

**LEGISLATIVE COUNCIL**

**Small Business Commissioner Bill 2013**

**Second print**

**Proposed amendments**

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- No. 1 Page 2, clause 3. Insert after line 8:  
*code of practice* means a code of practice prescribed by the regulations.
- \* Page 3, clause 5. [Vote “No” to the Question that the clause as read stand part of the Bill.]
- No. 2 Page 5, clause 14, line 32. Insert “(including compulsory mediation)” after “services”.
- No. 3 Page 6, clause 14, lines 3 and 4. Omit all words on those lines. Insert instead:  
(f) to administer codes of practice,  
(g) to monitor, investigate and advise the Minister about:  
(i) non-compliance with codes of practice, and  
(ii) market practices that may adversely affect small businesses,
- No. 4 Page 9, clause 24, lines 22–26. Omit the clause. Insert instead:  
**24 Annual report**  
(1) The Commissioner is, as soon as practicable after 31 December in each year, to prepare a report:  
(a) on the Commissioner’s work and activities for the 12 months ending on that 31 December, and  
(b) on the regulatory burden on small business in relation to the period of 12 months ending on that 31 December,  
and provide a copy of the report to the Presiding Officer of each House of Parliament.  
(2) The report on the regulatory burden on small businesses is to include the following:  
(a) the sources (such as legislative, procedural or administrative requirements) of the regulatory burden on small businesses,  
(b) recommendations for alleviating any such burden.

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## Part 3 Protection of small businesses

### 28 Codes of practice for fair treatment of small businesses

- (1) The regulations may prescribe a code of practice with respect to the fair treatment of small businesses in their commercial dealings with other businesses (whether or not small businesses) and in their dealings with government agencies.
- (2) Without limiting subsection (1), a code of practice may provide:
  - (a) for good faith obligations in commercial dealings, and
  - (b) for compulsory mediation of disputes between small businesses and other businesses (whether or not small businesses) or between small businesses and government agencies.
- (3) A code of practice may not be prescribed by the regulations unless the Commissioner has, before any such regulation is made, consulted with each body or organisation that the Commissioner considers to be representative of an industry or business likely to be affected by the code of practice.

### 29 Contravention of code of practice

A person must not, in trade or commerce, contravene a code of practice.

Maximum penalty: 1,000 penalty units in the case of a corporation or 200 penalty units in the case of an individual.

### 30 Injunctions

- (1) The Supreme Court may, on application by the Commissioner, grant an injunction in such terms as the Court determines to be appropriate if satisfied that a person has engaged, or is proposing to engage, in conduct that constituted, is constituting, or would constitute:
  - (a) a contravention of a code of practice, or
  - (b) attempting to contravene a code of practice, or
  - (c) aiding, abetting, counselling or procuring a person to contravene a code of practice, or
  - (d) inducing, or attempting to induce, whether by threats or promises or otherwise, a person to contravene a code of practice, or
  - (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of a code of practice, or
  - (f) conspiring with others to contravene a code of practice, or
  - (g) interfering with an investigation by the Commissioner.
- (2) An injunction may be granted under this section as an interim injunction without an undertaking being required as to damages or costs or may be granted as a permanent injunction.

### 31 Jurisdiction of CTTT in relation to unfair contracts

- (1) The operator of a small business may apply to the Consumer, Trader and Tenancy Tribunal (the *CTTT*) for an order in relation

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to any contract (being a contract to which the small business is a party) that the operator considers to be harsh, oppressive, unconscionable or unjust.

- (2) The CTTT has, and may exercise:
- (a) jurisdiction to determine any application made to it under this section, and
  - (b) the same jurisdiction as the Supreme Court, and all the powers and authority of the Supreme Court, in proceedings in which relief under the *Contracts Review Act 1980* is sought in relation to a contract to which a small business is a party.

**Note.** Under the *Contracts Review Act 1980*, the Supreme Court may (among other things) refuse to enforce any or all of the provisions of the contract concerned or make an order declaring the contract void (in whole or in part) or varying (in whole or in part) any provision of the contract. It may also make orders with respect to any consequential or related matter, such as orders for the payment of money (whether or not by way of compensation) to a party to the contract and orders for the supply of services.

- (3) This section does not affect any jurisdiction of the Supreme Court under the *Contracts Review Act 1980* in relation to a contract to which a small business is a party.

\* Page 12, clause 29. [Vote “No” to the Question that the clause as read stand part of the Bill.]

No. 6 Page 12. Insert after line 22:

**31 Proceedings for offences**

- (1) Proceedings for an offence under this Act may be dealt with:
- (a) summarily before the Local Court, or
  - (b) summarily before the Supreme Court in its summary jurisdiction.
- (2) If proceedings are brought in the Local Court, the maximum monetary penalty that the Local Court may impose for the offence is 100 penalty units, despite any higher maximum monetary penalty provided in respect of the offence.

No. 7 Page 14, Schedule 1. Insert after line 1:

**1.1 Contracts Review Act 1980 No 16**

**[1] Section 4 Definitions**

Insert at the end of paragraph (e) of the definition of *Court* in section 4 (1):

, or

- (f) in accordance with section 31 of the *Small Business Commissioner Act 2013*—the Tribunal.

**[2] Section 6 Certain restrictions on grant of relief**

Insert after section 6 (1):

- (1A) However, a corporation may, to the extent that it is conducting a small business, be granted relief under this Act.

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**[3] Section 6 (2)**

Insert “a small business or” after “other than”.

**[4] Section 7 Principal relief**

Insert after section 7 (1):

- (1A) In the case of a contract to which a small business is a party, the Court may also make any such decision or order if the Court finds that the contract has become, since the time it was made, unjust to the extent that it applies to the small business.

**[5] Section 9 Matters to be considered by Court**

Insert after section 9 (5):

- (6) A reference in this section to a contract or a provision of a contract being unjust at the time the contract was made includes, in the case of a contract to which a small business is a party, a reference to a contract or a provision of a contract that has become, since the contract was made, unjust to the extent that it applies to the small business.

**[6] Section 10 General orders**

Insert at the end of the section:

- (2) Without limiting subsection (1), if the Court is satisfied, on the application of the Small Business Commissioner, that a person has embarked, or is likely to embark, on a course of conduct leading to the formation of unjust contracts that are likely to involve small businesses, the Court may, by order, prescribe or otherwise restrict, the terms upon which that person may enter into contracts of a specified class that involve small businesses.

**[7] Section 12A**

Insert after section 12:

**12A Small Business Commissioner may bring proceedings for relief on behalf of small business**

- (1) The Small Business Commissioner may, with the consent of the operator of a small business, bring proceedings for relief under this Act on behalf of the small business.
- (2) If the Small Business Commissioner brings proceedings for relief under this Act on behalf of a small business, the Small Business Commissioner:
- (a) is to have the conduct of those proceedings on behalf of the small business, and
  - (b) may appear personally or by a legal practitioner or an agent, and
  - (c) may do all such things as are necessary or expedient to give effect to an order or a decision of the Court, and
  - (d) is liable to pay the costs (if any) of the small business.

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**[8] Section 13 Intervention**

Insert at the end of the section:

- (2) In the case of any proceedings in which relief under this Act is sought by a small business, the Small Business Commissioner has the same functions as are conferred on the Minister or the Attorney General under subsection (1). This subsection does not limit the functions conferred on the Small Business Commissioner under section 12A.