

Australian Capital Territory

## **Small Business Commissioner Bill 2004**

### **Explanatory statement**

**Circulated with authority of  
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Minister for Economic Development, Business and Tourism**

## **SMALL BUSINESS COMMISSONER BILL 2004**

### **Outline**

The Small Business Commissioner Bill 2004 provides for the establishment of the office of the Small Business Commissioner. The focus of the Small Business Commissioner is to enhance a competitive and fair operating environment for small business in the ACT.

In broad terms, the legislation establishes a work program for the commissioner in the following areas:

- Improving business to government relationships – for example, activities aimed at establishing a stronger customer service culture across ACT Government agencies towards small business;
- Regulation review and reform – activities to promote a small business friendly approach to the development and review of government regulation and government procedures impacting on small business;
- Dispute mediation – activities and programs to facilitate early mediation of disputes involving small businesses;
- Investigatory functions – establishing a capability where small business complaints can be examined quickly and professionally and remedial action facilitated at the appropriate level; and
- Advisory functions – providing another avenue of advice to Government on small business issues, with a focus on the ACT business environment context.

### **Financial Implications**

All costs associated with the appointment of the Small Business Commissioner, and associated office support, will be funded from the existing allocation to business and economic development provided through the Office of Business and Tourism.

Funding to be provided by the Office of Business and Tourism to support the Office of the Small Business Commissioner is noted in 2004/05 Budget Paper No. 3, and as per the table below.

Office of Small Business Commissioner	2004-05	2005-06	2006-07	2007-08
Expenses (\$'000)	340	346	352	358

## CLAUSE NOTES

### PART 1 – PRELIMINARY

**Clauses 1, 2, 3, 4 and 5** are standard requirements. They refer to the title, dictionary, notes and specify when the Act will commence.

### PART 2 – THE COMMISSONER

**Clause 6 –Office of commissioner** – A Small Business Commissioner is established as a statutory body.

**Clause 7 – Appointment of commissioner** – provides that the Minister for Economic Development, Business and Tourism is responsible for the administration of the Act and for the appointment of the commissioner.

**Clause 8 – Term of appointment of commissioner** – the maximum term of appointment of the commissioner is for five years. An appointment under this clause will be notified on the ACT Legislation Register.

**Clause 9 – Conditions of appointment of commissioner** – provides that the Minister will appoint the commissioner whose conditions of employment are subject to the determination of the Remuneration Tribunal. The commissioner must at all times undertake functions that are consistent with those articulated in the Act, and the instrument of appointment, in order to continue to hold the position.

**Clause 10 – Ending commissioner’s appointment** – this is a standard clause for statutory appointment, spelling out the circumstances or events which allows the Minister to terminate the appointment of the commissioner.

**Clause 11 – Functions** – lists the functions of the commissioner. In broad terms, the commissioner’s functions will be:

- a) Improving business to government relationships – eg, activities aimed at establishing a stronger customer service culture across ACT Government agencies towards small business. For example, the commissioner is seen as managing a process to establish and monitor Customer Service Charters within relevant ACT Government agencies.

- b) Dispute mediation – activities and programs to facilitate early mediation of disputes involving small businesses. Currently, there are no low cost, easily accessible, early intervention mechanisms that bring the disputing parties together in a neutral environment for the mediation of a dispute before it develops into an intractable problem that necessitates formal resolution via the legal dispute resolution mechanisms available to ACT small businesses.
- c) Regulation review and reform – activities to promote a small business friendly approach to the development and review of government regulation and government procedures that impact on small business. There have been two reviews that examined ‘red tape’ issues facing businesses in the ACT. Both reviews recognised the need for a culture change in ACT Government organisations to ensure that ‘red tape’ is minimised. However, while both reviews recognised the need for an on-going mechanism for change, none was put in place. The Small Business Commissioner will now provide that mechanism.
- d) Investigatory functions – establishing a capability and vehicle where small business complaints can be examined quickly and professionally, and remedial action facilitated. The investigatory functions have been carefully formulated so that:
  - they are subject to any other legislative requirements about information, such as privacy legislation, provisions relating to privilege and confidentiality of Cabinet documents;
  - the commissioner will not overlap or circumvent the existing review and dispute resolution responsibilities of bodies like the Office of Fair Trading, the Ombudsman or the Administrative Appeals Tribunal (see clause 11(2)); and
  - mediation is voluntary.
- e) Advisory functions – providing another avenue of advice to Government on small business issues, with a focus on the ACT business environment.

**Clause 12 – Directions by Minister** – enables the Minister to give written directions to the commissioner in relation to any general matters impacting on small business in the Territory, or on matters relating to a particular small business.

Subclause (2) requires the commissioner to comply with any direction given by the Minister under this section.

Subclause (3) requires the commissioner to include in his annual report a report on the actions taken to give effect to the Ministerial direction received.

Subclause (4) states that any Ministerial direction is to be notified on the legislative register.

**Clause 13 – Government entities to assist commissioner** – this requires that the chief executive of any Government Department or sub-agency of a Government Department must cooperate with any reasonable request by the commissioner to assist or provide advice on a small business issue or matter. These issues may be broad in nature (for example, a policy or procedural issue impacting on a range of small businesses) or the issue may relate to a particular small business (for example, a dispute between the agency and a small business on a particular matter).

**Clause 14 – Staff** – the staff of the commissioner are to be public servants subject to the *Public Sector Management Act 1994*. It is envisaged that the Office of the Small Business Commissioner will be small and have relatively senior officers with experience in small business issues and related research and investigatory skills.

**Clause 15 – Consultants** – the commissioner may engage consultants with specialist skills for short periods, but may not enter into a permanent contract of employment with them. The commissioner can employ, for example, short-term specialist skills such as experienced mediators to work on dispute resolution matters.

**Clause 16 – Delegation** – the commissioner may delegate any of the commissioner's functions to a public servant.

### PART 3 – MISCELLANEOUS

**Clause 17 – Protection of officials from liability** – this clause protects the commissioner and his staff against any liability incurred in the normal operations of their duties. This is the standard protection imparted to all public servants working for the ACT Government.

**Clause 18 - Approved forms** – this is a standard provision that enables the commissioner to approve forms. If a form is approved for a particular purpose it must be used for that purpose. Any approved form is to be notified on the Legislative Register.

**Clause 19 – Determination of fees** – allows the commissioner to establish fees and charges for particular services, for example, mediation functions. Setting a small mediation service fee that is payable by parties to a dispute should discourage frivolous use of the mediation service.

**Clause 20 – Regulation-making power** – enables the Executive to make regulations under the Act.

**Dictionary** - this section provides the definitions, or directs the reader to definitions, that are used for important terms or titles used in this Act – the Small Business Commissioner Act 2004.