

2004

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Economic Development, Business and Tourism)

Small Business Commissioner Bill 2004

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(Minister for Economic Development, Business and Tourism)

Small Business Commissioner Bill 2004

A Bill for

An Act to provide for a small business commissioner

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Small Business Commissioner Act 2004*.

4 **2 Commencement**

5 This Act commences on the day after its notification day.

6 *Note* The naming and commencement provisions automatically commence on
7 the notification day (see Legislation Act, s 75 (1)).

8 **3 Object of Act**

9 The main object of this Act is to enhance a competitive, cooperative
10 and fair operating environment for small business in the ACT.

11 **4 Dictionary**

12 The dictionary at the end of this Act is part of this Act.

13 *Note 1* The dictionary at the end of this Act defines certain terms used in this
14 Act.

15 *Note 2* A definition in the dictionary applies to the entire Act unless the
16 definition, or another provision of the Act, provides otherwise or the
17 contrary intention otherwise appears (see Legislation Act, s 155 and
18 s 156 (1)).

19 **5 Notes**

20 A note included in this Act is explanatory and is not part of this Act.

21 *Note* See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

Part 2 The commissioner

6 Office of commissioner

There is to be a Small Business Commissioner.

7 Appointment of commissioner

The Minister must appoint a person to be the commissioner.

Note 1 For the making of appointments (including acting appointments), see Legislation Act, pt 19.3.

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).

Note 3 Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

8 Term of appointment of commissioner

The commissioner must be appointed for a term of not longer than 5 years.

Note A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def *appoint*).

9 Conditions of appointment of commissioner

The commissioner's conditions of appointment are the conditions agreed between the Minister and the commissioner, subject to any determination under the *Remuneration Tribunal Act 1995*.

10 Ending commissioner's appointment

(1) The Minister may end the appointment of the commissioner—

(a) if the commissioner contravenes a Territory law; or

(b) for misbehaviour; or

- 1 (c) if the commissioner becomes bankrupt, or executes a personal
2 insolvency agreement; or
- 3 (d) if the commissioner is convicted, in the ACT, of an offence
4 punishable by imprisonment for at least 1 year; or
- 5 (e) if the commissioner is convicted outside the ACT, in Australia
6 or elsewhere, of an offence that, if it had been committed in the
7 ACT, would be punishable by imprisonment for at least
8 1 year; or
- 9 (f) in accordance with the commissioner's employment
10 conditions.
- 11 (2) The Minister must end the commissioner's appointment for physical
12 or mental incapacity, if the incapacity substantially affects the
13 exercise of the commissioner's functions.

Note A person's appointment also ends if the person resigns (see Legislation
 Act, s 210).

14 **11 Functions**

- 15 (1) The commissioner has the following functions:
- 16 (a) to facilitate and encourage the fair treatment of small
17 businesses in commercial dealings with other businesses in the
18 marketplace;
- 19 (b) to promote informed decision-making by small businesses to
20 minimise disputes with other businesses;
- 21 (c) to facilitate the resolution of complaints by small businesses
22 about unfair market practices and promote mediation between
23 the parties involved in the complaints;
- 24 (d) to make representations to appropriate entities on behalf of any
25 small business with a complaint mentioned in paragraph (c);

- 1 (e) to monitor and report to the Minister on any emerging trends in
2 market practices that have an adverse effect on small
3 businesses;
- 4 (f) to develop small business service charters within government
5 entities to ensure small businesses receive high quality services
6 from government entities;
- 7 (g) to monitor the operation and effectiveness of the small
8 business charters;
- 9 (h) as required by the Minister, to monitor and report on the
10 impact of legislation, government procedures and
11 administration on small businesses;
- 12 (i) to promote laws, policies and practices that support the objects
13 of this Act;
- 14 (j) to disseminate information about the operation of this Act and
15 the functions of the commissioner;
- 16 (k) to advise the Minister on the operation of this Act or any issue
17 relating to small businesses, whether at the Minister's request
18 or on the commissioner's own initiative;
- 19 (l) to exercise any other function given to the commissioner under
20 this Act or another Territory law.

Note A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

- 21 (2) To remove any doubt, the commissioner must not investigate or
22 continue to investigate anything arising in a complaint mentioned in
23 paragraph (1) (c), if the commissioner becomes aware that it is the
24 subject of an investigation, or a proceeding in a court or tribunal, in
25 relation to an offence or disciplinary matter.

1 **12 Directions by Minister**

2 (1) The Minister may give a written direction to the commissioner
3 about the exercise of the commissioner's functions.

4 (2) The commissioner must comply with a direction given to the
5 commissioner under this section.

6 (3) A report by the commissioner under the *Annual Reports*
7 (*Government Agencies*) Act 2004 for a financial year must include—

8 (a) a copy of any direction given under this section during the
9 year; and

10 (b) a statement by the commissioner about action taken during the
11 year to give effect to any direction given (whether before or
12 during the year) under this section.

13 *Note* **Financial year** has an extended meaning in the *Annual Reports*
14 (*Government Agencies*) Act 2004.

15 (4) A direction is a notifiable instrument.

16 *Note* A notifiable instrument must be notified under the Legislation Act.

17 **13 Government entities to assist commissioner**

18 The chief executive of a government entity must cooperate with any
19 request by the commissioner for information or assistance
20 reasonably required by the commissioner for the exercise of the
21 commissioner's functions.

22 **14 Staff**

23 The staff assisting the commissioner are to be employed under the
24 *Public Sector Management Act 1994*.

1 **15 Consultants**

2 (1) The commissioner may, on behalf of the Territory, engage
3 consultants.

4 (2) However, the commissioner must not enter into a contract of
5 employment under this section.

6 **16 Delegation**

7 The commissioner may delegate any of the commissioner's
8 functions under this Act or another Territory law to a public servant.

9 *Note* For the making of delegations and the exercise of delegated functions,
10 see Legislation Act, pt 19.4.

1 **Part 3 Miscellaneous**

2 **17 Protection of officials from liability**

3 (1) In this section:

4 *official* means—

5 (a) the commissioner; or

6 (b) any member of the staff assisting the commissioner; or

7 (c) anyone else exercising a function under this Act.

8 (2) An official does not incur civil liability for an act or omission done
9 honestly and without recklessness for this Act.

10 (3) Any civil liability that would, apart from this section, attach to an
11 official attaches instead to the Territory.

12 *Note* A reference to an Act includes a reference to the statutory instruments
13 made or in force under the Act, including regulations (see Legislation
14 Act, s 104).

15 **18 Approved forms**

16 (1) The commissioner may, in writing, approve forms for this Act.

17 (2) If the commissioner approves a form for a particular purpose, the
18 approved form must be used for that purpose.

19 (3) An approved form is a notifiable instrument.

20 *Note* A notifiable instrument must be notified under the Legislation Act.

21 **19 Determination of fees**

22 (1) The Minister may, in writing, determine fees for this Act.

23 *Note* The Legislation Act contains provisions about the making of
24 determinations and regulations relating to fees (see pt 6.3)

1 (2) A determination is a disallowable instrument.

2 *Note* A disallowable instrument must be notified, and presented to the
3 Legislative Assembly, under the Legislation Act.

4 **20 Regulation-making power**

5 The Executive may make regulations for this Act.

6 *Note* Regulations must be notified, and presented to the Legislative
7 Assembly, under the Legislation Act.

Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- administrative unit
- chief executive (see s 163)
- Minister (see s 162)
- public servant
- tribunal
- statutory office-holder.

business includes—

- (a) a business not carried on for profit; and
- (b) a trade or profession.

chief executive, in relation to a statutory office, means the holder of the office.

commissioner means the Small Business Commissioner.

government entity means—

- (a) an administrative unit; or
- (b) a statutory office-holder and the staff assisting the statutory officer-holder.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2004.

2 Notification

Notified under the Legislation Act on 2004.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.
