



New South Wales

Small Business Commissioner and Small Business Protection Bill 2012

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows:

- (a) to create the position of Small Business Commissioner as an independent statutory office and to confer functions on the Commissioner in relation to small businesses,
- (b) to ensure that small businesses are treated fairly in their commercial dealings with other businesses and their dealings with government agencies through enforceable codes of practice,
- (c) to enable small businesses to obtain relief under the *Contracts Review Act 1980* in respect of unjust contracts.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Clause 3 defines certain words and expressions used in the proposed Act. A *small business* is defined as a business enterprise with no more than 20 full-time equivalent employees or with an annual income or expenditure of between \$10,000 and \$5 million.

Part 2 Small Business Commissioner

Clause 4 creates the statutory office of Small Business Commissioner.

Clause 5 specifies the functions of the Commissioner. These include assisting small businesses in their dealings with government agencies.

Clause 6 enables the Commissioner to require information to be provided from persons about their commercial dealings with small businesses.

Clause 7 enables the Commissioner to share information with government agencies and certain other persons and bodies.

Clause 8 requires the Commissioner to report annually to Parliament on the Commissioner's work and activities and on the regulatory burden on small businesses.

Clause 9 enables the Commissioner to delegate his or her functions.

Clause 10 provides for the staff of the Commissioner.

Part 3 Protection of small businesses

Clause 11 enables the regulations under the proposed Act to prescribe codes of practice with respect to the fair treatment of small businesses in their commercial dealings with other businesses and their dealings with government agencies. The Commissioner will be required to consult with representatives of industries or businesses likely to be affected by a code of practice before any such code of practice is made.

Clause 12 makes it an offence to contravene a code of practice.

Clause 13 provides that the Supreme Court may, on application by the Commissioner, grant an injunction in relation to contravention of a code of practice and also to prevent a person from interfering with an investigation by the Commissioner.

Clause 14 confers on the Consumer, Trader and Tenancy Tribunal (the *CTTT*) jurisdiction under the *Contracts Review Act 1980* (the *CR Act*) with respect to unfair contracts to which a small business is a party. Under the proposed section, the operator of a small business will be able to apply to the CTTT for relief under the CR Act in relation to contracts the operator considers to be harsh, oppressive, unconscionable or unjust. The proposed provision does not affect the jurisdiction of the Supreme Court under the CR Act in relation to such contracts.

Part 4 Miscellaneous

Clause 15 provides that the proposed Act binds the Crown.

Clause 16 excludes the Commissioner, members of staff and persons acting under the direction of the Commissioner from personal liability.

Clause 17 provides for the manner in which proceedings for offences are to be dealt with.

Clause 18 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 19 repeals the *Small Business Development Corporation Act 1984*.

Schedule 1 Provisions relating to Small Business Commissioner

Schedule 1 contains provisions relating to the Commissioner, including term of office. The Commissioner may be removed from office by the Governor but only on the address of both Houses of Parliament.

Schedule 2 Amendment of Acts

Schedule 2.1 amends the *Contracts Review Act 1980* to extend the operation of that Act to contracts to which small businesses are a party. The Supreme Court or the CTTT will be able to provide relief to small businesses in respect of a contract that was unjust (which includes unconscionable, harsh or oppressive) at the time it was made or that has become unjust since it was made. The Commissioner will also be able to bring proceedings for relief on behalf of small businesses or intervene in proceedings on their behalf.

Schedule 2.2 amends the *Government Information (Public Access) Act 2009* to prohibit applications being made under that Act for access to information of the office of the Small Business Commissioner.

Schedule 2.3 amends the *Statutory and Other Offices Remuneration Act 1975* to add the Small Business Commissioner to the list of public offices to which that Act applies.

Schedule 3 Savings, transitional and other provisions

Schedule 3 contains savings, transitional and other provisions consequent on the enactment of the proposed Act. These include the power to make regulations of a savings or transitional nature consequential on the enactment of the proposed Act. The proposed Schedule also abolishes the Small Business Development Corporation and provides that the proposed Act (including the amendments to the *Contracts*

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Review Act 1980) extends to contracts in force immediately before the commencement of the proposed Act.