

Small Business and Retail Shop Legislation Amendment Bill 2011

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Western Australia

LEGISLATIVE ASSEMBLY

**Small Business and Retail Shop Legislation
Amendment Bill 2011**

A Bill for

An Act to amend the *Small Business Development Corporation Act 1983* and the *Commercial Tenancy (Retail Shops) Agreements Act 1985*.

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Small Business and Retail Shop Legislation Amendment Act 2011*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

1 **Part 2 — *Small Business Development Corporation***
2 ***Act 1983* amended**

3 **3. Act amended**

4 This Part amends the *Small Business Development Corporation*
5 *Act 1983*.

6 **4. Long title replaced**

7 Delete the long title and insert:

8
9 **An Act to provide for the following —**

- 10 • **the establishment of a Small Business Development**
11 **Corporation and Small Business Commissioner;**
12 • **to encourage, promote, facilitate and assist the**
13 **establishment, development and carrying on of small**
14 **business in the State;**
15 • **to enhance a competitive and fair operating**
16 **environment for small business in the State;**
17 • **to provide alternative dispute resolution services in**
18 **respect of small business disputes and disputes referred**
19 **under any other Act;**
20 • **related matters.**
21

22 **5. Part 1 heading inserted**

23 Before section 1 insert:
24

25 **Part 1 — Preliminary**
26

27 **6. Section 3 amended**

- 28 (1) In section 3(1) delete the definitions of:
29 *appointed member*

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Chairman
Managing Director

(2) In section 3(1) insert in alphabetical order:

appointed member means a person appointed under section 5(2B)(a) as a member of the board;

board means the board of management provided for under section 5;

chairperson means the person appointed under section 5(2B)(b) to be the chairperson of the board;

Commissioner means the Small Business Commissioner referred to in section 13;

public sector body has the meaning given in the *Public Sector Management Act 1994* section 3(1);

(3) In section 3(1) in the definition of **member** delete “Corporation” and insert:

board

7. Part 2 heading inserted

Before section 4 insert:

Part 2 — Small Business Development Corporation

1 **8. Section 5A inserted**

2 After section 4 insert:

3

4 **5A. Use of trading names for Corporation**

5 (1) The Corporation may use and operate under one or
6 more trading names approved by the Minister.

7 (2) The use of a trading name does not prevent or affect
8 any proceedings being taken by or against the
9 Corporation in its corporate name.

10

11 **9. Section 5 amended**

12 (1) Delete section 5(1) and (1a) and insert:

13

14 (1A) In this section —

15 *metropolitan region* has the meaning given in the
16 *Planning and Development Act 2005* section 4(1).

17 (1) The Corporation is to have a board of management
18 consisting of —

19 (a) 2 members who represent small business in the
20 areas of the State outside the metropolitan
21 region;

22 (b) 5 members who represent small business in the
23 metropolitan region;

24 (c) the Commissioner ex officio.

25 (2A) The board is the governing body of the Corporation
26 and, in the name of the Corporation, is to perform the
27 functions of the Corporation.

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- 1 (2B) The Minister is to —
- 2 (a) appoint the members of the board referred to in
- 3 subsection (1)(a) and (b); and
- 4 (b) appoint one of those members to be the
- 5 chairperson of the board.
- 6
- 7 (2) In section 5(5)(c) delete “Corporation” and insert:
- 8
- 9 board
- 10
- 11 Note: The heading to amended section 5 is to read:
- 12 **Board of management**
- 13 **10. Section 6 amended**
- 14 (1) In section 6(2):
- 15 (a) delete “Chairman” (each occurrence) and insert:
- 16
- 17 chairperson
- 18
- 19 (b) delete “Chairman.” and insert:
- 20
- 21 chairperson.
- 22
- 23 (2) Delete section 6(3) and insert:
- 24
- 25 (3) The Commissioner may nominate a person employed
- 26 or engaged by the Corporation to represent the
- 27 Commissioner at any meeting of the board that the
- 28 Commissioner is unable to attend, and while nominated
- 29 the person has the functions, powers and duties as a
- 30 member, of the Commissioner.

1 (4A) The nomination must be in writing delivered to the
2 chairperson.
3

4 (3) In section 6(4):

5 (a) delete “Chairman,” and insert:

6

7 chairperson,

8

9 (b) delete “Managing Director,” and insert:

10

11 Commissioner,
12

12

13 **11. Section 8 amended**

14 (1) In section 8(1) and (2) delete “Corporation” (each occurrence)
15 and insert:

16

17 board
18

18

19 (2) In section 8(3):

20 (a) delete “Corporation the Chairman,” and insert:

21

22 board the chairperson,
23

23

24 (b) delete “Chairman,” (second occurrence) and insert:

25

26 chairperson,
27

27

28 (c) delete “corporation” and insert:

29

30 board
31

31

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1 (3) In section 8(4) delete “Corporation —” and insert:

2

3 board —

4

5 (4) In section 8(5) and (6) delete “Corporation” and insert:

6

7 board

8

9 Note: The heading to amended section 8 is to read:

10

Proceedings of board

11

12. Section 9 amended

12

In section 9 delete “Corporation” and insert:

13

14 board

15

16

13. Section 10 deleted

17

Delete section 10.

18

14. Section 11 amended

19

(1) In section 11(1) delete “the administer” and insert:

20

21 administer

22

23

(2) In section 11(2):

24

(a) delete “functions of the Corporation are —” and insert:

25

26

Corporation has the following functions —

27

- 1 (b) in paragraph (b) delete “business;” and insert:
2
3 business or the operation of this Act;
4
- 5 (c) delete paragraph (e) and insert:
6
- 7 (e) to provide operational funding, grants and
8 financial assistance to non-government
9 organisations working with, or on behalf of,
10 small business in accordance with the
11 guidelines referred to in subsection (4);
- 12 (fa) to investigate, and report to the Minister on, the
13 impact on small business of legislation and
14 government policy of this jurisdiction, the
15 Commonwealth or any other State or Territory;
- 16 (fb) to investigate, and report to the Minister on, the
17 actions of public sector bodies that affect the
18 commercial activities of small businesses;
- 19 (fc) to assist public sector bodies —
20 (i) to develop legislation, policies and
21 administrative procedures that take into
22 account the interests of small business;
23 and
24 (ii) to improve the capacity of small
25 business to comply with legislative and
26 other requirements; and
27 (iii) to simplify and minimise small business
28 compliance requirements;
- 29 (fd) to facilitate and encourage the fair treatment of
30 small businesses in their commercial dealings
31 with other businesses in the marketplace;

s. 14

- 1 (fe) to investigate, and report to the Minister on,
2 emerging trends in market practice that have an
3 adverse effect on small business;
4
- 5 (d) after paragraph (g) insert:
6
- 7 (ha) to promote informed decision making by small
8 businesses;
9 (hb) to assist small businesses to operate in ways
10 that minimise disputes with other businesses;
11
- 12 (e) delete paragraphs (l) and (m).
- 13 (3) In section 11(3):
14 (a) in paragraph (b) delete “facilities; and” and insert:
15
16 facilities.
17
- 18 (b) delete paragraph (c);
19 (c) after paragraph (a) insert:
20
21 and
22
- 23 (4) Delete section 11(4) and insert:
24
- 25 (4) The Corporation must develop guidelines with respect
26 to the provision of operational funding, grants and
27 financial assistance to non-government organisations.
28

1 **15. Section 11A amended**

2 In section 11A(2):

3 (a) delete paragraph (a) and insert:

4

5 (a) the Commissioner; or

6

7 (b) delete paragraphs (c) and (d) and insert:

8

9 (c) a person employed or engaged by the
10 Corporation; or

11

12 (c) after paragraph (b) insert:

13

14 or

15

16 **16. Sections 11B, 11C, 13 and 14 deleted and Part 3 inserted**

17 Delete sections 11B, 11C, 13 and 14 and insert:

18

19 **Part 3 — Small Business Commissioner**

20 **Division 1 — Small Business Commissioner**

21 **13. Small Business Commissioner**

22 The chief executive officer of the Corporation
23 appointed under the *Public Sector Management*
24 *Act 1994* Part 3 is the Small Business Commissioner.

25 **14A. Functions**

26 The Commissioner has the following functions —

27 (a) to administer the day-to-day operations of the
28 Corporation;

s. 16

- 1 (b) to receive and investigate complaints about
2 unfair market practices affecting small business
3 and provide assistance to attempt to resolve
4 those complaints;
- 5 (c) to receive and investigate complaints by small
6 businesses about the actions of public sector
7 bodies that affect the commercial activities of
8 small business;
- 9 (d) to provide alternative dispute resolution
10 services for small businesses;
- 11 (e) to make representations to another person or
12 body on behalf of a small business that has
13 made a complaint;
- 14 (f) to perform functions conferred on the
15 Commissioner under any other Act;
- 16 (g) to advise the Minister on any matter related to
17 the functions of the Commissioner referred to
18 in paragraphs (b) to (f).

19 **14B. Powers**

20 The Commissioner has all the powers the
21 Commissioner needs to perform the functions of the
22 Commissioner under this Act or any other Act
23 including the power to raise fees or charges with
24 respect to the provision of services or the performance
25 of any work by, or on behalf of, the Commissioner.

26 **14C. Delegation**

- 27 (1) The Commissioner may delegate any power or duty of
28 the Commissioner under another provision of this Act
29 or under any other Act to a person employed or
30 engaged by the Corporation.
- 31 (2) The delegation must be in writing signed by the
32 Commissioner.

- 1 (3) A person to whom a power or duty is delegated under
2 this section cannot delegate that power or duty.
- 3 (4) A person exercising or performing a power or duty that
4 has been delegated to the person under this section is to
5 be taken to do so in accordance with the terms of the
6 delegation unless the contrary is shown.
- 7 (5) Nothing in this section limits the ability of the
8 Commissioner to perform a function through an agent.

9 **14. Accountability under this Part**

10 Any acts or things done under this Part are to be
11 regarded as —

- 12 (a) services under the control of the Corporation
13 for the purposes of the *Financial Management*
14 *Act 2006* section 52; and
- 15 (b) operations of the Corporation for the purposes
16 of Part 5 of that Act.

17 **Division 2 — Dispute resolution**

18 **Subdivision 1 — Preliminary**

19 **15A. Terms used**

20 In this Division —

21 *alternative dispute resolution* means —

- 22 (a) conciliation; or
23 (b) mediation; or
24 (c) another form of dispute resolution that, in the
25 opinion of the Commissioner, is appropriate to
26 assist in the resolution of a dispute;

27 *facilitator* means a person appointed under
28 section 15E(3) to conduct an alternative dispute
29 resolution proceeding;

s. 16

- 1 *small business dispute* means a dispute about —
- 2 (a) an unfair market practice that affects a small
- 3 business; or
- 4 (b) the actions of a public sector body that affects
- 5 the commercial activities of a small business.

6 **Subdivision 2 — Requests to provide assistance**

7 **15B. Request to provide assistance in dispute affecting**

8 **small business**

9 An owner or operator of a business may request the

10 Commissioner to provide assistance in respect of a

11 small business dispute.

12 **15C. Providing assistance**

- 13 (1) In this section —
- 14 *request to provide assistance* means —
- 15 (a) a request made under section 15B; or
- 16 (b) a request for the Commissioner to provide
- 17 assistance in respect of a dispute or matter
- 18 made under any other Act.
- 19 (2) On a request to provide assistance the Commissioner
- 20 may provide such assistance to attempt to resolve the
- 21 dispute or matter as the Commissioner considers is
- 22 appropriate.

23 **Subdivision 3 — Alternative dispute resolution**

24 **15D. Request to undertake alternative dispute resolution**

25 **in small business dispute**

26 The parties to a small business dispute may request the

27 Commissioner to undertake alternative dispute

28 resolution in respect of the dispute.

1 **15E. Undertaking alternative dispute resolution**

2 (1) In this section —

3 *request to undertake alternative dispute resolution*
4 means —

- 5 (a) a request made under section 15D; or
6 (b) a request for the Commissioner to undertake
7 alternative dispute resolution made under any
8 other Act.

9 (2) On a request to undertake alternative dispute resolution
10 in respect of a dispute the Commissioner must decide
11 whether, and to what extent —

- 12 (a) the parties should seek further advice or
13 assistance before an alternative dispute
14 resolution proceeding in respect of the dispute
15 is commenced; or
16 (b) to commence an alternative dispute resolution
17 proceeding in respect of the dispute; or
18 (c) to refuse to undertake alternative dispute
19 resolution.

20 (3) If the Commissioner decides to commence an
21 alternative dispute resolution proceeding under
22 subsection (2)(b), the Commissioner may appoint a
23 person with appropriate skills and experience to
24 conduct the proceeding.

25 **15F. Joining parties to alternative dispute resolution**
26 **proceeding**

27 The Commissioner may join a person as a party to an
28 alternative dispute resolution proceeding if —

- 29 (a) the Commissioner considers that the person has
30 an interest in the matter that is the subject of the
31 proceeding; and
32 (b) the person consents to being joined.

- 1 **15G. Costs of alternative dispute resolution proceeding**
- 2 (1) The costs of an alternative dispute resolution
3 proceeding, including the fees and expenses of the
4 facilitator, are to be determined by the Commissioner.
- 5 (2) The costs of an alternative dispute resolution
6 proceeding are to be paid by the parties in equal shares
7 or, with the approval of the Commissioner, as
8 otherwise agreed by the parties.
- 9 (3) Any costs payable by the parties under this section are
10 recoverable by the Commissioner in a court of
11 competent jurisdiction as a debt due to the
12 Commissioner.
- 13 **15H. Representation at alternative dispute resolution**
14 **proceeding**
- 15 (1) A party may be represented by a lawyer during an
16 alternative dispute resolution proceeding but the
17 facilitator may, if the facilitator considers it appropriate
18 to do so, meet with the party, either alone or with
19 another party, without the party's legal representative
20 being present.
- 21 (2) A party who is not a natural person may be represented
22 during an alternative dispute resolution proceeding by
23 an officer, employee or agent of that party.
- 24 (3) A facilitator may request the attendance of another
25 person during an alternative dispute resolution
26 proceeding if, in the opinion of the facilitator, the
27 attendance of that person may help in the alternative
28 dispute resolution proceeding.
- 29 **15I. Evidence of certain things inadmissible**
- 30 (1) Evidence of anything lawfully said or done in the
31 course of an alternative dispute resolution proceeding

- 1 is not admissible before a court or tribunal or body
2 unless subsection (2) applies.
- 3 (2) Evidence referred to in subsection (1) is admissible in a
4 proceeding if the parties to the alternative dispute
5 resolution proceeding consent to the admission of the
6 evidence.
7

8 **17. Part 4 heading inserted**

9 Before section 15 insert:
10

11 **Part 4 — Staff**
12

13 **18. Section 15 amended**

14 (1) Delete section 15(1) and insert:
15

- 16 (1) Subject to this Act, the Corporation may employ
17 persons as staff of the Corporation —
18 (a) to enable the Corporation to carry out its
19 functions; and
20 (b) to assist the Commissioner to carry out his or
21 her functions.
22

23 (2) In section 15(3) delete “its employees.” and insert:
24

25 persons employed under subsection (1).
26

27 (3) In section 15(4) delete “an employee of the Corporation.” and
28 insert:
29

30 a person employed under subsection (1).
31

s. 19

1 (4) After section 15(4) insert:
2

3 (5) Subsection (1) does not affect the power of the
4 Corporation to engage a person under a contract for
5 services or appoint a person on a casual employment
6 basis under the *Public Sector Management Act 1994*
7 section 100.
8

9 Note: The heading to amended section 15 is to read:

10 **Staff and contractors**

11 **19. Sections 15A and 16 replaced**

12 Delete sections 15A and 16 and insert:
13

14 **16. Staff of Corporation who are members of Senior**
15 **Executive Service**

16 The provisions of the *Public Sector Management*
17 *Act 1994* prevail over the provisions of this Act to the
18 extent of any inconsistency in respect of a person who
19 is employed under section 15 and who is a member of
20 the Senior Executive Service as defined in the *Public*
21 *Sector Management Act 1994* section 3(1).
22

23 **20. Section 17 amended**

24 Delete section 17(a) and (b) and insert:
25

26 (a) the services of any officer or employee of a
27 public sector body; or

28 (b) any facilities of a public sector body.
29

1 **21. Part 5 heading inserted**

2 After section 17 insert:

3

4 **Part 5 — Accountability and financial**
5 **provisions**

6

7 **22. Sections 18A to 18C inserted**

8 Before section 18 insert:

9

10 **18A. Protection from liability**

11 (1) No action or claim for damages lies against a person
12 for anything that the person has done, in good faith, in
13 the performance or purported performance of a
14 function under this Act.

15 (2) The protection given by subsection (1) applies even
16 though the thing done as described in that subsection
17 may have been capable of being done whether or not
18 this Act had been enacted.

19 (3) Despite subsection (1), the State is not relieved of any
20 liability that it might have for another person having
21 done something as described in that subsection.

22 (4) In this section, a reference to the doing of any thing
23 includes a reference to the omission to do any thing.

24 **18B. Directions by Minister**

25 (1) Subject to subsection (3), the Minister may give written
26 directions to the Corporation with respect to the
27 performance of its functions, either generally or in
28 relation to a particular matter, and the Corporation is to
29 give effect to any such direction.

s. 22

- 1 (2) Subject to subsection (3), the Minister may give written
2 directions to the Commissioner with respect to the
3 performance of his or her functions, either generally or
4 in relation to a particular matter, and the Commissioner
5 is to give effect to any such direction.
- 6 (3) The Minister must not under subsection (1) or (2)
7 direct the Corporation or Commissioner with respect to
8 the performance of its or his or her functions in
9 respect of —
- 10 (a) a particular person; or
11 (b) a particular application, complaint or
12 proceeding.
- 13 (4) The text of a direction given under subsection (1) or (2)
14 is to be —
- 15 (a) laid before each House of Parliament within
16 14 sitting days of that House after the direction
17 is given; and
18 (b) included in the annual report submitted by the
19 accountable authority of the Corporation under
20 the *Financial Management Act 2006* Part 5.

21 **18C. Minister to have access to information**

- 22 (1) In this section —
23 *document* includes any tape, disk or other device or
24 medium on which information is recorded or stored;
25 *information* means information specified, or of a
26 description specified, by the Minister.
- 27 (2) The Minister is entitled —
- 28 (a) to have information in the possession of the
29 Corporation that relates to the functions of the
30 Corporation; and
31 (b) to have information in the possession of the
32 Commissioner that relates to the functions of

- 1 the Commissioner referred to in section 14A(b)
2 to (g); and
- 3 (c) if the information referred to in paragraph (a) or
4 (b) is in or on a document, to have, and make
5 and retain copies of, that document.
- 6 (3) For the purposes of subsection (2) the Minister may —
- 7 (a) request the Corporation or the Commissioner,
8 as the case requires, to furnish information to
9 the Minister; and
- 10 (b) request the Corporation or the Commissioner,
11 as the case requires, to give the Minister access
12 to information; and
- 13 (c) for the purposes of paragraph (b) make use of
14 the services of staff employed or engaged by
15 the Corporation to obtain the information and
16 furnish it to the Minister.
- 17 (4) The Corporation or the Commissioner is to comply
18 with a request under subsection (3) and the Corporation
19 is to arrange for its staff and facilities to be available to
20 the Minister for the purposes of subsection (3)(c).
- 21 (5) The Minister is not entitled to have information under
22 this section in a form that —
- 23 (a) discloses the identity of a person involved in a
24 particular application, complaint or proceeding;
25 or
- 26 (b) might enable the identity of any such person to
27 be ascertained,
- 28 unless that person has consented to the disclosure.
29

s. 23

1 **23. Section 18 amended**

2 In section 18(2):

3 (a) delete paragraph (a) and insert:

4

5 (a) the Commissioner; or

6

7 (b) delete paragraphs (c) and (d) and insert:

8

9 (c) employed or engaged by the Corporation; or

10

11 (c) after paragraph (b) insert:

12

13 or

14

15 **24. Section 19 replaced**

16 Delete section 19 and insert:

17

18 **19. Small Business Development Corporation Account**

19 (1) There continues to be an account called the Small
20 Business Development Corporation Account which is
21 an agency special purpose account under the *Financial*
22 *Management Act 2006* section 16.

23 (2) The Small Business Development Corporation Account
24 must be credited with the following —

25 (a) money received by, made available to, or
26 payable to, the Corporation in the performance
27 of functions under this or any other Act;

28 (b) money received by, made available to, or
29 payable to, the Commissioner in the
30 performance of functions under this or any
31 other Act;

- 1 (c) money appropriated by Parliament to, or
2 otherwise lawfully received for, the Small
3 Business Development Corporation.
- 4 (3) Money held in the Small Business Development
5 Corporation Account may be applied for the
6 following —
- 7 (a) in payment of the costs of the administration of
8 this Act;
- 9 (b) to fund the services and facilities provided by
10 the Corporation under this or any other Act;
- 11 (c) in payment of the costs and expenses incurred
12 in the performance of the functions of the
13 Commissioner under this or any other Act.
14

15 **25. Section 20 deleted**

16 Delete section 20.

17 **26. Part 6 heading inserted**

18 Before section 24 insert:
19

20 **Part 6 — Regulations**
21

22 **27. Section 25 deleted**

23 Delete section 25.

1 **28. Part 7 inserted**

2 At the end of the Act insert:

3

4 **Part 7 — Transitional provisions relating to**
5 ***Small Business and Retail Shop Legislation***
6 ***Amendment Act 2011***

7 **25. Term used: commencement day**

8 In this Part —

9 *commencement day* means the day on which the
10 *Small Business and Retail Shop Legislation*
11 *Amendment Act 2011* section 9 comes into operation.

12 **26. Appointed members**

13 A person who was an appointed member of the
14 Corporation immediately before commencement day
15 is, on and from commencement day, an appointed
16 member of the board subject to the terms and
17 conditions on which the person was appointed as a
18 member of the Corporation.

19 **27. Application of section 18 to certain persons**

20 Section 18 applies in respect of a person who, before
21 commencement day, was —

- 22 (a) an appointed member of the Corporation; or
23 (b) the Managing Director of the Corporation.

24

**Part 3 — Commercial Tenancy (Retail Shops)
Agreements Act 1985 amended**

29. Act amended

This Part amends the *Commercial Tenancy (Retail Shops) Agreements Act 1985*.

30. Section 3 amended

In section 3(1) insert in alphabetical order:

Small Business Commissioner means the
Commissioner as defined in the *Small Business
Development Corporation Act 1983* section 3(1);

31. Section 11 amended

(1) In section 11(3):

(a) delete “either —” and insert:

any of the following —

(b) after paragraph (a) insert:

(ba) a person licensed under that Act and
nominated, at the request of each of the parties,
by the Small Business Commissioner;

(c) after paragraph (a) delete “or”.

(2) In section 11(4) delete “(a) or (b)”.

(3) In section 11(5)(b) delete “(a) or (b)”.

s. 32

1 **32. Sections 25A to 25E inserted**

2 After section 24 insert:

3

4 **25A. Request to Small Business Commissioner**

5 A person who may, under this Act, make an
6 application, referral or submission to the Tribunal may
7 request the Small Business Commissioner —

8 (a) to provide assistance to attempt to resolve the
9 matter under the *Small Business Development*
10 *Corporation Act 1983* section 15C; or

11 (b) to undertake alternative dispute resolution in
12 respect of the matter under the *Small Business*
13 *Development Corporation Act 1983*
14 section 15E.

15 **25B. Disclosure of information**

16 (1) In this section —

17 *confidential information*, in relation to a matter, means
18 information given to a person who acts under
19 section 11(3) in the matter.

20 (2) A person who has confidential information in relation
21 to a matter that is the subject of a request under
22 section 25A may disclose the information if the Small
23 Business Commissioner so requires.

24 **25C. Small Business Commissioner to issue certificate in**
25 **respect of request**

26 (1) The Small Business Commissioner must, on the
27 request of a person who may, under this Act, make an
28 application, referral or submission to the Tribunal,
29 issue a certificate to the person if the Commissioner is
30 satisfied that —

31 (a) the matter is unlikely to be resolved with the
32 assistance of alternative dispute resolution; or

- 1 (b) it would not be reasonable in the circumstances
2 to commence an alternative dispute resolution
3 proceeding in respect of the matter; or
4 (c) alternative dispute resolution has failed to
5 resolve the matter.
- 6 (2) The certificate is to be in a form approved by the Small
7 Business Commissioner and may include any
8 information about the conduct of the parties that the
9 Commissioner considers appropriate in the
10 circumstances.

11 **25D. Application to Tribunal restricted in certain**
12 **circumstances**

- 13 (1) An application, referral or submission in respect of a
14 matter may not be made to the Tribunal under this Act
15 unless the Small Business Commissioner has issued a
16 certificate in respect of the matter under section 25C.
- 17 (2) Subsection (1) does not apply in respect of a matter
18 prescribed by the regulations for the purposes of this
19 section.
- 20 (3) Nothing in this section prevents a person from making
21 a request to the Small Business Commissioner under
22 section 25A.

23 **25E. Small Business Commissioner may intervene in**
24 **proceeding of Tribunal**

25 The Small Business Commissioner may intervene at
26 any time in a proceeding of the Tribunal in relation to a
27 matter.
28

s. 33

1 **33. Section 26 amended**

2 After section 26(1aa) insert:

3

- 4 (2) In considering whether to make an order under the
5 *State Administrative Tribunal Act 2004* section 87(2) in
6 a proceeding, the Tribunal may have regard to a
7 certificate issued under section 25C that relates to the
8 proceeding.
9

10 **34. Section 30A inserted**

11 Before section 30 insert:

12

13 **30A. Small Business Commissioner to perform certain**
14 **functions**

15 The Small Business Commissioner has the following
16 functions under this Act —

- 17 (a) to provide assistance to attempt to resolve
18 disputes that arise in respect of retail shop
19 leases;
- 20 (b) to provide information and guidance in respect
21 of retail shop leases or the provisions of this
22 Act.
23

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