



Western Australia

Small Business Development Corporation Act 1983

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Small Business Development Corporation Act 1983

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Defined terms

Small Business Development Corporation Act 1983

An Act to provide for the following —

- **the establishment of a Small Business Development Corporation and Small Business Commissioner;**
- **to encourage, promote, facilitate and assist the establishment, development and carrying on of small business in the State;**
- **to enhance a competitive and fair operating environment for small business in the State;**
- **to provide alternative dispute resolution services in respect of small business disputes and disputes referred under any other Act;**
- **related matters.**

[Long title inserted: No. 20 of 2011 s. 4.]

Part 1 — Preliminary

[Heading inserted: No. 20 of 2011 s. 5.]

1. Short title

This Act may be cited as the *Small Business Development Corporation Act 1983*.

2. Commencement

This Act shall come into operation on a date to be fixed by proclamation.

3. Terms used

(1) In this Act, unless the contrary intention appears —

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;

Corporation means the Small Business Development Corporation established under section 4(1);

government entity means any of the following —

- (a) a department of the Public Service;
- (b) a local government;
- (c) the Parliamentary Commissioner for Administrative Investigations appointed under the *Parliamentary Commissioner Act 1971*, the Australian Small Business and Family Enterprise Ombudsman established under the *Australian Small Business and Family Enterprise Ombudsman Act 2015* (Commonwealth) or any other

ombudsman or equivalent office under a written law or a law of the Commonwealth;

- (d) a body, whether corporate or unincorporate, or the holder of an office, post or position, being a body or office, post or position that is established or continued for a public purpose under a written law;
- (e) the Australian Competition and Consumer Commission established by the *Competition and Consumer Act 2010* (Commonwealth);
- (f) the Australian Securities and Investments Commission referred to in the *Australian Securities and Investments Commission Act 2001* (Commonwealth);
- (g) the Commissioner, as defined in the *Taxation Administration Act 1953* (Commonwealth) section 2(1);
- (h) any person or office prescribed by the regulations;

local government includes a regional local government and a regional subsidiary;

member means a member of the board appointed by or under section 5;

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

small business means a business undertaking —

- (a) which is wholly owned and operated by an individual person or by individual persons in partnership or by a proprietary company within the meaning of the *Corporations Act 2001* of the Commonwealth and which —
 - (i) has a relatively small share of the market in which it competes; and
 - (ii) is managed personally by the owner or owners or directors, as the case requires; and
 - (iii) is not a subsidiary of, or does not form part of, a larger business or enterprise;

or

(b) which is declared by the Governor by Order in Council pursuant to subsection (2) to be a small business for the purposes of this Act.

(2) The Governor may, by Order in Council published in the *Government Gazette*, declare a business undertaking to be a small business for the purposes of this Act and by subsequent Order in Council so published vary or revoke that declaration.

[Section 3 amended: No. 5 of 1998 s. 4 and 9; No. 10 of 2001 s. 221; No. 20 of 2011 s. 6; No. 12 of 2020 s. 4.]

Part 2 — Small Business Development Corporation

[Heading inserted: No. 20 of 2011 s. 7.]

4. Corporation established, nature of etc.

- (1) For the purposes of this Act, there shall be established a body corporate by the name of the “Small Business Development Corporation”.
- (2) Under its corporate name the Corporation —
 - (a) has perpetual succession and a common seal; and
 - (b) may acquire, hold and dispose of real and personal property; and
 - (c) may sue and be sued in any court; and
 - (d) shall have and may exercise such powers, and shall perform such functions and duties, as are conferred or imposed upon it by or under this Act; and
 - (e) subject to this Act, is capable of doing and suffering all that bodies corporate may do and suffer.
- (3) Where in any judicial proceedings, whether under this Act or not, a document is produced bearing a seal purporting to be the common seal of the Corporation the court or tribunal before which those proceedings are brought shall in the absence of proof to the contrary presume that —
 - (a) the seal is the common seal of the Corporation; and
 - (b) the seal was duly affixed.
- (4) Regulations made under this Act may make provision as to the use of the common seal of the Corporation in the State and elsewhere.

5A. Trading names, use of by Corporation

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

s. 5

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

[Section 5A inserted: No. 20 of 2011 s. 8.]

5. Board of management, membership of etc.

- (1A) In this section —

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

- (1) The Corporation is to have a board of management consisting of —
- (a) 2 members who represent small business in the areas of the State outside the metropolitan region;
 - (b) 5 members who represent small business in the metropolitan region;
 - (c) the Commissioner ex officio.
- (2A) The board is the governing body of the Corporation and, in the name of the Corporation, is to perform the functions of the Corporation.
- (2B) The Minister is to —
- (a) appoint the members of the board referred to in subsection (1)(a) and (b); and
 - (b) appoint one of those members to be the chairperson of the board.
- (2) Subject to this Act each appointed member shall hold office for such period not exceeding 3 years as is specified in the instrument of his appointment, but is eligible for re-appointment.
- (3) The Minister may grant leave of absence to an appointed member on such terms and conditions as the Minister determines.

- (4) The Minister may terminate the appointment of an appointed member for inability, inefficiency or misbehaviour.
- (5) If an appointed member —
- (a) is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or
 - (b) has his appointment terminated by the Minister, pursuant to subsection (4); or
 - (c) is absent, except on leave duly granted by the Minister, from 3 consecutive meetings of the board of which he has had notice; or
 - (d) resigns his office by written notice addressed to the Minister,
- the office of that member becomes vacant.
- (6) The Minister may fill any vacancies in the office of member.
- [Section 5 amended: No. 73 of 1994 s. 4; No. 5 of 1998 s. 5 and 9; No. 38 of 2005 s. 15; No. 18 of 2009 s. 81; No. 20 of 2011 s. 9.]*

6. Acting etc. members, appointment of

- (1) Where —
- (a) an appointed member is absent or temporarily incapable of fulfilling the duties of a member; or
 - (b) the office of an appointed member is vacant and has not been filled in accordance with this Act,

the Minister may appoint a person to act in the place of that appointed member during that absence or incapability, or until the vacancy is filled, as the case requires, and a person so appointed has, while the appointment subsists, all the duties, powers and entitlements of, and the protection given to, the member in whose place the person is appointed to act.

s. 7

- (2) The Minister, in the absence or incapacity of the chairperson or if that office is vacant, may appoint a person to act as chairperson and that person, while the appointment subsists, has all the functions, powers and duties of the chairperson.
- (3) The Commissioner may nominate a person employed or engaged by the Corporation to represent the Commissioner at any meeting of the board that the Commissioner is unable to attend, and while nominated the person has the functions, powers and duties as a member, of the Commissioner.
- (4A) The nomination must be in writing delivered to the chairperson.
- (4) The appointment of a person as an acting member or as acting chairperson, or the nomination of a person to represent the Commissioner, may be terminated at any time by the Minister.

[Section 6 amended: No. 20 of 2011 s. 10.]

7. Members, remuneration of

- (1) A member, other than a member who is an officer in the Public Service of the State or employed by a State instrumentality, shall be paid such remuneration and allowances as the Minister from time to time on the recommendation of the Public Sector Commissioner determines.
- (2) Acceptance of, or acting in, the office of member shall not of itself render the provisions of Part 3 of the *Public Sector Management Act 1994* or any other Act applying to persons as officers of the Public Service or employees of a State instrumentality applicable to that member or affect or prejudice the application to him of those provisions if they applied to him at the time of the acceptance of, or acting in, that office.

[Section 7 amended: No. 32 of 1994 s. 19; No. 39 of 2010 s. 89.]

8. Board meetings etc.

- (1) The board shall hold its meetings at such place on such days and at such intervals as the board shall from time to time determine.
- (2) At any meeting of the board 4 members constitute a quorum.
- (3) At any meeting of the board the chairperson, or in his absence a person appointed as acting chairperson, presides but where both are absent from a meeting of the board the members may appoint one of their number to preside at that meeting.
- (4) At any meeting of the board —
 - (a) each member present is entitled to a deliberative vote; and
 - (b) where the votes cast on any question are equally divided, the question shall be deemed lost.
- (5) The board shall cause accurate minutes to be kept of the proceedings at its meetings.
- (6) To the extent that it is not prescribed, the board may determine its own procedure.

[Section 8 amended: No. 20 of 2011 s. 11.]

9. Vacancy or defect in appointment does not affect validity of board's acts etc.

No proceeding or act of the board shall (if there is a quorum) be invalidated or illegal in consequence only of there being any vacancy in the number of members at the time of that proceeding or act, or in consequence of there being some defect in the appointment of a person purporting to be a member.

[Section 9 amended: No. 20 of 2011 s. 12.]

[10. Deleted: No. 20 of 2011 s. 13.]

11. Functions of Corporation

- (1) Subject to the general direction and control of the Minister the Corporation shall administer this Act.
- (2) The Corporation has the following functions —
 - (a) to take such steps and do such acts and things as are necessary for the promotion and development of small business and to provide assistance for the establishment, development and carrying on of small business throughout the State;
 - (b) of its own motion, to make representations, to tender advice and make reports to the Minister on any matter or thing relating to, or affecting small business or the operation of this Act;
 - (c) at the request of the Minister to investigate any matter affecting small business referred to it by the Minister and to report to the Minister thereon;
 - (d) to establish and maintain liaison between associations or groups of people representing or servicing small business and the Government of the State;
 - (e) to provide operational funding, grants and financial assistance to non-government organisations working with, or on behalf of, small business in accordance with the guidelines referred to in subsection (4);
 - (fa) to investigate, and report to the Minister on, the impact on small business of legislation and government policy of this jurisdiction, the Commonwealth or any other State or Territory;
 - (fb) to investigate, and report to the Minister on, the actions of public sector bodies that affect the commercial activities of small businesses;
 - (fc) to assist public sector bodies —
 - (i) to develop legislation, policies and administrative procedures that take into account the interests of small business; and

- (ii) to improve the capacity of small business to comply with legislative and other requirements; and
- (iii) to simplify and minimise small business compliance requirements;
- (fd) to facilitate and encourage the fair treatment of small businesses in their commercial dealings with other businesses in the marketplace;
- (fe) to investigate, and report to the Minister on, emerging trends in market practice that have an adverse effect on small business;
- (f) to provide to any person, association or group of people an advisory and administrative service for, or in connection with the establishment, carrying on, expansion and development of any small business;
- (g) to arrange and co-ordinate training, educational and skill development programmes for small business;
- (ha) to promote informed decision making by small businesses;
- (hb) to assist small businesses to operate in ways that minimise disputes with other businesses;
- (h) to establish and maintain an information centre containing a comprehensive selection of literature, manuals, brochures, audio visual material, technical data, business profiles and the like;
- (i) to carry out research and to publish and distribute information, technical data and the like for the guidance of small business;
- (j) to engage the services of suitable consultants where appropriate to provide surveys, technical data, statistics, professional opinions or other information for the purposes of this Act;
- (k) to counsel small business on the availability of finance and the means of obtaining financial assistance;

s. 11A

[(l), (m) deleted]

- (n) to promote public awareness of the importance of matters relating to the activities of small business and to inform the public concerning the value of sound business practice.
- (3) The Corporation has power to do all things necessary or convenient for or in connection with the performance of its functions and, without limiting the generality of the foregoing, may —
 - (a) raise fees or charges with respect to the provision of services or the performance of any work by, or on behalf of, the Corporation; and
 - (b) own, lease, rent or otherwise acquire suitable premises or accommodation for its staff, records and facilities.
- (4) The Corporation must develop guidelines with respect to the provision of operational funding, grants and financial assistance to non-government organisations.

[Section 11 amended: No. 20 of 2011 s. 14.]

11A. Delegation by Corporation

- (1) The Corporation may, by instrument in writing, delegate the performance of any of its functions, except this power of delegation.
- (2) A delegation under subsection (1) may be made to —
 - (a) the Commissioner; or
 - (b) an appointed member; or
 - (c) a person employed or engaged by the Corporation; or
 - [(d) deleted]*
 - (e) with the approval of the Minister, any other person.
- (3) A delegate cannot subdelegate the performance of any function unless he or she is expressly authorised by the instrument of delegation to do so.

- (4) A function performed by a delegate is to be taken to be performed by the Corporation.
- (5) A delegate performing a function under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (6) Nothing in this section is to be read as limiting the ability of the Corporation to act through its officers and agents in the normal course of business.

[Section 11A inserted: No. 5 of 1998 s. 6; amended: No. 20 of 2011 s. 15.]

[11B, 11C. Deleted: No. 20 of 2011 s. 16.]

[12. Deleted: No. 5 of 1998 s. 7.]

Part 3 — Small Business Commissioner

[Heading inserted: No. 20 of 2011 s. 16.]

Division 1 — Small Business Commissioner

[Heading inserted: No. 20 of 2011 s. 16.]

13. Small Business Commissioner, appointment of

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

[Section 13 inserted: No. 20 of 2011 s. 16.]

14A. Functions of Commissioner

(1) The Commissioner has the following functions —

- (a) to administer the day-to-day operations of the Corporation;
- (b) to receive complaints about any matter that affects the commercial activities of small business, and do either or both of the following in relation to a complaint —
 - (i) investigate a matter complained about and any person in relation to the matter (including, without limitation, a public sector body or local government);
 - (ii) provide assistance to attempt to resolve the complaint;

[(c) deleted]

- (d) to provide alternative dispute resolution services for small businesses;
- (e) to make representations to another person or body on behalf of a small business that has made a complaint;
- (ea) to investigate any matter that affects the commercial activities of small business, and any person in relation to

- the matter (including, without limitation, a public sector body or local government);
- (eb) to give to the Minister, or to any government entity, a report on an investigation carried out under paragraph (b) or (ea);
 - (f) to perform functions conferred on the Commissioner under any other Act;
 - (g) to advise the Minister on any matter related to the functions of the Commissioner referred to in paragraphs (b) to (f).
- (2) The Commissioner need not investigate a matter, provide assistance or give a report if, in a particular case, the Commissioner considers it inappropriate to do so.
- (3) In performing the functions (the *investigatory functions*) referred to in subsection (1)(b)(i) and (ea), the Commissioner must —
- (a) avoid duplicating the operations of any department of the Public Service that performs a function that wholly or partly overlaps with the investigatory functions; and
 - (b) work cooperatively, as far as is possible, with departments of the Public Service to perform the investigatory functions.

[Section 14A inserted: No. 20 of 2011 s. 16; amended: No. 12 of 2020 s. 5.]

14B. Powers of Commissioner

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

[Section 14B inserted: No. 20 of 2011 s. 16.]

14BA. Commissioner may request documents, things and information

- (1) For the purpose of carrying out an investigation under section 14A(1)(b) or (ea), the Commissioner may do any of the following —
 - (a) request a person to produce to the Commissioner any document or thing specified, or of a kind specified, in the request that the Commissioner considers relates to the investigation;
 - (b) request a person to give to the Commissioner any information specified, or of a kind specified, in the request that the Commissioner considers relates to the investigation;
 - (c) keep any document or thing produced for the purpose of taking an extract from, or making a copy of, the document or thing.
- (2) If the Commissioner keeps a document or thing under subsection (1)(c), the Commissioner must return the document or thing as soon as practicable after taking the extract or making the copy, and, in any event, within 7 business days of the document or thing being produced to the Commissioner.
- (3) In subsection (2) —

business day means a day other than —

 - (a) a Saturday or Sunday; or
 - (b) a public holiday throughout the State.
- (4) A request under subsection (1) —
 - (a) may be made orally or in writing; and
 - (b) must specify the time within which the document, thing or information requested must be produced or given to the Commissioner; and

- (c) may require that the document, thing or information be verified by statutory declaration when produced or given.
- (5) A person must not, without reasonable excuse, fail to comply with a request made of the person under subsection (1).
Penalty for this subsection: a fine of \$20 000.
- (6) A person of whom the Commissioner has made a request under subsection (1) must not produce a document or thing, or give information, that —
- (a) the person knows is false or misleading in a material particular; or
 - (b) omits anything without which the document, thing or information is, to the person's knowledge, misleading in a material particular.
- Penalty for this subsection: a fine of \$20 000.
- (7) A person of whom the Commissioner has made a request under subsection (1) must not alter, suppress or destroy any document or thing that the person is requested to produce.
Penalty for this subsection: a fine of \$20 000.
- (8) A prosecution for an offence against this section may not be commenced without the authorisation of the Commissioner.

[Section 14BA inserted: No. 12 of 2020 s. 6.]

14BB. Reports by Commissioner

- (1) In this section, information is ***adverse information*** in relation to a person if, were the information to be published, the publication of the information would be likely to adversely affect the interests of the person.
- (2) The Commissioner must not give a report under section 14A(1)(eb) to the Minister or a government entity or under subsection (4) to the Premier and Deputy Premier that contains adverse information in relation to a person mentioned

in the report, unless the Commissioner has given the person a reasonable opportunity to make written submissions in relation to the matter.

- (3) If a person makes written submissions in relation to a matter in a report, the Commissioner —
- (a) must —
 - (i) amend the report to note in the report that the person has made written submissions; and
 - (ii) include the submissions with the report when the report is given to the Minister, Premier, Deputy Premier or the government entity;
 - but
 - (b) need not otherwise amend the report as a result of the submissions.
- (4) If the Commissioner investigates the Minister under section 14A(1)(b) or (ea) and prepares a report on the investigation, the Commissioner must give the report to the Premier and Deputy Premier.

[Section 14BB inserted: No. 12 of 2020 s. 6.]

14C. Delegation by Commissioner

- (1) The Commissioner may delegate any power or duty of the Commissioner under another provision of this Act (other than the power of the Commissioner to authorise the commencement of prosecutions under section 14BA(8)) or under any other Act to a person employed or engaged by the Corporation.
- (2) The delegation must be in writing signed by the Commissioner.
- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A person exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so

in accordance with the terms of the delegation unless the contrary is shown.

- (5) Nothing in this section limits the ability of the Commissioner to perform a function through an agent.

[Section 14C inserted: No. 20 of 2011 s. 16; amended: No. 12 of 2020 s. 7.]

14. Financial Management Act 2006, application of to this Part

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

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

[Section 14 inserted: No. 20 of 2011 s. 16.]

Division 2 — Dispute resolution

[Heading inserted: No. 20 of 2011 s. 16.]

Subdivision 1 — Preliminary

[Heading inserted: No. 20 of 2011 s. 16.]

15A. Terms used

In this Division —

alternative dispute resolution means —

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

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

small business dispute means a dispute about —

- (a) an unfair market practice that affects a small business; or
- (b) the actions of a public sector body or local government that affects the commercial activities of a small business.

[Section 15A inserted: No. 20 of 2011 s. 16; amended: No. 12 of 2020 s. 8.]

Subdivision 2 — Requests to provide assistance

[Heading inserted: No. 20 of 2011 s. 16.]

15B. Small business may request Commissioner’s assistance in small business dispute

An owner or operator of a business may request the Commissioner to provide assistance in respect of a small business dispute.

[Section 15B inserted: No. 20 of 2011 s. 16.]

15C. Assistance to resolve dispute, Commissioner may provide

- (1) In this section —

request to provide assistance means —

- (a) a request made under section 15B; or
- (b) a request for the Commissioner to provide assistance in respect of a dispute or matter made under any other Act.

- (2) On a request to provide assistance the Commissioner may provide such assistance to attempt to resolve the dispute or matter as the Commissioner considers is appropriate.

[Section 15C inserted: No. 20 of 2011 s. 16.]

Subdivision 3 — Alternative dispute resolution

[Heading inserted: No. 20 of 2011 s. 16.]

15D. Parties to small business dispute may request ADR

The parties to a small business dispute may request the Commissioner to undertake alternative dispute resolution in respect of the dispute.

[Section 15D inserted: No. 20 of 2011 s. 16.]

15E. Request for ADR, Commissioner's functions on

(1) In this section —

request to undertake alternative dispute resolution means —

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

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

- (a) the parties should seek further advice or assistance before an alternative dispute resolution proceeding in respect of the dispute is commenced; or
- (b) to commence an alternative dispute resolution proceeding in respect of the dispute; or
- (c) to refuse to undertake alternative dispute resolution.

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

[Section 15E inserted: No. 20 of 2011 s. 16.]

15F. Commissioner may add party to ADR proceeding

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

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

[Section 15F inserted: No. 20 of 2011 s. 16.]

15G. Costs of ADR proceeding

- (1) The costs of an alternative dispute resolution proceeding, including the fees and expenses of the facilitator, are to be determined by the Commissioner.
- (2) The costs of an alternative dispute resolution proceeding are to be paid by the parties in equal shares or, with the approval of the Commissioner, as otherwise agreed by the parties.
- (3) Any costs payable by the parties under this section are recoverable by the Commissioner in a court of competent jurisdiction as a debt due to the Commissioner.

[Section 15G inserted: No. 20 of 2011 s. 16.]

15H. Representation in ADR proceeding

- (1) A party may be represented by a lawyer during an alternative dispute resolution proceeding but the facilitator may, if the facilitator considers it appropriate to do so, meet with the party, either alone or with another party, without the party's legal representative being present.
- (2) A party who is not a natural person may be represented during an alternative dispute resolution proceeding by an officer, employee or agent of that party.
- (3) A facilitator may request the attendance of another person during an alternative dispute resolution proceeding if, in the opinion of the facilitator, the attendance of that person may help in the alternative dispute resolution proceeding.

[Section 15H inserted: No. 20 of 2011 s. 16.]

15I. ADR proceeding, admissibility of evidence of in courts etc.

- (1) Evidence of anything lawfully said or done in the course of an alternative dispute resolution proceeding is not admissible before a court or tribunal or body unless subsection (2) applies.
- (2) Evidence referred to in subsection (1) is admissible in a proceeding if the parties to the alternative dispute resolution proceeding consent to the admission of the evidence.

[Section 15I inserted: No. 20 of 2011 s. 16.]

Part 4 — Staff

[Heading inserted: No. 20 of 2011 s. 17]

15. Staff of Corporation, employment of

- (1) Subject to this Act, the Corporation may employ persons as staff of the Corporation —
 - (a) to enable the Corporation to carry out its functions; and
 - (b) to assist the Commissioner to carry out his or her functions.
- (2) Persons employed under subsection (1) may be employed on a full time or part time basis.
- (3) Subject to any relevant award or industrial agreement ¹ under the *Industrial Relations Act 1979* ², the Corporation may determine the remuneration and other terms and conditions of service of persons employed under subsection (1).
- (4) Part 3 of the *Public Sector Management Act 1994* does not apply to or in relation to a person employed under subsection (1).
- (5) Subsection (1) does not affect the power of the Corporation to engage a person under a contract for services or appoint a person on a casual employment basis under the *Public Sector Management Act 1994* section 100.

[Section 15 amended: No. 32 of 1994 s. 19; No. 20 of 2011 s. 18.]

16. Staff who are in Senior Executive Service, status of

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

[Section 16 inserted: No. 20 of 2011 s. 19.]

17. Staff and facilities of departments etc., use of by Corporation

The Corporation may by arrangement with the Minister concerned and on such terms and conditions as may be mutually arranged with that Minister and with the relevant employing authority within the meaning of the *Public Sector Management Act 1994*, make use, either full time or part time, of —

- (a) the services of any officer or employee of a public sector body; or
- (b) any facilities of a public sector body.

[Section 17 amended: No. 32 of 1994 s. 19; No. 20 of 2011 s. 20.]

Part 5 — Accountability and financial provisions

[Heading inserted: No. 20 of 2011 s. 21]

18A. Protection from personal liability

- (1) No action or claim for damages lies against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.
- (2) The protection given by subsection (1) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act had been enacted.
- (3) Despite subsection (1), the State is not relieved of any liability that it might have for another person having done something as described in that subsection.
- (4) In this section, a reference to the doing of any thing includes a reference to the omission to do any thing.

[Section 18A inserted: No. 20 of 2011 s. 22.]

18B. Directions to Corporation by Minister

- (1) Subject to subsection (3), the Minister may give written directions to the Corporation with respect to the performance of its functions, either generally or in relation to a particular matter, and the Corporation is to give effect to any such direction.
- (2) Subject to subsection (3), the Minister may give written directions to the Commissioner with respect to the performance of his or her functions, either generally or in relation to a particular matter, and the Commissioner is to give effect to any such direction.
- (3) The Minister must not under subsection (1) or (2) direct the Corporation or Commissioner with respect to the performance of its or his or her functions in respect of —
 - (a) a particular person; or

- (b) a particular application, complaint or proceeding; or
 - (c) a particular investigation carried out under section 14A(1)(b) or (ea).
- (4) The text of a direction given under subsection (1) or (2) is to be —
- (a) laid before each House of Parliament within 14 sitting days of that House after the direction is given; and
 - (b) included in the annual report submitted by the accountable authority of the Corporation under the *Financial Management Act 2006* Part 5.

[Section 18B inserted: No. 20 of 2011 s. 22; amended: No. 12 of 2020 s. 9.]

18C. Minister to have access to information

- (1) In this section —
- document** includes any tape, disk or other device or medium on which information is recorded or stored;
- information** means information specified, or of a description specified, by the Minister.
- (2) The Minister is entitled —
- (a) to have information in the possession of the Corporation that relates to the functions of the Corporation; and
 - (b) to have information in the possession of the Commissioner that relates to the functions of the Commissioner referred to in section 14A(1)(b) to (g); and
 - (c) if the information referred to in paragraph (a) or (b) is in or on a document, to have, and make and retain copies of, that document.
- (3) For the purposes of subsection (2) the Minister may —
- (a) request the Corporation or the Commissioner, as the case requires, to furnish information to the Minister; and

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- (b) request the Corporation or the Commissioner, as the case requires, to give the Minister access to information; and
 - (c) for the purposes of paragraph (b) make use of the services of staff employed or engaged by the Corporation to obtain the information and furnish it to the Minister.
- (4) The Corporation or the Commissioner is to comply with a request under subsection (3) and the Corporation is to arrange for its staff and facilities to be available to the Minister for the purposes of subsection (3)(c).
- (5) Subject to subsection (6), the Minister is not entitled to have information under this section in a form that —
- (a) discloses the identity of a person involved in a particular application, complaint or proceeding; or
 - (b) might enable the identity of any such person to be ascertained,
- unless that person has consented to the disclosure.
- (6) Subsection (5) does not apply to a report given to the Minister under section 14A(1)(eb).

[Section 18C inserted: No. 20 of 2011 s. 22; amended: No. 12 of 2020 s. 10.]

18. Disclosure of some information by officials restricted

- (1) A person to whom this subsection applies must not, directly or indirectly, record, disclose or make use of any information obtained in the course of duty except —
- (a) for the purpose of performing functions under this Act; or
 - (b) as required or allowed by this Act or under another law; or

- (c) with the written consent of the person to whom the information relates; or
- (d) in prescribed circumstances.

Penalty for this subsection: a fine of \$10 000.

- (2) Subsection (1) applies to any person who is or has been —
 - (a) the Commissioner; or
 - (b) an appointed member; or
 - (c) employed or engaged by the Corporation; or
 - [(d) *deleted*]
 - (e) a delegate under section 11A(2)(e).

[Section 18 inserted: No. 5 of 1998 s. 8; amended: No. 20 of 2011 s. 23; No. 12 of 2020 s. 11.]

18AA. Complainant identity protected

- (1) In this section —
complainant means —
 - (a) a person who makes a complaint to the Commissioner about a matter that affects the commercial activities of small business; or
 - (b) a person who discloses information to the Commissioner that, whether alone or with other information, results in the Commissioner commencing an investigation under section 14A(1)(b) or (ea).
- (2) Despite any other provision in this Act, the Commissioner is not required to, and may refuse to, disclose information that might —
 - (a) identify or tend to identify a person as a complainant; or
 - (b) enable the identity of a complainant to be ascertained.

[Section 18AA inserted: No. 12 of 2020 s. 12.]

19. Small Business Development Corporation Account

- (1) There continues to be an account called the Small Business Development Corporation Account which is an agency special purpose account under the *Financial Management Act 2006* section 16.
- (2) The Small Business Development Corporation Account must be credited with the following —
 - (a) money received by, made available to, or payable to, the Corporation in the performance of functions under this or any other Act;
 - (b) money received by, made available to, or payable to, the Commissioner in the performance of functions under this or any other Act;
 - (c) money appropriated by Parliament to, or otherwise lawfully received for, the Small Business Development Corporation.
- (3) Money held in the Small Business Development Corporation Account may be applied for the following —
 - (a) in payment of the costs of the administration of this Act;
 - (b) to fund the services and facilities provided by the Corporation under this or any other Act;
 - (c) in payment of the costs and expenses incurred in the performance of the functions of the Commissioner under this or any other Act.

[Section 19 inserted: No. 20 of 2011 s. 24.]

[20. Deleted: No. 20 of 2011 s. 25.]

21. *Financial Management Act 2006 and the Auditor General Act 2006, application of*

The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial

administration, audit and reporting of statutory authorities apply to and in respect of the Corporation and its operations.

[Section 21 inserted: No. 98 of 1985 s. 3; amended: No. 77 of 2006 Sch. 1 cl. 157(4).]

[22-23. Deleted: No. 98 of 1985 s. 3.]

Part 6 — Miscellaneous

[Heading inserted: No. 12 of 2020 s. 13.]

24. Regulations

The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

24A. Review of amendments made by *Small Business Development Corporation Amendment Act 2020*

- (1) The Minister must review the operation and effectiveness of the amendments made to this Act by the *Small Business Development Corporation Amendment Act 2020*, with particular regard to section 14BA, and prepare a report based on the review, as soon as practicable after the 2nd anniversary of the day on which the *Small Business Development Corporation Amendment Act 2020* section 3 comes into operation.
- (2) The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the 2nd anniversary.

[Section 24A inserted: No. 12 of 2020 s. 14.]

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

[Heading inserted: No. 20 of 2011 s. 28]

25. Term used: commencement day

In this Part —

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

[Section 25 inserted: No. 20 of 2011 s. 28.]

26. Appointed members as at 24 Mar 2012

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

[Section 26 inserted: No. 20 of 2011 s. 28.]

27. Application of s. 18 to certain persons

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

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

[Section 27 inserted: No. 20 of 2011 s. 28.]

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Notes

This is a compilation of the *Small Business Development Corporation Act 1983* and includes amendments made by other written laws. For provisions that have come into operation, and for information about any reprints, see the compilation table.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Small Business Development Corporation Act 1983</i>	46 of 1983	5 Dec 1983	1 Jan 1984 (see s. 2 and <i>Gazette</i> 30 Dec 1983 p. 5137)
<i>Acts Amendment (Financial Administration and Audit) Act 1985 s. 3</i>	98 of 1985	4 Dec 1985	1 Jul 1986 (see s. 2 and <i>Gazette</i> 30 Jun 1986 p. 2255)
<i>Acts Amendment (Public Service) Act 1987 s. 32</i>	113 of 1987	31 Dec 1987	16 Mar 1988 (see s. 2 and <i>Gazette</i> 16 Mar 1988 p. 813)
<i>Acts Amendment (Public Sector Management) Act 1994 s. 19</i>	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Statutes (Repeals and Minor Amendments) Act 1994 s. 4</i>	73 of 1994	9 Dec 1994	9 Dec 1994 (see s. 2)
<i>Financial Legislation Amendment Act 1996 s. 61 and 64</i>	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>Small Business Development Corporation Amendment Act 1998</i>	5 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2)
<i>Corporations (Consequential Amendments) Act 2001 s. 221</i>	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
Reprint of the <i>Small Business Development Corporation Act 1983</i> as at 7 Dec 2001 (includes amendments listed above)			
<i>Planning and Development (Consequential and Transitional Provisions) Act 2005 s. 15</i>	38 of 2005	12 Dec 2005	9 Apr 2006 (see s. 2 and <i>Gazette</i> 21 Mar 2006 p. 1078)

Short title	Number and year	Assent	Commencement
<i>Financial Legislation Amendment and Repeal Act 2006</i> Sch. 1 cl. 157	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
<i>Acts Amendment (Bankruptcy) Act 2009</i> s. 81	18 of 2009	16 Sep 2009	17 Sep 2009 (see s. 2(b))
<i>Public Sector Reform Act 2010</i> s. 89	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and <i>Gazette</i> 5 Nov 2010 p. 5563)
<i>Small Business and Retail Shop Legislation Amendment Act 2011</i> Pt. 2	20 of 2011	11 Jul 2011	24 Mar 2012 (see s. 2(b) and <i>Gazette</i> 23 Mar 2012 p. 1363)
Reprint 2: The Small Business Development Corporation Act 1983 as at 11 May 2012 (includes amendments listed above)			
<i>Small Business Development Corporation Amendment Act 2020</i>	12 of 2020	6 Apr 2020	s. 1 and 2: 6 Apr 2020 (see s. 2(a)); Act other than s. 1 and 2: 7 Apr 2020 (see s. 2(b))

Other notes

- ¹ Reference altered under the *Acts Amendment and Repeal (Industrial Relations) Act (No. 2) 1984* s. 88(3).
- ² Under the *Interpretation Act 1984* s. 16, a reference to the *Industrial Arbitration Act 1979* may be read as a reference to the *Industrial Relations Act 1979*. The reference was changed under the *Reprints Act 1984* s. 7(3)(g).

Defined terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined term	Provision(s)
adverse information	14BB(1)
alternative dispute resolution	15A
appointed member.....	3(1)
board	3(1)
business day	14BA(3)
chairperson.....	3(1)
commencement day	25
Commissioner	3(1)
complainant.....	18AA(1)
Corporation	3(1)
document.....	18C(1)
facilitator.....	15A
government entity	3(1)
information.....	18C(1)
investigatory functions.....	14A(3)
local government.....	3(1)
member	3(1)
metropolitan region.....	5(1A)
public sector body.....	3(1)
request to provide assistance.....	15C(1)
request to undertake alternative dispute resolution	15E(1)
small business	3(1)
small business dispute.....	15A