TO THE FINANCIAL STATEMENTS

1.	About the Small Business Commissioner	10
1.1.	Basis of preparation	10
1.2.	Objectives and Programs	11
2.	Board, committees and employees	12
2.1.	Key management personnel.....	12
2.2.	Employee benefits expenses.....	12
2.3.	Employee benefits liability	13
3.	Expenses	14
3.1.	Supplies and services	14
3.2.	Depreciation and amortisation	14
4.	Income	15
4.1.	Revenues from SA Government.....	15
4.2.	Recoveries	15
4.3.	Resources received free of charge.....	15
5.	Non-financial assets	16
5.1.	Property, plant and equipment.....	16
5.2.	Intangible assets	16
6.	Financial Assets	17
6.1.	Cash and cash equivalents.....	17
6.2.	Receivables	17
7.	Liabilities	18
7.1.	Payables	18
7.2.	Provisions	19
8.	Changes in accounting policy	20
8.1.	Treasurer’s Instructions (Accounting Policy Statement).....	20
8.2.	AASB 9 Financial Instrument.....	20
9.	Outlook	21
9.1.	Unrecognised contractual commitments	21
9.2.	Contingent assets and liabilities	22
9.3.	Events after the reporting period	22
10.	Measurement and risk	23
10.1.	Long service leave liability – measurement.....	23
10.2.	Fair Value.....	23
10.3.	Financial instruments.....	24

Small Business Commissioner

Notes to and forming part of the financial statements

for the year ended 30 June 2019

1. About the Small Business Commissioner

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.

As disclosed in the *State Budget 2019-20, Agency Statement, Budget Paper 4, Volume 1*, the Commissioner will become Program 15 of the Attorney-General's Department as of 1 July 2019.

1.1. Basis of preparation

The financial statements are general purpose financial statements prepared in compliance with:

- section 23 of the *Public Finance and Audit Act 1987*;
- Treasurer's Instructions and Accounting Policy Statements issued by the Treasurer under the *Public Finance and Audit Act 1987*; and
- relevant Australian Accounting Standards with reduced disclosure requirements.

For the 2018-19 financial statements the Commissioner adopted *AASB 9 – Financial Instruments* and is required to comply with new *Treasurer's Instructions (Accounting Policy Statements)* issued on 22 March 2019. Further information is provided in note 8.

The financial statements are prepared based on a 12 month reporting 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.

Income, expenses and assets are recognised net of the amount of GST except:

- when the GST incurred on a purchase of goods or services is not recoverable from the Australian Taxation Office, in which case the GST is recognised as part of the cost of acquisition of the asset or as part of the expense item applicable; and
- receivables and payables, which are stated with the amount of GST included.

Assets and liabilities that are sold, consumed or realised as part of the normal operating cycle even have been classified as current assets or current liabilities. All other assets and liabilities are classified as non-current.

Small Business Commissioner

Notes to and forming part of the financial statements

for the year ended 30 June 2019

1.2. Objectives and Programs

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 Commissioner supports business through alternative dispute resolution processes and provision of information on government services. The Small Business Commissioner is an independent statutory officer and is responsible for the administration and provision of information on the *Retail and Commercial Lease Act 1995*, *Building and Construction Industry Security of Payment Act 2009* and the *Farm Debt Mediation Act 2018* while having statutory responsibilities under the *Fair Trading Act 1987*, *Late Payment of Government Debts Act 2013*, *Work Health and Safety Act 2012* and the *Local Government Act 2009* (in relation to mobile food vendors).

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
- Administers the *Farm Debt Mediation Act 2018*
- Handles disputes in relation to mobile food vendors under the relevant section of the *Local Government Act 1999*.

Small Business Commissioner
Notes to and forming part of the financial statements
for the year ended 30 June 2019

2. Board, committees and employees

2.1. 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 for key management personnel was \$284 000 in 2018-19 and \$287 000 in 2017-18.

The compensation disclosed in this note excludes salaries and other benefits the Minister receives. The Minister's remuneration and allowances are set by the *Parliamentary Remuneration Act 1990* and the Remuneration Tribunal of SA respectively and are payable from the Consolidated Account (via the Department of Treasury and Finance) under section 6 the *Parliamentary Remuneration Act 1990*.

2.2. Employee benefits expenses

	2019	2018
	\$'000	\$'000
Salaries and wages	986	929
Long service leave	12	45
Annual leave	79	93
Skills and experience retention leave	6	5
Employment on-costs - superannuation	105	105
Employment on-costs - other	58	58
Workers' compensation	5	-
Total employee benefit expenses	1 251	1 235

Employment on-costs - superannuation

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

Executive remuneration

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

	2019	2018
	Number	Number
\$271 001 to \$291 000	1	1
Total	1	1

The table includes one employee who 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, salary sacrifice benefits, fringe benefits and any fringe benefits tax paid or payable in respect of those benefits.

Small Business Commissioner
Notes to and forming part of the financial statements
for the year ended 30 June 2019

2.3. Employee benefits liability

	2019	2018
	\$'000	\$'000
<u>Current</u>		
Accrued salaries and wages	19	19
Annual leave	89	89
Long service leave	7	4
Skills and experience retention leave	12	11
Total current employee benefits	127	123
<u>Non-current</u>		
Long service leave	241	243
Total non-current employee benefits	241	243
Total employee benefits	368	366

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 (SERL) 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 SERL liability in full is expected to be payable within 12 months and is measured at the undiscounted amount expected to be paid.

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

Long service leave

The liability for long service leave is measured as the present value of expected future payments to be made in respect of services provided by employees up to the end of the reporting period using the projected unit credit method. Details about the measurement of long service leave liability is provided as note 10.1.

Small Business Commissioner
Notes to and forming part of the financial statements
for the year ended 30 June 2019

3. Expenses

Employee benefits expenses are disclosed in note 2.2.

3.1. Supplies and services

	2019	2018
	\$'000	\$'000
Operating lease payments	129	125
Office administration expenses	104	101
Communications and information technology expenses	71	115
Travel and related expenses	57	41
Marketing	53	199
Contractors	51	-
Business training and development support	31	-
Mediation fees	24	22
Accommodation and service costs	21	28
Accounting and audit fees	19	18
Staff related expenses	16	14
Total supplies and services	576	663

Operating leases payments

Operating lease payments are recognised on a straight-line basis over the lease term.

3.2. Depreciation and amortisation

	2019	2018
	\$'000	\$'000
Buildings and leasehold improvements	116	116
Intangible assets	42	47
Total depreciation and amortisation	158	163

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.

Review 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.

Small Business Commissioner
Notes to and forming part of the financial statements
for the year ended 30 June 2019

3.2. 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.

4. Income

4.1. Revenues from SA Government

	2019	2018
	\$'000	\$'000
Revenues from SA Government		
Intra government transfers	1 859	1 847
Total revenues from SA Government	1 859	1 847
Net revenues from SA Government	1 859	1 847

Relates to transfers for operational funding received via the Department for Innovations and Skills.

4.2. Recoveries

	2019	2018
	\$'000	\$'000
Retail Shop Leases Fund administration fees	194	241
Other administration fees	14	-
Total recoveries	208	241

4.3. Resources received free of charge

	2019	2018
	\$'000	\$'000
Services received free of charge - Shared Services SA	16	14
Total resources received free of charge	16	14

Resources received free of charge are recorded at their fair value.

Small Business Commissioner
Notes to and forming part of the financial statements
for the year ended 30 June 2019

5. Non-financial assets

5.1. Property, plant and equipment

	2019 \$'000	2018 \$'000
<u>Buildings and leasehold improvements</u>		
Buildings and leasehold improvements at fair value	524	524
Accumulated depreciation at the end of the period	(338)	(222)
Total buildings and leasehold improvements	186	302
Total property, plant and equipment	186	302

Property, plant and equipment assets with a value equal to or in excess of \$10 000 are capitalised.

Reconciliation 2018-19

	Buildings and leasehold improvements	Total
	\$'000	\$'000
Carrying amount at 1 July 2018	302	302
Depreciation and amortisation	(116)	(116)
Carrying amount at 30 June 2019	186	186

5.2. Intangible assets

	2019 \$'000	2018 \$'000
<u>Computer software</u>		
Purchased computer software	262	262
Accumulated amortisation	(139)	(97)
Total Computer Software	123	165

Intangible assets are initially measured at cost and are tested for indications of impairment at each reporting date. Following initial recognition, intangible assets are carried at cost less any accumulated amortisation and any accumulated impairment losses.

The acquisition, or internal development, of software is capitalised only when the expenditure meets the definition and recognition criteria and when the amount of expenditure is greater than or equal to \$10 000.

Reconciliation 2018-19

	Computer software	Total
	\$' 000	\$' 000
Carrying amount at 1 July 2018	165	165
Amortisation	(42)	(42)
Carrying amount at 30 June 2019	123	123

Small Business Commissioner
Notes to and forming part of the financial statements
for the year ended 30 June 2019

6. Financial Assets

6.1. Cash and cash equivalents

	2019	2018
	\$'000	\$'000
Cash at bank	1 157	862
Total cash and cash equivalents	1 157	862

6.2. Receivables

	2019	2018
	\$'000	\$'000
<u>Current</u>		
<u>Trade receivables</u>		
From non-government entities	1	1
Total trade receivables	1	1
Prepayments	44	43
Accrued revenues	1	-
Total current receivables	46	44

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. Receivables are held with the objective of collecting the contractual cash flows and they are measured at amortised cost.

The Commissioner did not recognise an allowance for doubtful debts due to the low value of receivables. 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.

Refer to note 10.3 for further information on risk management.

Small Business Commissioner
Notes to and forming part of the financial statements
for the year ended 30 June 2019

7. Liabilities

7.1. Payables

	2019	2018
	\$'000	\$'000
<u>Current</u>		
Accrued expenses	102	51
Employment on-costs	19	19
Total current payables	121	70
<u>Non-current</u>		
Employment on-costs	22	23
Total non-current payables	22	23
Total payables	143	93

Payables and accruals are raised for all amounts owing but unpaid. Sundry payables are normally settled within 30 days from the date the invoice is first received. All payables are non-interest bearing. The carrying amount of payables represents fair value due to their short-term nature.

Employment on-costs

Employment on-costs include payroll tax Return to Work SA levies and superannuation contributions and are settled when the respective employee benefits that they relate to is discharged.

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 superannuation schemes.

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 remained 41% in 2019 and the average factor for the calculation of employer superannuation cost on-cost has changed from 9.9% in 2018 to 9.8% in 2019. These rates are used in the employment on-cost calculation. The net financial effect of the changes in the current financial year is immaterial.

Small Business Commissioner
Notes to and forming part of the financial statements
for the year ended 30 June 2019

7.2. Provisions

	2019	2018
	\$'000	\$'000
Current		
Provisions for workers compensation	2	-
Total current provisions	2	-
Non-current		
Provision for workers compensation	3	-
Total non-current provisions	3	-
Total provisions	5	-
Carrying amount at the beginning of the period	-	-
Additional provisions recognised	5	
Carrying amount at the end of the period	5	-

A provision has been reported to reflect unsettled workers compensation claims based on the experience across Government. There have been no claims made by the Office of the Small Business Commissioner to date.

The workers compensation provision is based on an actuarial assessment of the outstanding liability as at 30 June 2019 provided by a consulting actuary engaged through the Office of the Commissioner for the Public Sector. The provision is for the estimated cost of ongoing payments to employees as required under current legislation.

The Commissioner is responsible for the payment of workers compensation claims.

Small Business Commissioner

Notes to and forming part of the financial statements

for the year ended 30 June 2019

8. Changes in accounting policy

8.1. Treasurer's Instructions (Accounting Policy Statement)

On 22 March 2019 the *Treasurer's Instructions (Accounting Policy Statements) 2019* were issued by the Treasurer under the *Public Finance and Audit Act 1987*. The Accounting Policy Statements replaced the following Accounting Policy Frameworks:

- Purpose and Scope
- General Purpose Financial Statements Framework
- Asset Accounting Framework
- Financial Asset and Liability Framework
- Income Framework
- Definitions.

The new Accounting Policy Statements have largely been prepared on a no-policy change basis. Changes that impact on these financial statements are:

- removal of the additional requirement to report transactions with the SA Government.
- increasing the bands from \$10,000 to \$20,000 for employee and board member reporting.

These changes, however, do not impact on the amounts reported in the financial statements.

The Accounting Policy Statements also set out requirements in relation to Accounting Standards and Statements not yet effective.

8.2. AASB 9 Financial Instrument

AASB 9 Financial Instruments replaces the provisions of AASB 139 that relate to recognition, classification and measurement of financial assets and financial liabilities, derecognition of financial instruments, impairment of financial assets and hedge accounting. The adoption of AASB 9 from 1 July 2018 resulted in changes in accounting policies and adjustments to the amounts recognised in financial statements.

As part of the adoption of AASB 9, the Commissioner adopted consequential amendments to other accounting standards and the *Treasurer's Instructions (Accounting Policy Statements)* arising from the issue of AASB 9 as follows:

- *AASB 101 Presentation of Financial Statements* requires the impairment of financial assets to be presented in a separate line item in the statement of comprehensive income. In prior year, this information was presented as part of other expenses.
- *AASB 7 Financial Instruments: Disclosures* requires amended disclosures due to changes arising from AASB 9, these disclosures have been provided for the current year because the comparatives have not been restated.

In accordance with transitional provisions and the *Treasurer's Instructions (Accounting Policy Statements)*, *AASB 9 Financial Instruments* was adopted without restating comparative information for classification and measurement requirements. All adjustments relating to classification and measurement are recognised in retained earnings at 1 July 2018.

The adoption of AASB 9 has not had an effect on the recognition, measurement or classification of financial liabilities.

Small Business Commissioner
Notes to and forming part of the financial statements
for the year ended 30 June 2019

9. Outlook

9.1. Unrecognised contractual commitments

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

Expenditure commitments

	2019	2018
	\$'000	\$'000
Within one year	31	9
Later than one year but not later than five years	70	-
Later than five years	6	-
Total expenditure commitments	107	9

Amounts disclosed above represent lease management fees and software licences.

Operating lease commitments

	2019	2018
	\$'000	\$'000
Commitments in relations to operating leases contracted for at the reporting date but not recognised as liabilities are payable as follows:		
Within one year	141	146
Later than one year but not later than five years	547	243
Later than five years	225	-
Total operating lease commitments	913	389
 Representing:		
Cancellable operating leases	17	15
Non-cancellable operating leases	896	374
Total operating lease commitments	913	389

There are no purchase options available to the Commissioner.

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 3 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.

Small Business Commissioner
Notes to and forming part of the financial statements
for the year ended 30 June 2019

9.2. 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.

9.3. Events after the reporting period

The Commissioner is not aware of any significant events after reporting date.

Small Business Commissioner
Notes to and forming part of the financial statements
for the year ended 30 June 2019

10. Measurement and risk

10.1. Long service leave liability – measurement

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. These assumptions are based on employee data over SA Government entities.

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 2019 is 1.25% (2018: 2.5%).

There was no net financial effect of the changes to actuarial assumptions in the current financial year. 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. As a result, there is no net financial effect resulting from changes in the salary inflation rate.

Current long service leave reflects the portion of leave expected to be settled within the next 12 months, based on previous experience.

10.2. Fair Value

AASB 13 *Fair Value Measurement* defines fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants, in the principal or most advantageous market, at the measurement date.

Initial recognition

Non-current tangible assets are initially recorded at cost or at the value of any liabilities assumed, plus any incidental cost involved with the acquisition.

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

Revaluation

Non-current tangible assets are valued at fair value and revaluation of non-current assets or a group of assets is only performed when its fair value at the time of acquisition is greater than \$1.5 million and estimated useful life is greater than three years.

Revaluation is undertaken on a regular cycle as detailed below. If at any time management considers that the carrying amount of an asset materially differs from its fair value, then the asset will be revalued regardless of when the last valuation took place.

Any accumulated depreciation as at the revaluation date is eliminated against the gross carrying amounts of the assets and the net amounts are restated to the revalued amounts of the asset.

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

Small Business Commissioner
Notes to and forming part of the financial statements
for the year ended 30 June 2019

10.3. 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 *Risk Management Policy Statement* issued by the Premier and Treasurer and the principles established in the Australian Standard *Risk Management Principles and Guidelines*.

The Commissioner's exposure to financial risk is low due to the nature of the financial instruments held.

Liquidity risk

The Commissioner will be funded principally via a transfer of funds from the Attorney Generals Department 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.

Receivables and payables

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. All amounts recorded are carried at cost (not materially different from amortised cost).

Receivable amounts disclosed here excludes prepayments as they are not financial assets. Prepayments are presented in note 6.1.



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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 2019.

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 2019, 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 2019
- a Statement of Financial Position as at 30 June 2019
- a Statement of Changes in Equity for the year ended 30 June 2019
- a Statement of Cash Flows for the year ended 30 June 2019
- notes, comprising significant accounting policies and other explanatory information
- a Certificate from the Small Business Commissioner and the Acting 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

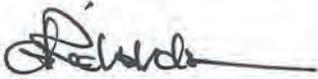
My objectives are to obtain reasonable assurance about whether the financial report as a whole is free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance but is not a guarantee that an 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, but not for the purpose of expressing an opinion on the effectiveness of the Retail Shop Leases Fund's internal control
- 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 2019

Retail Shop Leases Fund

Financial Statements
for the year ended
30 June 2019

Retail Shop Leases Fund
Certification of the Financial Statements
for the year ended 30 June 2019

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; and
- present a true and fair view of the financial position of the Retail Shop Leases Fund as at 30 June 2019 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
26th September 2019



Rosanne Davies
A/Manager, Business Services
26 September 2019

Retail Shop Leases Fund
Statement of Comprehensive Income
for the year ended 30 June 2019

	Note	2019 \$'000	2018 \$'000
<u>Expenses</u>			
Administration	2.1	194	239
Total expenses		194	239
<u>Income</u>			
Interest and investment	3.1	366	418
Total income		366	418
Net result		172	179
<u>Other comprehensive income</u>			
<i>Items that will be reclassified subsequently to net result when specific conditions are met</i>			
Items that will be reclassified subsequently to net result when specific conditions are met:			
Gain on revaluation of investments recognised directly in equity	3.2	-	59
Total other comprehensive income		-	59
Total comprehensive result		172	238

The accompanying notes form part of these financial statements. The net result and total comprehensive result are attributable to the SA Government as owner.

Retail Shop Leases Fund
Statement of Financial Position
for the year ended 30 June 2019

	Note	2019 \$'000	2018 \$'000
<u>Current assets</u>			
Cash and cash equivalents	4.1	245	339
Receivables	4.2	167	306
Investments	4.3	865	992
Total current assets		1 277	1 637
<u>Non-current assets</u>			
Investments	4.3	9 461	8 702
Total non-current assets		9 461	8 702
Total assets		10 738	10 339
<u>Current liabilities</u>			
Security bonds lodged	5.1	991	967
Payables	5.2	1	5
Total current liabilities		992	972
<u>Non-current liabilities</u>			
Security bonds lodged	5.1	7 138	6 931
Total non-current liabilities		7 138	6 931
Total liabilities		8 130	7 903
Net assets		2 608	2 436
<u>Equity</u>			
Investments market value reserve		-	161
Retained earnings		2 608	2 275
Total equity		2 608	2 436

The accompanying notes form part of these financial statements. The total equity is attributable to the SA Government as owner.

Retail Shop Leases Fund
Statement of Changes in Equity
for the year ended 30 June 2019

	Note	Investments market value reserve \$'000	Retained earnings \$'000	Total equity \$'000
Balance at 1 July 2017		102	2 096	2 198
<u>Net result for 2017-18</u>		-	179	179
Loss taken to equity		59	-	59
Total comprehensive result for 2017-18		59	179	238
Balance at 30 June 2018		161	2 275	2 436
Adjustments on initial adoption of AASB 9		(161)	161	-
Adjusted balance at 1 July 2018		-	2 436	2 436
<u>Net result for 2018-19</u>		-	172	172
Gain taken to equity		-	172	172
Total comprehensive result for 2018-19		-	172	172
Balance at 30 June 2019		-	2 608	2 608

The accompanying notes form part of these financial statements. All changes in equity are attributable to the SA Government as owner.

Retail Shop Leases Fund
Statement of Cash Flows
for the year ended 30 June 2019

		2019 (Outflows) Inflows \$'000	2018 (Outflows) Inflows \$'000
<u>Cash flows from operating activities</u>	Note		
<i>Cash outflows</i>			
Administration		(194)	(239)
Bond refunds		(961)	(896)
Cash used in operations		(1 155)	(1 135)
<i>Cash inflows</i>			
Interest received		495	435
Bonds lodged		1 188	1 267
Cash generated from operations		1 683	1 702
Net cash provided by operating activities		528	567
<u>Cash flows from investing activities</u>			
<i>Cash outflows</i>			
Purchase of investments		(622)	(794)
Cash used in investing activities		(622)	(794)
Net cash used in investing activities		(622)	(794)
Net (decrease) in cash and cash equivalents		(94)	(227)
Cash and cash equivalents at the beginning of the period		339	566
Cash and cash equivalents at the end of the period	4.1	245	339

The accompanying notes form part of these financial statements.

Retail Shop Leases Fund
Notes to and forming part of the financial statements
for the year ended 30 June 2019

NOTES TO THE FINANCIAL STATEMENTS

1.	About the Retail Shop Leases Fund	9
1.1.	Basis of preparation	9
1.2.	Objectives and activities	9
2.	Expenses	10
2.1.	Administration	10
3.	Income	10
3.1.	Interest and investment	10
3.2.	Other comprehensive income	10
4.	Financial assets	11
4.1.	Cash and cash equivalents	11
4.2.	Receivables	11
4.3.	Investments	11
4.3.	Investments (continued)	12
5.	Liabilities	13
5.1.	Security bonds lodged	13
5.2.	Payables	13
6.	Other disclosures	13
6.1.	Equity	13
6.2.	Cash flow	13
7.	Changes in accounting policy	14
7.1.	Treasurer’s Instructions (Accounting Policy Statement)	14
7.2.	AASB 9 Financial Instrument	15
8.	Outlook	16
8.1.	Unrecognised contractual commitments	16
8.2.	Contingent assets and liabilities	16
8.3.	Events after the reporting period	16
9.	Measurement and risk	17
9.1.	Financial instruments	17

Retail Shop Leases Fund

Notes to and forming part of the financial statements

for the year ended 30 June 2019

1. About the Retail Shop Leases Fund

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.

As disclosed in the *State Budget 2019-20, Agency Statement, Budget Paper 4, Volume 1*, the Commissioner will become Program 15 of the Attorney-General's Department as of 1 July 2019.

1.1. Basis of preparation

The financial statements are general purpose financial statements prepared in compliance with:

- section 23 of the *Public Finance and Audit Act 1987*;
- Treasurer's Instructions and Accounting Policy Statements issued by the Treasurer under the *Public Finance and Audit Act 1987*; and
- relevant Australian Accounting Standards with reduced disclosure requirements.

For the 2018-19 financial statements the Fund adopted *AASB 9 – Financial Instruments* and is required to comply with new *Treasurer's Instructions (Accounting Policy Statements)* issued on 22 March 2019.

The financial statements are prepared based on a 12 month reporting 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.

Income, expenses and assets are recognised net of the amount of GST except:

- when the GST incurred on a purchase of goods or services is not recoverable from the Australian Taxation Office, in which case the GST is recognised as part of the cost of acquisition of the asset or as part of the expense item applicable; and
- receivables and payables, which are stated with the amount of GST included.

Assets and liabilities that are sold, consumed or realised as part of the normal operating cycle have been classified as current assets or current liabilities. All other assets and liabilities are classified as non-current.

1.2. 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 the 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 2019

2. Expenses

2.1. Administration

	2019	2018
	\$'000	\$'000
Administration	194	239
Total administration expenses	194	239

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

3. Income

3.1. Interest and investment

	2019	2018
	\$'000	\$'000
Interest and investment	356	418
Gain on revaluation of Investments	10	-
Total interest and investment	366	418

Interest and investment income includes interest earned, distributions and the change in market fair value of the Fund's bank accounts and investments held with the Public Trustee.

The fund adopted *AASB 9 Financial Instruments* as of 1 July 2018. Per AASB 9, changes to fair value of investments which were previously disclosed under Other Comprehensive Income are now disclosed under Interest and investments in the Statement of Comprehensive Income.

3.2. Other comprehensive income

	2019	2018
	\$'000	\$'000
Gain on revaluation from investments	-	59
Total other comprehensive income	-	59

Gain on revaluation of investments recognised directly in equity relates to investments held with the Public Trustee. Prior to 1 July 2018 these investments were classified as available for sale financial assets. See note 3.1.

Retail Shop Leases Fund
Notes to and forming part of the financial statements
for the year ended 30 June 2019

4. Financial assets

4.1. Cash and cash equivalents

	2019	2018
	\$'000	\$'000
Cash at bank	245	339
Total cash and cash equivalents	245	339

The Commissioner has a deposit account with the Treasurer.

4.2. Receivables

	2019	2018
	\$'000	\$'000
<u>Current</u>		
Accrued interest	167	306
Total receivables	167	306

Accrued revenues are non-interest bearing.

The adoption of AASB 9 Financial Instruments had no impact on the fund's receivables.

4.3. Investments

	2019	2018
	\$'000	\$'000
<u>Current</u>		
Investments	865	992
Total current investments	865	992
<u>Non-current</u>		
Investments	9 461	8 702
Total non-current investments	9 461	8 702
Total investments	10 326	9 694

Investments represent funds deposited with the Public Trustee. These investments have been designated as fair value through the statement of comprehensive income 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.

Retail Shop Leases Fund
Notes to and forming part of the financial statements
for the year ended 30 June 2019

4.3. Investments (continued)

As at 30 June 2019 the Fund held investments in common funds in the following proportions:

Capital Stable	8.25%
Net Liabilities / Receivables	1.58%
Balanced	23.99%
Cash Common Fund	66.18%

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.

The fund adopted *AASB 9 Financial Instruments* as of 1 July 2018. Per AASB 9, changes to fair value of investments which were previously disclosed under Other Comprehensive Income are now disclosed under Interest and investments in the Statement of Comprehensive Income. The balance of the "Investments market value reserve" (2018: \$161 000) was transferred to retained earnings on transition.

Retail Shop Leases Fund
Notes to and forming part of the financial statements
for the year ended 30 June 2019

5. Liabilities

5.1. Security bonds lodged

	2019	2018
	\$'000	\$'000
<u>Current</u>		
Bonds lodged	991	967
Total current security bonds lodged	991	967
<u>Non-current</u>		
Bonds lodged	7 138	6 931
Total non-current security bonds lodged	7 138	6 931
Total security bonds lodged	8 129	7 898

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.

5.2. Payables

	2019	2018
	\$'000	\$'000
<u>Current</u>		
Unclaimed bonds	1	5
Total current payables	1	5

Unclaimed security bonds consist of bonds that have been refunded to the bond holder and remain unrepresented for greater than three months. Security bonds which are unclaimed for longer than 6 years are transferred to the Department of Treasury and Finance Unclaimed Monies account.

6. Other disclosures

6.1. Equity

Investments market value reserve

Comparative year – the reserve was used to record changes in fair value of the investments classified as available for sale except where an impairment had occurred.

Current year – the reserve was transferred to retained earning as the investments are recognised as fair value through the statement of comprehensive income following the funds adoption of *AASB 9 Financial Instruments* as of 1 July 2019.

6.2. Cash flow

Cash flows are included in the Statement of Cash Flows on a gross basis and the GST component of cash flows arising from investing and financing activities, which is recoverable from, or payable to, the ATO is classified as part of operating cash flows.

Retail Shop Leases Fund
Notes to and forming part of the financial statements
for the year ended 30 June 2019

7. Changes in accounting policy

7.1. Treasurer's Instructions (Accounting Policy Statement)

On 22 March 2019 the *Treasurer's Instructions (Accounting Policy Statements) 2019* were issued by the Treasurer under the Public Finance and Audit Act 1987. The Accounting Policy Statements replaced the following Accounting Policy Frameworks:

- Purpose and Scope
- General Purpose Financial Statements Framework
- Asset Accounting Framework
- Financial Asset and Liability Framework
- Income Framework
- Definitions.

The new Accounting Policy Statements have largely been prepared on a no-policy change basis. Changes that impact on these financial statements are:

- removal of the additional requirement to report transactions with the SA Government
- removal of the additional requirement to report a statement of equity for administered items

These changes, however, do not impact on the amounts reported in the financial statements.

The Accounting Policy Statements also set out requirements in relation to Accounting Standards and Statements not yet effective.

Retail Shop Leases Fund
Notes to and forming part of the financial statements
for the year ended 30 June 2019

7.2. AASB 9 Financial Instrument

Investments with the Public Trustee

Funds held with the Public Trustee that were previously classified as available for sale are now classified as fair value through the statement of comprehensive income.

The total impact on the Fund's retained earnings as at 1 July 2018 is as follows:

	2018
	\$'000
Closing retained earnings 30 June 2018 – AASB 139	2 275
Adjustment to retained earnings from adoption of AASB 9	161
Opening retained earnings 1 July 2018 – AASB 9	2 436

On 1 July 2018, the Fund has assessed and reclassified its financial assets into the appropriate AASB 9 categories depending on the business model and contractual cash flow characteristics applying to the asset. AASB 9 eliminates the AASB 139 categories of held to maturity, loans and receivables and available for sale.

On the date of initial application, the Fund's financial instruments were as follows, with any reclassifications noted.

	Measurement category		AASB 139 at	AASB 9 at 1 July
	AASB 139	AASB 9	30 June 2018	2018
			\$'000	\$'000
<u>Current financial assets</u>				
	Available for Sale at Fair Value	Fair Value through Profit and Loss	992	992
Investments with the Public Trustee				
<u>Non-current financial assets</u>				
	Available for Sale at Fair Value	Fair Value through Profit and Loss	8 702	8 702
Investments with the Public Trustee				

8. Outlook

8.1. Unrecognised contractual commitments

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

8.2. Contingent assets and liabilities

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

8.3. Events after the reporting period

The Fund is not aware of any events occurring after the balance date that would affect these financial statements.

Retail Shop Leases Fund

Notes to and forming part of the financial statements

for the year ended 30 June 2019

9. Measurement and risk

9.1. Financial instruments

Financial risk management

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

All cash balances and cash common funds held with the Public Trustee are available at call. Investments held with the Public Trustee are classified as 'fair value through the profit and loss' financial assets. Net gains or losses resulting from movements in fair value of investments are recognised through the profit and loss.

Investments represent funds held with the Public Trustee. The Public Trustee has invested in collective investment vehicles for the purpose of gaining exposure to Australian and international equities. The managers of such vehicles have invested in a variety of financial instruments which expose the fund to investment risks including market, credit, interest and currency risks. At reporting date funds totalling 10.3 million were invested with the public trustee. Pooled investment funds are not rated for credit risk. The Public Trustee considers the credit risk for individual fund managers prior to investing funds and reviews these assessments quarterly.

Impairment of financial assets

The fund considers that its cash and cash equivalents have low credit risk based on the external credit ratings of the counter parties and therefore the expected credit risk is nil.

Measurement of financial assets

The fund adopted *AASB 9 Financial Instruments* as of 1 July 2018. Per AASB 9, changes to fair value of investments which were previously disclosed under Other Comprehensive Income are now disclosed under Interest and investments in the Statement of Comprehensive Income.

Receivables and payables

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. All amounts recorded are carried at cost (not materially different from amortised cost).







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**Small Business
Commissioner**

SOUTH AUSTRALIA



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