



Small Business Commissioner Act 2022

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Queensland

Small Business Commissioner Act 2022

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Small Business Commissioner Act 2022

An Act to establish the office of small business commissioner and for related purposes

Part 1 Preliminary

1 Short title

This Act may be cited as the *Small Business Commissioner Act 2022*.

2 Commencement

This Act commences on 3 May 2022.

3 Main object

The main object of this Act is to establish the office of small business commissioner to—

- (a) enhance the operating environment for small businesses in Queensland; and
- (b) reduce the time and costs associated with resolving disputes involving small businesses.

4 Interpretation

The dictionary in schedule 1 defines particular words used in this Act.

Part 2 Small business commissioner

Division 1 Establishment

5 Small business commissioner

There is to be a small business commissioner.

6 Functions

The main functions of the commissioner are—

- (a) to provide a central point of contact in relation to matters affecting small businesses; and
- (b) to provide information and advisory services to the public about matters relating to small businesses; and
- (c) to assist parties in reaching an informal resolution for small business disputes, including by facilitating the exchange of information between the parties; and
- (d) to provide alternative dispute resolution services and administer a mediation process for small business disputes; and
- (e) to advocate on behalf of small businesses to—
 - (i) the State, the Commonwealth, another State or a local government; or
 - (ii) any other entity involved in administering a matter relevant to small businesses; and
- (f) to work collaboratively with the equivalent of the commissioner in other States or the Commonwealth to enhance conditions for small businesses; and
- (g) to perform functions conferred on the commissioner under another Act; and

- (h) to carry out other activities to further the objects of this Act, as directed by the Minister.

7 Powers

The commissioner has all the powers necessary for performing the commissioner's functions under this Act or conferred on the commissioner under another Act.

8 Delegation

The commissioner may delegate a power of the commissioner under this Act or another Act to a public service officer who is appropriately qualified to exercise the power delegated.

Division 2 Appointment

9 Appointment

- (1) The commissioner is appointed by the Governor in Council on the recommendation of the Minister.
- (2) The Minister may recommend a person only if the person is appropriately qualified to perform the functions of the commissioner.

10 Term of appointment

- (1) The commissioner holds office for the term, of not more than 5 years, stated in the commissioner's instrument of appointment.
- (2) A person may be re-appointed as commissioner only once for a further term of not more than 5 years.

11 Conditions of appointment

- (1) The commissioner is to be paid the remuneration and allowances decided by the Governor in Council.
- (2) A person holds office as the commissioner on the conditions decided by the Governor in Council.
- (3) The commissioner is appointed under this Act and not the *Public Service Act 2008*.

12 Preservation of rights of commissioner

- (1) This section applies if a person who is a public service officer is appointed as commissioner.
- (2) The person keeps all rights accrued or accruing to the person as a public service officer as if service as the commissioner were a continuation of service as a public service officer.
- (3) At the end of the person's term of office or resignation as commissioner, the person's service as the commissioner is taken to be service of a like nature in the public service for deciding the person's rights as a public service officer.

13 Vacancy in office of commissioner

The office of commissioner becomes vacant if the commissioner—

- (a) resigns under section 14; or
- (b) is removed by the Governor in Council under section 15.

14 Resignation

- (1) The commissioner may resign the commissioner's office by giving the Minister a signed letter of resignation.
- (2) The resignation takes effect when the Minister receives the resignation or, if a later day is stated in the letter, the later day.

15 Removal

- (1) The Governor in Council may remove a person from office as the commissioner if the person—
 - (a) is guilty of misconduct; or
 - (b) is incapable of performing the functions of the commissioner; or
 - (c) has neglected the duties of the commissioner, or performed the duties of the commissioner incompetently.
- (2) This section does not otherwise limit the *Acts Interpretation Act 1954*, section 25.

16 Acting commissioner

The Minister may appoint a person to act in the office of commissioner during—

- (a) a vacancy in the office of commissioner; or
- (b) a period when the commissioner is absent from duty, or can not, for another reason, perform the functions of the office.

Division 3 Role of Minister and reporting requirements

17 Ministerial direction

- (1) The Minister may give the commissioner a written direction about a matter relevant to the performance of the commissioner's functions.
- (2) The commissioner must comply with a direction given under subsection (1).
- (3) The commissioner must include details, in the commissioner's annual report prepared under section 20, of—

- (a) any direction given by the Minister under subsection (1) during the financial year to which the report relates; and
- (b) the actions taken by the commissioner as a result of the direction.

18 Statement of expectations

- (1) The Minister may give the commissioner a written statement (a *statement of expectations*) about the Minister's expectations for the performance of the commissioner's functions.
- (2) Without limiting subsection (1), the statement of expectations may—
 - (a) state a particular period for which the statement applies; and
 - (b) provide for the nature and scope of the commissioner's activities for a particular period.
- (3) The commissioner must have regard to the statement of expectations in performing the commissioner's functions.

19 Reporting to Minister

The commissioner must—

- (a) keep the Minister reasonably informed about the functions performed and activities carried out by the commissioner; and
- (b) comply with a reasonable request by the Minister to give the Minister stated information at a stated time about the functions performed or activities carried out by the commissioner.

20 Annual report

- (1) The commissioner must prepare and give to the Minister, within 3 months after the end of each financial year, an annual

report on the functions performed, and activities carried out, by the commissioner during the financial year.

- (2) The Minister must table a copy of the report in the Legislative Assembly within 14 days after receiving it.

Part 3 Mediation

21 Who may apply

- (1) The parties to a small business dispute may apply for mediation of the dispute under this part only if—

- (a) the parties to the dispute have attempted to resolve the dispute by seeking informal assistance from the commissioner; and
- (b) the dispute is within a mediator's jurisdiction; and

Notes—

- 1 A mediator appointed under the *Retail Shop Leases Act 1994* has jurisdiction to mediate small business disputes under this Act. See the *Retail Shop Leases Act 1994*, sections 96 and 97.
 - 2 This part does not apply to a retail tenancy dispute under the *Retail Shop Leases Act 1994*. Retail tenancy dispute resolution is provided for in part 8 of that Act.
- (c) any requirements prescribed by regulation for this section have been complied with by the parties to the dispute; and
 - (d) all parties to the dispute agree to mediate the dispute under this part.
- (2) Also, an application may be made by the parties to a small business franchise dispute only if the Australian Small Business and Family Enterprise Ombudsman established under the *Australian Small Business and Family Enterprise Ombudsman Act 2015* (Cwlth), section 12 has referred the dispute to the commissioner.

22 Requirements for application

An application for mediation must be—

- (a) in the approved form; and
- (b) signed by each party to the dispute; and
- (c) accompanied by the fee prescribed by regulation.

23 Commissioner to act on application

- (1) As soon as practicable after the application is made, the commissioner must either accept or dismiss the application.
- (2) The commissioner may dismiss the application if the commissioner considers the application—
 - (a) does not relate to a small business dispute; or
 - (b) is frivolous or vexatious; or
 - (c) has not been made in good faith; or
 - (d) has otherwise not been properly made.
- (3) For deciding whether or not a dispute is a small business dispute under subsection (2)(a), the commissioner may, for example, have regard to the following—
 - (a) the number of employees each party employs;
 - (b) the annual turnover of each party to the dispute.
- (4) If the commissioner decides to dismiss the application, the commissioner must give each party an information notice for the decision.
- (5) If the commissioner accepts the application, the commissioner must—
 - (a) nominate a mediator to mediate the small business dispute; and
 - (b) give written notice to the parties to the dispute of—
 - (i) the mediator nominated to mediate the dispute; and

- (ii) the time, date and place of the mediation conference to be conducted by the mediator.
- (6) The date of the mediation conference must be at least 7 days after the notice is given.
- (7) In this section—
- information notice*, for a decision to dismiss an application for mediation, means a written notice stating—
- (a) the decision; and
 - (b) the reasons for the decision; and
 - (c) that the party to whom the notice is given may, within 28 days, have the decision reviewed under section 36; and
 - (d) how the party may apply for the review.

24 Person may apply to be joined as a party

- (1) A person may apply to the commissioner to be joined as a party to a mediation of a small business dispute under this part.
- (2) The application must be—
 - (a) in the approved form; and
 - (b) accompanied by the fee prescribed by regulation.
- (3) The commissioner may join the person as a party to the mediation only with the consent of each of the other parties to the dispute.

25 Limited right of representation

At the mediation conference, each party to the small business dispute—

- (a) must conduct the party's own case; and
- (b) may be represented by an agent approved by the mediator only if—

- (i) the party is a corporation; or
- (ii) the mediator is satisfied an agent should be permitted to represent the party.

26 Conference to be held in private

The mediation conference is not open to the public.

27 Parties attendance at conference not compellable

A party to the small business dispute can not be compelled to attend the mediation conference.

28 Mediator may allow interested person to take part in mediation conference

- (1) The mediator may allow a person to take part in the mediation conference if—
 - (a) the mediator is satisfied the person has an interest in the resolution of the small business dispute; and
 - (b) each of the other parties to the dispute consents.
- (2) However, the person does not become a party to the dispute.

29 Mediation agreements

- (1) This section applies if the parties to the small business dispute reach an agreement about the dispute.
- (2) The agreement (the *mediation agreement*) must be in writing and signed by the parties.

30 Notifying outcome of mediation

The mediator must, as soon as practicable after the mediation ends—

- (a) give each party to the dispute—

- (i) if the parties have entered into a mediation agreement under section 29—a copy of the signed mediation agreement; or
 - (ii) otherwise—a notice about the outcome of the mediation; and
- (b) notify the commissioner of the outcome of the mediation.

31 No official record of mediation conference

- (1) A person must not make an official record of anything said at a mediation conference.

Maximum penalty—40 penalty units.

- (2) However, the mediator may make notes of the mediation conference the mediator considers appropriate.

32 Admissions made during mediation conference

Evidence of anything said in a mediation conference for a small business dispute is not admissible in a proceeding before a court or tribunal.

33 Withdrawal of applications

- (1) A party to a small business dispute may, by written notice given to the commissioner, withdraw the application for mediation.
- (2) The notice may be given before or after a mediator has started mediating the dispute.
- (3) The commissioner must, as soon as practicable after receiving the notice, advise the following persons of the withdrawal—
- (a) all other parties to the dispute;
 - (b) if the commissioner has nominated a mediator for the dispute—the mediator.

34 Exclusion of other jurisdictions

- (1) On and from the making of an application for mediation under section 22, the dispute must not be referred to arbitration or heard by a court or tribunal.
- (2) Subsection (1) does not apply if—
 - (a) the application is withdrawn under section 33; or
 - (b) a proceeding about the matter in dispute was started in a court or tribunal before the application was made; or
 - (c) an application for an order in the nature of an injunction about the matter in dispute is made to a court; or
 - (d) a mediator refuses to mediate the dispute because the mediator is of the opinion the dispute is not within the jurisdiction of the mediator; or
 - (e) the mediator has given a notice about the outcome of the mediation under section 30(a)(ii).
- (3) For subsection (2)(b), a proceeding relating to a lease is taken to have started before a court if the lessor has—
 - (a) served on the lessee a notice under the *Property Law Act 1974*, section 124; or
 - (b) given to the lessee a notice under the *Property Law Act 1974*, section 131.

35 Enforcing mediation agreements

- (1) A party to a small business dispute who enters into a mediation agreement may apply to a court with jurisdiction to hear the dispute for an order enforcing the agreement.
- (2) The court may make any order it considers appropriate in the circumstances.

Part 4 Miscellaneous

36 **Review of decision to dismiss application for mediation**

- (1) This section applies if a party to a small business dispute is given an information notice for a decision by the commissioner to dismiss an application for mediation.
- (2) The party may apply to the chief executive for a review of the decision.
- (3) The application must—
 - (a) be made within 28 days after the information notice was given to the party or, if the chief executive extends the period within which the application must be made, within the extended period; and
 - (b) be in writing; and
 - (c) state the grounds on which the review is sought.
- (4) After reviewing the decision, the chief executive must, within 28 days after receiving the application—
 - (a) confirm the commissioner’s decision; or
 - (b) substitute another decision for the commissioner’s decision.
- (5) The chief executive must give a statement of reasons for the chief executive’s decision under subsection (4) to—
 - (a) each party to the dispute; and
 - (b) the commissioner.

37 **Exchange of information**

- (1) The commissioner may enter into an arrangement (an *information-sharing arrangement*) with a relevant agency for the purposes of sharing or exchanging information—
 - (a) held by the commissioner or relevant agency; or

- (b) to which the commissioner or relevant agency has access.
- (2) An information-sharing arrangement may relate only to information that assists—
 - (a) the commissioner in performing the commissioner’s functions under this Act; or
 - (b) the relevant agency in performing its functions.
- (3) Under an information-sharing arrangement, the commissioner and the relevant agency are, despite another Act or law, authorised to—
 - (a) ask for and receive information held by the other party to the arrangement or to which the other party has access; and
 - (b) disclose information to the other party.
- (4) In this section—

relevant agency means—

 - (a) the chief executive of a department; or
 - (b) a local government; or
 - (c) a person who is the equivalent of the commissioner in another State or the Commonwealth; or
 - (d) an agency of the Commonwealth, or another State, prescribed by regulation; or
 - (e) another entity involved in administering matters relevant to small businesses prescribed by regulation.

38 Confidentiality

- (1) Subsection (2) applies to a person who obtains confidential information in performing a function under this Act.
- (2) The person must not, whether directly or indirectly, disclose the confidential information unless the disclosure is—
 - (a) in the performance of a function under this Act; or

- (b) with the consent of the person to whom the information relates; or
- (c) otherwise required or permitted by law.

Maximum penalty—50 penalty units.

- (3) A party to a small business dispute or another person who obtains confidential information under or as a result of the operation of this Act must not disclose the information unless the disclosure is—
 - (a) to a professional advisor or financier who agrees to keep the information confidential; or
 - (b) with the consent of the person to whom the information relates; or
 - (c) otherwise required or permitted by law.

Maximum penalty—20 penalty units.

- (4) This section does not apply to a mediator.

Note—

For the obligation of mediators to maintain secrecy, see the *Retail Shop Leases Act 1994*, section 113.

- (5) In this section—

confidential information—

- (a) means any information that—
 - (i) could identify a person; or
 - (ii) is about a person’s current financial position or financial background; or
 - (iii) would be likely to damage the commercial activities of a person to whom the information relates; but
- (b) does not include—
 - (i) information that is publicly available; or

- (ii) statistical or other information that could not reasonably be expected to result in the identification of the individual to whom it relates.

39 Review of Act

- (1) The Minister must review the effectiveness of this Act as soon as practicable after the day that is 5 years after the commencement.
- (2) As soon as practicable after finishing the review, the Minister must table a report about its outcome in the Legislative Assembly.

40 Commissioner may approve forms

The commissioner may approve forms for use under this Act.

41 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may be made about—
 - (a) the fees payable under this Act; and
 - (b) the obligations of parties to a small business dispute in relation to the mediation process; and
 - (c) the practices and procedures of the mediation process.
- (3) A regulation may provide for a maximum penalty of not more than 20 penalty units for a contravention of the regulation.

Part 5 Transitional provisions

42 Continuation of appointment of existing small business commissioner

- (1) This section applies if, on the commencement, a person has not been appointed as commissioner under part 2, division 2.
- (2) On the commencement, the person appointed as small business commissioner under the repealed *COVID-19 Emergency Response Act 2020*, part 6 immediately before the commencement is taken to have been appointed as commissioner under part 2, division 2.
- (3) Subject to subsections (4) and (5), the person is to be paid the remuneration and allowances, and is appointed on the same conditions, that applied in relation to the person's appointment immediately before the repeal of the repealed *COVID-19 Emergency Response Act 2020*, part 6.
- (4) The person's appointment as commissioner under this section ends at the start of the term of the commissioner first appointed under this Act after the commencement.
- (5) Also, the person's appointment as commissioner under this section, and the term the person has held office since the person's appointment under the repealed *COVID-19 Emergency Response Act 2020*, part 6 is to be considered for applying section 10(2).

43 Relationship with the Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020

If a small business lease dispute is an affected lease dispute under the *Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020*, that regulation applies in relation to the dispute, and not this Act.

44 Particular proceedings under the Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020

- (1) This section applies in relation to a small business tenancy dispute other than an affected lease dispute, if—
 - (a) before the commencement—a party to the dispute had given a dispute notice to the pre-commencement small business commissioner; and
 - (b) on the commencement—
 - (i) the parties have not entered into a settlement agreement for the dispute; or
 - (ii) for a proceeding in QCAT relating to the dispute—the proceeding has not been withdrawn, or dismissed, struck out or otherwise disposed of by QCAT; or
 - (iii) for a proceeding in a court relating to the dispute—the proceeding has not been withdrawn, or dismissed, struck out or otherwise disposed of by the court.
- (2) The *Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020* continues to apply in relation to the dispute.
- (3) In this section—

affected lease dispute see the *Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020*, schedule 1.

dispute notice see the *Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020*, section 26(1).

pre-commencement small business commissioner means the commissioner appointed under the repealed *COVID-19 Emergency Response Act 2020*, part 6 immediately before the commencement.

settlement agreement see the *Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020*, section 32.

small business tenancy dispute see the *Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020*, schedule 1.

Schedule 1 Dictionary

section 4

commissioner means the small business commissioner appointed under part 2.

mediation means the process under part 3 under which the parties to a small business dispute use a mediator to help them resolve the dispute by negotiated agreement without adjudication.

mediation conference means a conference conducted by a mediator under part 3 between the parties to a small business dispute.

mediation process—

- (a) means the process of mediation of a small business dispute under part 3; and
- (b) includes all steps taken in making arrangements for a mediation conference or in the follow-up of the mediation conference.

mediator means a mediator appointed under the *Retail Shop Leases Act 1994*, part 9, division 1.

small business dispute means a small business lease dispute or small business franchise dispute.

small business franchise dispute means a dispute about a franchise agreement to which the Franchising Code of Conduct set out in the *Competition and Consumer (Industry Codes—Franchising) Regulation 2014* (Cwlth), schedule 1 applies, if the franchisee or franchisor under the agreement carries on a small business.

small business lease means a lease under which the leased premises are to be wholly or predominantly used for carrying on a small business, other than a retail shop lease under the *Retail Shop Leases Act 1994*.

small business lease dispute means a dispute about a small business lease, or about the use or occupation of leased premises under a small business lease, other than a small business franchise dispute.