

# ***Victorian Small Business Commissioner***

## ***Role & Functions***

Wednesday, 17 May

# Jurisdiction & Statutory Referrals

In 2003 the Government committed to providing small business with a low cost informal ADR procedure to enable disputes to be dealt with prior to litigation. The VSBC now operates under the following acts:

- ❖ *Small Business Commissioner Act 2003 (SBCA)* – **Powers to name and shame**
- ❖ *Retail Leases Act 2003 (RLA)* - **Needs a VSBC certificate to proceed to litigation**
- ❖ *Owner Drivers and Forestry Contractors Act 2005 (ODFCA)*  
- **Needs a VSBC certificate to proceed to litigation**
- ❖ *Farm Debt Mediation Act 2011 (FDMA)*  
- **No enforcement action can be taken without VSBC certificate**
- ❖ *Transport (Compliance and Miscellaneous) Act 1983 (Taxi Act)*

# Role of the VSBC

- Advocacy
- Monitoring
- Engagement with small business
- Resolving disputes

# Types of disputes?

- Any commercial agreement between businesses/  
business-to-government, business-nonprofits
  - ❖ Licensing / agency agreement
  - ❖ Franchises
  - ❖ Buying a business
  - ❖ Leases
  - ❖ Service contracts
  - ❖ Supply chain
  - ❖ Distribution
- No definition of 'small business'



# Our Approach

- Information & Assistance  
No Cost
- Pre-mediation dispute resolution  
No Cost
- Mediation  
\$195 per party



- ❖ half day session
- ❖ CBD, Metro or regional locations
- ❖ Scheduled within 6-8 weeks

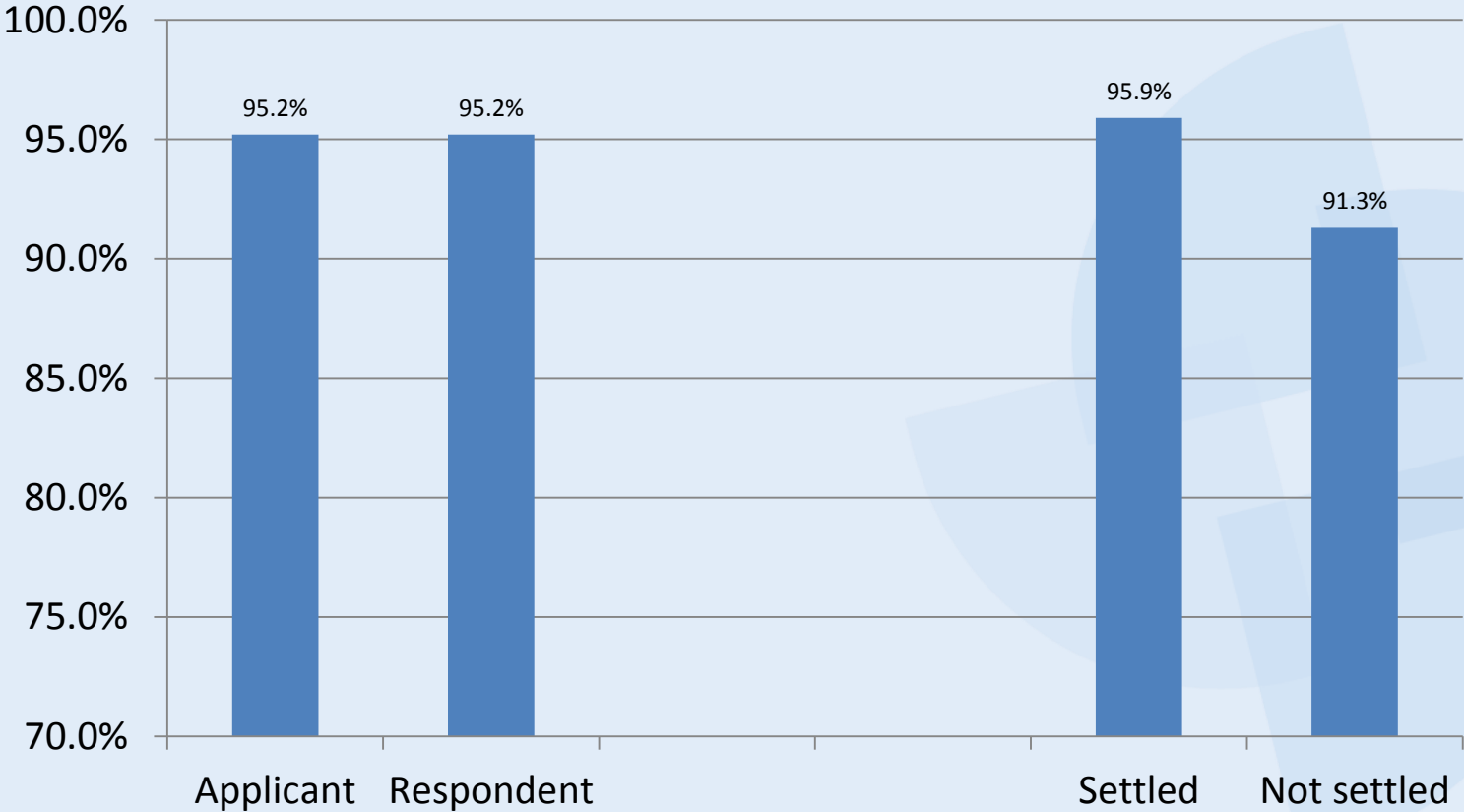
- VCAT average cost incurred by a party: \$5,302\*

\*Primary research to determine the costs of participating in particular types of disputes at VCAT

# Activity and outcomes 2015-16

- Last year we had over **11,000** enquiries with the majority of these were settled over the phone
- We received approx. **1,900** applications for mediation and **42.5%** were completed prior to mediation
- **5.2%** refused mediation
- **584** went to mediation and **82%** of these were successfully resolved

# Mediation customer satisfaction



2015-16 feedback from mediation participants

# Unreasonable refusal at VSBC

- Statutory and common law procedural fairness built in:
  - ❖ Registered mail to ensure receipt
  - ❖ Conservative approach / provide ample opportunities
  - ❖ Documented decisions to / not to issue certificate
  - ❖ Certificate and 'naming' decision not delegated
- Operational guidelines
  - ❖ On website and referenced in all letters to respondents
- Standardised procedures and business rules, and regular consultation

**Every case is different and must be treated on its own merits**



# Other States

- SBCs in NSW, WA, SA in past four years.
- As of 2017 there is now a Small Business Champion in Qld
- All have common core of Retail Lease Act (or equivalent)  
Alternate Dispute Resolution
- Differences include:
  - ❖ Acts other than Small Business Commissioner Act
  - ❖ Powers to compel
  - ❖ Pricing model
  - ❖ Extent to which mediators used
  - ❖ Additional roles (policy, advocacy, programs)

# Small Business Commission Act 2017

- The *Small Business Commission Act 2017* (the Act) strengthens and broadens the roles and functions of the VSBC
- The Act has been passed by Parliament and will commence in upcoming months
- Key changes:
  - ❖ Dispute is now defined as a “contractual or commercial” dispute
  - ❖ Widens scope of organisations to include: a school, RTO, TAFE institute or university; a professional association; a peak business, industry or trade body.
  - ❖ Powers to review legislation & policy that impacts small business
  - ❖ National Priorities – collaboration with other states to enhance conditions small business

# VICTORIAN FAIR PAYMENT CODE

Victorian  
Small Business  
Commissioner

VICTORIA

- The **Victorian Fair Payment Code** will start **1 July 2017**
- VSBC will be administering the code
- By signing the code, businesses will be recognised as fair payers
- Signatories undertake to pay suppliers on time
- Public feedback is open to **31 May 2017**
- Find out more:

[www.vsbic.vic.gov.au/victorian-fair-payment-code](http://www.vsbic.vic.gov.au/victorian-fair-payment-code)

# Retail Leases

presented by

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