



Western Australia

Small Business Development Corporation Act 1983

Compare between:

[01 Dec 2010, 01-h0-01] and [11 Jul 2011, 01-i0-01]

Small Business Development Corporation Act 1983

An Act to make provision for the establishment of a Small Business Development Corporation to encourage, promote, facilitate and assist the establishment, development, and carrying on of small business in the State and for incidental and other purposes.

1. Short title

This Act may be cited as the *Small Business Development Corporation Act 1983*¹.

2. Commencement

This Act shall come into operation on a date to be fixed by proclamation¹.

3. Interpretation

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

appointed member means a person appointed by the Minister pursuant to section 5(1)(a) or (b) to be a member of the Corporation;

Chairman means the person appointed under section 5(1) to be the Chairman of the Corporation and includes a person acting in the office of Chairman;

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

Managing Director means the chief executive officer of the Corporation appointed under Part 3 of the *Public Sector Management Act 1994*;

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

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;
 - (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 by No. 5 of 1998 s. 4 and 9; No. 10 of 2001 s. 221.]

4. The Corporation

- (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;
 - (b) may acquire, hold and dispose of real and personal property;
 - (c) may sue and be sued in any court;
 - (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.

5. Composition of Corporation

- (1) The Corporation shall consist of —
 - (a) one person appointed by the Minister as a member and Chairman of the Corporation;
 - (b) 6 persons appointed by the Minister as members of the Corporation, of whom 2 shall be persons representative

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of small business in the areas of the State outside the metropolitan region; and

(c) the Managing Director ex officio.

- (1a) For the purposes of subsection (1)(b) —
metropolitan region has the same meaning as in the *Planning and Development Act 2005*.
- (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 Corporation 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 by 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.]

6. Acting members

- (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.

- (2) The Minister, in the absence or incapacity of the Chairman or if that office is vacant, may appoint a person to act as Chairman and that person, while the appointment subsists, has all the functions, powers and duties of the Chairman.
- (3) The Managing Director may nominate, in writing delivered to the Chairman, an employee of the Corporation to represent him at any meeting at which he is unable to attend, and while so attending the person so nominated has the functions, powers and duties as a member, of the Managing Director.
- (4) The appointment of a person as an acting member or as acting Chairman, or the nomination of a person to represent the Managing Director, may be terminated at any time by the Minister.

7. Remuneration of members

- (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.

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- (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 by No. 32 of 1994 s. 19; No. 39 of 2010 s. 89.]

8. Proceedings of the Corporation

- (1) The Corporation shall hold its meetings at such place on such days and at such intervals as the Corporation shall from time to time determine.
- (2) At any meeting of the Corporation 4 members constitute a quorum.
- (3) At any meeting of the Corporation the Chairman, or in his absence a person appointed as acting Chairman, presides but where both are absent from a meeting of the corporation the members may appoint one of their number to preside at that meeting.
- (4) At any meeting of the Corporation —
- (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 Corporation shall cause accurate minutes to be kept of the proceedings at its meetings.
- (6) To the extent that it is not prescribed, the Corporation may determine its own procedure.

9. Matters not to be invalidated by vacancies, or defects in appointment

No proceeding or act of the Corporation shall (if there is a quorum) be invalidated or illegal in consequence only of there being any vacancy in the or 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.

10. Liability of members

A person who is or has been a member or acting member of the Corporation is not personally liable for anything done or omitted in good faith in, or in connection with, the exercise or purported exercise of any power conferred, or the carrying out of any duty imposed, on the Corporation by this Act.

11. Powers and functions of the Corporation

- (1) Subject to the general direction and control of the Minister the Corporation shall the administer this Act.
- (2) The functions of the Corporation are —
 - (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;
 - (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;

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- (e) to investigate the effect upon small business of policies of Governments, Acts of Parliament (whether of the Commonwealth or a State or Territory of the Commonwealth) or subordinate legislation made thereunder and to advise and keep the Minister informed thereon;
- (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;
- (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;
- (l) to promote and co-ordinate the provision of venture capital to small business;
- (m) to recommend to the Minister ways and means by which incentives and financial assistance, including guarantees, may be provided for small business; and
- (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;
 - (b) own, lease, rent or otherwise acquire suitable premises or accommodation for its staff, records and facilities; and
 - (c) open and maintain an account at a bank approved by the Treasurer.
- (4) The Minister may from time to time give directions to the Corporation with respect to its functions, powers and duties, either generally or with respect to a particular matter, and the Corporation shall give effect to those directions.

11A. Delegation

- (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 Managing Director;
 - (b) an appointed member;
 - (c) a person employed by the Corporation under section 15;
 - (d) a person engaged by the Corporation under section 16; or
 - (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.

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- (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 by No. 5 of 1998 s. 6.]

11B. Minister may give directions

- (1) The Minister may give directions in writing 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) The text of a direction given under subsection (1) 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 Part 5 of the *Financial Management Act 2006*.

[Section 11B inserted by No. 5 of 1998 s. 6; amended by No. 77 of 2006 s. 17.]

11C. Minister to have access to information

- (1) The Minister is entitled —
 - (a) to have information in the possession of the Corporation; and
 - (b) where the information is in or on a document, to have, and make and retain copies of, that document.
- (2) For the purposes of subsection (1) the Minister may —

- (a) request the Corporation to furnish information to the Minister;
 - (b) request the Corporation to give the Minister access to information;
 - (c) for the purposes of paragraph (b) make use of a member of staff of the Corporation to obtain the information and furnish it to the Minister.
- (3) The Corporation is to comply with a request under subsection (2) and make its facilities and members of staff available to the Minister for the purposes of paragraph (c) of that subsection.
- (4) In this section —
- document** includes any tape, disc or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;
- information** means information specified, or of a description specified, by the Minister that relates to the functions of the Corporation.

[Section 11C inserted by No. 5 of 1998 s. 6.]

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

13. Powers, functions and duties of Managing Director

The Managing Director shall, under the Corporation, administer the day to day operations of the Corporation and generally has and may exercise the powers and shall perform the functions and duties conferred or imposed upon him by or under this Act.

14. Acting appointments

- (1) Where —
- (a) the Managing Director is absent or temporarily incapable of fulfilling his duties as Managing Director;
- or

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(b) the office of Managing Director is vacant,

the Minister may appoint an employee of the Corporation to act in the office of Managing Director during that absence or incapacity or until the vacancy is filled, as the case requires, and that person has, while his appointment subsists all the powers, functions and duties of the Managing Director.

- (2) Any reference in this Act to the Managing Director shall be construed as including a reference to a person appointed by the Minister pursuant to subsection (1) to act in the office of Managing Director.

15. Employees of the Corporation

- (1) Subject to this Act, the Corporation may, from time to time, employ such persons as it considers necessary to enable the Corporation to carry out its 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 agreement³ under the *Industrial Relations Act 1979*⁴, the Corporation may determine the remuneration and other terms and conditions of service of its employees.
- (4) Part 3 of the *Public Sector Management Act 1994* does not apply to or in relation to an employee of the Corporation.

[Section 15 amended by No. 32 of 1994 s. 19.]

15A. Status of Managing Director and other employees of Corporation who are members of Senior Executive Service

Notwithstanding anything in sections 12, 13, 14 and 15, to the extent that there is in the case of a person who is —

- (a) appointed under section 12 to be the Managing Director of the Corporation; or
- (b) employed under section 15,

and who is a member of the Senior Executive Service within the meaning of the *Public Sector Management Act 1994*⁵ an inconsistency between this Act and that Act that Act shall prevail.

[Section 15A inserted by No. 113 of 1987 s. 32.]

16. Professional or technical assistance

The Corporation may engage under contract for services such professional and technical or other assistance as may be necessary to enable the Corporation to perform effectively its functions under this Act.

17. Use of staff and facilities of departments and instrumentalities

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 employed in the Public Service of the State or in a State instrumentality or otherwise in the service of the Crown in right of the State; or
- (b) any facilities of a department of the Public Service of the State or of a State instrumentality.

[Section 17 amended by No. 32 of 1994 s. 19.]

18. Confidentiality

- (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;
 - (b) as required or allowed by this Act or under another law;

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

Penalty: \$10 000.

- (2) Subsection (1) applies to any person who is or has been —
 - (a) the Managing Director;
 - (b) an appointed member;
 - (c) employed by the Corporation under section 15;
 - (d) engaged by the Corporation under section 16; or
 - (e) a delegate under section 11A(2)(e).

[Section 18 inserted by No. 5 of 1998 s. 8.]

19. Funds

- (1) The funds available for the purpose of enabling the Corporation to perform its functions under this Act consist of —
 - (a) moneys from time to time appropriated by Parliament for the purposes of this Act;
 - (b) all moneys received by the Corporation for services provided under the authority of this Act;
 - (c) any other moneys made available for the purposes of this Act.
- (2) An account called the Small Business Development Corporation Account is to be established —
 - (a) as an agency special purpose account under section 16 of the *Financial Management Act 2006*; or
 - (b) with the approval of the Treasurer, at a bank as defined in section 3 of that Act,

to which the moneys referred to in subsection (1) are to be credited.

- (3) All expenditure incurred by the Corporation for the purpose of giving effect to this Act shall be charged to the Small Business Development Corporation Account.
- (4) Moneys standing to the credit of the Small Business Development Corporation Account shall be applied by the Corporation only for the purposes of this Act.

[Section 19 amended by No. 49 of 1996 s. 61 and 64; No. 77 of 2006 s. 17.]

20. Power to invest

Any money standing to the credit of the Small Business Development Corporation Account which is not immediately required for the purposes of this Act may, with the approval of the Treasurer be invested by the Corporation in any manner authorised under section 37 of the *Financial Management Act 2006* for the investment of money standing to the credit of the Public Bank Account.

[Section 20 amended by No. 98 of 1985 s. 3; No. 77 of 2006 s. 17.]

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

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 by No. 98 of 1985 s. 3; amended by No. 77 of 2006 s. 17.]

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

24. Regulations

The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are

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necessary or convenient to be prescribed for giving effect to the purposes of this Act.

[25. *Omitted under the Reprints Act 1984 s. 7(4)(e).*]

Notes

¹ This is a compilation of the *Small Business Development Corporation Act 1983* and includes the amendments made by the other written laws referred to in the following table ^{1a}. The table also contains information about any reprint.

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)

Small Business Development Corporation Act 1983

Short title	Number and year	Assent	Commencement
<i>Corporations (Consequential Amendments) Act 2001</i> s. 221	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</i> s. 15	38 of 2005	12 Dec 2005	9 Apr 2006 (see s. 2 and <i>Gazette</i> 21 Mar 2006 p. 1078)
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 17	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)

^{1a} [On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.](#)

Provisions that have not come into operation

<u>Short title</u>	<u>Number and year</u>	<u>Assent</u>	<u>Commencement</u>
Small Business and Retail Shop Legislation Amendment Act 2011 Pt. 2 ⁶	20 of 2011	11 Jul 2011	To be proclaimed (see s. 2(b))

² Footnote no longer applicable.

³ Reference altered under the *Acts Amendment and Repeal (Industrial Relations) Act (No. 2) 1984* s. 88(3).

⁴ 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).

⁵ Under the *Public Sector Management Act 1994* s. 112(1), a reference to the *Public Service Act 1978* is to be read as a reference to the *Public Sector Management Act 1994*. The reference was changed under the *Reprints Act 1984* s. 7(3)(g).

⁶ On the date as at which this compilation was prepared, the *Small Business and Retail Shop Legislation Amendment Act 2011* Pt. 2 had not come into operation. It reads as follows:

Part 2 — Small Business Development Corporation Act 1983 amended

3. Act amended

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

4. Long title replaced

Delete the long title and insert:

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.**

5. Part 1 heading inserted

Before section 1 insert:

Part 1 — Preliminary

6. Section 3 amended

(1) In section 3(1) delete the definitions of:

appointed member

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

8. Section 5A inserted

After section 4 insert:

5A. Use of trading names for Corporation

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

(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.

9. Section 5 amended

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

(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) In section 5(5)(c) delete “Corporation” and insert:

board

Note: The heading to amended section 5 is to read:

Board of management

10. Section 6 amended

- (1) In section 6(2):
- (a) delete “Chairman” (each occurrence) and insert:

chairperson

- (b) delete “Chairman.” and insert:

chairperson.

(2) Delete section 6(3) and insert:

- (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.

(3) In section 6(4):

(a) delete "Chairman," and insert:

chairperson.

(b) delete "Managing Director," and insert:

Commissioner.

11. Section 8 amended

(1) In section 8(1) and (2) delete "Corporation" (each occurrence) and insert:

board

(2) In section 8(3):

(a) delete "Corporation the Chairman," and insert:

board the chairperson.

(b) delete "Chairman," (second occurrence) and insert:

chairperson.

(c) delete "corporation" and insert:

board

(3) In section 8(4) delete "Corporation —" and insert:

board —

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

board

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

Proceedings of board

12. Section 9 amended

In section 9 delete “Corporation” and insert:

board

13. Section 10 deleted

Delete section 10.

14. Section 11 amended

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

administer

(2) In section 11(2):

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

Corporation has the following functions —

(b) in paragraph (b) delete “business;” and insert:

business or the operation of this Act;

(c) delete paragraph (e) and insert:

(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;

- (d) after paragraph (g) insert:
 - (ha) to promote informed decision making by small businesses;
 - (hb) to assist small businesses to operate in ways that minimise disputes with other businesses;

- (e) delete paragraphs (l) and (m).
- (3) In section 11(3):
 - (a) in paragraph (b) delete “facilities; and” and insert:

facilities.
 - (b) delete paragraph (c);
 - (c) after paragraph (a) insert:

and

- (4) Delete section 11(4) and insert:

- (4) The Corporation must develop guidelines with respect to the provision of operational funding, grants and financial assistance to non-government organisations.

15. Section 11A amended

In section 11A(2):

(a) delete paragraph (a) and insert:

(a) the Commissioner; or

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

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

(c) after paragraph (b) insert:

or

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

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

Part 3 — Small Business Commissioner

Division 1 — Small Business Commissioner

13. Small Business Commissioner

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

14A. Functions

The Commissioner has the following functions —

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

(b) to receive and investigate complaints about unfair market practices affecting small business and provide assistance to attempt to resolve those complaints;

- (c) to receive and investigate complaints by small businesses about the actions of public sector bodies that affect the commercial activities of small business;
- (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;
- (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).

14B. Powers

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.

14C. Delegation

- (1) The Commissioner may delegate any power or duty of the Commissioner under another provision of this Act 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.

14. Accountability under 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.

Division 2 — Dispute resolution

Subdivision 1 — Preliminary

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 that affects the commercial activities of a small business.

Subdivision 2 — Requests to provide assistance

15B. Request to provide assistance in dispute affecting small business

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

15C. Providing assistance

(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.

Subdivision 3 — Alternative dispute resolution

15D. Request to undertake alternative dispute resolution in small business dispute

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

15E. Undertaking alternative dispute resolution

(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.

15F. Joining parties to alternative dispute resolution 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.

15G. Costs of alternative dispute resolution 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.

15H. Representation at alternative dispute resolution 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.

15I. Evidence of certain things inadmissible

- (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.

17. Part 4 heading inserted

Before section 15 insert:

Part 4 — Staff

18. Section 15 amended

- (1) Delete section 15(1) and insert:
- (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) In section 15(3) delete "its employees." and insert:
- persons employed under subsection (1).

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

a person employed under subsection (1).

(4) After section 15(4) insert:

(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.

Note: The heading to amended section 15 is to read:
Staff and contractors

19. Sections 15A and 16 replaced

Delete sections 15A and 16 and insert:

16. Staff of Corporation who are members of Senior Executive Service

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).

20. Section 17 amended

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

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

21. Part 5 heading inserted

After section 17 insert:

Part 5 — Accountability and financial provisions

22. Sections 18A to 18C inserted

Before section 18 insert:

18A. Protection from 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.

18B. Directions 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.
- (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*.

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(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

(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) 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.

23. Section 18 amended

In section 18(2):

(a) delete paragraph (a) and insert:

(a) the Commissioner; or

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

 (c) employed or engaged by the Corporation; or

 (c) after paragraph (b) insert:

 or

24. Section 19 replaced

Delete section 19 and insert:

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.

25. Section 20 deleted

Delete section 20.

26. Part 6 heading inserted

Before section 24 insert:

Part 6 — Regulations

27. Section 25 deleted

Delete section 25.

28. Part 7 inserted

At the end of the Act insert:

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

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.

26. Appointed members

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.

27. Application of section 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.