



New South Wales

Small Business Commissioner Bill 2012

Explanatory note

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

Overview of Bill

The object of this Bill is to create the office of Small Business Commissioner and to specify the objectives and functions of that office. Among the Commissioner's objectives will be to deal with issues concerning the small business sector in a neutral and independent manner and to provide a central point of contact for small businesses to make complaints about their commercial dealings with other businesses and their dealings with government agencies. The Commissioner's functions include the following:

- (a) investigating complaints made by or on behalf of small businesses,
- (b) providing low cost alternative dispute resolution services,
- (c) making representations or taking action on behalf of small businesses,
- (d) requiring any person or government agency to provide such information (or answers to questions) relating to the person's or agency's dealings with small businesses as the Commissioner reasonably requires for the purposes of an investigation under the proposed Act.

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 a day or days to be appointed by proclamation.

Clause 3 defines certain words and expressions used in the proposed Act.

Part 2 Small Business Commissioner

Division 1 Appointment of Small Business Commissioner

Clause 4 provides for the appointment of a Small Business Commissioner by the Governor on the recommendation of the Minister.

Clause 5 provides that the Commissioner is subject to the control and direction of the Minister in the exercise of the Commissioner's functions, except in relation to certain matters (including the Commissioner's reporting functions).

Clause 6 specifies the maximum term of office of the Commissioner (5 years) and provides that the office is a full-time one.

Clause 7 provides for the remuneration of the Commissioner.

Clause 8 specifies when the office of Commissioner becomes vacant.

Clause 9 provides that the Governor may, on the recommendation of the Minister, remove the Commissioner from office for incompetence, incapacity or misbehaviour.

Clause 10 provides for the filling of any vacancy in the office of Commissioner.

Clause 11 provides for the appointment of an acting Commissioner.

Clause 12 provides for the appointment of staff of the Commissioner.

Division 2 Objectives and functions of Commissioner

Clause 13 specifies the objectives of the Commissioner, which include dealing with issues concerning the small business sector in a neutral and independent manner, providing a central point of contact for small businesses to make certain complaints, encouraging government agencies and larger businesses to enter into productive working relationships with small businesses, facilitating the resolution of disputes involving small businesses, facilitating and encouraging the fair treatment of small businesses, promoting a fair operating environment in which small businesses can flourish and identifying and supporting measures to reduce the administrative burden for small businesses.

Clause 14 specifies the general functions of the Commissioner, which include receiving and dealing with complaints made by or on behalf of small businesses,

investigating complaints, providing low cost alternative dispute resolution services for small businesses and making representations or taking action on behalf of small businesses, whether at the Commissioner's own initiative or at the request of a small business.

Clause 15 provides that the Commissioner may only deal with a complaint made by or on behalf of a small business if satisfied that the subject-matter of the complaint relates to the unfair treatment of, or an unfair practice involving, the small business or that it is in the public interest to deal with the complaint.

Clause 16 authorises the Commissioner to require any person or government agency to provide information relating to the person's or agency's dealings with small businesses that the Commissioner reasonably requires for the purposes of any investigation by the Commissioner under the proposed Act.

Clause 17 provides for the Commissioner to certify the outcome of any application made to the Commissioner for assistance in resolving a complaint or other dispute involving a small business.

Clause 18 provides that, if the Commissioner makes a finding that a person or body has persistently engaged in anti-competitive practices that are in contravention of any law and that adversely affect the small business sector, the Commissioner may refer the finding to the Director-General of the Department of Finance and Services.

Clause 19 provides for the Commissioner to enter into information sharing arrangements with government agencies, holders of statutory offices or certain other persons or bodies for the purposes of sharing or exchanging any information that is held by the Commissioner or the agency, office holder or other person or body.

Clause 20 provides that the Commissioner is to act in an informal manner as far as possible and according to the substantial merits of the case without undue regard to technicalities. The Commissioner may determine the procedures to be followed in exercising the Commissioner's functions under the proposed Act.

Clause 21 provides that the Commissioner may engage the services of any person for the purpose of getting expert assistance.

Clause 22 provides for the Commissioner to delegate the exercise of any function of the Commissioner to any member of staff of the Commissioner or any person authorised by the regulations.

Division 3 Reports by Commissioner

Clause 23 requires the Commissioner to prepare an annual report to Parliament on the Commissioner's work and activities.

Clause 24 provides for the preparation of a special report to Parliament on any matter relating to the functions of the Commissioner.

Clause 25 requires the Commissioner, before furnishing a report to Parliament, to provide a draft report to the Minister and any government agency or person criticised in the report and to consider any submissions that are made by the Minister or the government agency or person concerned.

Clause 26 specifies the procedure for reports to Parliament.

Part 3 Miscellaneous

Clause 27 provides for the proposed Act to bind the Crown.

Clause 28 provides for the grant of injunctions to stop interference with any investigation conducted by the Commissioner.

Clause 29 provides that the Commissioner, a member of the Commissioner's staff or a person acting under the direction of the Commissioner is not personally liable for acts done in good faith for the purpose of exercising a function under the proposed Act or any other Act.

Clause 30 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 31 repeals the *Small Business Development Corporation Act 1984*.

Clause 32 provides for the review of the proposed Act in 5 years from the date of assent to the proposed Act.

Schedule 1 Amendment of Acts

Schedule 1.1 provides for information relating to complaint handling, dispute resolution or the investigative and reporting functions of the office of Small Business Commissioner to be excluded information for the purposes of the *Government Information (Public Access) Act 2009*.

Schedule 1.2 includes the Small Business Commissioner in the list of public offices to which the *Statutory and Other Offices Remuneration Act 1975* applies.