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Annual REPORT 2019/20

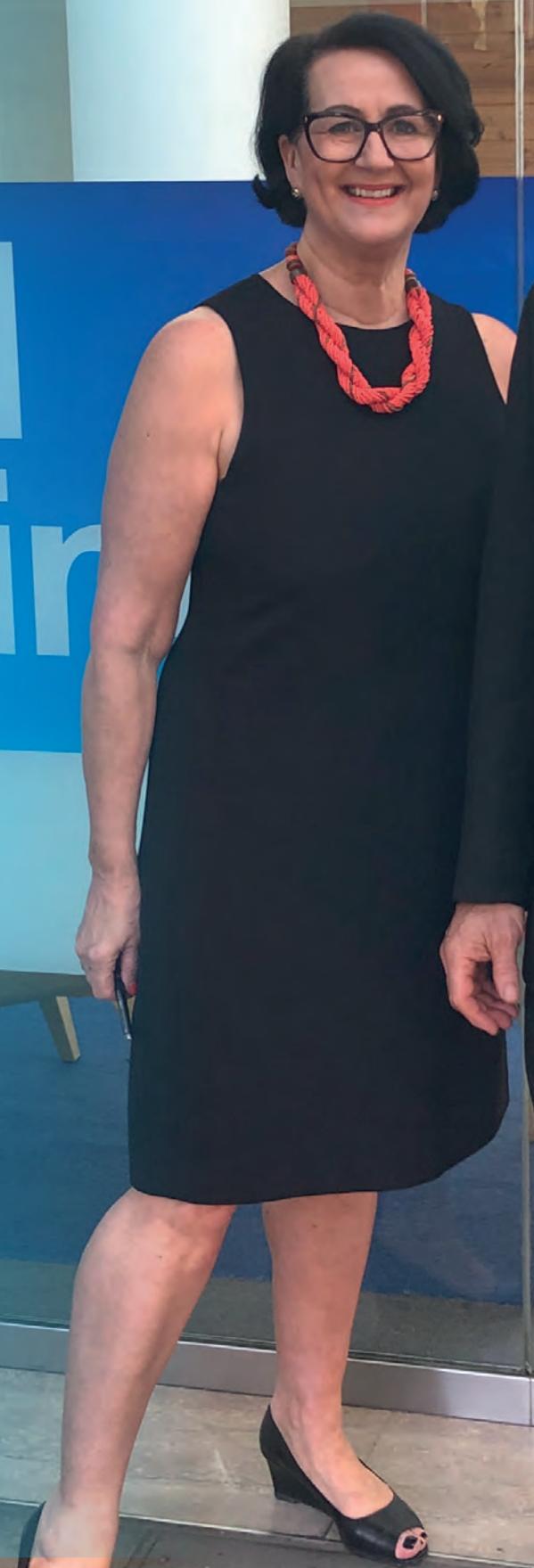


**Small Business
Commissioner**
SOUTH AUSTRALIA



Government
of South Australia

Deputy Premier and Attorney-General Hon Vickie Chapman MP took time out of her busy diary to visit the Small Business Centre at 99 Gawler Place.



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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

30 September 2020

“

We help
thousands of
South Australian
businesses
every year.”

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MESSAGE

FROM THE SMALL BUSINESS COMMISSIONER

2019/20 has been the most devastating year for many small businesses in living memory.

In South Australia (SA), many businesses were flattened as a result of the summer bushfires either directly or indirectly, and just when assistance started to flow and green shoots of recovery were starting to show, a devastating viral bushfire swept SA, the nation and indeed the world: COVID-19.

It has been a most dreadful time.

I have to commend both the State and Federal Governments for the speed at which they responded to both crises and the enormous funding which has been provided to assist businesses through unprecedented times.

Unfortunately, the assistance will not be enough for some to survive and businesses will, and have, failed. That is to be regretted.

Throughout the period, I worked closely at the most senior levels of the SA Government to ensure that the voice of small business and their needs were understood.

Extraordinarily swift amendments to various Acts affecting the leasing sector were prepared and passed by Parliament in just over a week, which effectively prohibited lessors from terminating lease agreements and evicting lessees.

The initial legislation also greatly expanded my capacity to not only resolve disputes but also issue determinations in relation to financial distress on lessees as a result of the COVID-19 pandemic. Further details are contained on page 24 of this report.

Further legislative amendments were made in May 2020 to implement key elements of the National Cabinet approved SME Commercial Leasing Principles During COVID-19.

These amendments required that non-residential lessees and lessors who were in dispute over the quantum of rent which should be paid by a business that suffered financial distress due to COVID-19, had to mediate through my office before the matter could be taken to court.

As a result, in April 2020, the office recorded its highest monthly number of enquires with 429; this was almost matched in May with 425. There was a 48% increase in enquiries from small businesses from March to June 2020, compared with the same period of the previous year. 44% percent of these were leasing issues and 15% directly related to COVID affected businesses.

In anticipation of the increased workload, I appointed four additional mediators to the mediation panel, and accessed additional staffing and accommodation to ensure the Office could provide an adequate response to requests for mediation.

Some businesses and sectors have done extraordinarily well through this period providing the essentials of life.

For others, new opportunities have emerged as they have been, in many cases, forced to reassess their business models and pivot to new opportunities.

I would also like to commend and thank Business SA for its role in supporting not only its members but all small businesses.

We quickly partnered to deliver a webinar in March 2020 to provide information and advice to businesses on how to manage through the COVID-19 crisis. More than 1 250 people logged into the webinar, which is the greatest number ever for our online sessions.

I also partnered with Business SA in their Regional Voice program to link with country SA businesses and we travelled to key areas in the State regularly.

The success of communicating via webinar and video to small businesses is supported by the number of online attendees at our information session which was a total of 1 064. A total of 428 tuned into our online event: *Coronavirus: Navigating the Disruption for Small Business during COVID-19*, presented by Andrew Leunig on 1 April 2020. This was the highest number of attendees for a single event held by my Office.

We will continue to use this channel of delivery as it allows businesses across SA to access information at a time of their choosing, rather than be required to attend an event in the city at a specific time.

Unfortunately, the COVID-19 Pandemic overshadowed the impacts many SA businesses experienced in the most devastating recent summer period.

Both the Adelaide Hills and Kangaroo Island experienced intense fire storms, which left a trail of destruction within their respective communities.

The livelihoods of many small businesses and farmers were thrust into question and it was not only those who were directly affected.

The Minister for Innovation and Skills, Hon David Pisoni MP, and I visited Kangaroo Island in January 2020 and it was clear that there are many businesses experiencing severe cash flow issues as a result of the fires in terms of business closure (due to staff/owners being CFS volunteers), loss of tourism, cancellation of forward bookings and loss of property.



Small Business Commissioner John Chapman, Minister for Innovation and Skills Hon David Pisoni MP, and Turner Fuels Principal David Turner at Kingscote discussing the likely impacts on business as a result of the January Bushfires.

Businesses in the tourism sector in particular had their business slashed as tourists cancelled bookings for tours both domestically and internationally, while other businesses that would normally enjoy peak patronage during the summer months were left with a trickle of business.

It is great credit to the State and Federal Government that support packages were quickly put in place with initial grants to small businesses directly impacted increased from \$10 000 to \$50 000 within days of their launch.

The second and very significant initiative was the launch of concessional loans of up to \$500 000 to businesses which could demonstrate direct or indirect impacts to their cash flows.

I worked with relevant Government agencies to expand financial counselling services provided by Rural Business Support beyond farming and drought affected small businesses directly connected to the farming sector to include all small businesses in bushfire affected areas.

I convened two sessions on Kangaroo Island, which were attended by senior representatives from the Department for Innovation and Skills (DIS), Primary Industries and Regions SA (PIRSA) and the South Australian Government Financing Authority (SAFA), where I presented and answered questions. They also included one on one sessions with small business owners and farmers.

The sessions were well attended with 45 at the Kingscote breakfast and 37 attending at the Parndana Hotel.

I would like to commend the businesses that supported the CFS through both donations and support, but also in providing time off for volunteers who bravely fought the fires.



The January bushfire in the Adelaide Hills came within metres of devastating businesses and properties in Lobethal.



What the impact of the bushfires and the COVID-19 pandemic has highlighted for all of us is the need to take another look at our business planning and management.

My office had just completed its Business Continuity Plan (BCP) when COVID -19 started to really impact the SA community.

We moved quickly to a work from home and online environment so I could ensure we could continue to provide service to our small business stakeholders, and at the same time reduce the risk as much as we could of our staff succumbing to COVID-19.

Our levels of inquiries increased in line with the shutdowns that were taking place and our staff continued to directly contact business owners to respond to their concerns.

At this point, I would like to thank my staff for their unabiding dedication to continuing to support our small businesses while they also experienced their own challenges of isolation as they worked from home.

THANK YOU!

I would also like to thank the Ombudsman, Wayne Lines and his Deputy, Emily Strickland, for making available four staff members at short notice to assist our office in dealing with the dramatic increase in demand for mediations.

But it does make you rethink how vulnerable we can all be to external shocks way beyond our control and the need to ensure that we have capacity to deal with the unexpected, be they bushfires or COVID-19.

There is a need for businesses to have not only adequate insurance and financial reserves, but also a disaster recovery plan. A disaster recovery plan is a useful process which should be undertaken by every business owner. The first step is sitting back and thinking, 'how would I survive if my business was wiped out?' (not only by bushfire but other natural or unnatural disaster).

There will be another disaster at some time in the future.

We should all learn and act from history and take actions necessary to preserve our livelihoods.

One area which continues to cause great difficulty and can bring on a disaster is the late payment of accounts.

We deal with a steady stream of payment disputes with many payments being withheld because of poor management or inadequate cashflows.

Many businesses simply do not have sufficient capital to ensure they can make payments if and when they fall due, which is unsatisfactory and in potential breach of the *Corporations Act 2001*.

Business owners should be aware that civil and criminal penalties can be applied to those convicted of offences, such as trading while insolvent.

Unfortunately, there remain ongoing payment issues with the GFG group of companies which own the Whyalla Steelworks and associated iron ore mines.

I continue to deal with complaints about non-payment of accounts from suppliers and contractors to the GFG companies on a regular basis.

In early 2020, I wrote to the Executive Chairman of GFG, Sanjeev Gupta seeking clarification and explanation of a number of financial matters and was provided with a fulsome response.

However, in May 2020, I had to again correspond with Mr Gupta due to continued concerns about late payments of South Australian suppliers and contractors.

Mr Gupta's subsequent response committed that extra funding had been secured to ensure payments would be made.

However, despite my request to GFG that payment terms be reduced from a standard 62 days to 30 days to assist small businesses, this has not been agreed to.

As part of the purchase of the former Arrium businesses by GFG, the SA Government entered a commitment to provide \$50 million of funding as part of a transformation package.

I have formally raised my concerns that this funding should not be provided until there is a clear and cast-iron commitment by GFG that it will substantially improve its payment times.

It is pleasing to note that the Federal Government is proceeding with a plan to legislate to ensure that Australia's largest businesses have to be transparent and report on their payment performance.

The *Payment Times Reporting Bill 2020* will require businesses with turnover of more than \$100 million to publish information about their payment policies.



The SBC's concerns over late payments of debts were highlighted in an article in *The Adelaide Advertiser* in October 2019.

Further, the Federal Government has requirements that the big businesses it contracts with will pay their suppliers.

So, the message is clear: if you are a big business and don't pay your bills in a timely manner, then don't expect to do business with the Federal Government.

It is a path the SA Government should follow for the benefit of small business but so far, despite my promptings, there appears to be little appetite within the Government to implement a change which would bring enormous benefits to small businesses in the State.

This is disappointing to say the least.

In conclusion, I would like to thank the Deputy Premier and Attorney-General, Hon Vickie Chapman MP, and her staff for their support of my office and its activities.

As to the year ahead, resilience for small business will be a priority.

I will continue to work to ensure that the commitment and hard work of this most important sector to the State's economy receives the recognition and fair treatment it deserves.



I would like to thank my staff for their unabiding dedication to continuing to support our small businesses while they also experienced their own challenges of isolation as they worked from home."



John Chapman
Small Business Commissioner

DISPUTE RESOLUTION

The core business of the Office of the Small Business Commissioner (OSBC) is to ensure a fair and competitive operating environment for SA 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, under the guidance of the Small Business Commissioner (SBC).

In normal circumstances, at any one time, the Office has 60-80 active disputes under management. The number of cases under management has increased considerably due to COVID-19.

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

- Initial assistance (enquiries);
- Pre-mediation (formal case); and
- External mediation (formal mediation).

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



During 2019/20
we received:

3878
Enquiries



ENQUIRIES

During 2019/20, the OSBC received 3 878 enquiries – a 14% 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*, the *COVID-19 Emergency Response Act* and general small business enquiries.

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

ENQUIRIES BY ACT	2019/20	2018/19
<i>Small Business Commissioner Act 2011</i>	1 632 (42.08%)	1 659 (49%)
<i>Retail and Commercial Leases Act 1995</i>	1 583 (40.82%)	1 187 (35%)
<i>Building and Construction Industry Security of Payment Act 2009</i>	116 (2.99%)	132 (4%)
<i>COVID-19 Emergency Response Act 2020</i>	241 (6.21%)	-
<i>Farm Debt Mediation 2018</i>	63 (1.62%)	42 (1.3%)
<i>Local Government Act 1999</i>	2 (0.05%)	15 (0.4%)
<i>Late Payment of Government Debts (Interest) Act 2013</i>	2 (0.05%)	-
Other jurisdictions	239 (6.16%)	348 (10.3%)
TOTAL	3 878	3 383

FORMAL CASES

During 2019/20, the OSBC handled 338 new formal cases, of which 29 subsequently went to formal mediation. 58 were still ongoing as at 30 June 2020. There are three category outcomes when a formal case is closed: successfully resolved, assistance provided, and unsuccessful.

As the table below shows, there was a 7% increase in the number of formal cases dealt with this 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 180 cases closed with a “successfully resolved” outcome, 162 were resolved prior to mediation and 19 at mediation.

RESULTS OF CASES CLOSED	2019/20	2018/19
Successfully resolved	180 (64%)	159 (61%)
Assistance provided	47 (17%)	63 (24%)
Unsuccessful	52 (19%)	39 (15%)
TOTAL	279	260

It is to be noted that the function of the OSBC is squarely set in the alternative dispute resolution space. Conversations are impartial 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).

Results of Disputes Successfully Resolved

Of the 180 cases closed with a “successfully resolved” outcome:



162
Disputes
successfully
resolved prior
to mediation

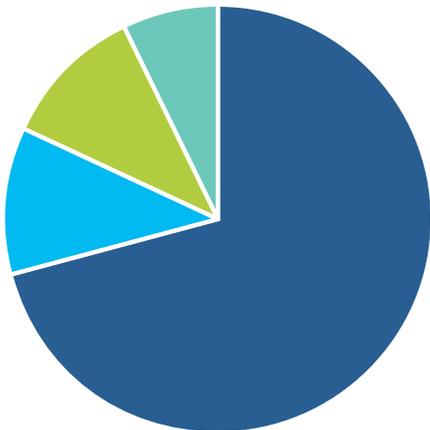


19
Disputes
successfully
resolved at
mediation

FORMAL MEDIATIONS

Formal mediations are conducted at the final stage of the dispute resolution process. In 2019/20, the OSBC conducted 29 formal mediations over 33 mediation days. Of these:

- 19 (66%) were successfully resolved
- 3 (10%) were not successful but assistance was provided
- 5 (17%) were unsuccessful – the parties did not come to an agreement
- 2 (7%) mediations were awaiting an outcome as at 30 June 2020.



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 members of the ongoing panel of mediators commenced are:

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

In May 2020 a further four mediators were included on the panel due to the expected increase of mediations that would take place under the *COVID-19 Emergency Response Act 2020*. The four additional mediators are:

- Ms Symoane Mercurio - Cowell Clarke Commercial Lawyers;
- Ms Penny McCann - Education in Law Pty Ltd;
- Mr Stephen Dickinson - ANSR Dispute Resolution; and
- Mr John Taylor - Randle & Taylor Barristers & Solicitors.

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.

SIGNIFICANT CASES

SMALL BUSINESS MANUFACTURER AND THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION (ACCC)

The OSBC was contacted by a small business which manufactured small portable generators. The Director of the business was concerned that some suppliers of portable generators were engaging in conduct that was misleading or deceptive in contravention of section 18 of the Australian Consumer Law.

The Director initially raised his concerns with the Australian Competition and Consumer Commission (ACCC) in August 2018 but was not satisfied with the ACCC's response. The Director then sought assistance from the OSBC.

After considering the information provided by the small business, the SBC formed the view that possible safety concerns had been raised if the allegations made by the Director were true. On that basis, the SBC formally requested that the ACCC conduct a review of the matter in February 2019.

The ACCC launched an investigation into the small business' allegations to determine whether there had been a likely breach of the *Competition and Consumer Act 2010*. The ACCC engaged an independent expert and attended a site visit on 2 September 2019 to observe the Director testing a number of portable generators.

The ACCC finalised its investigations in March 2020, and issued an infringement notice against B.A.R Group Pty Ltd (BAR Group) for allegedly misleading consumers about the running power of a portable generator. In September 2019, BAR Group advertised on its website that its 123 G8100-HELT portable generator was capable of achieving a running power of 6kW. The ACCC was concerned that the generator was only capable of a running power of 6kW for a short time and not continuously for several hours. BAR Group paid a penalty of \$12,600 for the infringement.

Regrettably, the small business which raised the issue with the OSBC was placed into voluntary liquidation on 8 November 2019.

THREE PARTY TENANCY DISPUTE

A retail and commercial leasing dispute was received from a former lessee who sought to exit the lease by selling plant and equipment of a take away business to a potential lessee, however actual assignment of the lease was conditional on all rental arrears being paid to the lessor.

In this particular case, a separate transaction took place between the lessee and the potential lessee for the sale/purchase of shop equipment to the value of \$30,000 without first obtaining the lessor's approval for assignment.

The OSBC became aware of this situation after receiving a second dispute relating to the equipment purchase and a request for a refund as a result of the lease not being assigned, therefore making this dispute unique as it involved three parties.

Discussions with the lessor confirmed the issues raised by both parties, with the solution being the payment of arrears in order to move towards a resolution. Agreement was reached for the repayment of arrears, which resolved the lessor/lessee issue. However, emphasis then turned to the second dispute regarding the business to business issue relating to the equipment purchase.

As a result of the time taken to resolve the lessor/lessee issue over the outstanding rent, the buyer of the equipment was seeking a refund of the monies paid as the business venture was no longer viable.

However, the negotiation process conducted by an OSBC Senior Case Officer resulted in a successful outcome with monies being refunded (minus some incidentals) without the need for litigation.

SMALL BUSINESS ISSUE WITH ELECTRICITY COMPANY

The OSBC was contacted in March 2020 by a small business that was trying to deal with an electricity retailer and their legal firm over an electricity account debt from a previous retail shop lease.

The small business owner was dealing with demands for payment of more than \$8,000 that had carried over from a 2016 electricity account.

The small business was contacted by a retailer's lawyers in 2018 and had repeatedly tried to explain the debt was that of the previous tenant and not related to their business.

An OSBC Senior Case Officer contacted the electricity retailer and the legal firm in 2020.

As a result, the electricity retailer recalled the debt from the legal firm involved. Evidence from the small business was provided to the electricity company through the OSBC.

Through good-faith negotiations between the parties the matter was resolved and the debt waived.

FARM DEBT MEDIATION MATTER

A farmer took over his family's cropping and livestock farm in 2005. The farmer bought out the interests of other family members to carry on the farming traditions with his family having held the land for four generations.

In 2013, weather events resulted in a 60% reduction in crop yield. Despite the farmer diversifying into other activities and selling part of the property, he was unable to service debt levels. He owed approximately \$3 million.

The farmer had been endeavouring to re-finance the bank debt to more favourable terms. The bank, however, issued a Notice of Demand requiring payment of all borrowings in late 2017. The farmer was unable to comply with the demand. A mediation organised by the bank was held in mid 2018 before the *Farm Debt Mediation Act 2018* (the FDM Act) commenced on 3 September 2018.

The FDM Act requires a creditor who proposes to take enforcement action under a farm mortgage, to give written notice to a farmer that mediation is available. The creditor cannot take enforcement action against a farmer unless the SBC has issued it with an Exemption Certificate (valid for approximately three years).

The farmer invited the bank to mediation pursuant to the FDM Act in early October 2018. The bank responded that its view was that the FDM Act did not apply in this instance. The SBC took a different view - that the FDM Act was applicable.

The farmer, however, also suffered a serious injury which required his hospitalisation and ongoing procedures. The bank's lawyers continued to press for an Exemption Certificate. An Exemption Certificate allows a farmer to foreclosure of a creditor. The SBC wrote to the bank advising that the FDM Act did apply and that the bank had not satisfied the requirements for the issue of an Exemption Certificate.

When the bank then sought to fast track mediation of the farm debt dispute, it became apparent to the SBC that a number of complexities had arisen with regard to the construction of the FDM Act.

In early 2019, the farmer sought a Prohibition Certificate which would prevent the creditor from taking any enforcement action against him until the earliest of six months, or to the date that the parties commenced mediation.

The SBC provided the bank with details of the farmer's application. The bank argued strongly that the SBC should refuse the farmer's application for a Prohibition Certificate.

The SBC, however, did issue the farmer with the Prohibition Certificate on the grounds that more than

three months had elapsed since the farmer requested mediation but it had not taken place, despite the farmer attempting to do so in good faith. The bank's equivocation around the issue of whether or not the FDM Act applied in the circumstances ultimately assisted the farmer in making out the necessary criteria for issue of the Prohibition Certificate.

At around the same time that the SBC was considering the farmer's application for a prohibition certificate, the bank did invite the farmer to mediation pursuant to the FDM Act and the farmer accepted that invitation. Mediation by a suitably qualified and experienced independent mediator was arranged by the SBC.

At the conclusion of a full day of mediation, the parties emerged with an agreement that required the farmer to pay back an agreed sum some months hence, with the parties agreeing that if the debt was not repaid on time then the farmer would have to surrender the farm property to the bank.

The farmer did persist throughout to obtain re-finance, but was not successful. The bank then sought an Exemption Certificate from the SBC.

Whilst the SBC was considering the bank's application, the farmer was able to re-finance. In good faith, and although the payment was outside of the date agreed to at mediation, the bank accepted the agreed amount from the farmer in full settlement of the farm debt which, allowing the parties to resolve the matter entirely, with the bank formally withdrawing its application for an Exemption Certificate.

This farmer has expressed his gratitude to the SBC and has now been able to re-focus on growing his farming business.

FAULTY TRAILER PURCHASED FROM INTERSTATE

The OSBC was approached by a small SA business that had purchased a custom built trailer from an interstate manufacturer. The small business owner became aware of several defects whilst towing the trailer back to SA himself.

When contacted by the SBC, the trailer manufacturer immediately offered to provide a refund for the trailer. Concerned that it could take several months to organise the construction of a replacement trailer, the small business owner's preference was to have the manufacturer repair the defects. As the relationship between the parties had deteriorated, the trailer manufacturer did not trust that their business carrying out the repairs to the trailer would be a satisfactory solution to the issue.

Further negotiations were facilitated by the OSBC and finally the parties agreed that the manufacturer would pay an agreed amount to the purchaser, so that he could have the trailer repaired by a third party in Adelaide.

Although the relationship between the parties had become quite strained, the OSBC was able to assist the parties to reach a resolution that was acceptable to them both.

UNEXPECTED BILL FROM PROPERTY MANAGER

The OSBC was approached by the former lessee of a retail shop who had been issued with a large, unexpected bill for outgoings, quite some time after he had sold his business and assigned the lease to the purchaser. The lessee had travelled overseas for several months after selling his business and the invoice had also gone unnoticed in his email 'junk' folder, further extending the time before he became aware of the debt. As he became aware of the invoice so late, there were tax implications for the lessee and he was also not financially able to pay the whole debt at the time.

The property manager of the retail shop had initially been resolute in pursuing the lessee for the entire debt.

When contacted by the OSBC, the property manager acknowledged some responsibility for the situation, noting that the lessee may have been led to believe that there would be no further money owing. The property manager also admitted they were very slow in issuing the invoice to the lessee.

The OSBC was able to aid the parties in negotiating a lower agreed amount, which the lessee was able to pay and that satisfied the debt with property manager.

Through the OSBC's involvement, it became clear both parties had some responsibility for the situation and through good-faith negotiation, they were able to come to a resolution that both sides were happy with.

MEDIATION BETWEEN MINER AND LANDHOLDERS

In late 2019, a mining company (the miner) approached the SBC seeking to mediate mining-related matters in dispute between it and two adjacent landowners (the farmers) in rural SA.

The miner was seeking to progress discussions with the farmers whose properties were no longer going to be required in the future by the mining operation, as had been originally forecast. The miner was seeking to settle all matters with the farmers through a financial offer. The SBC was advised that these or related issues had been ongoing between the parties for more than a decade.



Thank you so much for all of your support and encouragement throughout this difficult situation. Both you and Ben have been amazing.”

TRACEY

The SBC called on a mediation pursuant to his functions and powers to resolve disputes under the *Small Business Commissioner Act 2011*.

The issues were discussed across two separate mediation sessions with the SBC personally in attendance at both. The SBC also maintained an active oversight of all matters leading up to the mediations including the invitations to mediate that were issued by OSBC Officers.

The SBC made the parties aware that the SBC had a discretion to utilise the *Fair Trading (Mining and Resources Industry Land Access Dispute Resolution Code) Regulations 2018* known as the Mining and Resources Industry Land Access Dispute Resolution Code (the Code). Under the Code the SBC could, if he deemed it appropriate, require that the parties to mediate in good faith – that is, to require attendance as well as a certain standard of conduct and behaviour.

All parties were advised that the Code was available and that it would be within the SBC's powers to activate it if it was deemed desirable or necessary to resolve the disputed matters.

Ultimately however, the parties consented to mediation and the Code did not need to be activated. The parties mediated in person in the OSBC's office on two occasions in the first quarter of 2020.

OSBC mediations are almost always conducted in complete confidentiality. On this occasion however, the farmers were adamant that they would not bind themselves to confidentiality, but it was agreed that any 'number or figure' discussed during the mediation(s) would remain confidential. All other matters regarding the mediation would be able to be shared with others.

During mediation, various offers were made and counter-offers put.

In March 2020, the miner put a final offer to the farmers with time to consider it and any expiry date and time. Ultimately the farmers put a counter-offer back to the miner, but this was not considered to be acceptable.

The mediation process conducted by OSBC ceased at that point in time.





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LEGISLATION

SMALL BUSINESS COMMISSIONER ACT 2011

ROADWORKS IMPACTING SMALL BUSINESS

Following continued difficulties by small retail businesses impacted by roadworks due to both State Government and Council projects, the OSBC developed a set of guidelines to assist governments, project managers and small businesses in navigating this difficult area.

While the SBC remains committed to securing compensation for businesses where significant financial loss has been incurred due to these disruptions, it is hoped the development of guidelines and checklists will allow the continuation of improvements in project management and lessen small business disruption.

Already the involvement of the OSBC has seen significant changes with the Department of Planning Transport and Infrastructure (DPTI) adopting their own guidelines around engagement with small business and the engagement of independent small business advisers on particular projects.

DPTI has also engaged with the OSBC regularly in relation to particular projects as part of its “Gateway” project approval process. I look forward to that cooperation continuing.

We will continue to work with small businesses through concerns which arise from these projects.

While discussions with State and Local Government on this matter progress, the SBC also took the opportunity to raise the matter with the Minister for Employment, Skills and Small and Family Business, Senator the Hon Michaelia Cash directly during a visit to Adelaide in July 2019.

The Minister had a very clear understanding of the issues, given the Federal Government had made multi-billion-dollar commitments to improving road networks across Australia, and one option she discussed was that of imposing a financial penalty on project managers who do not meet deadlines for completion of projects.

The discussion also covered the area of late payments for small businesses by big business and the difficulty this causes in terms of cash flows. The SBC reiterated his concerns for the need for legislative change to force big businesses to pay on time.



Small Business Commissioner John Chapman and Federal Minister for Employment, Skills, Small and Family Business, Senator the Hon Michaelia Cash caught up in July 2019.



DPTI has also engaged with the OSBC regularly in relation to particular projects as part of its “Gateway” project approval process.”

KING WILLIAM ROAD UPGRADE

The \$15.5 million upgrade of King William Road, Hyde Park, commenced in June 2019 and continued through until completion in December 2019.

The project included the replacement of the entire stretch of road pavers as well as street frontage works which have contributed to a loss of parking.

As part of the construction, the City of Unley and project managers opted to close the road completely for four weeks in July 2019 to allow contractors a clear run to remove and reinstate paving at the Hyde Park section. This created considerable concern amongst small business owners and some landlords because of the impact on their businesses. A number approached the SBC for assistance. The SBC communicated concerns directly to the Council.

The City of Unley had engaged in significant consultation prior to the project being approved and then during the construction phase, including with the SBC and his staff.

In addition, the Council worked to ensure businesses had appropriate access for deliveries and waste removal.

Council supported the traders by providing door mats to prevent dust and mud on their premises, social media tiles for use on social media channels, regular window cleaning,

and magnets with the contact number and email address of the construction engagement team. Council placed advertisements in The Advertiser and Messenger newspapers throughout the four week road closure, as well as through the Australian Traffic Network to advise people that the road was closed to traffic but open for business. Council also placed electronic VMS boards throughout the City of Unley to advertise that King William Road was open for business. Regular electronic newsletters were sent by email to the traders to keep them informed of developments.

In terms of parking, Council provided electronic parking maps and free all-day off-street parking at a specific trader compound to ensure parks close to the precinct were available for customers and visitors. Traders were not charged for trading permits, including outdoor dining permits, for the 2019-20 financial year. Council also endorsed a delayed payment on Council rates for commercial tenancies along King William Road and encouraged landlords to pass this on to their tenants to assist with cash flow.

There was no doubt that the project did have an impact on businesses, but it was evident that a number of traders had taken the opportunity to reduce stocks or even close for the period when customer traffic was reduced.

During media interviews the SBC lobbied for the Adelaide community to support these businesses during this difficult construction project. In addition, the SBC regularly posted on social media reminding the network that these businesses were open and needed support. It is notable that these posts had some of the largest “likes” and “shares” experienced on the OSBC’s social media sites.

Attempts to secure additional off-street parking during the construction works were not successful.



Daniella Schultz from Hustle Café was one of the many traders who dealt with a four week closure of King William Road Hyde Park while the road was rebuilt.

GAWLER PLACE UPGRADE

The Lord Mayor of the City of Adelaide the Right Honourable Sandy Verschoor officially turned the first sod on the Gawler Place Upgrade project on 16 January 2019 and on 17 December 2019 the project was completed.

The Council engaged very closely with the SBC on the design of the project to ensure minimal disruption to small businesses and it was pleasing that the OSBC did not receive one complaint during the \$16.8 million project, which reinforces the need for governments to continually engage with their small businesses during roadwork projects.

CITY SOUTH TRAMLINE REPLACEMENT PROJECT

In July 2019, a major project to remove and replace the existing tramlines in King William Street South (between Victoria Square and South Terrace) was undertaken over a period of 14 nights. However, consideration of the planning and community engagement for those that might be impacted by this project, including many businesses along the route, commenced nine months prior to any work ever being started.

This project was notable in terms of significant traffic disruption including stopping all tram traffic along one of Adelaide's busiest thoroughfares.

The other notable feature of this project was the coordination of other service providers such as SA Power Networks, gas pipelines authorities, NBN, telecommunications and the like.

The works were going to directly impact upon all businesses situated along the route, and also bring the roadway up to relevant standards. This meant, however, that many formerly 'angle' parking places, would be lost to 'parallel' parking spots.

One hotel business was going to be severely impacted, as it had been booked out many months before to accommodate the cast of a large show that was playing at the Festival Theatre at the same time. After their night-time performances, the show's cast would be sleeping through the morning and into the daylight hours, so the associated construction noise and activity through the small hours and into the daytime were going to be particularly problematic for this business. Transporting the cast from this location



Progression of the Gawler Place upgrade with Lord Mayor Sandy Verschoor and Acting City of Adelaide CEO Clare Mockler cutting the ribbon on completion of the project.

to and from the Festival Theatre also presented logistical issues for the hotel and the cast of the show and would need to be carefully navigated.

A high degree of coordination was essential between the project managers (the PTP Alliance), DPTI, the City of Adelaide, and the SBC to manage various issues in a broadly functional manner. This included weekly meetings in the time leading up to the project between the hotelier, the OSBC and the project managers, as well as other meetings called on as necessary. A range of innovative solutions were devised to deal with logistical issues, such as dedicated pick-ups and buses for the cast at each end of the journey. Some of the cast were relocated with the project picking up the extra costs. Works were coordinated so that, as far as possible, the noisiest and most disruptive works outside the hotel were completed at the ‘best’ times.

This project, including the installation of a major new tram stop at Sturt and Halifax Streets, progressed as smoothly as could be expected, although there was a raft of issues that required attention as the project rolled out. This project highlighted the value of early and comprehensive engagement of all parties to the project and, in this case,

included the businesses that might be impacted. This project included a thoroughly planned and implemented ‘Business Support Policy’. The Policy should stand as the current benchmark for consultation on major projects, particularly within the CBD.



King William Street tram tracks from the Victoria Square Ferris Wheel.



Aerial and ground level images of the replacement of the King William Street Tramline.

OPEN TO BUSINESS GUIDE

The issue of infrastructure works affecting small business is an ongoing one for the SBC. In his experience, a number of small businesses have been destroyed by poorly planned and managed projects.

As a result, the SBC identified a need for a set of guidelines for governments and contractors undertaking roadworks, as well as affected businesses.

The guidelines are intended to assist governments and contractors to be “small business friendly” and serve as a reminder of the importance of small businesses as stakeholders.

The guide recommends early and genuine consultation with businesses that will be affected by the works. Business impacts to be taken into consideration include customer traffic declines, access for deliveries and waste disposal, as well as dust, mud and noise. Checklists are provided for governments and contractors to help mitigate the impacts of a project.

Targeted information and a separate checklist is provided for business owners to assist them to prepare for, and manage, the disruption of infrastructure works before, during and after construction

The SBC launched the Open to Business Guide at the 2019 Small Business Friendly Council Workshop on 29 October 2019.



Open to Business – Making Roadworks Work booklet.



Small Business Commissioner John Chapman discussing the Open to Business - Making Roadworks Work document on 5AA Leon Byner's program.



Small Business Commissioner John Chapman launching the Open to Business - Making Roadworks Work document at the Small Business Friendly Council Workshop in October 2019.

IMPACT OF HIGH RISE CONSTRUCTION ON SMALL BUSINESSES

The OSBC regularly receives complaints concerning the impact of construction projects on customer traffic or access to nearby small businesses.

While the OSBC has had some success in navigating solutions with some construction managers, in other cases there has been a refusal to engage or to acknowledge any problem.

Complaints have included lack of, or restricted access, noise, dust and mud, operations outside of approved hours, and in one case, sprayed concrete which spattered across vehicles and nearby premises.

The OSBC regularly engages with the City of Adelaide and other agencies such as the EPA and Safework, when breaches of approvals or laws are apparent.

However, it has become clear over time that there is often very limited action which can be taken. Some builders clearly regard the current penalties on some particular projects as merely a “cost of doing business”.

In September 2019, the OSBC joined with the City of Adelaide and the Public Sector Innovation Lab on a 90 day project which, as a first stage, will map the process from “I want to build a building” to “Building Occupied.” The first meeting was held on 4 September 2019. Other parties on the working group include the State Commission Assessment Panel (SCAP), the EPA, and DPTI.

At the completion of the mapping process, it was proposed that key stakeholders will be informed of the project and will be engaged for their input and views at the appropriate junctures.

Key stakeholders from the business perspective include: Master Builders Association; UDIA; Business SA; Property Council of Australia; and RenewalSA.

The aim of the project is to require construction managers and developers to work with nearby small businesses to mitigate project impacts and to have clear legal accountabilities amongst relevant government entities where breaches of legislation occur.

This will particularly consider the staged implementation of the *Planning Development and Infrastructure Act 2016*.

During deliberations on this matter, the SBC made a submission to the Review of the *Local Nuisance and Litter Control Act 2016*. The SBC noted that an area which may assist in achieving positive change by some builders would be an expansion of, and increase in, expiation fees under that Act.



The OSBC regularly engages with the City of Adelaide and other agencies such as the EPA and Safework, when breaches of approvals or laws are apparent.”

ENQUIRIES UNDER THE SMALL BUSINESS COMMISSIONER ACT 2011

HOW WERE ENQUIRIES MADE?															
	2019						2020						Total 2019/20	Total 2018/19	Variance
	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun			
Email	8	6	7	6	14	11	6	14	38	114	67	72	363	98	270%
Phone	105	101	81	102	102	65	101	88	138	9	5	2	899	1174	-23%
Online form	18	26	11	17	13	9	17	13	15	24	23	28	214	216	-1%
Walk-in	18	21	8	15	12	19	16	13	2	0	0	0	124	157	-21%
Letter	0	0	0	0	1	1	0	0	0	0	1	1	4	3	33%
Direct contact	0	1	0	0	1	6	16	4	0	0	0	0	28	11	155%
TOTAL	149	155	107	140	143	111	156	132	193	147	96	103	1632	1659	-2%



Thank you for your continued interest. After your intervention, there was a distinctive change in tone - and very soon after, we were granted Incorporated status. There had been numerous road-blocks prior to your assistance, which helps me think our task was going to be a long and winding one without your help.”

PAT

SUBJECT MATTER															
	2019						2020						Total	Total	Variance
	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	2019/20	2018/19	
Farming	1	2	4	2	1	3	1	0	1	5	0	0	20	41	-51%
Franchising	1	1	1	4	2	1	1	1	2	3	1	0	18	16	13%
Local Government	3	4	2	3	1	0	2	4	7	0	0	0	26	42	-38%
Small Business Issue	104	107	76	89	104	65	105	77	109	51	55	39	981	1133	-13%
State Government	3	3	1	6	3	5	4	3	6	13	16	44	107	68	57%
Motor Vehicle	6	10	4	8	5	7	4	3	6	1	1	4	59	71	-17%
Newsagent	0	0	1	0	0	0	0	0	0	0	0	0	1	3	-67%
Other	10	5	1	1	1	2	25	13	27	19	5	4	113	97	16%
Late Payment of Accounts	2	0	0	4	3	2	0	2	7	12	6	1	39	3	1200%
Starting a Small Business	7	13	9	13	8	9	4	12	5	5	1	5	91	93	-2%
No Selection	12	10	8	10	15	17	10	17	23	38	11	6	177	92	92%
Total	149	155	107	140	143	111	156	132	193	147	96	103	1632	1659	-2%

COVID-19 EMERGENCY RESPONSE ACT 2020

The impact of the COVID-19 virus and effective shutdown of many sectors of small business demanded and received a quick response from the State and Federal Governments.

Thousands of businesses were adversely impacted to the point of not being in a position to pay staff, suppliers or their rent.

In late March 2020, the National Cabinet chaired by the Prime Minister and of which, SA Premier Hon Steven Marshall MP was a member, set down some key principles to address the financial impacts on many lessees and stop evictions.

Underpinning the approach was the directive that commercial tenants, landlords and financial institutions were encouraged to sit down together to find a way through to ensure that businesses can survive and be there on the other side. The National Cabinet agreed to the following principles, to underpin and govern intervention to aid commercial tenancies as follows:

- a short term, temporary moratorium on eviction for non-payment of rent to be applied across commercial tenancies impacted by severe rental distress due to coronavirus;
- tenants and landlords are encouraged to agree on rent relief or temporary amendments to the lease;
- the reduction or waiver of rental payment for a defined period for impacted tenants;
- the ability for tenants to terminate leases and/or seek mediation or conciliation on the grounds of financial distress;
- commercial property owners should ensure that any benefits received in respect of their properties should also benefit their tenants in proportion to the economic impact caused by coronavirus;
- landlords and tenants not significantly affected by coronavirus are expected to honour their lease and rental agreements; and
- cost-sharing or deferral of losses between landlords and tenants, with Commonwealth, state and territory governments, local government and financial institutions to consider mechanisms to provide assistance.

Further meetings occurred in early April 2020 and the COVID-19 Emergency Response Bill 2020 was introduced on 7 April 2020 and passed by Parliament the following day. *The COVID-19 Emergency Response Act 2020* (the COVID Act) was assented to and proclaimed on 9 April 2020. The SBC's advice and input was sought throughout the development of the legislation.

In summary, the new COVID Act brought in a set of wide-ranging measures and various temporary modifications of the law of the State in response to the COVID-19 pandemic, including stopping evictions.

Under the COVID Act, if a lessee is suffering financial hardship as a result of the COVID-19 pandemic, a lessor cannot take any prescribed action against the lessee on grounds of a breach of a lease during the prescribed period consisting of:

- a failure to pay rent; or
- a failure to pay outgoings; or
- the business operating under the lease not being open for business during the hours specified in the lease; or
- any other act or omission of a kind prescribed by the regulations for the purposes of section 6(3)(d) of the Act.

Prescribed action was defined as taking action under the provisions of a commercial lease or seeking orders or issuing proceedings in a court for any of the following:

- eviction of the lessee from premises that is subject to a commercial lease;
- exercising right of re-entry to premises that is subject to a commercial lease;
- recovery of land;
- distraint of goods;
- forfeiture;
- damages;
- requiring a payment of an interest on unpaid rent otherwise payable by a lessee;
- recovery of the whole or part of a security bond under the commercial lease;
- performance of obligations by the lessee or any other person pursuant to a guarantee under the commercial lease;

- possession;
- termination of the commercial lease;
- any other remedy available to a lessor against a lessee at common law or under South Australian law.

Unless otherwise agreed between the lessor and lessee, the COVID Act required that rent must not be increased during the prescribed period if the lessee is suffering financial hardship as a result of the COVID-19 pandemic. Rent determined by turnover is excluded from this provision in the COVID Act.

The COVID Act also required that a lessor must not require a lessee to pay land tax or reimburse land tax if the lessee is suffering financial hardship as a result of the COVID-19 pandemic.

The prescribed period was defined as the period beginning on the day which the section of the COVID Act commenced and would end on a day fixed by the Minister by notice in the Government Gazette. The date of expiry will be no longer than six months after the commencement of the section. It may be earlier than six months if the relevant declarations relating to the COVID-19 outbreak have ceased.

The COVID Act was proclaimed on 9 April 2020 with an effective life of six months unless an earlier termination was declared by the Attorney-General.

In addition, the SBC was provided with additional legislative powers to:

- expand the role to mediate disputes on application by lessee/lessor;
- issue a determination as to whether a lessee is suffering financial hardship as a result of the COVID-19 pandemic with a right of appeal to Magistrates Court;
- mediate any other dispute in relation to COVID-19 arising from a lease or occupation of premises subject to a lease;
- exercise powers for the prescribed period under Part 7 of the *Fair Trading Act 1987* during the prescribed period, including to gather or require production of information in relation to leases.

On 12 May 2020, the SA Government announced that changes would be made to the COVID Act in relation to matters involving commercial leases. These changes were in response to the State Government's consideration of the National Cabinet Mandatory Code of Conduct SME Commercial Leasing Principles During COVID-19, which had been published on 7 April 2020.

The amending legislation was introduced into State Parliament on 12 May 2020, passed on 14 May 2020, and enacted on 15 May 2020.

Under the amended COVID Act, the Government significantly increased powers to make regulations, if necessary, for the purposes of mitigating the adverse impacts on a party to, or any other person with an interest in, a commercial lease resulting from the COVID-19 pandemic.

The new Regulations commenced operation on 15 May 2020 and replaced the original regulations, which were effected on 9 April 2020.

The Regulations imposed an obligation on parties to commercial leases to negotiate in good faith and have regard to:

- a. the economic impacts of the COVID-19 pandemic on the parties to the lease; and
- b. the provisions of the Act and these regulations; and
- c. the provisions of the National Cabinet Mandatory Code of Conduct—SME Commercial Leasing Principles During COVID-19 published on 7 April 2020.

The Regulations included prohibitions and restrictions relating to commercial leases and in particular including banning evictions for:

- a failure to pay rent; or
- a failure to pay outgoings; or
- the business operating under the lease not being open for business during the hours specified in the lease.

The Regulations also provided powers to the SBC to seek information or require parties to provide information under Section 7 of the *Fair Trading Act 1987*.

The amended COVID Act and replacement Regulations provided a clear path forward for both commercial landlords and tenants. Firstly, the requirement to negotiate in good faith and if that failed, mediate through the OSBC.

The Regulations provided that the only way a party to a lease could then take a matter to court was for the SBC to provide a certificate outlining why a mediation had not taken place or had failed.

As at 30 June 2020, 75 applications had been received for mediation under the COVID Act.

Of these cases:

- 12 were successfully resolved with agreement being reached prior to formal mediation;

- three Mediations were conducted – two of which were successful and one unsuccessful;
- three Mediation certificates were issued; and
- 58 cases were still in progress.

The considerable jump in demand for assistance to resolve leasing matters came at a time when the OSBC was operating “virtually” with nearly all staff operating from a home office environment.

In order to ensure a timely response could be provided to requests for mediation and determinations, the SBC expanded the panel of mediators and determined that for the immediate period mediations would be conducted by electronic means. Additional staff support was provided by the Ombudsman, Wayne Lines.

ENQUIRIES UNDER THE COVID-19 EMERGENCY RESPONSE ACT 2020

OUTCOME OF ENQUIRIES		2019/20
Closed	Advice Given	79
Closed	Invited to Lodge a Formal Dispute	77
Closed	Converted to a Formal Case	63
In Progress		22
TOTAL		241

CASES UNDER THE COVID-19 EMERGENCY RESPONSE ACT 2020

STATUS OF CASES		2019/20
Closed	Successfully	12
Closed	Assistance Provided	4
Closed	Unsuccessful	1
In Progress		58
TOTAL		75

RETAIL AND COMMERCIAL LEASES ACT 1995

The State Government introduced the Retail and Commercial Leases (Miscellaneous) Amendment Bill 2019 into Parliament on 3 July 2019. The Bill passed in the Lower House on 24 September 2019 and passed in the Upper House on 10 December 2019. His Excellency the Governor assented to the *Retail and Commercial Leases (Miscellaneous) Amendment Act 2019* (the RCL Act) on 19 December 2019.

On 14 May 2020, His Excellency the Governor in Executive Council proclaimed the *Retail and Commercial Leases (Miscellaneous) Amendment Act 2019* and varied the *Retail and Commercial Leases Regulations 2010*. The Act is committed to the Attorney-General Hon Vickie Chapman MP.

The amendments, which will come into effect on 1 July 2020, build on the existing protective measures built into the Act by:

- allowing leases to move in and out of the Act;
- clarifying the application of GST;
- establishing a formal process for the Valuer-General to review the rent threshold which currently stands at \$400 000;

- providing an option for a landlord to register a new lease above the current threshold of \$400 000 so that the lease will not be captured by the lease should the threshold increase during the term of the lease;
- increasing requirements for disclosure of information by landlords to tenants;
- increasing penalties for breaches of the Act (broadly in line with CPI between 1995 and 2015) and introducing two new penalties;
- increasing the value of a bond from up to four weeks' rent to three months;
- amending the definition of a public company, and also providing protection to charity groups which may use a public company structure but are registered with the Australian Charities and Not for Profit Commission;
- excluding overseas companies from coverage of the Act if they are registered on an international stock exchange.

A number of technical amendments have also been implemented.

The amendments align with the Government's agenda for small business as they assist in making SA a more attractive place to invest and grow business.



The Retail Shop Leases Advisory Committee met in February 2020 to discuss the amendments to the *Retail and Commercial Leases Act 1995*.

ADMINISTRATION OF THE RETAIL SHOP LEASES FUND

During the year, the OSBC processed 686 lodgements to the value of \$1 080 203.29 and 650 refunds to the value of \$979 322.50, which were split between lessee \$696 149.58 and lessor/agent \$283 172.92.

284 Notice of Claim letters were sent to lessors, lessees and agents. Of these, 17 were disputed. These bond disputes must be referred to the Magistrates Court for resolution as per the RCL Act.

LODGEMENTS	2019/20	2018/19
Processed	686	776
TOTAL AMOUNT	\$1 080 203.29	\$1 190 348.53

REFUNDS	2019/20	2018/19
Processed	650	612
Lessee Amount	\$696 149.58	\$601 734.10
Lessor/Agent Amount	\$283 172.92	\$359 790.68
TOTAL AMOUNT	\$979 322.50	\$961 524.78

MANAGEMENT OF THE RETAIL SHOP LEASES INVESTMENT FUND UNDER THE PUBLIC TRUSTEE

The OSBC maintains an operating account with a major bank to cater for bond lodgements and refunds which held \$0.154 million as at 30 June 2020.

The account is reviewed at least annually and any excess funds are transferred to the funds management area of the Public Trustee. As at 30 June 2020, the Retail Shop Leases Investment Fund held \$10.495 million.

The allocation to the funds is in line with recommendations made by a review conducted in 2016 by Brett & Watson and is outlined below.

MARKET VALUE & PROPORTION OF PORTFOLIO HELD WITH THE PUBLIC TRUSTEE	Proportion	Investment Income	
Cash	\$1 129 862.08	10.77%	1.28%
Net Liabilities / Receivables	\$100 052.92	0.95%	
Balanced SIS	\$2 430 210.90	23.16%	0.23%
Capital Stable SIS	\$6 835 047.43	65.13%	-1.26%
TOTAL	\$10 495 173.33	100.00%	

Further details on the Retail Shop Leases Fund can be found in the 2019/20 Financial Statement attached to this report.

ENQUIRIES UNDER THE RETAIL AND COMMERCIAL LEASES ACT 1995

HOW WERE ENQUIRIES MADE?															
	2019						2020						Total 2019/20	Total 2018/19	Variance
	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun			
Email	0	1	0	1	1	3	3	3	14	204	148	63	441	21	2000%
Phone	125	103	94	88	83	64	139	114	125	16	16	4	971	1040	-7%
Online form	7	9	4	8	9	3	4	3	15	38	36	17	153	91	68%
Walk-in	3	0	3	2	2	1	0	4	1	0	0	0	16	32	-50%
Letter	0	0	0	0	0	0	0	0	0	0	1	0	1	2	-50%
Direct contact	0	0	0	0	0	0	0	0	0	1	0	0	1	1	0%
TOTAL	135	113	101	99	95	71	146	124	155	259	201	84	1 583	1 187	33%

SUBJECT MATTER															
	2019						2020						Total 2019/20	Total 2018/19	Variance
	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun			
Assignment	6	0	3	2	1	4	2	0	1	0	1	1	21	18	17%
Bond Security	59	46	56	35	25	11	21	12	32	43	48	34	422	447	-6%
Disclosure Statements	4	0	0	0	0	0	0	0	0	0	0	3	7	6	17%
End of Lease Negotiations	12	8	6	14	5	3	5	5	6	1	9	7	81	83	-2%
Term of Lease	5	13	5	3	5	3	4	5	1	4	5	3	56	82	-32%
Outgoings	7	11	9	11	11	3	3	9	5	5	5	5	84	99	-15%
Pre Lease Negotiations	9	6	7	7	9	4	7	6	8	4	3	1	71	58	22%
Rent	9	10	7	1	7	5	12	1	23	105	68	14	262	113	132%
Repairs & Maintenance	9	4	4	7	11	7	4	6	6	1	3	3	65	86	-24%
Termination	7	3	0	7	4	6	7	7	20	10	6	2	79	89	-11%
Other	8	12	4	8	7	8	6	8	36	83	49	6	235	97	142%
Bank Guarantee	0	0	0	1	1	0	0	1	2	0	0	0	5	-	-
No Selection	0	0	0	3	9	17	75	64	15	3	4	5	195	9	2067%
Total	135	113	101	99	95	71	146	124	155	259	201	84	1 583	1 187	33%

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) aims to ensure that a person or business who carries out construction work, or who supplies 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 throughout the contractual chain. It also provides a mechanism for the rapid adjudication of disputes in the building and construction industry.

The OSBC received additional funding in the 2017/18 budget to provide limited funding to assist industry bodies in promoting and educating the building and construction industry in the SOP Act.

This year, four industry associations have agreed to participate in this initiative. Due to the restrictions in place resulting from the COVID-19 pandemic, many of the industry associations have put their face-to-face interactive presentations on hold in both metropolitan and regional areas. However one industry association, Master Builders Association SA, has successfully completed the first milestone of this initiative by developing a SOP Act guide, delivering seminars, promoting the SOP Act via social media channels and circulating information via email to their membership base.

Due to the ever changing nature of the industry, where new participants enter regularly, it is vital that an ongoing program to promote the SOP Act and educate the industry is maintained. For tradespeople that set up their own businesses after being employees, it is important that they have access to education on the SOP Act to understand the protections this legislation can provide.

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

The SA Government approved the drafting of amendments to the SOP Act at the end of October 2019.

A draft bill was prepared by Parliamentary Counsel incorporating the proposed amendments which include many of the recommendations from the 'Review of Security of Payment Laws: Building Trust and Harmony' (the Murray Review), prepared for the Federal Government by John Murray AM. Amendments also incorporated changes proposed to the SOP Act by the former Government in 2017. The draft Building and Construction Industry Security of Payment (Review Recommendations) Amendment Bill 2020 (the Bill) was circulated for consultation over an eight-week period which ended in mid-February 2020.

Overall, there was broad agreement with the majority of amendments included in the Bill. Many respondents saw merit in the proposed amendments as they believe that they will improve the scope, effectiveness and clarity of the SOP Act and will enhance the interests of the many small businesses that operate in the SA building and construction industry. There was also support expressed for amendments which seek to improve the processes contained within the SOP Act for the adjudication of disputed payment claims. The incorporation of many of the recommendations of the Murray Review will also contribute towards national consistency in Security of Payment legislation.

As at 30 June 2020, feedback from the consultation process on the bill was being considered by the State Government.



Representatives from a number of states with responsibilities for Security of Payment legislation met with Small Business Commissioners and the Australian Small Business and Family Enterprise Ombudsman in Adelaide in September 2019 as part of a regular forum on building industry payment issues.

“

The Security of Payment Act is designed to maintain cash flow throughout the contractual chain. It also provides a mechanism for the rapid adjudication of disputes in the building and construction industry.”

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

In 2019/20, the OSBC assisted contractors and subcontractors with 116 enquiries in relation to the Security of Payment legislation and provided advice 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 by making application with one of the Authorised Nominating Authorities, who will appoint an adjudicator to determine the dispute.

In total, 63 claims worth a total of \$47 187 609.10 were made through adjudication mechanisms within the SOP Act. Of these, 41 resulted in an award to the claimant. The total amount awarded was \$18 853 121.72.

Total Amount Claimed vs Awarded

		2019/20 Adjudications	2019/20 Amount	2018/19 Adjudications	2018/19 Amount
ABC Dispute Resolution Services	Claimed	0	\$0	2	\$212 869.10
	Awarded	0	\$0	2	\$151 164.00
Adjudicate Today	Claimed	55	\$15 893 798.13	64	\$32 598 646.51
	Awarded	35	\$3 051 025.32	59	\$10 183 194.38
Australian Solutions Centre	Claimed	3	\$3 095 611.07	1	\$166 792.00
	Awarded	2	\$0	1	\$155 822.70
Master Builders Association of SA	Claimed	2	\$60 847.80	0	\$0
	Awarded	1	\$10 144.20	0	\$0
Nominator	Claimed	2	\$93 528.60	0	\$0
	Awarded	1	\$37 190.22	0	\$0
Resolution Institute	Claimed	1	\$25 043 823.50	13	\$90 851 012.22
	Awarded	2	\$15 754 761.98	11	\$6 466 779.58
RICS Dispute Resolution Services	Claimed	0	\$0	2	\$7 168 272.01
	Awarded	0	\$0	1	\$91 524.14
TOTAL	Claimed	63	\$47 187 609.10	82	\$130 997 591.84
	Awarded	41	\$18 853 121.72	74	\$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

**Master Builders Association
of South Australia**

Web: www.mbase.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

Resolution Institute

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

RICS Dispute Resolution Service

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

ENQUIRIES UNDER THE BUILDING AND CONSTRUCTION SECURITY OF PAYMENT ACT 2009

SUBJECT MATTER															
	2019						2020						Total 2019/20	Total 2018/19	Variance
	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun			
Email	0	2	0	0	0	0	1	3	5	3	3	2	19	13	46%
Phone	4	5	4	12	10	9	7	6	16	2	1	0	76	101	-25%
Online Form	1	0	1	0	5	0	0	0	2	2	5	2	18	12	50%
Walk-in	0	0	0	2	0	0	0	1	0	0	0	0	3	6	-50%
TOTAL	5	7	5	14	15	9	8	10	23	7	9	4	116	132	-12%

FARM DEBT MEDIATION ACT 2018

The *Farm Debt Mediation Act 2018* (the FDM Act) came into effect in September 2018 and is designed to provide protection and financial security for farmers by enforcing a mandatory mediation process before a creditor is able to foreclose on a farming operation. The SBC is responsible for the administration of the FDM Act.

Following on from the commencement of the FDM Act, the lodgement of Farm Debt Mediation matters with the OSBC continued at a steady rate into the 2019/20 year.

That flow, however, has effectively been interrupted due to events linked with COVID-19. Whilst such an interruption might not appear to have an immediate connection with COVID-19, the unprecedented economy-wide events have resulted in a situation where the various creditors (in the main, banks), have only moved cautiously and where it has been felt necessary to do so.

As a consequence, the Farm Debt Mediation functions of OSBC have been relatively quiet from the around the onset of the COVID-19 provisions in late March 2020.

Prior to COVID-19, the SBC estimated that OSBC would facilitate around 15 Farm Debt Mediations per year. Between 3 September 2018 and 30 June 2020, the OSBC had received 22 applications under the *Farm Debt Mediation Act 2018* in total.

Of these, 15 Farm Debt Mediations were held (seven in 2018/19 and eight in 2019/20), 1 matter was resolved prior to mediation and 6 matters were still in progress as at 30 June 2020.

High level analysis of the 15 completed Farm Debt Mediations indicates that:

- 14 mediations resulted in a signed Agreement and/or Settlement Deed between the farmer and creditor regarding the farm debt;
- only a single mediation did not result in a signed Agreement and/or Settlement Deed;
- initiation of a Farm Debt Mediation process was by a creditor in 12 cases and by a farmer on only three occasions;
- the total amount of farm debt that was the subject of mediation has to date been approximately \$40 million;

- one Prohibition Certificate was issued to a farmer; and
- Exemption Certificates have been issued to creditors on five occasions.

As at 30 June 2020, creditors were again beginning to indicate their interest in farm debt matters, and therefore Farm Debt Mediation. OSBC was starting to field a number of enquiries from creditors, as well as a number of enquiries from RBS Counsellors, who can become the conduit between farmers and OSBC, enabling farmers to initiate mediation on their own behalf.

The SBC anticipates that as the various COVID-19 measures potentially ease off post September 2020, creditors will again start to focus their attention on this important aspect of their loan books.

In October 2019, the SBC attended a forum organised by the NSW Government to discuss various aspects of FDM including legal challenges in that state.

Of note were legal challenges in that state which surrounded whether a party was a “farmer” under the relevant FDM Act, with a number of judgements confirming:

- that the farmer carries the onus of establishing they meet the definitions of the FDM Act;
- when assessing whether the farmer is solely or principally engaged in a farming operation, each case is to be considered in a qualitative and not quantitative sense, in all the circumstances;
- the person’s farming and non-farming income and assets need to be considered, as do sources of income and the size, nature and history of their farming and non-farming operations; and
- a person’s involvement in non-farming activities is not necessarily a disqualifying factor – it depends on their significance relative to the farming operation.

The operation of FDM legislation was on the agenda for a meeting of State and New Zealand Government officials.

Plans are well underway to implement FDM in New Zealand in 2020.



NSW Farm Debt Mediation Officer Hannah Jaireth, SA SBC John Chapman, New Zealand Farm Debt representative Gwyn Morgan, Clare Purcell and Tiffany Reed-Marshall from the Victorian Department of Jobs Precincts and Regions attended the Farm Debt Mediation meeting in Sydney.

CASES UNDER THE FARM DEBT MEDIATION ACT 2018

RESULT OF CASES CLOSED

		Total 2019/20	Total 2018/19	Variance
Closed	Successfully	8*	7	14%
Closed	Unsuccessful	1	0	-
TOTAL		9	7	28%

* includes one case resolved prior to mediation

WORK HEALTH AND SAFETY ACT 2012

REVIEW OF CODES UNDER THE WORK HEALTH AND SAFETY ACT 2012

On 27 April 2020, the Treasurer the Hon Rob Lucas MLC, who has ministerial responsibility, wrote to the SBC with a request for the SBC to review the 20 Codes of Practice which are in effect in South Australia under the *Work, Health and Safety Act 2012* (WHS Act).

Under Section 274 of the WHS Act, the Industrial Relations Consultative Council (IRCC) Code Committee must consult with the SBC so that the SBC may assess whether the code of practice would affect small business if implemented and, if so, provide any comments or

advice that the Commissioner considers to be appropriate in the circumstances (including that the Code be varied).

The SBC reviewed the Codes in accordance with the request and, given there had been no substantive change, advised the Treasurer by letter dated 12 May 2020 that the current Codes were appropriate from a small business perspective.

INQUIRIES

SA PRODUCTIVITY COMMISSION – INQUIRY INTO GOVERNMENT PROCUREMENT STAGE 2

Two submissions were provided to the SA Productivity Commission (SAPC) in response to its Inquiry into Government Procurement Stage 2. The State Government extended the terms of reference to include procurement in the building and construction sector valued over \$165,000 (GST inclusive). The first submission was in response to the Issues Paper for Stage 2 dated 5 June 2019.

The first submission covered the following issues:

- The costs to business of participating in the procurement process;
- The appropriateness of procurement governance and reporting arrangements;
- The risk management framework used by public authorities to evaluate supplier bids;
- The reform of reporting requirements and actions to strengthen SA Government's whole-of-government procurement;
- Policy and practice amendments to encourage innovative procurement offerings;
- Proposal for clearer guidance on State Government Intellectual Property Policy to reduce impediment to innovation; and
- Managing intellectual property through the procurement process.

A second submission was made in response to the draft report issued by the SAPA on 30 August 2019.

The second submission covered the following issues:

- Timeliness of the process of procurement and costs incurred by small business;
- The development of case studies to highlight the impact on small business by weaknesses in procurement governance and reporting arrangements;
- Risk management, particularly relating to due diligence of contractors engaged by government agencies;
- Financial monitoring of contractors;
- Government behaving as a model contractor;
- Coordination and across Government approach to pre-qualification requirements;

- Contract management processes;
- Overall policy to protect subcontractors and suppliers;
- Education of procurement personnel;
- Effective implementation of the Government's purchasing policy in relation to non-aggregation of contracts;
- Implementation of Cascading Statutory Trusts to protect subcontractors and suppliers; and
- Compensation to affected parties when there is evidence of failure in assessment, monitoring and/or management of a contractor engaged directly by the SA Government which has passed into administration/receivership or liquidation.

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



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

ECONOMIC AND FINANCE COMMITTEE INQUIRY INTO THE MOTOR VEHICLE REPAIR AND INSURANCE INDUSTRY

In 2019, the State Parliament’s Economic and Finance Committee launched an inquiry into the State’s motor vehicle and insurance industry.

The Committee wrote to the SBC and specifically sought information relating to existing powers under *Fair Trading (Motor Vehicle Industry Dispute Resolution Code) Regulations 2014* (the Code). This Code was established under the *Fair Trading Act 1987* specifically to deal with disputes involving the motor industry.

The Code provides the SBC with powers, if necessary, to require parties to answer questions, exchange information, attend meetings and attend mediation or otherwise take part in an alternative dispute resolution process.

The Code is a tool which can assist in resolving disputes. On two occasions the SBC has had to activate the Code in disputes involving vehicle manufacturers who, to that point, refused to adequately engage with the office.

The SBC appeared before the Committee in November 2019 and provided his views on current dispute resolution

arrangements and how these could be strengthened as well as concerns about the imbalance of power between small repairers and insurers.

The SBC pointed out to the Committee that one of the biggest challenges for collision repairers in making a complaint is the fear that they will not receive further work from an insurer. The SBC also canvassed the difficulties the industry experienced with quoting, including the dreaded “Funny Time Funny Money” where an hourly rate paid by the insurer in no way resembles the true hourly cost of running a collision repair business.

The Committee sought detailed information on what other legislative processes could be adopted to ensure disputes were quickly resolved, including where an independent determination can be made on a dispute outside of the courts.

As at 30 June 2020, the Committee had not finalised its report.



Small Business Commissioner John Chapman appeared before the SA Parliament’s Economic and Finance Committee to discuss dispute resolution processes involving collision repairers and insurance companies.

ENHANCEMENTS TO UNFAIR CONTRACT TERM PROTECTIONS

On 13 December 2019, the Federal Government released for public consultation a Regulation Impact Statement (RIS) on Enhancements to Unfair Contract Terms (UCT) Protections. The consultation RIS invited parties to provide feedback on options to enhance the unfair contract term protections for small business, consumers and insurance contracts.

The SBC provided a submission on 17 March 2020 commenting on the options set out in the RIS. The SBC fully supported the Government's intention to strengthen unfair contract term protections for small businesses, and made the following recommendations:

- Unfair contracts should be illegal and should attract appropriate penalties;
- Regulators should have strengthened powers to issue infringement notices and to make determinations as to whether a contractual term is unfair;
- A small business for the purpose of unfair contract term protections should be defined as a business that employs less than 100 employees or has an annual turnover of less than \$10 million;
- The value threshold should be removed altogether to broaden the coverage of small business contracts;
- 'Repeat usage' should be a factor that a court must consider in determining whether a contract is a standard form contract;
- The UCT legislation should be expanded to include the insurance sector to provide greater protections for small business; and
- Minimum standards under state and territory laws would not be able to be declared unfair.

The Federal Government has not indicated when it will release the findings of the consultation.





INFORM | MEDiate | ADVOCATE

ENGAGEMENT WITH THE COMMUNITY

INFORMATION SERVICES

The OSBC provides information to small business in relation to starting and/or running a small business in SA. In 2019/20, the OSBC 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.

From March 2020, the OSBC delivered online only information sessions due to the COVID-19 pandemic.

INFORMATION SESSIONS

During 2019/20 the OSBC delivered 12 information sessions at the Small Business Centre, two information sessions on Kangaroo Island and five online; a total of 19 information sessions. Overall, 360 people attended in person and 1,064 tuned in via webinar.

The two information sessions held in Kangaroo Island had a focus on bushfire recovery for small business. Representatives from the Australian Taxation Office, PIRSA, SAFA and Department for Innovation and Skills spoke at the meeting, which was attended by 82 local people.

Given the COVID-19 pandemic, moving online was quickly appreciated as small businesses were looking for relevant information to help them navigate their business through this unpredictable climate.

All sessions were published on the OSBC YouTube Channel, which has seen a significant increase in subscribers.



19
information
sessions and
webinars



360
attendees
at events



1064
attendees
via webinar

Topics included:

- Social Media for small business;
- Cybercrime for small business;
- Small business planning;
- Google Adwords;
- Franchising for small business;
- Digital transformation for small business;
- Business recovery for bushfire affected small businesses;
- Coronavirus: Navigating the disruption for small business;
- Retail and commercial leasing; and
- Sales and marketing to tackle Coronavirus.

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 first half of the year with one seminar being held in the Small Business Centre.

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

“

Thank you for this information session. Much appreciated. It's a whole new world for me and I need to revisit the fast changing world.”

GOOGLE ADWORDS
FOR SMALL BUSINESS

Excellent session, thank you very much!!”

FRANCHISING FOR
SMALL BUSINESS

Great night, great variety of speakers with a different dimension to their presentation.”

FRANCHISING FOR
SMALL BUSINESS

“

“Well run, professional, helpful and hospitable – thanks!”

BIZLINK

Encouraging and useful information about how to go about this rather than focus on ‘don't do this/that”

SMALL BUSINESS PLANNING

Excellent presentation, thank you!”

SOCIAL MEDIA FOR
SMALL BUSINESS



Small Business Commissioner, John Chapman with Sergeant Jonathon Newman, Cybercrime Training and Prevention Supervisor, Financial and Cybercrime Investigation Branch, SAPOL who presented two events on Ransomware and Cybercrime prevention for small business.



Small Business Commissioner, John Chapman, with Lauren Krollig, Senior Consultant Workplace Relations, Business SA who presented an event on understanding award rates for small businesses, speaking with an attendee.



Shweta Tripathi, Business Broker with Accelerate Business and Franchise Sales, presenting What is Your Business Worth? information session.



Speakers at the bushfire recovery session held at the Parndana Hotel on Kangaroo Island including John Chapman, Small Business Commissioner, Andrew Watson, Australian Taxation Office, Rebecca Wigglesworth, South Australian Government Financing Authority, Nikki Becker, Department for Innovation and Skills and Lyn Dohle, Primary Industries & Regions of South Australia.



Attorney-General, Hon Vickie Chapman speaking to small businesses at the Coronavirus: Navigating the Disruption for small business webinar.

“

I just wanted to pass on some feedback that these events are AWESOME! I have made positive connections with other suppliers each time I've attended and even got a wedding booking last year out of it. Also ... the speakers and topics are first class!”

SHELLEY

PUBLIC EVENTS

Unfortunately, due to COVID-19 many planned activities for the second half of 2019/20 were cancelled. However, during the first half of 2019/20 the OSBC was represented at the following local small business events and expos:

- SA Migrant Small Business Expo (Community Corporate);
- Indigenous Business Trade Fair (Australian Government National Indigenous Australians Agency & Supply Nation);
- Southern Business Connection Expo (Edwardstown Business Association);
- IPA Adelaide Small Business Summit (Institute of Public Accountants);
- Mainstreet SA Conference (Mainstreet SA);
- Growing SA Conference (AgCommunicators);
- Yorke Peninsula Field Days (Grain Producers SA); and
- Riverland Field Days (PIRSA).



OSBC Senior Case Officer Amanda Arnold at the Southern Business Connection Expo, which was held at Tonsley.



Speaking panel at the Institute of Public Accountants Adelaide Small Business Summit event.

PRESENTATIONS

The SBC and his team engaged with a wide range of stakeholders during 2019/20. In the second half of the financial year, many presentations were presented online to assist businesses managing through COVID-19.

EVENT	LOCATION
Association of Consulting Architects	Adelaide
Australian Lottery and Newsagents Association Industry Breakfast	Adelaide
NECA Gala Dinner	Adelaide
State Law Society National Roadshow SA	Adelaide
IPA Small Business Summit	Adelaide
Renew Adelaide	Adelaide
Meet the Buyer	Adelaide
Regional Voice Bordertown	Bordertown
Mercantile CPA Business Breakfast	Bowden
City of Burnside Presentation	Burnside
Regional Voice Barossa	Lyndoch
Blakiston Rotary Club	Mount Barker
Regional Voice Mount Gambier	Mount Gambier
JobKeeper Payment, Let's Break it Down	Online
Navigating Your Business through the COVID-19 Pandemic	Online
Creating an Ecommerce Platform for Your Business	Online
Business Resilience: COVID-19 selling online	Online
Prospect and Unley Councils - COVID-19 & Business	Online
Business Support in the Region	Port Pirie
Unley Business Awards	Unley
Regional Voice Victor Harbor	Victor Harbor



Australian Financial Complaints Authority

Lead Ombudsman, Small Business for the Australian Financial Complaints Authority (AFCA) Geoff Brown was in Adelaide to brief industry and business groups on the work of AFCA and how it can help small businesses in their disputes with financial institutions.

The event was hosted by SBC and was attended by Ian Horne, Australian Hotels Association, Tim White, Law Society of SA, Paul Williams, Australian Subcontractors Association, Ryan McClenaghan, Ai Group, Melissa Ekberg, Civil Contractors Federation, Langdon Blight, CPA Australia, Huan Do, Housing Industry Association, Andrew Clarke, Master Plumbers Association, Larry Moore, National Electrical & Communications Association and Colin Shearing SA Independent Retailers.

Association of Consulting Architects

The SBC met with members of the Association of Consulting Architects in July 2019. The conversations highlighted the importance of design and the lasting and positive impact architects work can have on the built environment.

Other issues raised included the difficulty businesses have being paid promptly and according to their terms; an issue of great concern to the SBC.

Mainstreet Development

The importance of main street areas across SA was also a focus for the SBC.

A small sponsorship was provided to MainstreetSA to support their two-day event, which brought councils, trader groups and other stakeholders together to discuss key issues, and how to maintain and improve town and city centre areas. MainstreetSA is a not for profit organisation, which is committed to supporting the traditional village shopping strips and town centres of SA.

A number of international speakers provided an insight into the changing retail landscape and actions, which had been taken in their regions to reactivate retail trading.

The SBC was part of a panel discussion on the future of main streets and his comments focussed on the need for leadership to come from within the existing businesses and the importance of councils taking a role in facilitating discussions on the future make up of main streets and initiatives to promote their strengths.



Lead Ombudsman for the Australian Financial Complaints Authority Geoff Browne (top right) with SA business and industry leaders.



The 2019 Glenelg Street Party was a winner at the MainstreetSA awards at Published ArtHouse Hotel. The event won the award, which was sponsored by the SBC in the over \$50,000 expenditure category. SBC John Chapman presented the award to Jetty Road Coordinator, Alex Brown and Jetty Road Mainstreet Committee Chair, Con Maios.



Small Business Commissioner John Chapman speaking at the MainstreetSA conference along with Gavin Williams from Matilda Bookshop in Stirling.



Members of the Association of Consulting architects meeting in July 2019.

PUBLICATIONS

The OSBC reviewed and conducted minor updates to their publications this year. The OSBC use its main publications to raise the awareness of their services and delivery important information to small businesses. This is done either through the Small Business Centre Shopfront or intermediaries such as other government departments.

Workplace Wellbeing Guide for Small Businesses

The OSBC continues to raise awareness of workplace wellbeing and the importance of following healthy workplace practices through many channels and intermediaries, and this year partnered with Business SA to develop a simple guide for small businesses.

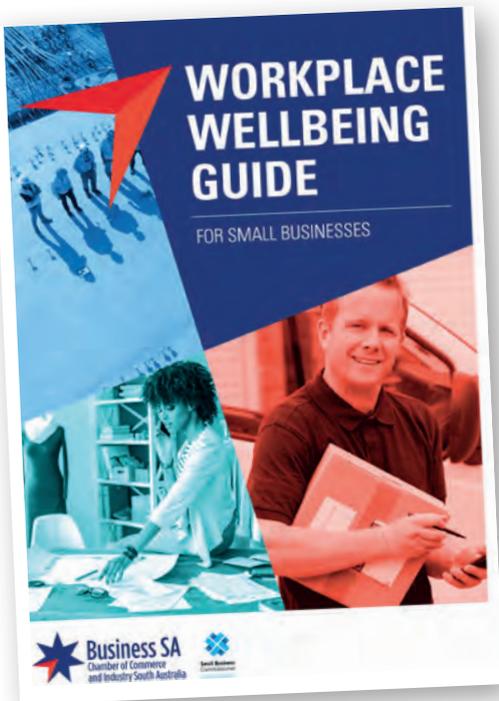
The Workplace Wellbeing Guide was launched in December 2019 and aimed to be a simple and easy to use guide of practical activities for small business owners. The seven personal steps to wellbeing aim to help with improving overall mental health.

The Guide is available in the Small Business Centre Shopfront, and online on the OSBC website www.sasbc.sa.gov.au and Business SA website www.business-sa.com.

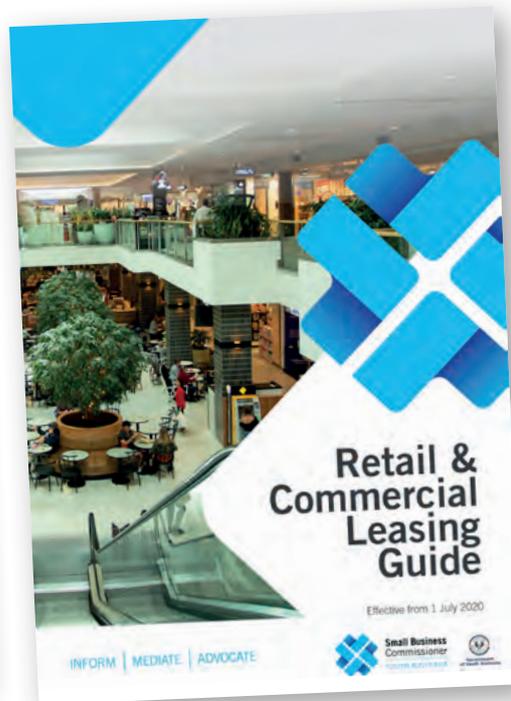
Retail and Commercial Leasing Guide

To align with changes to the Retail and Commercial Leasing legislation, which came into effect on 1 July 2020, the OSBC conducted a full review of its Retail and Commercial Leasing Guide. The Guide, which under the new legislation would be mandatory to be provided with every new business lease, was updated to include the new legislative guidelines as well as updated branding and images to align with other OSBC publications.

The Retail and Commercial Leasing Guide is available in hard copy from the Small Business Centre Shopfront or online on the OSBC website www.sasbc.sa.gov.au.



Workplace Wellbeing Guide for Small Businesses.



Retail and Commercial Leasing Guide.

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 for the OSBC. LinkedIn and YouTube are also growing in popularity, especially in the current COVID-19 climate, specifically for the month of May where reach spanned to more than 20,000 people - an 80% increase on April.

The OSBC uses its social media platforms to deliver targeted communication and information, as well as engage with other government departments to cross deliver information relevant to small business.

The OSBC YouTube channel, for the months of March, April and May 2020, had a combined reach of more than 6,550 with a total view count of 3,298 people watching various information sessions. The highest performing video for this time was on Commercial Leasing COVID-19 (posted on 15 April), which had close to 2,000 views.

WEBSITE

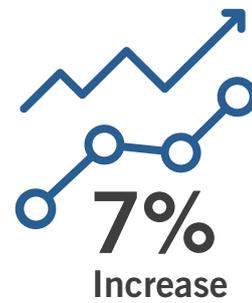
The OSBC website is the main point of entry for submitting enquires, lodging retail and commercial bonds and registering for events. There were 39,557 new user visits to the OSBC website in 2019/2020, a 7% increase on the previous year.

The OSBC has been publishing updates to its website on latest COVID-19 information as it relates to small businesses, including landlords and tenants of retail and commercial leasing. As such, there was a spike to site visits for April recording 8,779, an 86% increase from March 2020 and a 193% increase when compared to April last year.

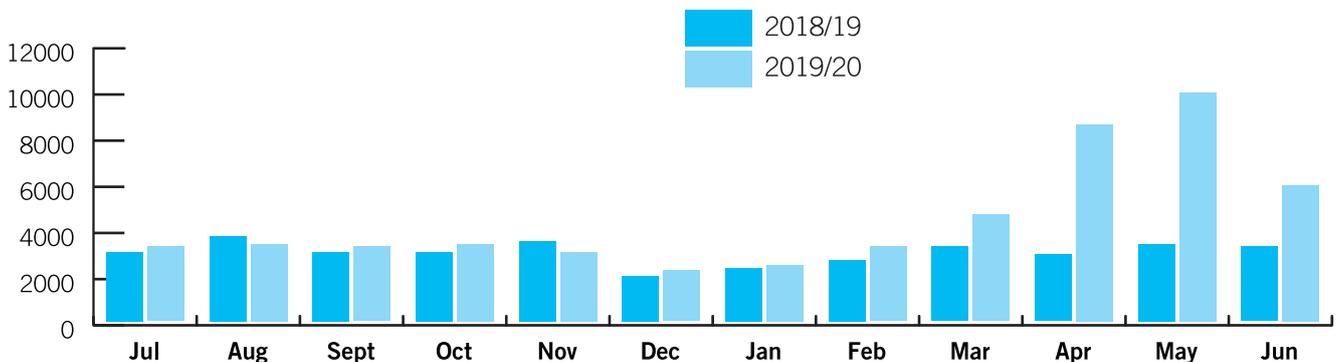
In May 2020 there were 10,185 visits to the OSBC website, a 197% increase from the previous year (May 2019 visits 3,427).



39557
New Visits



VISITS TO THE OSBC WEBSITE



LOCAL GOVERNMENT

The OSBC works closely with the Local Government Association of SA (LGA) on a range of issues that impact small business. The support of the LGA for the Small Business Friendly Council Initiative has been significant.

During the COVID-19 pandemic, the SBC took part in a number of webinars with the LGA and also Prospect and Unley Councils to outline support services which were available for small businesses.

In July 2019 the SBC was invited to a meeting of the South Australian Region Organisation of Councils (SAROC) in Whyalla.

The SBC outlined the role of his office, how it works with local government through the Small Business Friendly Council Initiative, and opportunities for councils to develop their Main Street business precincts.

The discussion focussed very much on the difficulties regional communities are facing to retain retail businesses due to changes in consumer shopping habits to online purchasing.

Earlier that month the SBC also addressed the Legatus group of councils, Mayors and CEOs at Port Pirie. Legatus covers councils in the Mid North and Yorke Peninsula.

The focus of the discussion was on ways of improving the small business environment, particularly in Main Street areas.

In October 2019 the SBC was recognised for his work with councils by being named as a winner of the 2019 Local Government Association Hullick Award.

This award is given to a federal or state public officer who has demonstrated a true partnership approach in



Small Business Commissioner John Chapman speaking at the meeting of the South Australian Region Organisation of Councils (SAROC) in Whyalla.

working with councils, treats the local government sector with respect and goes the extra mile in engaging with councils for the benefit of communities. Jim Hullick was a long time CEO of the LGA and a fierce advocate for local government. The SBC was nominated for the award by the Whyalla Council.



LGA Senior Manager Sean Holden, Jim Hullick, Small Business Commissioner John Chapman, and the then Whyalla Council CEO Chris Cowley at the LGA Awards night.



Small Business Commissioner John Chapman speaking to representatives from the Legatus group of councils which covers councils in the Mid North and Yorke Peninsula in July 2019.

SMALL BUSINESS COMMISSIONERS' NATIONAL MEETINGS

SBCs from Victoria, New South Wales, Western Australia and the Australian Small Business and Family Enterprise Ombudsman meet on a regular basis to discuss common issues of concern.

In the first half of the financial year, the agenda included franchise reform, insurance responses to disasters, security of payment reform in the building and construction sector and the ongoing issue of payment times, the impacts on small business from roadworks and late payments to small business, as well as supply chain finance.

In the second half of the financial year, discussions were dominated by small business impacts from bushfires and then the COVID-19 pandemic.

In a pleasing development, the Queensland Government has reconfigured the role of its part time Small Business Champion to that of a Small Business Commissioner.

Maree Adshead who previously held the Small Business Champion was appointed as the first Queensland SBC in May 2020.

The national agenda has been broadened to include regular meetings with the Federal Regulatory Agency Group (FRAG), which consists of senior representatives from the Australian Taxation Office, the Australian Securities and Investment Commission, the Australian Competition and Consumer Commission, and the Fair Work Ombudsman

Key topics included Unfair Contract Terms, Modernising the Business Register, Single Touch Payroll and e-invoicing.



Small Business Commissioners' Meeting in Adelaide pre-COVID, September 2019.



The COVID-19 Pandemic resulted in the meeting of Small Business Commissioners moving to an online forum in May 2020.

REGIONAL ENGAGEMENT

BUSINESS SA REGIONAL VOICE PROGRAM

The Office continued its successful partnership with Business SA and its Regional Voice program. Regional Voice events were held at Barossa Valley, Victor Harbor, Mt Gambier and Bordertown in the first half of 2019/20.

The program evolved due to the COVID-19 pandemic with the SBC joining Business SA in a series of webinars to assist small businesses. The webinars proved to be very successful with the small business community; the first joint webinar attracting more than 1,250 online attendees.



Small Business Commissioner John Chapman and Business SA Senior Workplace Relations Consultant Lauren Krollig joined with the Advertiser for a webinar for small business.



Small Business Commissioner John Chapman presenting at Business SA's Regional Voice at Chateau Yaldara.



The first joint Business SA and OSBC webinar.



Business SA Regional Voice attendees at Bordertown.

RIVERLAND FIELD DAYS

The OSBC continued a comprehensive regional engagement during the year. With its responsibilities for Farm Debt Mediation, the OSBC regularly attends farming events as part of an ongoing awareness campaign.

This year, the OSBC attended the Riverland Field Days in Barmera with the Premier visiting and meeting OSBC staff member Susie Sammut who attended the three day event.



Premier Steven Marshall chats with OSBC Business Support Officer, Susie Sammut at the Riverland Field Days.

GROWING SA

The Minister for Primary Industries and Regional Development, the Hon Tim Whetstone MP and the SBC discussed farm debt issues at the Growing SA Conference at Hahndorf.

The Minister was a keynote speaker at the conference presented by Grain Producers SA and Livestock SA.

Minister Whetstone spoke about the Government's plan to lift the moratorium on GM food production and also announced that the State Government would be developing new aggravated trespass laws including doubling of penalties.



The Minister for Primary Industries and Regional Development, the Hon Tim Whetstone and Small Business Commissioner John Chapman at Growing SA Conference.

YORKE PENINSULA FIELD DAYS

The OSBC was also represented at South Australia's oldest Field Day event at the three day Yorke Peninsula Field Days at Paskeville.

The Field Days offer an opportunity to provide information on the alternative dispute resolution processes undertaken by the OSBC in all areas of small business including Farm Debt Mediation and dispute resolution between farmers and miners seeking access to land.



Small Business Commissioner John Chapman with OSBC Case and Education Manager, James Rock caught up with Deputy Chair of Grain Producers SA, Adrian McCabe (centre) at the Yorke Peninsula Field Days.



OSBC Case and Education Manager, James Rock, with Peter Glover and Steve Glover of Cereal Farmers at the Yorke Peninsula Field Days.



Being a family retail business the COVID-19 pandemic has had a major impact to our business. The SA Office of the Small Business Commissioner has been a wonderful support mechanism for tenants to resolve difficult stalemates between landlords and tenants. I have found the process and information provided by staff to be very helpful and their attentive approach to be refreshingly constructive. I can recommend any small business operator who is experiencing difficulty to seek a mediation through the Office of the Small Business Commissioner.”

TOM

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; and
- creating the right environment to establish and grow a business.

NEW COUNCILS TO THE INITIATIVE

In the 2019/20 financial year, the SBC welcomed the following councils to the SBFC Initiative making the total number of participating councils 33:

- Copper Coast Council;
- City of Mount Gambier; and
- City of West Torrens.

SMALL BUSINESS FRIENDLY COUNCIL INITIATIVE CASE STUDIES

As part of the initiative, councils are asked to provide a progress report for the period from 1 June to 31 May each year. Based on the valuable information provided in these reports, the OSBC is able to share best practice examples by way of case studies.

CITY OF ADELAIDE

Collectively the Adelaide City Council has provided over \$5 million in assistance to small and medium businesses in response to COVID-19 since March 2020. This covers waiving fees and charges; rent relief to City of Adelaide tenants, improved access to rate hardship measures, and a host of grants and activation projects to targeted sectors impacted by the COVID-19.

In June the City of Adelaide, in partnership with Business SA, commenced delivering a City Business Support Package to assist city businesses journey from recovery to growth and prosperity. The two-year program runs until 30 June 2022 and provides specialised services that include a Business Advice Hotline, Accounting, Statutory and Compliance Information, Tenants' Landlord Advisory Service, Mental Health Support Services and Digital Capability Coaching. This will provide businesses with professional advice to better position themselves in an increasingly globalised and digitally connected marketplace.



Alex from Anchovy Bandit, an early adopter of Prospect Delivers and are currently expanding their business to include two additional shop fronts below the cinemas.

CITY OF PROSPECT

The City of Prospect established a new program called Prospect Delivers which provided meal vouchers to their most vulnerable residents, while assisting local restaurants and cafes to stay open during the height of the COVID restrictions. Twenty five restaurants and cafes participated providing food to 555 vulnerable residents over a seven week period.

The program was widely recognised for as a timely and innovative program, but most of all helped increase local business confidence. This initiative has been replicated or adapted by two other South Australian Councils. The strength of Prospect's local economy meant that even during the height restrictions, Prospect Road was relatively busy compared to many other mainstreet precincts in metro Adelaide, especially compared to those in the City.

The City of Prospect measured vacancies at the beginning of the COVID-19 restrictions, when the Government sought to close business as a public health response. While some churn is normal, the vacancy rate is both a measure of economic vitality and business confidence. The vacancy rates were measured from 20 April -12 June 2020 (8 weeks). While the Prospect Delivers campaign ran for a seven week period from 22 April – 19 June 2020; when combined with Council promotion of the campaign, the rate remission, and the initial JobKeeper payments in May, Prospect Delivers provided a substantial local stimulus and injected business confidence.



Small Business Commissioner John Chapman, speaking at the City of Prospect webinar session which discussed the measures the Council is taking to assist businesses during the COVID restrictions.

SMALL BUSINESS FRIENDLY COUNCIL INAUGURAL WORKSHOP

The 2019 Small Business Friendly Council Workshop was held on 29 October 2019 in the Noel Lothian Hall in the Botanic Gardens.

The SBC opened the workshop and used the opportunity to announce the release of the Open to Business Guide for governments, contractors and businesses when dealing with roadworks.

Robert Veitch and David Cowell of the Adelaide Plains Council provided a presentation entitled, “Look North – Business Development Beyond the River,” which gave insights into the Adelaide Plains Council’s strategy to promote business participation and growth in the local community.

Joanne Davidson, Research and Policy Manager at the South Australian Tourism Commission, discussed the state of the visitor economy in South Australia. Ms Davidson discussed the role of small businesses and councils in the visitor economy and the opportunities which tourism provides to help small business; which in turn helps the economy within our state.

Akarra Klinberg, Coordinator of Business & Economic Development at the City of Unley, gave insights into the construction project to transform King William Road in Hyde Park, and discussed the benefits of early and ongoing engagement with affected businesses.

The keynote speaker was Ray Smith, General Manager of Bland Shire Council in New South Wales. Ray provided a lively presentation about the “Bring Flavour to Bland” campaign, which started out as a tongue-in-cheek attempt to attract visitors to the Bland Shire and ended up reaching an audience of more than 44 million people.

The afternoon concluded with networking, refreshments and canapes which gave participants the opportunity to swap stories with other participating councils and share their experiences with one another.



SBFC Workshop attendees OSBC Project Manager, Stephanie Burke with Ray Smith, Shire of Bland NSW, Joanne Davidson, SA Tourism Commission, Small Business Commissioner John Chapman, David Cowell and Robert Veitch, Adelaide Plains Council, and Akarra Klingberg, City of Unley.



INFORM | FRESH YEAST | MEDIATE | ADVOCATE

OPERATIONS OF THE OFFICE OF THE SMALL BUSINESS COMMISSIONER

ROLE AND FUNCTIONS

The 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 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 Small Business Commissioner 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.

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.

CHANGES TO THE STRUCTURE

From 1 July 2019, the OSBC moved administratively from the Department for Innovation and Skills to the Attorney-General's Department.

MINISTERIAL RESPONSIBILITIES

From 1 July 2019, the OSBC reported to the Hon Vickie Chapman MP, Deputy Premier and Attorney-General.

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*
- *COVID-19 Emergency Response Act 2020*
- *COVID-19 Emergency Response (Commercial Leases No 2) Regulations 2020*

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	3 878
	Number of new cases	338
	Number of cases closed	279 - 252 prior to mediation - 27 through formal mediation
Information Sessions to Small Businesses	Attendance at events	19 events held in Adelaide, the regions and online, totaling 1 424 attendees in person and online.
	Attendees' rating of events	97% of attendees indicated that they were happy with the information provided.
	Overall attendee comments and feedback	Feedback is sought from all attendees and 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)	12 FTEs with 100% target met.

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

Work health, safety and rehabilitation programs	Effectiveness
WHS Training	All staff participated in WHS training as required by the Attorney-General's Department. WHS Officers are trained in accordance with the Department's requirements.
WHS Staff Awareness	All staff are provided with information (at staff meetings and/or via email) in relation to WHS incidents, updates, reporting requirements and other relevant information. The OSBC displays appropriate signage in the office in relation to emergency procedures and WHS information and representatives.
WHS Reporting	WHS Officers attend regular meetings and report to the OSBC as required (at staff meetings and/or via email).

Work Health and Safety and Return to Work Performance

OSBC had zero claims in 2019/20. Further details of have been reported at a corporate level by the AGD in their Annual Report.

EXECUTIVE EMPLOYMENT

EXECUTIVE CLASSIFICATION	NUMBER OF EXECUTIVES
SAES	1

The Office of the Commissioner for Public Sector Employment has a workforce information page that provides further information on the breakdown of executive gender, salary and tenure by agency.

FINANCIAL PERFORMANCE

FINANCIAL PERFORMANCE OF THE AGENCY

The following is a brief summary of the overall financial position of the agency. Full, audited financial statements for 2019/20 are attached to this report.

The net result for 2019/20 was slightly worse than budget by \$21 000. This is reflected as the unexpected costs incurred by the OSBC responding to and providing mediations services for COVID-19 affected businesses.

STATEMENT OF COMPREHENSIVE INCOME	2019/20 Budget	2019/20 Actual	Variation	2018/19 Actual
Total Income	2 083	2 104	(21)	2 089
Total Expenses	2 241	2 283	(42)	2 007
Net result	(158)	(179)	21	82
Total Comprehensive Result	(158)	(179)	21	82

STATEMENT OF FINANCIAL POSITION	2019/20 Budget	2019/20 Actual	Variation	2018/19 Actual
Current assets	1 203	1 281	(78)	1 203
Non-current assets	167	168	(1)	309
Total assets	1 370	1 449	(79)	1 512
Current liabilities	250	285	(35)	250
Non-current liabilities	282	347	(65)	266
Total liabilities	532	632	(100)	516
Net assets	838	817	21	996
Equity	838	817	21	996

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 with a contract value below \$10 000 each

CONSULTANCIES	Purpose	\$ Actual payment
All consultancies below \$10 000 each - combined	Denise Brine HR Specialist – external review of reclassification process	\$1 372.50 (ex GST)

Consultancies with a contract value above \$10 000 each

CONSULTANCIES	Purpose	\$ Actual payment
BDO	Delivery of financial reports for lessees/lessors	\$0
Diverse Information Solutions	Development of Records Disposal Schedule	\$12 000 (ex GST)
	Total	\$12 000 (ex GST)

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 with a contract value below \$10 000 each

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

Contractors with a contract value above \$10 000 each

CONTRACTORS	Purpose	\$ Actual payment
-	-	\$0
	Total	\$0

OTHER INFORMATION

Section 6 of the *Small Business Commissioner Act 2011* states:

- (1) Subject to this section, the Minister may give directions to the Commissioner.
- (2) The Minister—
 - (a) may not give a direction in relation to the investigation, mediation or resolution of a particular complaint or dispute; and
 - (b) must consult with the Commissioner before giving a direction.
- (3) A Ministerial direction to the Commissioner—
 - (a) must be communicated to the Commissioner in writing; and
 - (b) must be included in the annual report of the Commissioner under the *Public Sector Act 2009*.

During the 2019/20 year the Minister did not provide any directions to the SBC.

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

OSBC employees are expected to comply with their obligations at law, as set out in the policy. Strategies used within the OSBC include:

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

PUBLIC INTEREST DISCLOSURE

Number of occasions on which public interest information has been disclosed to a responsible officer of the agency under the *Public Interest Disclosure Act 2018*:

- Nil

Note: Disclosure of public interest information was previously reported under the Whistleblowers Protection Act 1993 and repealed by the Public Interest Disclosure Act 2018 on 1/7/2019.

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 four Freedom of Information requests in 2019/20.

PUBLIC COMPLAINTS

NUMBER OF PUBLIC COMPLAINTS REPORTED

Summary of Public Complaints Received

CATEGORY OF COMPLAINTS BY SUBJECT	Number of instances
Advice given	4

Complaint Outcomes

NATURE OF COMPLAINT OR SUGGESTION	Services improved or changed as a result of complaints or consumer suggestions
<p>A complainant business approached the SBC to see whether it could be 'compensated for disruption' as a result of major DPTI works that had occurred nearby, which had impacted heavily on their trade for the length of the project.</p> <p>OSBC sought to liaise with DPTI to identify activities that might restimulate business in the area. The local business was not content with the events proposed.</p> <p>The SBC visited the business in person and sought further information to provide to DPTI for consideration, however that was not provided by the trader.</p>	<p>The complainant was advised of the OSBC's Complaints, Compliments and Feedback Policy (July 2018), which ultimately refers complainants to ICAC/ the Office of Public Integrity (OPI), or the South Australian Ombudsman.</p> <p>The complainant appreciated the SBC's attendance and efforts, and declined to take the matter any further.</p>
<p>The complainant represented a farmer in a Farm Debt Mediation that was performed by one of the SBC's accredited and independent Mediators from his Panel. Following the mediation, the complainant made strong accusations of bias and misconduct against the mediator and the OSBC.</p> <p>The SBC instigated a formal investigation into the matters which concluded that the complaints were unsubstantiated.</p>	<p>The complainant was provided with the findings of the investigation by the SBC, and was also provided with OSBC's Complaints, Compliments and Feedback Policy (July 2018) which refers complainants to ICAC/ the Office of Public Integrity (OPI), or the South Australian Ombudsman.</p>
<p>This matter arose out of a disagreement between a lessee and lessor regarding a disputed security bond held by the OSBC.</p> <p>The SBC is obliged by the <i>Retail and Commercial Leases Act 1995</i> to refer such disputes to the Magistrates Court.</p> <p>OSBC referred the matter to the Port Pirie Magistrates Court (local to the complainant), not knowing that the complainant had moved and would prefer that the matter be heard in the Adelaide Magistrate's Court.</p> <p>The SBC advised the complainant that they would be able to seek to have the matter transferred to the Adelaide Magistrates Court at the first Directions Hearing.</p>	<p>The complainant thanked the SBC for his assistance and the complaint was closed.</p>

NATURE OF COMPLAINT OR SUGGESTION

Services improved or changed as a result of complaints or consumer suggestions

A party to a court ordered mediation conducted by the OSBC complained that the mediator had continued aspects of the mediation after the party had requested the mediation cease.

The party requested the SBC advise the Magistrates Court of the termination of the mediation by that party. The party was advised that given that the Court had initiated the mediation, the Court should properly be the body to terminate the process.

The complainant was advised by the SBC that they could raise the matter directly with the Magistrate, and they did so in due course.

The party remained unhappy with the response from the SBC and raised a formal complaint.

Following further exchanges of correspondence, the complainant was advised they could refer the matter to ICAC/ the Office of Public Integrity (OPI), or the South Australian Ombudsman.

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.

“

Glad it's all over. It was tough but we pulled through with your help. You were great throughout the whole process and we couldn't have done it without you. So, thank you! Hope we get the confirmation that the case is closed. Wish you all the best in your personal and professional life.”

JELENA





Audited Financial Statements 2019/20

INFORM | MEDiate | ADVOCATE



Our ref: A20/352 and A20/042

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29 September 2020

Mr J Chapman
Small Business Commissioner
GPO Box 1264
ADELAIDE SA 5001

Dear Mr Chapman

Audit of Small Business Commissioner and Retail Shop Leases Fund for the year to 30 June 2020

We have completed the audit of your accounts for the year ended 30 June 2020. 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 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, 13 October 2020.

2 Audit management letters

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

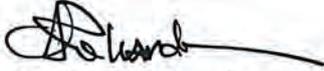
What the audit covered

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

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

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

Yours sincerely

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

Andrew Richardson
Auditor-General

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To the Small Business Commissioner

Opinion

I have audited the financial report of the Small Business Commissioner for the financial year ended 30 June 2020.

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 2020, its financial performance and its cash flows for the year then ended in accordance with relevant 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 2020
- a Statement of Financial Position as at 30 June 2020
- a Statement of Changes in Equity for the year ended 30 June 2020
- a Statement of Cash Flows for the year ended 30 June 2020
- notes, comprising significant accounting policies and other explanatory information
- a Certificate from the Small Business Commissioner and 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* (including Independence Standards) have been met.

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

Responsibilities of the Small Business Commissioner

The Small Business Commissioner is responsible for the preparation of the financial report that gives a true and fair view in accordance with relevant 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

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 2020.

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.



Andrew Richardson

Auditor-General

29 September 2020

**Small Business Commissioner
(SBC)**

**Financial Statements
for the year ended
30 June 2020**

Small Business Commissioner
Certification of the Financial Statements
for the year ended 30 June 2020

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 2020 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
29th September 2020



Rosanne Davies
A/Manager, Business Services
29 September 2020

Small Business Commissioner
Statement of Comprehensive Income
for the year ended 30 June 2020

	Note	2020 \$'000	2019 \$'000
Income			
Intra-government transfers	2.1	1 885	1 859
Recoveries	2.2	194	208
Resources received free of charge	2.3	16	16
Mediation income		9	6
Total income		2 104	2 089
Expenses			
Employee benefits expenses	3.2	1 522	1 251
Supplies and services	4.1	496	557
Depreciation and amortisation	4.2	161	158
Grants and subsidies		85	22
Other expenses	4.3	19	19
Total expenses		2 283	2 007
Net result		(179)	82
Total comprehensive result		(179)	82

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 2020

	Note	2020 \$'000	2019 \$'000
<u>Current assets</u>			
Cash and cash equivalents	6.1	1 253	1 157
Receivables	6.2	28	46
Total current assets		1 281	1 203
<u>Non-current assets</u>			
Property, plant and equipment	5.1	87	186
Intangible assets	5.4	81	123
Total non-current assets		168	309
Total assets		1 449	1 512
<u>Current liabilities</u>			
Employee benefits	3.3	208	127
Payables	7.1	63	121
Financial liabilities	7.2	9	-
Provisions	7.3	5	2
Total current liabilities		285	250
<u>Non-current liabilities</u>			
Employee benefits	3.3	311	241
Payables	7.1	29	22
Provisions	7.3	7	3
Total non-current liabilities		347	266
Total liabilities		632	516
Net assets		817	996
<u>Equity</u>			
Retained earnings		817	996
Total equity		817	996

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 2020

	Retained earnings \$'000	Total equity \$'000
Balance at 1 July 2018	914	914
<u>Net result for 2018-19</u>	82	82
Total comprehensive result for 2018-19	82	82
Balance at 30 June 2019	996	996
<u>Net result for 2019-20</u>	(179)	(179)
Total comprehensive result for 2019-20	(179)	(179)
Balance at 30 June 2020	<u>817</u>	<u>817</u>

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 2020

	2020 (Outflows) Inflows \$'000	2019 (Outflows) Inflows \$'000
Cash flows from operating activities	Note	
Cash inflows		
Intra government transfers	1 885	1 859
Other recoveries	11	13
Recoveries from Retail Shop Leases Fund	195	194
Mediation receipts	9	6
Cash generated from operations	<u>2 100</u>	<u>2 072</u>
Cash outflows		
Employee benefit payments	(1 365)	(1 249)
Payments for supplies and services	(530)	(506)
Payments of grants and subsidies	(85)	(22)
Cash used in operations	<u>(1 980)</u>	<u>(1 777)</u>
Net cash provided by operating activities	<u>120</u>	<u>295</u>
Cash flows from investing activities		
Cash outflows		
Purchase of PPE and Intangibles	(15)	-
Cash used in investing activities	<u>(15)</u>	<u>-</u>
Net cash used in investing activities	<u>(15)</u>	<u>-</u>
Cash flows from financing activities		
Cash outflows		
Repayment of leases	(9)	-
Cash used in financing activities	<u>(9)</u>	<u>-</u>
Net cash used in financing activities	<u>(9)</u>	<u>-</u>
Net increase in cash and cash equivalents	<u>96</u>	<u>295</u>
Cash and cash equivalents at the beginning of the period	1 157	862
Cash and cash equivalents at the end of the period	6.1 <u>1 253</u>	<u>1 157</u>

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 2020

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Small Business Commissioner

Notes to and forming part of the financial statements

for the year ended 30 June 2020

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.

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 2019-20 financial statements the Commissioner adopted AASB 15 – *Revenue from Contracts with Customers*, AASB 16 – *Leases* and AASB 1058 – *Income of Not-for-Profit Entities*. 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 2020

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*.
- Manages retail and commercial leasing matters and mediations under the *COVID-19 Emergency Response Act 2020* and *COVID-19 Emergency Response (Commercial Leases No 2) Regulations 2020*

1.3. Impact of COVID-19 pandemic on Small Business Commissioner

The COVID-19 pandemic has impacted on the operations of the Commissioner and the impacts are included under the relevant disclosure notes. The key impacts in 2019-20 were:

- In April 2020, the Commissioner recorded its highest monthly number of enquires with 429, this was almost matched in May with 425. There was a 48% increase in inquiries from small businesses from March to June 2020, compared to the same period of the previous year. 44% percent of these were leasing issues and 15% directly related to COVID-19 affected businesses.
- This is translated to 75 retail and commercial leasing disputes where the mediation process is managed under *COVID-19 Emergency Response Act 2020* and *COVID-19 Emergency Response (Commercial Leases No 2) Regulations 2020*.
- From 23 March 2020, staff of the Commissioner began working from home arrangements in small groups. Since 30 March 2020, 10 out of 12 staff of the Commissioner have been working from home, with some staff coming into the office to complete essential work when required.
- 5 extra staff (3.4 FTE's) were provided by AGD in June 2020 to respond to the increases in mediation activity and extra short-term accommodation was secured. These additional and unbudgeted costs contributed to the small financial deficit for 2019-20.
- 4 additional mediators were appointed to the Commissioner's panel.

Small Business Commissioner
Notes to and forming part of the financial statements
for the year ended 30 June 2020

2. Income

2.1. Intra-government transfers

	2020	2019
	\$'000	\$'000
Intra-government transfers	1 885	1 859
Total intra-government transfers	1 885	1 859

Relates to transfers for operational funding received via the Department for Innovations and Skills and Attorney-General's Department (AGD). Intra-government transfers are recognised as income on receipt.

2.2. Recoveries

	2020	2019
	\$'000	\$'000
Retail Shop Leases Fund administration fees	187	187
Retail Shop Lease administration fees - Other - Audit	7	7
Other administration fees	-	14
Total recoveries	194	208

2.3. Resources received free of charge

	2020	2019
	\$'000	\$'000
Services received free of charge - Shared Services SA	16	16
Total resources received free of charge	16	16

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 2020

3. Board, committees and employees

3.1. 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.

Total compensation for the key management personnel was \$290 000 in 2019-20 and \$284 000 in 2018-19.

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*.

There are no related party transactions.

3.2. Employee benefits expenses

	2020 \$'000	2019 \$'000
Salaries and wages	1 141	986
Employment on-costs - superannuation	128	105
Annual leave	98	79
Employment on-costs - other	72	58
Long service leave	71	12
Workers' compensation	7	5
Skills and experience retention leave	5	6
Total employee benefit expenses	1 522	1 251

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:

	2020 Number	2019 Number
\$274 001 to \$294 000	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 2020

3.3. Employee benefits liability

	2020	2019
	\$'000	\$'000
<u>Current</u>		
Accrued salaries and wages	41	19
Annual leave	144	89
Long service leave	10	7
Skills and experience retention leave	13	12
Total current employee benefits	208	127
<u>Non-current</u>		
Long service leave	311	241
Total non-current employee benefits	311	241
Total employee benefits	519	368

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 2020

4. Expenses

Employee benefits expenses are disclosed in note 3.2.

4.1. Supplies and services

	2020	2019
	\$'000	\$'000
Accommodation	161	150
Office administration expenses	109	104
Information technology and communications charges	93	71
Marketing	44	53
Travel and related expenses	40	57
Mediation fees	25	24
Contractors	13	51
Staff related expenses	9	16
Business training and development support	1	31
Repairs & maintenance and minor purchases	1	-
Total supplies and services	496	557

Accommodation

Most of the Commissioner's accommodation is provided by the Department of Planning, Transport and Infrastructure (DPTI) under Memoranda of Administrative Arrangement (MoAA) issued in accordance with Government-wide accommodation policies. MoAA do not meet the definition of lease set out in AASB 16.

In prior years expenses associated with MoAA have been classified as operating lease payments. Expenses associated with MoAA have been re-classified as accommodation expenses for both the current year and the comparative. Further details about this re-classification is set out in note 8.1.

4.2. Depreciation and amortisation

	2020	2019
	\$'000	\$'000
Leasehold improvements	111	116
Intangible assets	42	42
Right-of-use vehicles	8	-
Total depreciation and amortisation	161	158

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.

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 2020

4.2. Depreciation and amortisation (continued)

Useful lives

Depreciation and amortisation are calculated on a straight-line basis. Property, plant and equipment and intangible assets depreciation and amortisation are calculated over the estimated useful life as follows:

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

4.3. Other expenses

	2020	2019
	\$'000	\$'000
Audit fees	19	19
Total other expenses	19	19

Audit fees are paid / payable to the Auditor-General's Department relating to work performed under the *Public Finance and Audit Act 1987*. No other services were provided by the Auditor-General's Department.

Small Business Commissioner
Notes to and forming part of the financial statements
for the year ended 30 June 2020

5. Non-financial assets

5.1. Property, plant and equipment by asset class

Property, plant and equipment comprises owned and right-of-use (leased) tangible assets that do not meet the definition of investment property.

	2020	2019
	\$'000	\$'000
Leasehold improvements		
Leasehold improvements at fair value	526	524
Accumulated depreciation at the end of the period	(448)	(338)
Total leasehold improvements	<u>78</u>	<u>186</u>
Right-of-use vehicles		
Right-of-use vehicles at cost	15	-
Accumulated depreciation	(6)	-
Total right-of-use vehicles	<u>9</u>	<u>-</u>
Total property, plant and equipment	<u><u>87</u></u>	<u><u>186</u></u>

Property, plant and equipment assets with a value equal to or in excess of \$10 000 are capitalised, otherwise it is expensed. Leasehold improvements are recorded at fair value. Detail about the commissioner's approach to fair value is set out in note 10.2.

5.2. Property, plant and equipment owned by the Commissioner

Reconciliation 2019-20

	Leasehold improvements	Total
	\$'000	\$'000
Carrying amount at 1 July 2019	186	186
Depreciation	(111)	(111)
Other	3	3
Carrying amount at 30 June 2020	<u>78</u>	<u>78</u>

Reconciliation 2018-19

	Leasehold improvements	Total
	\$'000	\$'000
Carrying amount at 1 July 2018	302	302
Depreciation	(116)	(116)
Carrying amount at 30 June 2019	<u>186</u>	<u>186</u>

Small Business Commissioner
Notes to and forming part of the financial statements
for the year ended 30 June 2020

5.3. Right of use vehicles

Right of use vehicles are recorded at cost.

Short-term leases of 12 months or less and low value leases where the underlying asset value is less than \$15,000 are not recognised as right-of-use assets. The associated lease payments are recognised as an expense and are disclosed in note 4.1.

The commissioner has 1 motor vehicle lease with the South Australian Government Financing Authority (SAFA). Motor vehicle lease is non-cancellable, with rental payments monthly in arrears. Motor vehicle has a lease term of 3 years. No contingent rental provisions exist within the lease agreement and no options exist to renew the lease at the end of their term.

5.4. Intangible assets

	2020 \$'000	2019 \$'000
<u>Computer software</u>		
Purchased computer software	260	262
Accumulated amortisation	(179)	(139)
Total computer software	81	123

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 2019-20

	Computer software \$' 000	Total \$' 000
Carrying amount at 1 July 2019	123	123
Amortisation	(42)	(42)
Carrying amount at 30 June 2020	81	81

Small Business Commissioner
Notes to and forming part of the financial statements
for the year ended 30 June 2020

6. Financial Assets

6.1. Cash and cash equivalents

	2020	2019
	\$'000	\$'000
Cash at bank	1 253	1 157
Total cash and cash equivalents	1 253	1 157

6.2. Receivables

	2020	2019
	\$'000	\$'000
Current		
Trade receivables		
From government entities	2	-
From non-government entities	-	1
Total trade receivables	2	1
Prepayments	26	44
Accrued revenues	-	1
Total current receivables	28	46

Trade receivables arise in the normal course of selling goods and services to other government agencies and to the public. Trade receivables are normally settled within 30 days after the issue of an invoice or the goods/services have been provided under a contractual arrangement.

The Commissioner did not recognise an impairment loss on receivables 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 2020

7. Liabilities

Employee benefits liabilities are disclosed in note 3.3.

7.1. Payables

	2020 \$'000	2019 \$'000
<u>Current</u>		
Accrued expenses	32	102
Employment on-costs	31	19
Total current payables	63	121
<u>Non-current</u>		
Employment on-costs	29	22
Total non-current payables	29	22
Total payables	92	143

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.

The net amount of GST recoverable from the ATO is included as part of payables.

Employment on-costs

Employment on-costs include payroll tax, WorkCover 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 (DTF), the proportion of long service leave taken as leave has changed from 41% in 2019 to 42% in 2020 and the average factor for the calculation of employer superannuation cost on-cost has remained unchanged from 9.8%. 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 2020

7.2. Financial liabilities

	2020 \$'000	2019 \$'000
Current		
Lease liabilities	9	-
Total current financial liabilities	<u>9</u>	<u>-</u>

The Commissioner measures financial liabilities including borrowings/debt at amortised cost.

All material cash outflows are reflected in the lease liabilities disclosed above.

7.3. Provisions

	2020 \$'000	2019 \$'000
Current		
Provisions for workers compensation	5	2
Total current provisions	<u>5</u>	<u>2</u>
Non-current		
Provisions for workers compensation	7	3
Total non-current provisions	<u>7</u>	<u>3</u>
Total provisions	<u>12</u>	<u>5</u>

Movement in workers compensation provision

	2020 \$'000	2019 \$'000
Carrying amount at the beginning of the period	5	-
Additional provisions recognised	7	5
Carrying amount at the end of the period	<u>12</u>	<u>5</u>

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 2020 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 2020

8. Changes in accounting policy

8.1. AASB 16 Leases

AASB 16 sets out a comprehensive model for lessee accounting that addresses recognition, measurement, presentation and disclosure of leases. Lessor accounting is largely unchanged. AASB 16 *Leases* replaces AASB 117 *Leases* and related interpretations.

The adoption of AASB 16 *Leases* from 1 July 2019 resulted adjustments to the amounts recognised from a lessee perspective in the financial statements:

- AASB 117 *Leases* only required the recognition of an asset and lease liability in relation to finance leases. AASB 16 *Leases* applies a comprehensive model to all leases. Applying AASB 16 will result in leases previously classified as operating leases having right-of-use assets and related lease liabilities being recognised in the Statement of Financial Position
- AASB 117 *Leases* resulted in operating lease payments being recognised as an expense under Supplies and Services. AASB 16 *Leases* largely replaces this with depreciation expenses that represents the use of the right-of-use asset and borrowing costs that represent the cost associated with financing the right-of-use asset.

Impact on retained earnings

The total impact on the Commissioner's retained earnings as at 1 July 2019 is as follows:

	<u>\$'000</u>
Closing retained earnings 30 June 2019 - AASB 117	996
<u>Assets</u>	
Property, plant and equipment	18
<u>Liabilities</u>	
Financial liabilities	<u>(18)</u>
Opening retained earnings 1 July 2019 - AASB 16	<u>996</u>

The Commissioner disclosed in its 2018-19 financial report total undiscounted operating lease commitments of \$0.913 million under AASB 117.

The Commissioner has accommodation services provided by the DPTI under Memoranda of Administrative Arrangement (MoAA) issued in accordance with Government-wide accommodation policies.

These MoAA do not meet the definition of lease set out either in AASB 16 or in the former standard AASB 117. Accordingly, the 2018-19 undiscounted operating lease commitments should have been disclosed as \$0.018 million under AASB 117. There is no material difference between the revised operating lease commitments when discounted and the financial liabilities recognised as at 1 July 2019.

Commitments related to accommodation services provided by DPTI are included in Note 9.1.

The misclassification did not impact on the Statement of Comprehensive Income or the Statement of Financial Position in prior years. This misclassification impacted items within the supplies and services expenses line. Note 4.1 applies the correct classification for both the current and comparative years.

Small Business Commissioner
Notes to and forming part of the financial statements
for the year ended 30 June 2020

8.1. AASB 16 Leases (continued)

Accounting policies on transition

AASB 16 sets out accounting policies on transition in its transitional provisions. The Treasurer's Instructions (Accounting Policy Statements) requires certain choices in those transitional provisions to be taken. The Commissioner has adopted the following accounting policies:

- to apply AASB 16 retrospectively. The cumulative effect of initially applying the Standard was recognised at 1 July 2019. Comparatives have not been restated.
- at 1 July 2019 AASB 16 was applied only to contracts that were previously identified as containing a lease under AASB 117 and related interpretations.
- the initial measurement of lease liability was the present value of the remaining lease payments discounted using the relevant incremental borrowing published by the DTF rate as at 1 July 2019 based on the SA Government's cost of borrowing. The average weighted incremental borrowing rate for this purpose was 0.59%.
- the initial measurement of right-of-use assets has been calculated as an amount equal to the lease liability on transition adjusted for prepaid or accrued lease payments and lease incentive liabilities.
- the initial measurement of lease liabilities and right-of-use assets excludes all leases that ended by 30 June 2020, except for vehicles leased from SAFA.

Ongoing accounting policies

The Treasurer's Instructions (Accounting Policy Statements) specify required accounting policies for public authorities in applying AASB 16. These requirements are reflected in the Commissioner's accounting policies as follows:

- AASB 16 is not applied to leases of intangible assets.
- right-of-use assets and lease liabilities are not recognised for leases of low value assets, being assets which have a value of \$15 000 or less, nor short-term leases, being those with a lease term of 12 months or less.
- the Commissioner, in the capacity of a lessee, does not include non-lease components in lease amounts.
- right-of-use assets are subsequently measured applying a cost model.

Significant accounting policies relate to the application of AASB 16 are disclosed under relevant notes and are referenced at note 5.3.

8.2. AASB 15 Revenue from Contracts with Customers

AASB 15 *Revenue from Contracts with Customers* establishes a revenue recognition model for revenue arising from contracts with customers. It requires that revenue be recognised at an amount that reflects the consideration to which an entity expects to be entitled in exchange for transferring goods or services to a customer. AASB 15 supersedes AASB 111 *Construction contracts*, AASB 118 *Revenue* and related Interpretations and applies to all revenue arising from contracts with customers.

Impact on retained earnings

On transition, there was no impact on retained earnings.

Accounting policies on transition

The Fund has adopted AASB 15 on 1 July 2019. The *Treasurer's Instructions (Accounting Policy Statements)* require certain choices in those transitional provisions to be taken. The Fund has on transition:

- recognised the cumulative effect of initially applying AASB 15 as an adjustment to the opening balance of retained earnings as at 1 July 2019. Therefore, the comparative information has not been restated.

Small Business Commissioner
Notes to and forming part of the financial statements
for the year ended 30 June 2020

8.2. AASB 15 Revenue from Contracts with Customers (continued)

- not adopted the completed contract expedient, and therefore has not excluded revenue which was fully recognised in previous years in accordance with the former revenue and income accounting standards
- elected not to restate retrospectively contracts for modifications that occurred before 1 July 2019. Such contract modifications were minor so this is expected to have little impact on the financial statements.

Impacts on the financial statements are explained below together with impacts from adoption of AASB 1058 *Income of Not-for-Profit Entities*.

Ongoing accounting policies

The *Treasurer's Instructions (Accounting Policy Statements)* specify requirements for public authorities in applying AASB 15. These requirements are reflected in the Fund's accounting policies as follows:

- for non-intellectual property licences, low value licences (i.e. assets which have a value of \$15 000 or less) and short-term licences (i.e. being those with a licence term of 12 months or less) are exempt from AASB 15 revenue recognition requirements. The Fund has elected to recognise revenue at the point in time the licence is issued.
- AASB 15 is applied to a portfolio contracts with similar characteristics.
- there is no adjustment to the promised amount of consideration for the effects of a significant financing component if the period between the transfer of goods/services and the payment date is one year or less.
- the incremental costs of obtaining a contract are expensed when incurred when the amortisation period of the asset that the Fund would have recognised is one year or less.
- for measuring progress towards satisfaction of performance obligations when the output method is applied, revenue is recognised in the amount to which there is a right to invoice corresponding directly to the value to the customers of the Fund's performance completed to date.

8.3. AASB 1058 Income of Not-for-Profit Entities

AASB 1058 *Income of Not-for-Profit Entities* establishes new income recognition requirements for not-for-profit entities. Its requirements apply where the consideration to acquire an asset, including cash, is significantly less than fair value principally to the entity to further its objectives. AASB 1058 also contains requirements for the receipt of volunteer services. AASB 1058 supersedes income recognition requirements in AASB 1004 *Contributions*, AASB 118 *Revenue* and AASB 111 *Construction Contracts*. However, elements of AASB 1004 remain in place, primarily in relation to restructures of administrative arrangements and other contributions and distributions by owners.

Accounting policies on transition

On transition, there was no impact on retained earnings.

Small Business Commissioner
Notes to and forming part of the financial statements
for the year ended 30 June 2020

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

	2020	2019
	\$'000	\$'000
Within one year	143	161
Later than one year but not later than five years	25	610
Later than five years	-	231
Total expenditure commitments	168	1 002

Amounts disclosed above represent lease management fees, memoranda of administrative arrangements with DPTI for accommodation and software licences.

In 2019 expenditure commitments included an extension on the current memoranda of administrative arrangements with DPTI for accommodation, as the extension was going to be taken up. The extension is now no longer possible, so the undiscounted expenditure commitments in 2019 without the lease extension would have been \$249 000.

Operating lease commitments

	2020	2019
	\$'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	-	11
Later than one year but not later than five years	-	7
Total operating lease commitments	-	18

The comparative amount does not include commitments for memoranda of administrative arrangements with DPTI for accommodation. This has been reclassified and included under expenditure commitments. For more detail about the reclassification see 8.1.

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.

Small Business Commissioner
Notes to and forming part of the financial statements
for the year ended 30 June 2020

9.3. COVID-19 pandemic outlook for the Commissioner

The COVID-19 pandemic will continue to impact the operations of the Commissioner in 2020-21. The key expected impacts are:

- The Commissioner will continue to undertake a greatly increased number of mediations for retail & commercial leasing matters under the *COVID-19 Emergency Response Act 2020* and relevant regulations. This has required extra expenditure to cover the cost of 5 additional staff (3.4 FTES), mediation costs, advertising additional short-term accommodation including extra mediation facilities. Funding has been secured to cover costs to September 2020 (the current expiry of the *COVID-19 Emergency Response Act 2020* and relevant regulations).
- Should the *COVID-19 Emergency Response Act 2020* and relevant regulations need to be extended then there will be an additional requirement for budget adjustment.
- The Commissioner estimates 40 COVID-19 related mediations per month will occur from August – October 2020 as businesses continue to struggle with leasing issues.

9.4. Events after the reporting period

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

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 DTF 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 2020 is 0.75% (2019: 1.25%).

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

The actuarial assessment performed by the DTF decreased the salary inflation rate at 2.5% (2019 4%) for long service leave liability.

The net financial effect of the changes to actuarial assumptions in the current financial year is a decrease in the long service leave liability of \$25 500 and employee benefits expense of \$25 500. 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 Commissioner classifies current long service leave based on its best estimate of the amount to be paid in the coming year.

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.

Revaluation

Non-current tangible owned by the Commission 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.

The Commissioner does not have a class of assets greater than \$1.5 million, therefore no revaluation is required.

Small Business Commissioner

Notes to and forming part of the financial statements

for the year ended 30 June 2020

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.

Categorisation of financial instruments

Details of significant accounting policies and methods adopted including the criteria for recognition, the basis of measurement, and the basis on which income and expenses are recognised with respect to each class of financial asset, financial liability and equity instrument are disclosed in the respective financial asset/financial liability note.

Classification of financial instruments

The Commissioner measures all financial instruments at amortised cost. All financial assets and liabilities have a contractual maturity within one year.

Receivables and payables

Receivable and payable amounts disclosed in financial instruments exclude amounts relating to statutory receivables and payables (e.g. Commonwealth, State and Local Government taxes, fees and charges; 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 in financial instruments exclude prepayments as they are not financial assets. Prepayments are presented in note 6.2.



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To the Small Business Commissioner

Opinion

I have audited the financial report of the Retail Shop Leases Fund for the financial year ended 30 June 2020.

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 2020, its financial performance and its cash flows for the year then ended in accordance with relevant 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 2020
- a Statement of Financial Position as at 30 June 2020
- a Statement of Changes in Equity for the year ended 30 June 2020
- a Statement of Cash Flows for the year ended 30 June 2020
- notes, comprising significant accounting policies and other explanatory information
- a Certificate from the Small Business Commissioner and 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* (including Independence Standards) have been met.

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

Responsibilities of the Small Business Commissioner

The Small Business Commissioner is responsible for the preparation of the financial report that gives a true and fair view in accordance with relevant 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

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 2020.

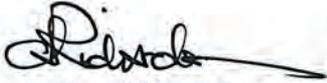
My objectives are to obtain reasonable assurance about whether the financial report as a whole is free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an 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

29 September 2020

Retail Shop Leases Fund

**Financial Statements
for the year ended
30 June 2020**

Retail Shop Leases Fund
Certification of the Financial Statements
for the year ended 30 June 2020

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 2020 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
29th September 2020



Rosanne Davies
A/Manager, Business Services
29 September 2020

Retail Shop Leases Fund
Statement of Comprehensive Income
for the year ended 30 June 2020

	Note	2020 \$'000	2019 \$'000
Income			
Interest and investment	2.1	202	356
Gain/(loss) on revaluation of investments		(196)	10
Total income		6	366
Expenses			
Administration	3.1	187	187
Other expenses	3.2	9	7
Total expenses		196	194
Net result		(190)	172
Total comprehensive result		(190)	172

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 2020

	Note	2020 \$'000	2019 \$'000
<u>Current assets</u>			
Cash and cash equivalents	4.1	155	245
Receivables	4.2	102	167
Investments	4.3	1 130	865
Total current assets		1 387	1 277
<u>Non-current assets</u>			
Investments	4.3	9 265	9 461
Total non-current assets		9 265	9 461
Total assets		10 652	10 738
<u>Current liabilities</u>			
Security bonds lodged	5.1	896	991
Payables	5.2	2	1
Total current liabilities		898	992
<u>Non-current liabilities</u>			
Security bonds lodged	5.1	7 336	7 138
Total non-current liabilities		7 336	7 138
Total liabilities		8 234	8 130
Net assets		2 418	2 608
<u>Equity</u>			
Retained earnings		2 418	2 608
Total equity		2 418	2 608

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 2020

	Retained earnings	Total equity
	\$'000	\$'000
Balance at 1 July 2018	2 436	2 436
<u>Net result for 2018-19</u>	172	172
Total comprehensive result for 2018-19	172	172
Balance at 30 June 2019	2 608	2 608
<u>Net result for 2019-20</u>	(190)	(190)
Total comprehensive result for 2019-20	(190)	(190)
Balance at 30 June 2020	2 418	2 418

Retail Shop Leases Fund
Statement of Cash Flows
for the year ended 30 June 2020

		2020 (Outflows) Inflows \$'000	2019 (Outflows) Inflows \$'000
<u>Cash flows from operating activities</u>	Note		
<i>Cash inflows</i>			
Interest received		2	6
Bonds lodged		1 083	1 188
Cash generated from operations		1 085	1 194
<i>Cash outflows</i>			
Administration		(187)	(187)
Bond refunds		(979)	(961)
Other expenses		(9)	(7)
Cash used in operations		(1 175)	(1 155)
Net cash provided by (used in) operating activities		(90)	39
<u>Cash flows from investing activities</u>			
<i>Cash outflows</i>			
Purchase of investments		-	(133)
Cash used in investing activities		-	(133)
Net cash used in investing activities		-	(133)
Net (decrease) in cash and cash equivalents		(90)	(94)
Cash and cash equivalents at the beginning of the period		245	339
Cash and cash equivalents at the end of the period	4.1	155	245

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 2020

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Retail Shop Leases Fund

Notes to and forming part of the financial statements

for the year ended 30 June 2020

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.

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 2019-20 financial statements the Fund adopted AASB 15 – Revenue from Contracts with Customers, AASB 16 – Leases and AASB 1058 – *Income of Not-for-Profit Entities*. Further information is provided in note 6.

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 to be 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.

1.3. Impact of COVID-19 pandemic on the Fund

The COVID-19 pandemic has impacted on the operations of the Fund and the impacts on funds under management are included under the relevant disclosure notes.

The key impacts in 2019-20 were:

- An increase in refunds and decrease in lodgements due to lack of new business leases commencing due to COVID-19
- From March to April 2020 there was a 56% reduction in bond lodgement funds for new leases

Retail Shop Leases Fund
Notes to and forming part of the financial statements
for the year ended 30 June 2020

1.3. Impact of COVID-19 pandemic on the Fund (continued)

- The uncertainty in both Australian and global investment markets created volatility for investment returns for the Retail Shop Leases Fund. The spread of COVID-19 and its effects on the global economy were profound. After a particularly challenging March period, markets staged a strong recovery in the June quarter. A number of significant government stimulus measures and cuts to interest rates helped to restore confidence. For the financial year, global shares and fixed interest were the best performers, finishing in positive territory, whilst Australian shares, listed real estate and most other asset classes finished down. Ordinarily defensive style investments like property and infrastructure faced difficult operating conditions due to COVID-19 related shutdowns and social distancing, which consequently meant returns were lower this financial year. In Australia, the RBA cut official interest rates to a record low of 0.25% to support the economy through COVID-19. This has reduced the returns available for cash investments.

Of the total fund of \$10.65m as at 30th June 2020, \$10.495m was under management of the Public Trustee and is invested as follows:

		Proportion	Investment Income
Cash	\$1,129,862.08	10.77%	1.28%
Net Liabilities / Receivables	\$100,052.92	0.95%	
Balanced SIS	\$2,430,210.90	23.16%	0.23%
Capital Stable SIS	\$6,835,047.43	65.13%	-1.26%
Total Funds Held	\$10,495,173.33	100.00%	

Retail Shop Leases Fund
Notes to and forming part of the financial statements
for the year ended 30 June 2020

2. Income

2.1. Interest and investment

	2020 \$'000	2019 \$'000
Interest and investment	202	356
Total interest and investment	202	356

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.

3. Expenses

3.1. Administration

	2020 \$'000	2019 \$'000
Administration	187	187
Total administration	187	187

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

3.2. Other expenses

	2020 \$'000	2019 \$'000
Bank charges	2	-
Audit fee*	7	7
Total other expenses	9	7

*Audit fees paid / payable to the Auditor-General's Department relating to work performed under the Public Finance and Audit Act 1987. No other services were provided by the Auditor-General's Department.

Retail Shop Leases Fund
Notes to and forming part of the financial statements
for the year ended 30 June 2020

4. Financial assets

4.1. Cash and cash equivalents

	2020	2019
	\$'000	\$'000
Cash at bank	155	245
Total cash and cash equivalents	155	245

The Commissioner has a deposit account with the Treasurer.

4.2. Receivables

	2020	2019
	\$'000	\$'000
<u>Current</u>		
Accrued interest	102	167
Total receivables	102	167

Accrued revenues are non-interest bearing.

4.3. Investments

	2020	2019
	\$'000	\$'000
<u>Current</u>		
Investments	1 130	865
Total current investments	1 130	865
<u>Non-current</u>		
Investments	9 265	9 461
Total non-current investments	9 265	9 461
Total investments	10 395	10 326

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.

As at 30 June 2020 the Fund held investments in common funds in the following proportions:

Capital Stable	10.77%
Net Liabilities / Receivables	0.95%
Balanced	23.16%
Cash Common Fund	65.13%

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.

Retail Shop Leases Fund
Notes to and forming part of the financial statements
for the year ended 30 June 2020

5. Liabilities

5.1. Security bonds lodged

	2020	2019
	\$'000	\$'000
<u>Current</u>		
Bonds lodged	896	991
Total current security bonds lodged	896	991
<u>Non-current</u>		
Bonds lodged	7 336	7 138
Total non-current security bonds lodged	7 336	7 138
Total security bonds lodged	8 232	8 129

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

	2020	2019
	\$'000	\$'000
<u>Current</u>		
Unclaimed bonds	2	1
Total current payables	2	1

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.

Retail Shop Leases Fund

Notes to and forming part of the financial statements

for the year ended 30 June 2020

6. Changes in accounting policy

6.1. AASB 16 Leases, AASB 15 Revenue from Contracts with Customers and AASB 1058 Income of Not-for-Profit Entities

On transition, there was no impact on retained earnings.

6.2. Presentation of Financial Statements

Treasurer's Instructions (Accounting Policy Statements) issued on 1 June 2020 removed the previous requirement for financial statements to be prepared using the net cost of services format. The net cost of services is the total cost of services less any revenue retained by public authorities involved in the provision of services but does not include items classified as revenues from and payments to the South Australian Government.

Presentation of the Statement of Comprehensive Income on an 'income and expense' basis allows information to be presented in such a way that eliminates potential confusion as to the source of funding for the Fund. As well as changes to the format of the Statement of Comprehensive Income, there are presentational changes to remove the net cost of services format from the Statement of Cash Flows. These statements now show income before expenses, and cash receipts before cash payments. Related disclosures also reflect this changed format.

7. Outlook

7.1. Unrecognised contractual commitments

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

7.2. Contingent assets and liabilities

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

7.3. Impact of standards and statements not yet effective

The Fund has assessed the impact of new and changed Australian Accounting Standard Board Standards and Interpretations not yet effective.

AASB 1059 Service Concession Arrangements: Grantors

AASB 1059 prescribes the accounting for certain arrangements in which an operator provides public services on behalf of a public sector grantor involving a service concession arrangement. This standard applies to reporting periods beginning on or after 1 January 2020. The Fund has assessed its arrangements where operators provide services and has concluded that none of these will be within the scope of AASB 1059.

7.4. COVID-19 pandemic outlook for the Fund

The COVID-19 pandemic will continue to impact Retail Shop Leases Fund in 2020-21.

The key expected impacts on the Fund are:

- A decrease of new business leases commencing due to the COVID-19 pandemic is expected
- Due to legislative changes to the *Retail and Commercial Leasing Act 1995* which came into effect on 1 July 2020, increasing the maximum bond amount from 4 weeks to up to 3 months, a substantial increase in lodgement funds is expected.
- Uncertainty in the retail and commercial leases market may impact inflows and outflows in the Retail Shop Leases Fund depending on the level of take up of new leases, non-renewal of existing leases and termination of leases.
- Continued volatility in investment markets with uncertainty over future investment returns.

7.5. 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 2020

8. Measurement and risk

8.1. 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 \$10.5 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

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.

Categorisation of financial instruments

Details of the significant accounting policies and methods adopted including the criteria for recognition, the basis of measurement, and the basis on which income and expenses are recognised with respect to each class of financial asset, financial liability and equity instrument are disclosed in the respective financial asset / financial liability note.

Classification of financial instruments

The Fund measures all financial instruments at amortised cost. All current financial instruments have a contract maturity of within one year and all non-current financial instruments have a contract maturity of more than one year but less than five years.

Receivables and payables

The receivable and payable amounts disclosed for financial instruments 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 amortised cost.



**Small Business
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