## Small Business Commissioner Act 2003
### Act No. 6/2003

### TABLE OF PROVISIONS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Purpose</td>
<td>1</td>
</tr>
<tr>
<td>2. Commencement</td>
<td>1</td>
</tr>
<tr>
<td>3. Definition</td>
<td>2</td>
</tr>
<tr>
<td>4. Appointment of Small Business Commissioner</td>
<td>2</td>
</tr>
<tr>
<td>5. Functions and powers of Commissioner</td>
<td>2</td>
</tr>
<tr>
<td>6. Commissioner's investigatory function</td>
<td>4</td>
</tr>
<tr>
<td>7. Terms and conditions of appointment</td>
<td>4</td>
</tr>
<tr>
<td>8. Acting Commissioner</td>
<td>5</td>
</tr>
<tr>
<td>9. Staff</td>
<td>7</td>
</tr>
<tr>
<td>10. Further powers</td>
<td>7</td>
</tr>
<tr>
<td>11. Delegation</td>
<td>7</td>
</tr>
<tr>
<td>12. Validity of acts and decisions</td>
<td>7</td>
</tr>
<tr>
<td>13. Ministerial directions</td>
<td>8</td>
</tr>
<tr>
<td>14. Reporting</td>
<td>8</td>
</tr>
<tr>
<td>15. <strong>Liquor Control Reform Act 1998</strong>—powers to investigate</td>
<td>8</td>
</tr>
<tr>
<td>16. <strong>Victorian Civil and Administrative Tribunal Act 1998</strong>—powers of Commissioner to intervene</td>
<td>8</td>
</tr>
</tbody>
</table>

### ENDNOTES | 10
No. 6 of 2003

Small Business Commissioner Act 2003†
[Assented to 15 April 2003]

The Parliament of Victoria enacts as follows:

1. Purpose
   The main purpose of this Act is to establish the office of the Small Business Commissioner to enhance a competitive and fair operating environment for small business in Victoria.

2. Commencement
   (1) Subject to sub-section (2), this Act comes into operation on a day or days to be proclaimed.

   (2) If a provision referred to in sub-section (1) does not come into operation before 1 May 2003, it comes into operation on that day.
3. Definition

In this Act—

"Commissioner" means the Small Business Commissioner appointed under section 4.

4. Appointment of Small Business Commissioner

(1) There is to be appointed a Small Business Commissioner.

(2) The Governor in Council may appoint a person to be the Small Business Commissioner.

5. Functions and powers of Commissioner

(1) The Commissioner has all the functions and may exercise all of the powers conferred on him or her by this or any other Act.

(2) The Commissioner has the following functions—

(a) to facilitate and encourage the fair treatment of small businesses in their commercial dealings with other businesses in the marketplace;

(b) to promote informed decision-making by small businesses in order to minimise disputes with other businesses;

(c) to receive and investigate complaints by small businesses regarding unfair market practices and mediate between the parties involved in the complaint;

(d) to make representations to an appropriate person or body on behalf of a small business that has made a complaint referred to in paragraph (c);

(e) to monitor and report to the Minister on any emerging trends in market practices that have an adverse effect on small businesses;
(f) to encourage the development and implementation of small business service charters within government to ensure small businesses receive high quality service;

(g) to monitor the operation and effectiveness of those small business service charters;

(h) as required by the Minister, to monitor and report to the Minister on the impact that legislation in Victoria, government procedures and administration have on small businesses;

(i) as required by the Minister, to assist other branches and agencies of government to develop legislation, government procedures and administration that provide alternative ways in which small businesses can comply with the requirements of the legislation, procedures and administration;

(j) to investigate compliance with industry codes;

(k) to advise the Minister generally about matters for which the Commissioner is responsible;

(l) to advise the Minister on the operation of this Act.

(3) The Commissioner may carry out his or her functions and exercise his or her powers at the request of the Minister or any other person or body or on his or her own motion.

(4) The Commissioner has power to do all things necessary or convenient to be done for or in connection with the performance of his or her functions.
(5) The Commissioner is responsible to the Secretary to the Department of Innovation, Industry and Regional Development for the general conduct and management of the functions and activities of the Commissioner and must advise the Secretary in all matters relating to that conduct and management.

(6) The Secretary to the Department of Innovation, Industry and Regional Development must take reasonable steps to ensure that adequate resources are made available to the Commissioner to enable him or her to carry out his or her functions and exercise his or her powers.

6. Commissioner's investigatory function
The Commissioner may investigate any matter relevant to the Commissioner's functions and powers under this Act.

7. Terms and conditions of appointment

(1) The Commissioner holds office for a term, not exceeding 5 years, specified in his or her instrument of appointment, and is eligible for reappointment for a term not exceeding 5 years.

(2) The Governor in Council may specify the terms and conditions of appointment in the Commissioner's instrument of appointment.

(3) The Commissioner is entitled to be paid the remuneration and allowances that are fixed from time to time by the Governor in Council.

(4) The Public Sector Management and Employment Act 1998 (except in accordance with Part 7 of that Act) does not apply to the Commissioner in respect of the office of Commissioner.
(5) The Commissioner ceases to hold office if he or she—

(a) becomes an insolvent under administration within the meaning of the Corporations Act; or

(b) is convicted of an indictable offence or an offence which, if committed in Victoria, would be an indictable offence.

(6) The Governor in Council may remove the Commissioner from office if he or she has refused, neglected or failed to carry out his or her duties or has demonstrated inefficiency or misbehaviour in carrying out his or her duties.

(7) The Commissioner may at any time resign by writing signed and delivered to the Governor.

8. Acting Commissioner

(1) The Minister may appoint an Acting Commissioner—

(a) during a vacancy in the office of Commissioner; or

(b) during any period when the Commissioner is absent or, for any reason, is unable to perform the functions of Commissioner.

(2) The Minister may—

(a) appoint an Acting Commissioner for a period not exceeding 6 months;

(b) determine the terms and conditions of appointment of the Acting Commissioner;

(c) terminate the appointment of the Acting Commissioner at any time.
(3) An Acting Commissioner is entitled to receive the remuneration and allowances that the Commissioner would have been entitled to for performing the duties of office.

(4) While a person is acting in the office of the Commissioner in accordance with sub-section (1), the Acting Commissioner has all the functions and powers of the Commissioner.

(5) If a person is acting in the office of the Commissioner in accordance with sub-section (1)(b) and the office becomes vacant while the person is so acting, that person may continue to so act for 6 months after the date on which the vacancy occurred unless—

(a) the Minister otherwise directs; or

(b) the vacancy is filled before the end of that period.

(6) The validity of anything done by or in relation to a person purporting to act in the office of the Commissioner under an appointment made under sub-section (1) shall not be called in question on the ground that—

(a) the occasion for his or her appointment has not arisen; or

(b) there is a defect or irregularity in or in connection with his or her appointment; or

(c) the appointment had ceased to have effect; or

(d) the occasion for him or her to act had not arisen or had ceased.
9. **Staff**

There may be employed under Part 3 of the **Public Sector Management and Employment Act 1998** any employees that are necessary for the administration of this Act or to enable the Commissioner to perform his or her functions and exercise his or her powers.

10. **Further powers**

The Commissioner may—

(a) request assistance or information from any public authority within the meaning of the **Public Sector Management and Employment Act 1998**;

(b) engage consultants to assist him or her in the performance of his or her functions and the exercise of his or her powers.

11. **Delegation**

The Commissioner, by instrument in writing, may delegate to any person employed under Part 3 of the **Public Sector Management and Employment Act 1998** any power under this Act, other than this power of delegation.

12. **Validity of acts and decisions**

An act or decision of the Commissioner or an Acting Commissioner is not invalid—

(a) only because of a defect or irregularity in, or in connection with, the appointment of the Commissioner or Acting Commissioner; or

(b) on the ground that the occasion for the Acting Commissioner to act had not arisen or had ceased.
13. Ministerial directions

The Minister may give written directions to the Commissioner about the performance of the functions of the Commissioner except those functions under this or any other Act that are expressed to be not subject to the Minister's direction or control.

14. Reporting

(1) The Commissioner must, within 3 months after the end of a financial year, submit a report to the Minister relating to the operation and performance of the Commissioner as if it were an annual report of operations under Part 7 of the Financial Management Act 1994.

(2) The Minister must cause the report to be laid before each House of the Parliament on or before 31 October each year or, if a House is not then sitting, on the first sitting day of that House after 31 October.

15. Liquor Control Reform Act 1998—powers to investigate

After section 11(7) of the Liquor Control Reform Act 1998 insert—

"(8) The Small Business Commissioner appointed under the Small Business Commissioner Act 2003 may investigate the compliance by licensees of packaged liquor licences with a code of conduct under subsection (5).".

16. Victorian Civil and Administrative Tribunal Act 1998—powers of Commissioner to intervene

After section 73(2) of the Victorian Civil and Administrative Tribunal Act 1998 insert—

"(2A) The Small Business Commissioner appointed under the Small Business
Commissioner Act 2003 may intervene at any stage in proceedings brought before the Tribunal—

(a) concerning a retail tenancy dispute within the meaning of Part 10 of the Retail Leases Act 2003; or

(b) under section 8A of the Fair Trading Act 1999.

(2B) If the Small Business Commissioner intervenes in proceedings referred to in subsection (2A), he or she becomes a party to the proceedings and has all the rights (including rights of appeal) of such a party.".
ENDNOTES

† Minister's second reading speech—
Legislative Assembly: 27 February 2003
Legislative Council: 27 March 2003

The long title for the Bill for this Act was "to establish the office of the Small Business Commissioner and to amend the Liquor Control Reform Act 1998 and the Victorian Civil and Administrative Tribunal Act 1998 and for other purposes"