

Authorised Version No. 007
Small Business Commissioner Act 2003

No. 6 of 2003

Authorised Version incorporating amendments as at
1 May 2014

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
1 Purpose	1
2 Commencement	1
3 Definitions	1
4 Appointment of Small Business Commissioner	2
5 Functions and powers of Commissioner	3
5A Commissioner may refuse to deal with certain complaints	5
5B Commissioner's alternative dispute resolution function	5
6 Commissioner's investigatory function	6
6A Power to issue certificates	6
7 Terms and conditions of appointment	7
8 Acting Commissioner	8
9 Staff	9
10 Further powers	9
11 Delegation	9
11A Advisory opinions	10
12 Validity of acts and decisions	10
12A Immunity for the alternative dispute resolution function	10
13 Ministerial directions	11
14 Reporting	11

ENDNOTES	13
1. General Information	13
2. Table of Amendments	14
3. Explanatory Details	15

Authorised Version No. 007
Small Business Commissioner Act 2003

No. 6 of 2003

Authorised Version incorporating amendments as at
1 May 2014

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 subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision referred to in subsection (1) does not come into operation before 1 May 2003, it comes into operation on that day.

3 Definitions

In this Act—

alternative dispute resolution includes mediation and preliminary assistance;

Commissioner means the Small Business Commissioner appointed under section 4;

S. 3 (Heading) amended by No. 14/2014 s. 4(1).

S. 3 def. of *alternative dispute resolution* inserted by No. 14/2014 s. 4(2).

S. 3 def. of *Commissioner* amended by No. 14/2014 s. 4(3).

s. 4

S. 3 def. of
Council
inserted by
No. 14/2014
s. 4(2).

Council has the same meaning as in the **Local Government Act 1989**;

S. 3 def. of
dispute
inserted by
No. 14/2014
s. 4(2).

dispute means a dispute between a small business and one or more of the following—

- (a) another business;
- (b) a public entity;
- (c) a public service body;
- (d) a Council;
- (e) a non-profit organisation;

S. 3 def. of
non-profit organisation
inserted by
No. 14/2014
s. 4(2).

non-profit organisation means an organisation having as its whole or dominant purpose a charitable, benevolent, philanthropic or patriotic purpose but does not include a school, an educational institution, an educational company or an instrumentality of the State;

S. 3 def. of
public entity
inserted by
No. 14/2014
s. 4(2).

public entity has the same meaning as in the **Public Administration Act 2004**;

S. 3 def. of
public service body
inserted by
No. 14/2014
s. 4(2).

public service body has the same meaning as in the **Public Administration Act 2004**.

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 and with public entities, public service bodies, Councils and non-profit organisations; **S. 5(2)(a) amended by No. 14/2014 s. 5(1).**
 - (b) to promote informed decision-making by small businesses in order to minimise disputes with other businesses and with public entities, public service bodies, Councils and non-profit organisations; **S. 5(2)(b) amended by No. 14/2014 s. 5(2).**
 - (c) to receive and investigate complaints by small businesses regarding unfair market practices or commercial dealings, and provide alternative dispute resolution between the parties involved in the complaint; **S. 5(2)(c) substituted by No. 14/2014 s. 5(3).**
 - (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);
 - (da) to provide alternative dispute resolution to small businesses in disputes with other businesses and with public entities, public service bodies, Councils and non-profit organisations; **S. 5(2)(da) inserted by No. 14/2014 s. 5(4).**
 - (e) to monitor and report to the Minister on any emerging trends in market practices that have an adverse effect on small businesses;

S. 5(2)(j)
amended by
No. 14/2014
s. 5(5).

- (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 of practice and to assist with the development and provision of industry codes of practice that promote alternative dispute resolution;
 - (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 State Development, Business and Innovation 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 State Development, Business and Innovation 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.

S. 5(5)
amended by
Nos 43/2012
s. 3(Sch.
item 50),
70/2013
s. 4(Sch. 2
item 47).

S. 5(6)
amended by
Nos 43/2012
s. 3(Sch.
item 50),
70/2013
s. 4(Sch. 2
item 47).

5A Commissioner may refuse to deal with certain complaints

S. 5A
inserted by
No. 14/2014
s. 6.

- (1) The Commissioner may refuse to deal with a complaint received by the Commissioner if he or she is satisfied that—
- (a) the complaint is trivial or vexatious; or
 - (b) the complaint is unlikely to be resolved through alternative dispute resolution; or
 - (c) the complaint could be more appropriately dealt with by a public entity, public service body or other person.
- (2) If the Commissioner refuses to deal with a complaint under subsection (1), the Commissioner must give written notice to the person who made the complaint and, if applicable, details of the public entity, public service body or person to be contacted regarding the complaint.

5B Commissioner's alternative dispute resolution function

S. 5B
inserted by
No. 14/2014
s. 6.

- (1) In performing his or her alternative dispute resolution function under this Act, the Commissioner may determine the form of

alternative dispute resolution to be used in the dispute.

- (2) The Commissioner may charge fees and expenses for performing his or her alternative dispute resolution function, which must not be more than the maximum amount (if any) prescribed by the regulations.
- (3) Subsection (2) does not affect the power of the Commissioner to charge fees and expenses under any other Act.

6 Commissioner's investigatory function

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

6A Power to issue certificates

- (1) The Commissioner may certify in writing that alternative dispute resolution performed under this Act has failed to resolve a dispute or is unlikely to resolve a dispute.
- (2) A certificate issued under subsection (1) must include details of the parties involved in the dispute.
- (3) The Commissioner may certify that a party to the dispute has unreasonably refused to participate in alternative dispute resolution.
- (4) A certificate issued under this section may be admitted in evidence in proceedings before VCAT or a court.
- (5) The Commissioner is not required to give a party to the dispute an opportunity to be heard or make submissions to the Commissioner before issuing a certificate under this section.

S. 6A
inserted by
No. 14/2014
s. 7.

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 Administration Act 2004** (other than Part 5 or 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.

S. 7(4)
substituted by
No. 108/2004
s. 117(1)
(Sch. 3
item 183.1).

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 subsection (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 subsection (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 subsection (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 Administration Act 2004** 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.

S. 9
amended by
No. 108/2004
s. 117(1)
(Sch. 3
item 183.2).

10 Further powers

The Commissioner may—

- (a) request assistance or information from any public entity, public service body or Council;
- (b) engage consultants to assist him or her in the performance of his or her functions and the exercise of his or her powers.

S. 10(a)
substituted by
Nos 108/2004
s. 117(1)
(Sch. 3
item 183.3),
14/2014 s. 8.

11 Delegation

The Commissioner, by instrument in writing, may delegate to any person employed under Part 3 of the **Public Administration Act 2004** any power under this Act, other than this power of delegation.

S. 11
amended by
No. 108/2004
s. 117(1)
(Sch. 3
item 183.4).

s. 11A

S. 11A
inserted by
No. 14/2014
s. 9.

11A Advisory opinions

- (1) The Commissioner may refer a matter to VCAT for an advisory opinion under section 125 of the **Victorian Civil and Administrative Tribunal Act 1998**.
- (2) For the purposes of subsection (1), the Commissioner may refer any matter relating to the performance of his or her functions or the exercise of his or her powers under this Act or under any other Act.
- (3) Before referring a matter to VCAT, the Commissioner must be satisfied that the referral of the matter is in the public interest.

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.

S. 12A
inserted by
No. 14/2014
s. 10.

12A Immunity for the alternative dispute resolution function

The Commissioner or another person who performs an alternative dispute resolution function of the Commissioner under this Act or under any other Act is not personally liable for anything necessarily or reasonably done or omitted to be done in good faith—

- (a) in the performance of the function; or
- (b) in the reasonable belief that the act or omission was in the performance of the function.

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.
- (3) Subject to subsection (4), a report submitted to the Minister may include details of a certificate issued under section 6A(1) certifying that a party to a dispute has unreasonably refused to participate in alternative dispute resolution.
- (4) Before the details of the certificate are included in the report, the Commissioner must give written notice to the party specifying—
 - (a) the Commissioner's intention to include the details of the certificate in the report; and
 - (b) that the party may make submissions to the Commissioner within 21 days giving reasons why details of the certificate should not be included in the report.

S. 14(3)
inserted by
No. 14/2014
s. 11.

S. 14(4)
inserted by
No. 14/2014
s. 11.

s. 14

S. 14(5)
inserted by
No. 14/2014
s. 11.

(5) If a party makes any submissions to the Commissioner within 21 days after receiving the notice, the Commissioner must consider those submissions.

S. 14(6)
inserted by
No. 14/2014
s. 11.

(6) If the Commissioner intends to include in a report submitted to the Minister a comment or opinion that is adverse to any person, other than the details of a certificate referred to in subsection (3), the Commissioner must first give the person a reasonable opportunity to respond to the adverse material and fairly set out the response in the report.

S. 14(7)
inserted by
No. 14/2014
s. 11.

(7) The Commissioner must not include in the report any information that would identify any person who is not the subject of any adverse comment or opinion unless the Commissioner—

- (a) is satisfied that it is necessary or desirable to do so in the public interest; and
- (b) is satisfied that it will not cause unreasonable damage to the person's reputation, safety or wellbeing; and
- (c) states in the report that the person is not the subject of any adverse comment or opinion.

Ss 15, 16
repealed by
No. 29/2011
s. 3(Sch. 1
item 87).

* * * * *

ENDNOTES

1. General Information

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"

The **Small Business Commissioner Act 2003** was assented to on 15 April 2003 and came into operation on 1 May 2003: section 2(2).

Small Business Commissioner Act 2003
No. 6 of 2003

Endnotes

2. Table of Amendments

This Version incorporates amendments made to the **Small Business Commissioner Act 2003** by Acts and subordinate instruments.

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 183) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Small Business Commissioner Act 2003**

Statute Law Revision Act 2011, No. 29/2011

Assent Date: 21.6.11
Commencement Date: S. 3(Sch. 1 item 87) on 22.6.11: s. 2(1)
Current State: This information relates only to the provision/s amending the **Small Business Commissioner Act 2003**

Statute Law Revision Act 2012, No. 43/2012

Assent Date: 27.6.12
Commencement Date: S. 3(Sch. item 50) on 28.6.12: s. 2(1)
Current State: This information relates only to the provision/s amending the **Small Business Commissioner Act 2003**

Statute Law Revision Act 2013, No. 70/2013

Assent Date: 19.11.13
Commencement Date: S. 4(Sch. 2 item 47) on 1.12.13: s. 2(1)
Current State: This information relates only to the provision/s amending the **Small Business Commissioner Act 2003**

Small Business Commissioner Amendment Act 2014, No. 14/2014

Assent Date: 18.3.14
Commencement Date: Ss 4–11 on 1.5.14: Special Gazette (No. 136) 29.4.14 p. 1
Current State: All of Act in operation

3. Explanatory Details

No entries at date of publication.