

Authorised Version No. 001
Small Business Commission Act 2017

No. 16 of 2017

Authorised Version as at
1 July 2017

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
Part 1—Preliminary	1
1 Purposes	1
2 Commencement	1
3 Definitions	1
Part 2—Small Business Commission	4
Division 1—Small Business Commission	4
4 Establishment of Small Business Commission	4
5 Functions and powers of Commission	4
6 Commission may request information to perform its functions	6
7 Obligations of public entities and public service bodies	6
8 Commission must seek consent before disclosing confidential information	7
9 Commission may refuse to deal with certain complaints	7
10 Commission's alternative dispute resolution function	8
11 Commission's investigatory function	8
12 Power to issue certificates	8
13 Advisory opinions	9
14 Staff	9
15 Delegation	9
16 Reporting	9
17 Ministerial directions	11
Division 2—Small Business Commissioner	11
18 Appointment of Small Business Commissioner	11
19 Terms and conditions of appointment	11
20 Acting Commissioner	12
21 Functions and powers of Commissioner	14
22 Validity of acts and decisions	14
23 Immunity for the alternative dispute resolution function	14

<i>Section</i>	<i>Page</i>
Part 3—Amendment of other Acts	15
Division 1—Amendments to the Transport (Compliance and Miscellaneous) Act 1983	15
24 Definition	15
25 Unresolved disputes may be referred to Small Business Commissioner or the Tribunal	15
26 Function of Small Business Commissioner	15
27 Mediation or other alternative dispute resolution by Small Business Commissioner	16
28 Small Business Commissioner may issue certificates	16
Division 2—Amendments to the Victorian Civil and Administrative Tribunal Act 1998	17
29 Intervention	17
Division 3—Amendments to the Liquor Control Reform Act 1998	18
30 Packaged liquor licence	18
31 Specification of certain licences as small business licences	18
Division 4—Amendments to the Retail Leases Act 2003	18
32 Definitions	18
33 Copy of lease to be provided at negotiation stage	18
34 Minimum 5 year term	19
35 Alterations to premises to enable fit out	19
36 Agreement about rent based on turnover	19
37 Rent reviews generally	19
38 Rent reviews based on current market rent	19
39 Confidentiality of information supplied to valuer	19
40 Relocation of the tenant's business	19
41 Confidentiality of turnover information	20
42 New heading to Division 2 of Part 10 substituted	20
43 Functions of the Small Business Commissioner	20
44 Referral of retail tenancy disputes for alternative dispute resolution	21
45 Retail tenancy disputes must first be referred for alternative dispute resolution	21
Division 5—Amendments to the Owner Drivers and Forestry Contractors Act 2005	21
46 Purpose	21
47 Definitions	22
48 Notice of termination	22
49 Referral of disputes for alternative dispute resolution	22
50 Disputes must first be referred for alternative dispute resolution before proceeding to the Tribunal	23
51 Part 6 heading amended	23

<i>Section</i>	<i>Page</i>
52 Functions of the Small Business Commissioner under this Act	23
Division 6—Amendments to the Farm Debt Mediation Act 2011	24
53 Definitions	24
54 Farmer may request mediation	24
55 Creditor may agree to or refuse mediation	25
56 Referral of mediation by Department	25
57 Application by farmer for issue of prohibition certificate	25
58 Issue of prohibition certificate	25
59 Application by creditor for issue of exemption certificate	25
60 Issue of exemption certificate	25
61 Heading to Part 3 amended	26
62 New heading to Division 1 of Part 3 substituted	26
63 Functions of the Small Business Commissioner	26
64 Functions of mediators	27
65 Referral of farm debt disputes for mediation	27
66 Conduct of mediation	27
67 Mediation session fee	27
68 Costs of mediation	27
69 Manner of giving notices	27
Division 7—Repeal of Part	28
70 Repeal of Part	28
Part 4—Repeal, savings and transitional provisions	29
Division 1—Repeal of Small Business Commissioner Act 2003	29
71 Repeal of Small Business Commissioner Act 2003	29
Division 2—Savings and transitional provisions	29
72 Transitional provision relating to establishment of Small Business Commission	29
<hr style="border-top: 3px double #000;"/>	
Endnotes	30
1 General information	30
2 Table of Amendments	32
3 Amendments Not in Operation	33
4 Explanatory details	34

Authorised Version No. 001
Small Business Commission Act 2017
No. 16 of 2017
Authorised Version as at
1 July 2017

The Parliament of Victoria enacts:

Part 1—Preliminary

1 Purposes

The main purposes of this Act are—

- (a) to repeal the **Small Business Commissioner Act 2003**; and
- (b) to re-enact the law in relation to the Small Business Commission with amendments; and
- (c) to establish the Small Business Commission to enhance a competitive and fair operating environment for small business in Victoria.

2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision referred to in subsection (1) does not come into operation before 15 December 2017, it comes into operation on that day.

3 Definitions

In this Act—

alternative dispute resolution includes mediation and preliminary assistance;

Commission means the Small Business Commission established by section 4;

Commissioner means the Small Business
Commissioner appointed under section 18;

Council has the same meaning as in the **Local
Government Act 1989**;

dispute means a contractual or commercial
dispute between a small business and one or
more of the following—

- (a) another business;
- (b) a public entity;
- (c) a public service body;
- (d) a Council;
- (e) a non-profit organisation;
- (f) a school, RTO, TAFE institute or
university;
- (g) a special body, other than—
 - (i) the IBAC within the meaning of
the **Independent Broad-based
Anti-corruption Commission
Act 2011**;
 - (ii) the office of the Ombudsman;
 - (iii) the office of the Freedom of
Information Commissioner;
 - (iv) the Mental Health Tribunal;
 - (v) the Victorian Auditor-General's
office;
 - (vi) VCAT;
 - (vii) the Victorian Inspectorate within
the meaning of the **Victorian
Inspectorate Act 2011**;
- (h) a professional association;
- (i) a peak business, industry or trade body;

non-profit organisation means an organisation having as its whole or dominant purpose a charitable, benevolent, philanthropic or patriotic purpose but does not include a school, an educational institution, an educational company or an instrumentality of the State;

public entity has the same meaning as in the **Public Administration Act 2004**;

public service body has the same meaning as in the **Public Administration Act 2004**;

RTO has the same meaning as in the **Education and Training Reform Act 2006**;

school has the same meaning as in the **Education and Training Reform Act 2006**;

Secretary means the Secretary to the Department of Economic Development, Jobs, Transport and Resources;

special body has the same meaning as in the **Public Administration Act 2004**;

TAFE institute has the same meaning as in the **Education and Training Reform Act 2006**;

university has the same meaning as in the **Education and Training Reform Act 2006**.

Part 2—Small Business Commission

Division 1—Small Business Commission

4 Establishment of Small Business Commission

- (1) The Small Business Commission is established.
- (2) The Small Business Commission is to be constituted by the Commissioner.

5 Functions and powers of Commission

- (1) The Commission has all the functions and may exercise all of the powers conferred on it by this or any other Act.
- (2) The Commission has the following functions—
 - (a) to facilitate and encourage the fair treatment of small businesses in their commercial dealings with other businesses in the marketplace and with public entities, public service bodies, Councils and non-profit organisations;
 - (b) to promote informed decision-making by small businesses in order to minimise disputes;
 - (c) to receive and investigate complaints by small businesses regarding unfair market practices or commercial dealings, and provide alternative dispute resolution between the parties involved in the complaint;
 - (d) to make representations to an appropriate person or body on behalf of a small business that has made a complaint referred to in paragraph (c);
 - (e) to provide alternative dispute resolution to small businesses involved in disputes;

- (f) to monitor and report to the Minister on any emerging trends in market practices that have an adverse effect on small businesses;
 - (g) to encourage the development and implementation of small business service charters within government to ensure small businesses receive high quality service;
 - (h) to monitor the operation and effectiveness of those small business service charters;
 - (i) as required by the Minister, and in consultation with the Secretary, to review proposed legislation in terms of its potential to adversely affect small businesses;
 - (j) to work collaboratively with similar small business commissioners in other States or the Territories, or similar Commonwealth agencies, to enhance conditions for small businesses;
 - (k) to investigate compliance with industry codes of practice and to assist with the development and provision of industry codes of practice that promote alternative dispute resolution;
 - (l) to advise the Minister generally about matters for which the Commission is responsible;
 - (m) to advise the Minister on the operation of this Act.
- (3) The Commission may carry out its functions and exercise its powers at the request of the Minister or any other person or body or on its own motion.
- (4) The Commission has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

- (5) The functions of the Commission do not include the development of legislation and regulatory policy relating to small business and related matters.
- (6) The Commission may advise or comment on the development of legislation and regulatory policy relating to small business and related matters.
- (7) The Commission is responsible to the Secretary for the general conduct and management of the functions and activities of the Commission and must advise the Secretary in all matters relating to that conduct and management.
- (8) The Secretary must take reasonable steps to ensure that adequate resources are made available to the Commission to enable it to carry out its functions and exercise its powers.

6 Commission may request information to perform its functions

- (1) For the purpose of carrying out its functions, the Commission, by written notice delivered to a public entity or public service body, may make a reasonable request for the entity or body to provide information of a kind specified in the notice.
- (2) The Commission must not disclose to any person any document that it has obtained from any agency (as defined in the **Freedom of Information Act 1982**) or Minister that is an exempt document under the **Freedom of Information Act 1982** in the hands of the agency or Minister.

7 Obligations of public entities and public service bodies

A public entity or public service body must respond to a reasonable request under section 6(1) in a timely and efficient manner.

8 Commission must seek consent before disclosing confidential information

- (1) This section applies if—
 - (a) information or a document is given to the Commission; and
 - (b) the person or body giving the information or document states that it is of a confidential nature.
- (2) The Commission must not disclose the information or the contents of the document to any person or body unless—
 - (a) the person or body who supplied the information or document has consented to the disclosure; or
 - (b) the disclosure is lawfully required.

9 Commission may refuse to deal with certain complaints

- (1) The Commission may refuse to deal with a complaint received by the Commission if the Commission is satisfied that—
 - (a) the complaint is trivial or vexatious; or
 - (b) the complaint is unlikely to be resolved through alternative dispute resolution; or
 - (c) the complaint could be more appropriately dealt with by a public entity, public service body or any other person.
- (2) If the Commission refuses to deal with a complaint under subsection (1), the Commission must give written notice to the person who made the complaint and, if applicable, details of the public entity, public service body or person to be contacted regarding the complaint.

10 Commission's alternative dispute resolution function

- (1) In performing its alternative dispute resolution function under this Act, the Commission may determine the form of alternative dispute resolution to be used in the dispute.
- (2) The Commission may charge fees and expenses for performing its alternative dispute resolution function.
- (3) Subsection (2) does not affect the power of the Commission to charge fees and expenses under any other Act.

11 Commission's investigatory function

The Commission may investigate any matter relevant to the Commission's functions and powers under this Act.

12 Power to issue certificates

- (1) The Commission may certify in writing that alternative dispute resolution performed under this Act has failed to resolve a dispute or is unlikely to resolve a dispute.
- (2) A certificate issued under subsection (1) must include details of the parties involved in the dispute.
- (3) The Commission may certify that a party to the dispute has unreasonably refused to participate in alternative dispute resolution.
- (4) A certificate issued under this section may be admitted in evidence in proceedings before VCAT or a court.
- (5) The Commission is not required to give a party to the dispute an opportunity to be heard or make submissions to the Commission before issuing a certificate under this section.

13 Advisory opinions

- (1) The Commission may refer a matter to VCAT for an advisory opinion under section 125 of the **Victorian Civil and Administrative Tribunal Act 1998**.
- (2) For the purposes of subsection (1), the Commission may refer any matter relating to the performance of its functions or the exercise of its powers under this Act or under any other Act.
- (3) Before the Commission refers a matter to VCAT, the Commission must be satisfied that the referral of the matter is in the public interest.

14 Staff

- (1) There may be employed under Part 3 of the **Public Administration Act 2004** any employees that are necessary for the administration of this Act or to enable the Commission to perform its functions and exercise its powers.
- (2) The Commission may engage consultants, contractors or agents for or in connection with the performance of its functions.

15 Delegation

The Commission, by instrument in writing, may delegate to any person employed under Part 3 of the **Public Administration Act 2004** any power under this Act, other than this power of delegation.

16 Reporting

- (1) The Small Business Commission is not a public body within the meaning of the **Financial Management Act 1994**.

- (2) The Commission must, within 3 months after the end of a financial year, submit a report to the Minister relating to the operation and performance of the Commission as if it were an annual report of operations under Part 7 of the **Financial Management Act 1994**.
- (3) The Minister must cause the report to be laid before each House of the Parliament on or before 31 October each year or, if a House is not then sitting, on the first sitting day of that House after 31 October.
- (4) Subject to subsection (5), a report submitted to the Minister may include details of a certificate issued under section 12(3) certifying that a party to a dispute has unreasonably refused to participate in alternative dispute resolution.
- (5) Before the details of the certificate are included in the report, the Commission must give written notice to the party specifying—
 - (a) the Commission's intention to include the details of the certificate in the report; and
 - (b) that the party may make submissions to the Commission within 21 days giving reasons why details of the certificate should not be included in the report.
- (6) If a party makes any submissions to the Commission within 21 days after receiving the notice, the Commission must consider those submissions.
- (7) If the Commission intends to include in a report submitted to the Minister a comment or opinion that is adverse to any person, other than the details of a certificate referred to in subsection (4), the Commission must first give the person a reasonable opportunity to respond

to the adverse material and fairly set out the response in the report.

- (8) The Commission must not include in the report any information that would identify any person who is not the subject of any adverse comment or opinion unless the Commission—
- (a) is satisfied that it is necessary or desirable to do so in the public interest; and
 - (b) is satisfied that it will not cause unreasonable damage to the person's reputation, safety or wellbeing; and
 - (c) states in the report that the person is not the subject of any adverse comment or opinion.

17 Ministerial directions

The Minister may give written directions to the Commission about the performance of the functions of the Commission except those functions under this or any other Act that are expressed to be not subject to the Minister's direction or control.

Division 2—Small Business Commissioner

18 Appointment of Small Business Commissioner

The Governor in Council may appoint a person to be the Small Business Commissioner.

19 Terms and conditions of appointment

- (1) The Commissioner holds office for a term, not exceeding 5 years, specified in the Commissioner's instrument of appointment, and is eligible for reappointment for a term not exceeding 5 years.
- (2) The Governor in Council may specify the terms and conditions of appointment in the Commissioner's instrument of appointment.

- (3) The Commissioner is entitled to be paid the remuneration and allowances that are fixed from time to time by the Governor in Council.
- (4) The Commissioner ceases to hold office if the Commissioner—
 - (a) becomes an insolvent under administration within the meaning of the Corporations Act; or
 - (b) is convicted of an indictable offence or an offence which, if committed in Victoria, would be an indictable offence.
- (5) The Governor in Council may remove the Commissioner from office if the Commissioner has refused, neglected or failed to carry out the Commissioner's duties or has demonstrated inefficiency or misbehaviour in carrying out the Commissioner's duties.
- (6) The Commissioner may at any time resign by writing signed and delivered to the Governor.

20 Acting Commissioner

- (1) The Minister may appoint an Acting Commissioner—
 - (a) during a vacancy in the office of Commissioner; or
 - (b) during any period when the Commissioner is absent or, for any reason, is unable to perform the functions of Commissioner.
- (2) The Minister may—
 - (a) appoint an Acting Commissioner for a period not exceeding 6 months; and
 - (b) determine the terms and conditions of appointment of the Acting Commissioner; and

- (c) terminate the appointment of the Acting Commissioner at any time.
- (3) An Acting Commissioner is entitled to receive the remuneration and allowances that the Commissioner would have been entitled to for performing the duties of office.
- (4) While a person is acting in the office of the Commissioner in accordance with subsection (1), the Acting Commissioner has all the functions and powers of the Commissioner.
- (5) If a person is acting in the office of the Commissioner in accordance with subsection (1)(b) and the office becomes vacant while the person is so acting, that person may continue to so act for 6 months after the date on which the vacancy occurred unless—
- (a) the Minister otherwise directs; or
 - (b) the vacancy is filled before the end of that period.
- (6) The validity of anything done by or in relation to a person purporting to act in the office of the Commissioner under an appointment made under subsection (1) is not to be called in question on the ground that—
- (a) the occasion for the person's appointment has not arisen; or
 - (b) there is a defect or irregularity in or in connection with the person's appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion for the person to act had not arisen or had ceased.

21 Functions and powers 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.

22 Validity of acts and decisions

An act or decision of the Commission is not invalid—

- (a) only because of a defect or irregularity in, or in connection with, the appointment of the Commissioner or Acting Commissioner; or
- (b) on the ground that the occasion for the Acting Commissioner to act had not arisen or had ceased.

23 Immunity for the alternative dispute resolution function

The Commissioner or another person who performs an alternative dispute resolution function of the Commission under this Act or under any other Act is not personally liable for anything necessarily or reasonably done or omitted to be done in good faith—

- (a) in the performance of the function; or
- (b) in the reasonable belief that the act or omission was in the performance of the function.

Part 3—Amendment of other Acts

Division 1—Amendments to the Transport (Compliance and Miscellaneous) Act 1983

24 Definition

In section 162J of the **Transport
(Compliance and Miscellaneous) Act 1983**—

(a) the definition of *Small Business
Commissioner* is repealed;

(b) insert the following definition—

"Small Business Commission means
the Small Business Commission
established under section 4 of the **Small
Business Commission Act 2017**";

25 Unresolved disputes may be referred to Small Business Commissioner or the Tribunal

(1) In the heading to section 162MC of the
**Transport (Compliance and Miscellaneous)
Act 1983**, for "Commissioner" substitute
"Commission".

(2) In section 162MC(1)(b), (2)(a) and (4) of the
**Transport (Compliance and Miscellaneous)
Act 1983**, for "Commissioner" substitute
"Commission".

26 Function of Small Business Commissioner

(1) In the heading to section 162N of the **Transport
(Compliance and Miscellaneous) Act 1983**, for
"Commissioner" substitute "Commission".

(2) In section 162N(1) of the **Transport
(Compliance and Miscellaneous) Act 1983**,
for "Commissioner" (where thrice occurring)
substitute "Commission".

- (3) In section 162N(2) of the **Transport (Compliance and Miscellaneous) Act 1983**—
 - (a) for "Commissioner" **substitute** "Commission";
 - (b) for "himself or herself" **substitute** "itself";
 - (c) for "his or her" **substitute** "its".
- (4) In section 162N(3) of the **Transport (Compliance and Miscellaneous) Act 1983**, for "Commissioner" **substitute** "Commission".

27 Mediation or other alternative dispute resolution by Small Business Commissioner

- (1) In the heading to section 162P of the **Transport (Compliance and Miscellaneous) Act 1983**, for "Commissioner" **substitute** "Commission".
- (2) In section 162P(1) of the **Transport (Compliance and Miscellaneous) Act 1983**, for "Commissioner" **substitute** "Commission".
- (3) In section 162P(3) of the **Transport (Compliance and Miscellaneous) Act 1983**—
 - (a) for "Commissioner" **substitute** "Commission";
 - (b) for "he or she" **substitute** "it".
- (4) In section 162P(4) of the **Transport (Compliance and Miscellaneous) Act 1983**, for "Commissioner" **substitute** "Commission".

28 Small Business Commissioner may issue certificates

- (1) In the heading to section 162PA of the **Transport (Compliance and Miscellaneous) Act 1983**, for "Commissioner" **substitute** "Commission".

- (2) In section 162PA(1) of the **Transport (Compliance and Miscellaneous) Act 1983**—
 - (a) for "Commissioner" **substitute** "Commission";
 - (b) for "him or her" **substitute** "it".
- (3) In section 162PA(3) of the **Transport (Compliance and Miscellaneous) Act 1983**, for "Commissioner" **substitute** "Commission".
- (4) In section 162PA(5) of the **Transport (Compliance and Miscellaneous) Act 1983**, for "Commissioner" (where twice occurring) **substitute** "Commission".
- (5) In section 162PB of the **Transport (Compliance and Miscellaneous) Act 1983**, for "Commissioner" **substitute** "Commission".

Division 2—Amendments to the Victorian Civil and Administrative Tribunal Act 1998

29 Intervention

- (1) In section 73(2A) of the **Victorian Civil and Administrative Tribunal Act 1998**—
 - (a) for "Commissioner appointed" **substitute** "Commission established";
 - (b) for "**Small Business Commissioner Act 2003**" **substitute** "**Small Business Commission Act 2017**".
- (2) In section 73(2B) of the **Victorian Civil and Administrative Tribunal Act 1998**—
 - (a) for "Commissioner" **substitute** "Commission";
 - (b) for "he or she" **substitute** "it".

- (3) In section 73(4) of the **Victorian Civil and Administrative Tribunal Act 1998**, for "Commissioner" **substitute** "Commission".

Division 3—Amendments to the Liquor Control Reform Act 1998

30 Packaged liquor licence

Section 11(8) of the **Liquor Control Reform Act 1998** is repealed.

31 Specification of certain licences as small business licences

In section 66AC(2)(a) of the **Liquor Control Reform Act 1998**, for "Small Business Commissioner Act 2003" **substitute** "Small Business Commission Act 2017".

Division 4—Amendments to the Retail Leases Act 2003

32 Definitions

In section 3 of the **Retail Leases Act 2003**—

- (a) the definition of *Small Business Commissioner* is repealed;
- (b) **insert** the following definition—

"Small Business Commission means the Small Business Commission established under section 4 of the **Small Business Commission Act 2017**;"

33 Copy of lease to be provided at negotiation stage

In section 15(1) of the **Retail Leases Act 2003**, for "Commissioner" **substitute** "Commission".

34 Minimum 5 year term

(1) In section 21(5)(a) of the **Retail Leases Act 2003**—

- (a) for "Commissioner" **substitute** "Commission";
- (b) for "he or she" **substitute** "it";
- (c) for "his or her" **substitute** "its".

(2) In section 21(5A) and (6) of the **Retail Leases Act 2003**, for "Commissioner" **substitute** "Commission".

35 Alterations to premises to enable fit out

In section 30(4) of the **Retail Leases Act 2003**, for "Commissioner" **substitute** "Commission".

36 Agreement about rent based on turnover

In section 34(2)(b) of the **Retail Leases Act 2003**, for "Commissioner" **substitute** "Commission".

37 Rent reviews generally

In section 35(7)(b) of the **Retail Leases Act 2003**, for "Commissioner" **substitute** "Commission".

38 Rent reviews based on current market rent

In section 37(3)(b) and (7)(a) of the **Retail Leases Act 2003**, for "Commissioner" **substitute** "Commission".

39 Confidentiality of information supplied to valuer

In section 38(2)(a) of the **Retail Leases Act 2003**, for "Commissioner" **substitute** "Commission".

40 Relocation of the tenant's business

In section 55(8)(b) of the **Retail Leases Act 2003**, for "Commissioner" **substitute** "Commission".

41 Confidentiality of turnover information

In section 67(2)(c) of the **Retail Leases Act 2003**, for "Commissioner" **substitute** "Commission".

42 New heading to Division 2 of Part 10 substituted

For the heading to Division 2 of Part 10 of the **Retail Leases Act 2003 substitute**—

**"Division 2—Small Business
Commission".**

43 Functions of the Small Business Commissioner

- (1) In the heading to section 84 of the **Retail Leases Act 2003**, for "Commissioner" **substitute** "Commission".
- (2) In section 84(1) of the **Retail Leases Act 2003**—
 - (a) for "Commissioner" **substitute** "Commission";
 - (b) in paragraph (a), for "Commissioner" **substitute** "Commission";
 - (c) in paragraph (d), for "Commissioner" (where twice occurring) **substitute** "Commission";
 - (d) in paragraph (h), for "Commissioner" **substitute** "Commission".
- (3) In section 84(2) of the **Retail Leases Act 2003**, for "Commissioner" **substitute** "Commission".
- (4) In section 84(3) of the **Retail Leases Act 2003**—
 - (a) for "Commissioner" **substitute** "Commission";
 - (b) for "himself or herself" **substitute** "itself";
 - (c) for "his or her" **substitute** "its".

- (5) In section 84(4) and (5) of the **Retail Leases Act 2003**, for "Commissioner" substitute "Commission".

44 Referral of retail tenancy disputes for alternative dispute resolution

- (1) In section 86(1), (1A) and (1B) of the **Retail Leases Act 2003**, for "Commissioner" substitute "Commission".
- (2) In the note at the foot of section 86(2) of the **Retail Leases Act 2003**, for "Commissioner" substitute "Commission".
- (3) In section 86(2A) of the **Retail Leases Act 2003**—
- (a) for "Commissioner" substitute "Commission";
 - (b) for "he or she" substitute "it".
- (4) In section 86(3) of the **Retail Leases Act 2003**, for "Commissioner" substitute "Commission".

45 Retail tenancy disputes must first be referred for alternative dispute resolution

In section 87(1) of the **Retail Leases Act 2003**, for "Commissioner" substitute "Commission".

Division 5—Amendments to the Owner Drivers and Forestry Contractors Act 2005

46 Purpose

In section 1(e) of the **Owner Drivers and Forestry Contractors Act 2005**, for "Commissioner" substitute "Commission".

47 Definitions

In section 3 of the **Owner Drivers and Forestry Contractors Act 2005**—

(a) the definition of *Small Business Commissioner* is repealed;

(b) **insert** the following definition—

"Small Business Commission means the Small Business Commission established under section 4 of the **Small Business Commission Act 2017**";

48 Notice of termination

(1) In section 21(2)(a) of the **Owner Drivers and Forestry Contractors Act 2005**—

(a) for "Commissioner" **substitute** "Commission";

(b) for "he or she" **substitute** "it";

(c) for "his or her" **substitute** "its".

(2) In section 21(3) of the **Owner Drivers and Forestry Contractors Act 2005**, for "Commissioner" **substitute** "Commission".

49 Referral of disputes for alternative dispute resolution

(1) In section 35(1) and (2) of the **Owner Drivers and Forestry Contractors Act 2005**, for "Commissioner" **substitute** "Commission".

(2) For the note at the foot of section 35(2) of the **Owner Drivers and Forestry Contractors Act 2005 substitute**—

"Note

The parties may ask the Commission for preliminary assistance before referring the dispute (see section 34)."

(3) In section 35(3) of the **Owner Drivers and Forestry Contractors Act 2005**, for "Commissioner" **substitute** "Commission".

50 Disputes must first be referred for alternative dispute resolution before proceeding to the Tribunal

In section 40(1) of the **Owner Drivers and Forestry Contractors Act 2005**, for "Commissioner" **substitute** "Commission".

51 Part 6 heading amended

In the heading to Part 6 of the **Owner Drivers and Forestry Contractors Act 2005**, for "COMMISSIONER" **substitute** "COMMISSION".

52 Functions of the Small Business Commissioner under this Act

- (1) In the heading to section 54 of the **Owner Drivers and Forestry Contractors Act 2005**, for "Commissioner" **substitute** "Commission".
- (2) In section 54(1) of the **Owner Drivers and Forestry Contractors Act 2005**—
 - (a) for "Commissioner" **substitute** "Commission";
 - (b) in paragraph (a), for "Commissioner" **substitute** "Commission";
 - (c) in paragraph (b), for "Commissioner" **substitute** "Commission".
- (3) In section 54(2) of the **Owner Drivers and Forestry Contractors Act 2005**, for "Commissioner" **substitute** "Commission".

- (4) In section 54(3) of the **Owner Drivers and Forestry Contractors Act 2005**—
- (a) for "Commissioner may personally" **substitute** "Commission may itself";
 - (b) for "his or her" **substitute** "its".
- (5) In section 54(4) of the **Owner Drivers and Forestry Contractors Act 2005**—
- (a) for "Commissioner" **substitute** "Commission";
 - (b) for "his or her" **substitute** "its".

Division 6—Amendments to the Farm Debt Mediation Act 2011

53 Definitions

In section 3 of the **Farm Debt Mediation Act 2011**—

- (a) in the definition of *mediator*, for "Commissioner" **substitute** "Commission";
- (b) the definition of *Small Business Commissioner* is repealed;
- (c) **insert** the following definition—

"Small Business Commission means the Small Business Commission established under section 4 of the **Small Business Commission Act 2017**;"

54 Farmer may request mediation

In section 9(5) of the **Farm Debt Mediation Act 2011**, for "Commissioner" **substitute** "Commission".

55 Creditor may agree to or refuse mediation

In section 10(3)(b) of the **Farm Debt Mediation Act 2011**, for "Commissioner" substitute "Commission".

56 Referral of mediation by Department

In section 11 of the **Farm Debt Mediation Act 2011**, for "Commissioner" substitute "Commission".

57 Application by farmer for issue of prohibition certificate

In section 13(1) of the **Farm Debt Mediation Act 2011**, for "Commissioner" substitute "Commission".

58 Issue of prohibition certificate

In section 14(1) of the **Farm Debt Mediation Act 2011**—

- (a) for "Commissioner" substitute "Commission";
- (b) in paragraph (d), for "Commissioner" substitute "Commission".

59 Application by creditor for issue of exemption certificate

In section 15(1) and (2) of the **Farm Debt Mediation Act 2011**, for "Commissioner" substitute "Commission".

60 Issue of exemption certificate

(1) In section 16(2) of the **Farm Debt Mediation Act 2011**—

- (a) for "Commissioner" substitute "Commission";
- (b) in paragraph (c), for "Commissioner" substitute "Commission".

- (2) In section 16(3) of the **Farm Debt Mediation Act 2011**, for "Commissioner" (where twice occurring) **substitute** "Commission".
- (3) In section 16(4) of the **Farm Debt Mediation Act 2011**, for "Commissioner" **substitute** "Commission".

61 Heading to Part 3 amended

In the heading to Part 3 of the **Farm Debt Mediation Act 2011**, for "COMMISSIONER" **substitute** "COMMISSION".

62 New heading to Division 1 of Part 3 substituted

For the heading to Division 1 of Part 3 of the **Farm Debt Mediation Act 2011** **substitute**—

"Division 1—The Small Business Commission and mediators".

63 Functions of the Small Business Commissioner

- (1) In the heading to section 20 of the **Farm Debt Mediation Act 2011**, for "Commissioner" **substitute** "Commission".
- (2) In section 20(1) of the **Farm Debt Mediation Act 2011**—
 - (a) for "Commissioner" **substitute** "Commission";
 - (b) in paragraphs (a), (e) and (f), for "Commissioner" **substitute** "Commission".
- (3) In section 20(2) and (3) of the **Farm Debt Mediation Act 2011**, for "Commissioner" **substitute** "Commission".

64 Functions of mediators

In section 21(1) of the **Farm Debt Mediation Act 2011**, for "Commissioner" substitute "Commission".

65 Referral of farm debt disputes for mediation

In section 22 of the **Farm Debt Mediation Act 2011**, for "Commissioner" substitute "Commission".

66 Conduct of mediation

In section 23(2) and (3)(b) of the **Farm Debt Mediation Act 2011**, for "Commissioner" substitute "Commission".

67 Mediation session fee

- (1) In section 24(2) of the **Farm Debt Mediation Act 2011**—
 - (a) for "Commissioner" substitute "Commission";
 - (b) in paragraph (b), for "Commissioner" substitute "Commission".
- (2) In section 24(3) of the **Farm Debt Mediation Act 2011**, for "Commissioner" (where twice occurring) substitute "Commission".

68 Costs of mediation

In section 25(1) and (2) of the **Farm Debt Mediation Act 2011**, for "Commissioner" substitute "Commission".

69 Manner of giving notices

In section 32(1) and (2) of the **Farm Debt Mediation Act 2011**, for "Commissioner" substitute "Commission".

Division 7—Repeal of Part

70 Repeal of Part

This Part is **repealed** on 15 December 2018.

Note

The repeal of this Part does not affect the ongoing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

Part 4—Repeal, savings and transitional provisions

Division 1—Repeal of Small Business Commissioner Act 2003

71 Repeal of Small Business Commissioner Act 2003

The **Small Business Commissioner Act 2003** is repealed.

Division 2—Savings and transitional provisions

72 Transitional provision relating to establishment of Small Business Commission

(1) In this section—

commencement day means the day on which section 4 comes into operation;

2003 Act Commissioner means the Small Business Commissioner appointed under the **Small Business Commissioner Act 2003** and holding office immediately before the commencement day.

(2) On and from the commencement day—

(a) The 2003 Act Commissioner is taken to be appointed as the Commissioner under section 18 on the same terms and conditions as set out in the instrument of appointment of the 2003 Act Commissioner as in force immediately before the commencement day; and

(b) any dispute in respect of which, immediately before the commencement day, a certificate had not been issued by the 2003 Act Commissioner may be concluded by the Commission.

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

Minister's second reading speech—

Legislative Assembly: 9 November 2016

Legislative Council: 24 November 2016

The long title for the Bill for this Act was "A Bill for an Act to repeal the **Small Business Commissioner Act 2003** and to re-enact the law in relation to the Small Business Commission with amendments, to establish the Small Business Commission so as to enhance a competitive and fair operating environment for small business in Victoria and for other purposes."

The **Small Business Commission Act 2017** was assented to on 10 May 2017 and came into operation on 1 July 2017: Special Gazette (No. 216) 27 June 2017 page 1.

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

2 Table of Amendments

There are no amendments made to the **Small Business Commission Act 2017** by Acts and subordinate instruments.

3 Amendments Not in Operation

This publication does not include amendments made to the **Small Business Commission Act 2017** by the following Act/s.

Small Business Commission Act 2017, No. 16/2017

<i>Assent Date:</i>	10.5.17
<i>Commencement Date:</i>	S. 70 on 1.7.17: Special Gazette (No. 216) 27.6.17 p. 1
<i>Note:</i>	S. 70 repeals Pt 3 (ss 24–70) on 15.12.18
<i>Current State:</i>	This information relates only to the provision/s amending the Small Business Commission Act 2017

At the date of this publication, the following provisions amending the **Small Business Commission Act 2017** were Not in Operation:

Amending Act/s:

Small Business Commission Act 2017, No. 16/2017

70 Repeal of Part

This Part is **repealed** on 15 December 2018.

Note

The repeal of this Part does not affect the ongoing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

4 Explanatory details

No entries at date of publication.