

Small Business Commissioner Regulation 2022

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, Di Farmer, Minister for Employment and Small Business and Minister for Training and Skills Development provide this human rights certificate with respect to the *Small Business Commissioner Regulation 2022* (the subordinate legislation) made under the *COVID-19 Emergency Response Act 2020*, the *Retail Shop Leases Act 1994* and the *Small Business Commissioner Act 2022*.

In my opinion, the subordinate legislation as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The *Small Business Commissioner Act 2022* (SBC Act) was assented to on 8 April 2022 and will commence on 3 May 2022, and will establish a permanent Small Business Commissioner (Commissioner) in standalone legislation. The SBC Act will establish a voluntary mediation process for small business lease disputes and small business franchise disputes (small business disputes) that will be administered by the Commissioner. The SBC Act will also amend the mediation process in Part 8 of the *Retail Shop Leases Act 1994* (RSL Act) to provide that the Commissioner is to administer the mediation process for retail tenancy disputes.

The primary policy objective of the subordinate legislation is to prescribe a fee for applying for mediation under the respective provisions of the SBC Act and the RSL Act and the ability for this fee to be waived. A further objective of the subordinate legislation is to prescribe certain practices and procedures that will apply to the mediation conferences. The subordinate legislation achieves this by establishing the *Small Business Commissioner Regulation 2022* and amending the *Retail Shop Leases Regulation 2016* to prescribe the following:

- the process by which a party to a dispute may ask the mediator to change the time and date of the mediation conference;
- a power to allow mediators to mediate related disputes on application by the parties;
- the use of technology to conduct mediations if agreed to by the parties and the mediator;
- a fee of 350 fee units, to be paid in equal shares by the parties, for an application for mediation;
- the ability for the Commissioner to waive all or part of the mediation fee payable by a party if the Commissioner is satisfied the payment of the fee would cause, or would be likely to cause, the party financial hardship; and,
- the ability for the Commissioner to waive all or part of the mediation fee for a class of parties, such as parties from an industry sector or geographical region, if the Commissioner is satisfied the waiver will promote access to mediation by the parties during the period. This may be necessary to respond to the effects of, for example, a natural disaster that affects a particular industry or region.

A secondary objective of the subordinate legislation is to amend the *Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020* (Leases Regulation) to sever its mediation process for most small business disputes, other than affected lease disputes, on commencement of the SBC Act. This amendment is necessary as presently, small business tenancy disputes, which includes retail tenancy disputes under the RSL Act and other small business lease disputes, are mediated through the process in Part 3 of the Leases Regulation. However, on commencement of the SBC Act, the mediation process for small business lease disputes and retail tenancy disputes will be dealt with through the respective mediation processes in the SBC Act and RSL Act. Without this amendment, duplicative mediation processes would exist.

The subordinate legislation achieves its secondary objective, in part, by amending section 21 in the Leases Regulation. The amended section 21 prescribes that on and from the commencement of the SBC Act, the Leases Regulation no longer provides the mediation process for small business disputes for which an application may be made under the SBC Act, part 3, or retail tenancy disputes under the RSL Act. It also achieves this secondary objective by omitting section 24 of the Leases Regulation. The mediation process for affected lease disputes will continue to be contained in the Leases Regulation and administered by the Commissioner.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The subordinate legislation has been considered with regards to the *Human Rights Act 2019* and it has been determined that no human rights have been engaged by the subordinate legislation.

Conclusion

I consider that the *Small Business Commissioner Regulation 2022* is compatible with the *Human Rights Act 2019* because it does not limit a human right.

DI FARMER MP
MINISTER FOR EMPLOYMENT AND SMALL BUSINESS
MINISTER FOR TRAINING AND SKILLS DEVELOPMENT

© The State of Queensland 2022