

# Small Business Commissioner Bill 2021

## Explanatory Notes

### FOR

## Amendments to be moved during consideration in detail by the Honourable Di Farmer MP

### Title of Bill

Small Business Commissioner Bill 2021

### Objectives of the amendments

The Small Business Commissioner Bill 2021 (SBC Bill) was introduced into the Legislative Assembly on 12 October 2021 and proposes to establish a permanent Small Business Commissioner (Commissioner) in standalone legislation. The SBC Bill was referred to the Education, Employment and Training Committee (the Committee) for inquiry.

The first objective of the amendments is to amend Clause 2 of the SBC Bill, which provides that the Act is to commence on 1 March 2022. The SBC Bill was anticipated to be debated in the final sitting week of 2021. However, as the debate of the SBC Bill did not occur in that sitting week there is now insufficient time for the SBC Bill to receive assent before its 1 March 2022 commencement date or for the proposed supporting regulation to be lodged or considered by Executive Council with sufficient time to align with the SBC Bill's commencement. Accordingly, the first objective of the amendments is to amend the SBC Bill's commence date to 3 May 2022 to ensure there's sufficient time for assent to occur before commencement and to ensure the supporting regulation's commencement can align with the SBC Bill.

The second objective of the amendments is to correct an error identified with Clause 21(2) of the SBC Bill. Under Clause 21(2) of the SBC Bill, parties can only apply for mediation through the Commissioner for a small business franchise dispute if the Australian Small Business and Family Enterprise Ombudsman (ASFBEO) has referred the dispute to the Commissioner under section 15(a) of the *Australian Small Business and Family Enterprise Ombudsman Act 2015* (Cwlth) (AFBEO Act). This requirement is in addition to the other eligibility criteria in Clause 21(1).

As part of further review of the SBC Bill in light of the public submissions received by the Committee, it was identified that the referral reference in Clause 21(2) of the SBC Bill to section 15(a) of the AFBEO Act is incorrect. Specifically, that section 15(a) only relates to

the referral of a ‘relevant action’, which does not include a franchise dispute. ASFBE0 does not rely on a particular legislative power to refer franchise matters to other agencies, but instead do so administratively. The Bill requires amendment to reflect the correct process.

## **Achievement of the objectives**

The amendment achieves its first objective by amending Clause 2 of the SBC Bill to provide that the Act commences on 3 May 2022.

The amendment achieves its second objective by amending Clause 21(2) of the SBC Bill to remove reference to section 15(a) of the ASFBE0 Act.

## **Alternative ways of achieving objectives**

There are no alternative ways for achieving the objective of the amendments.

## **Estimated cost for government implementation**

There is no additional implementation cost to Government. The amendments are minor and technical in nature and do not change the policy intent or implementation of the SBC Bill.

## **Consistency with fundamental legislative principles**

The amendments have been drafted with regard to, and are consistent with, the fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*.

## **Consultation**

The Department of Employment, Small Business and Training consulted with ASFBE0 during the development of the SBC Bill and after identifying the legislative reference in Clause 21(2). ASFBE0 clarified the referral process and informed this amendment.

## **Consistency with legislation of other jurisdictions**

The Bill is specific to the State of Queensland and is not uniform with or complementary to the legislation of the Commonwealth or another state. Accordingly, while other jurisdictions accept franchise dispute referrals from ASFBE0, there is no consistent approach across jurisdictions as to how this is achieved, or the approach taken in legislation.

## **Notes on provisions**

*Amendment 1* amends clause 2 of the SBC Bill to provide that the Act commences on 3 May 2022.

*Amendment 2* amends Clause 21(2) of the SBC Bill to remove the reference to section 15(a) of the ASFBE0 Act. This amendment reflects that ASFBE0 will refer small business franchise disputes to the Commissioner administratively and not through a head of power in its Act.