

South Australia

Small Business Commission Act 2011

An Act to establish the Small Business Commission, to provide for the functions and powers of the Commission, and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Small Business Commission Act 2011*.

3—Interpretation

In this Act, unless the contrary intention appears—

alternative dispute resolution includes mediation, but does not include arbitration or expert determination;

Commission means the Small Business Commission established under section 3A;

Commissioner means the person holding or acting in the office of the Small Business Commissioner;

Deputy means the Deputy Small Business Commissioner;

government agency means any of the following:

- (a) a person who holds an office established by an Act;
- (b) an administrative unit;
- (c) a council established under the *Local Government Act 1999*;
- (d) any incorporated or unincorporated body—
 - (i) established for a public purpose by an Act; or
 - (ii) established for a public purpose under an Act (other than an Act providing for the incorporation of companies or associations, co-operatives, societies or other voluntary organisations); or
 - (iii) established or subject to control or direction by the Governor, a Minister of the Crown or any instrumentality or agency of the Crown or a council (whether or not established by or under an Act); or
- (e) an entity prescribed by the regulations to be a government agency to which this Act applies,

but does not include an entity excluded from the ambit of this definition by the regulations;

industry code has the same meaning as in Part 3A of the *Fair Trading Act 1987* and includes a code whether or not prescribed for the purposes of that Act or any other Act of the State or the Commonwealth.

Part 2—Small Business Commission

3A—Establishment of Commission

- (1) The *Small Business Commission* is established.
- (2) The Commission is to be constituted by the Commissioner, and is an agency of the Crown.

4—Small Business Commissioner

- (1) There will be a Small Business Commissioner.
- (2) The Commissioner will be appointed by the Governor.

4A—Objects of Commission

The objects of the Commission are to—

- (a) deal with issues concerning the small business sector in an independent manner; and
- (b) promote a fair operating environment in which small businesses can thrive; and
- (c) provide small businesses with general advice and assistance; and
- (d) facilitate the timely and cost-effective resolution of disputes involving small businesses through appropriate forms of alternative dispute resolution.

5—Functions of Commission

- (1) The functions of the Commission are to—
 - (a) facilitate the resolution of disputes involving small businesses through alternative dispute resolution; and
 - (b) support small business owners in their dealings with other businesses or government agencies through the provision of general advice and assistance; and
 - (c) collaborate with industry associations on matters impacting small businesses to ensure that optimal outcomes are achieved; and
 - (d) identify issues and trends in the small business sector, and where appropriate, provide recommendations to the Minister or government agencies; and
 - (e) make representations or take any action on behalf of small businesses, either on the Commission's own initiative or at the request of a small business; and

- (f) administer Part 3A (Industry codes) of the *Fair Trading Act 1987* and the Australian Consumer Law (SA) to the extent that responsibility for that administration is assigned to the Commission under the *Fair Trading Act 1987*; and
 - (g) administer Part 3B (Regulation of motor vehicle insurers and repairers) of the *Fair Trading Act 1987* to the extent that responsibility for that administration is assigned to the Commission under that Act; and
 - (h) monitor, investigate and advise the Minister about—
 - (i) non-compliance with industry codes that may adversely affect small businesses; and
 - (ii) non-compliance with an applicable industry code of conduct declared under section 28I of the *Fair Trading Act 1987* that may adversely affect small businesses; and
 - (iii) market practices that may adversely affect small businesses; and
 - (i) report to the Minister on any aspect of the Commission's functions at the request of the Minister or on the Commission's own initiative; and
 - (j) take any other action considered appropriate by the Commission for the purpose of facilitating and encouraging the fair treatment of small businesses; and
 - (k) perform any other functions conferred on the Commission by or under this or any other Act.
- (2) The Commission is to perform the functions with a view to the development and maintenance in South Australia of relationships between small businesses and other businesses, and small businesses and State and local government bodies, that are based on dealings conducted fairly and in good faith.
- (3) The Commission has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

6—Ministerial direction

- (1) Subject to this section, the Minister may give directions to the Commission.
- (2) The Minister—
 - (a) may not give a direction in relation to the investigation, mediation or resolution of a particular complaint or dispute; and
 - (b) must consult with the Commission before giving a direction.
- (3) A Ministerial direction to the Commission—
 - (a) must be communicated to the Commission in writing; and
 - (b) must be included in the annual report of the Commission under the *Public Sector Act 2009*.

7—Terms and conditions of appointment of Commissioner

- (1) The Commissioner will be appointed for a term not exceeding 5 years and on conditions determined by the Governor and, at the end of a term of appointment, will be eligible for reappointment.

- (2) The appointment of the Commissioner may be terminated by the Governor on the ground that the Commissioner—
 - (a) has been guilty of misconduct; or
 - (b) has been convicted of an offence punishable by imprisonment; or
 - (c) has become bankrupt or has applied to take the benefit of a law for the relief of insolvent debtors; or
 - (d) has been disqualified from managing corporations under Chapter 2D Part 2D.6 of the *Corporations Act 2001* of the Commonwealth; or
 - (e) has, because of mental or physical incapacity, failed to carry out duties of the position satisfactorily; or
 - (f) is incompetent or has neglected the duties of the position.
- (3) The appointment of the Commissioner is terminated if the Commissioner—
 - (a) becomes a member, or a candidate for election as a member, of the Parliament of a State or the Commonwealth or a Legislative Assembly of a Territory of the Commonwealth; or
 - (b) is sentenced to imprisonment for an offence.
- (4) The Commissioner may resign by notice in writing to the Minister of not less than 3 months (or such shorter period as is accepted by the Minister).

8—Deputy and Acting Commissioner

- (1) The Minister may appoint a person (who may be a Public Service employee) to be the Deputy Small Business Commissioner.
- (2) The Deputy may—
 - (a) act as the Commissioner during any period for which—
 - (i) no person is for the time being appointed as the Commissioner; or
 - (ii) the Commissioner is absent from, or unable to discharge, official duties; and
 - (b) when not so acting, perform functions or exercise powers of the Commission by delegation from the Commission.
- (3) The Minister may appoint a person (who may be a Public Service employee) to act as the Commissioner during any period for which—
 - (a) no person is for the time being appointed as the Commissioner or the Commissioner is absent from, or unable to discharge, official duties; and
 - (b) no person is for the time being appointed as the Deputy or the Deputy is absent from, or unable to discharge, official duties.
- (4) The terms and conditions of appointment of the Deputy or other person appointed to act as the Commissioner will be determined by the Minister.

8A—Functions of Commissioner

- (1) The Commissioner has all the functions and powers of the Commission.

- (2) All acts and things done by the Commissioner in the name of or on behalf of the Commission are taken to have been done by the Commission.

9—Honesty and accountability

The Commissioner, the Deputy and any other person appointed to act as the Commissioner are senior officials for the purposes of the *Public Sector (Honesty and Accountability) Act 1995*.

10—Staff etc

- (1) The Commission's staff consists of—
- (a1) the Deputy and any acting Commissioner appointed under section 8; and
 - (a) Public Service employees assigned to assist the Commission; and
 - (b) persons employed by the Commission, with the consent of the Minister and on terms and conditions determined by the Minister, to assist the Commission.
- (2) The Commissioner may, under an arrangement established by the Minister administering an administrative unit of the Public Service, make use of the services or staff of that administrative unit.

11—Delegation

- (1) The Commission may delegate to a person (including a person for the time being performing particular duties or holding or acting in a particular position) a function or power under this or any other Act (except a prescribed function or power).
- (3) A delegation—
- (a) must be by instrument in writing; and
 - (b) may be absolute or conditional; and
 - (c) does not derogate from the power of the delegator to act in a matter; and
 - (d) is revocable at will.
- (4) A delegated function or power may, if the instrument of delegation so provides, be further delegated in accordance with that instrument.

12—Power to require information

- (1) The Commission may, by written notice served personally or by post or email, require a person to give the Commission, within a reasonable time specified in the notice, information in the person's possession that the Commission requires for the performance of the Commission's functions under this Act.
- (2) A person required to give information under this section must provide the information within the time stated in the notice.
- Maximum penalty: \$20 000.
Expiation fee: \$1 200.
- (3) A person cannot be compelled to give information under this section if the information might tend to incriminate the person of an offence or is privileged on the ground of legal professional privilege.

Part 3—Dispute resolution

Division 1—Preliminary

12A—Interpretation

In this Part—

designated alternative dispute resolution process—see section 12D(1).

Division 2—General

12B—Alternative dispute resolution

- (1) A person may apply to the Commission for alternative dispute resolution of a dispute involving a small business.
- (2) In the performance of its functions relating to the resolution of disputes through alternative dispute resolution, the Commission may determine the form of alternative dispute resolution to be used.
- (3) The Commission may charge fees and expenses for performing its alternative dispute resolution functions.

12C—Commission may refuse to deal with dispute

In the performance of its functions relating to the resolution of disputes, the Commission may refuse to deal with a dispute for any of the following reasons:

- (a) the dispute does not involve a small business;
- (b) the dispute is, in the opinion of the Commission, trivial, vexatious or does not arise or has not been made in good faith;
- (c) the dispute is unlikely to be resolved through alternative dispute resolution;
- (d) the dispute is the subject of proceedings before a court;
- (e) there is another government agency or person that the Commission is satisfied is better suited to deal with the dispute;
- (f) any other reason determined by the Commission.

Division 3—Designated alternative dispute resolution

12D—Notice of designated alternative dispute resolution

- (1) In the performance of its functions relating to the resolution of disputes through alternative dispute resolution, the Commission may determine that a dispute will be dealt with through alternative dispute resolution under this Division (a *designated alternative dispute resolution process*).
- (2) If the Commission makes a determination under subsection (1), the Commission must give each party to the dispute written notice of the determination.

- (3) A party may, by notice given to the Commission within 10 business days of receiving a notice under subsection (2), refuse to participate in the designated alternative dispute resolution process.
- (4) If the Commission receives a notice under subsection (3), the Commission must, by notice given to each party to the dispute within 3 business days of receipt of the notice, determine—
 - (a) to discontinue the designated alternative dispute resolution process; or
 - (b) to proceed with the designated alternative dispute resolution process.

12E—Commission may require attendance at alternative dispute resolution processes and production of documents

- (1) For the purposes of a designated alternative dispute resolution process conducted under this Act, the Commission may, subject to this section, require any person by notice in writing—
 - (a) to attend a meeting at a time and place specified in the notice; or
 - (b) to produce, at a time and place specified in the notice, to the Commission any document or thing described in the notice that is in the custody or under the control of the person, and that the Commission determines would benefit the resolution of the dispute.
- (2) Subsection (1)(b) does not apply to documents or things that—
 - (a) are subject to legal professional privilege; or
 - (b) contain commercial information of a confidential nature; or
 - (c) are subject to a confidentiality requirement under any other Act or law.
- (3) A person who, without reasonable excuse, refuses or fails to comply with a requirement in a notice under this section is guilty of an offence.

Maximum penalty: \$20 000.

Expiation fee: \$1 200.

12F—Statements made during alternative dispute resolution

Evidence of admissions or statements made in the course of designated alternative dispute resolution processes under this Act is not admissible in evidence before a court.

12G—Power to issue certificates

- (1) The Commission must certify the outcome of a designated alternative dispute resolution process within 21 business days of the day on which the Commission gave written notice of its determination under section 12D(2), or, in exceptional circumstances, such longer period as the Commission determines.
- (2) A certificate issued under subsection (1) must include the names of the parties to the dispute and the nature of the dispute.
- (3) A certificate issued under subsection (1) must certify—
 - (a) whether or not the dispute was resolved; and

- (b) if relevant, whether 1 or more of the parties to the dispute refused or failed to attend a meeting in accordance with a notice issued under section 12E(1) and the reasons (if any) for that refusal or failure.
- (4) A certificate issued under subsection (1) may be admitted in evidence in proceedings before a court or tribunal.

Division 4—Enforcement

12H—Result of alternative dispute resolution may be enforced

- (1) If an agreement reached as a result of alternative dispute resolution is recorded in a written instrument and signed by both the Commission and the parties to the agreement, then—
 - (a) a copy of the instrument must be given to each party; and
 - (b) in the event that a party to the agreement fails to carry out the party's obligations under the agreement—the other party may apply to the Magistrates Court for an order enforcing the terms of the agreement.
- (2) An application to the Magistrates Court under subsection (1) is a minor statutory proceeding for the purposes of paragraph (c) of the definition of *minor statutory proceeding* in section 3(1) of the *Magistrates Court Act 1991*.

Part 4—Miscellaneous

13—Confidentiality

- (1) A person must not divulge or communicate personal information, information relating to trade secrets or business processes or financial information acquired by reason of being, or having been, employed or engaged in, or in connection with, the administration of this Act, except—
 - (a) with the consent of the person to whom the information relates; or
 - (b) as authorised by the Commission or the person's employer; or
 - (c) in connection with the administration of this Act; or
 - (d) to a police officer or a member of the police force of another State, a Territory of the Commonwealth or the Commonwealth; or
 - (e) to a person concerned in the administration of another law of the State, or a law of another State, a Territory of the Commonwealth or the Commonwealth, relating to trade or commercial practices or the protection of consumers; or
 - (f) for the purposes of legal proceedings.

Maximum penalty: \$20 000.

- (2) Information that has been disclosed under this section for a particular purpose must not be used for any other purpose by—
 - (a) the person to whom the information was disclosed; or

- (b) any other person who gains access to the information (whether properly or improperly and whether directly or indirectly) as a result of that disclosure.

Maximum penalty: \$20 000.

14—Regulations

- (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may fix fees in respect of measures designed to resolve a complaint taken by the Commission and provide for their payment, recovery or waiver.

Schedule 1—Transitional provisions

Part 4—Transitional provisions

37—Provisions relating to Fair Trading Act

- (1) A person holding office as an authorised officer under section 7 of the *Fair Trading Act 1987* immediately before the commencement of this clause will continue to hold office as an authorised officer as if the person had been appointed by the Minister responsible for the administration of that Act under section 76 of that Act as amended by this Act.
- (2) A code of practice prescribed by the regulations under the *Fair Trading Act 1987* as in force immediately before the commencement of this clause will be taken to have been prescribed as an industry code under Part 3A of that Act as amended by this Act and the Commissioner for Consumer Affairs will be taken to have been declared to be responsible for the administration of the code.

Legislative history

Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Formerly

Small Business Commissioner Act 2011

Legislation amended by principal Act

The *Small Business Commission Act 2011* amended the following:

Fair Trading Act 1987

Retail and Commercial Leases Act 1995

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2011	41	<i>Small Business Commissioner Act 2011</i>	10.11.2011	22.3.2012 (<i>Gazette 15.3.2012 p992</i>)
2021	50	<i>Fair Trading (Motor Vehicle Insurers and Repairers) Amendment Act 2021</i>	9.12.2021	Sch 1 (cl 1)—28.2.2023 (<i>Gazette 23.2.2023 p405</i>)
2024	65	<i>Statutes Amendment (Small Business Commission and Retail and Commercial Leases) Act 2024</i>	5.12.2024	Pt 2 (ss 3 to 22) & Sch 1—1.7.2025 (<i>Gazette 19.6.2025 p1865</i>)

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	28.2.2023
	substituted by 65/2024 s 3	1.7.2025
Pt 1		
heading	inserted by 65/2024 s 4	1.7.2025
s 1	amended by 65/2024 s 5	1.7.2025

Small Business Commission Act 2011—1.7.2025

Legislative history

s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	28.2.2023
s 3		
alternative dispute resolution	inserted by 65/2024 s 6(1)	1.7.2025
Commission	inserted by 65/2024 s 6(1)	1.7.2025
government agency	inserted by 65/2024 s 6(2)	1.7.2025
Pt 2		
heading	inserted by 65/2024 s 7	1.7.2025
s 3A	inserted by 65/2024 s 8	1.7.2025
s 4		
s 4(2)	amended by 65/2024 s 9	1.7.2025
s 4A	inserted by 65/2024 s 10	1.7.2025
s 5		
heading	amended by 65/2024 s 11(1)	1.7.2025
s 5(1)	amended by 50/2021 Sch 1 cl 1(1), (2) substituted by 65/2024 s 11(2)	28.2.2023 1.7.2025
s 5(2)	amended by 65/2024 s 11(3)	1.7.2025
s 5(3)	inserted by 65/2024 s 11(4)	1.7.2025
s 6		
s 6(1)—(3)	amended by 65/2024 s 12	1.7.2025
s 7		
heading	amended by 65/2024 s 13	1.7.2025
s 8		
s 8(2)	amended by 65/2024 s 14	1.7.2025
s 8A	inserted by 65/2024 s 15	1.7.2025
s 10		
s 10(1)	amended by 65/2024 s 16(1)—(3)	1.7.2025
s 11		
s 11(1)	amended by 65/2024 s 17(1)	1.7.2025
s 11(2)	<i>deleted by 65/2024 s 17(2)</i>	<i>1.7.2025</i>
s 12		
s 12(1)	amended by 65/2024 s 18(1)—(3)	1.7.2025
s 12(2)	amended by 65/2024 s 18(4)	1.7.2025
Pt 3	inserted by 65/2024 s 19	1.7.2025
Pt 4		
heading	inserted by 65/2024 s 20	1.7.2025
s 13		
s 13(1)	amended by 65/2024 s 21	1.7.2025
s 14		
s 14(2)	amended by 65/2024 s 22	1.7.2025
Sch 1		

Pts 1—3

*omitted under Legislation Revision and
Publication Act 2002*

28.2.2023

Transitional etc provisions associated with Act or amendments

Statutes Amendment (Small Business Commission and Retail and Commercial Leases) Act 2024, Sch 1

1—Transitional provision

A reference in an instrument under an Act, or any other document or instrument, to the Small Business Commissioner will, unless the context otherwise requires, be taken to be a reference to the Small Business Commission.

Historical versions

28.2.2023