

Western Australia

Small Business Guarantees Act 1984

As at 21 Mar 2003

Version 01-a0-02

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CONTENTS

1.	Short title	1
2.	Commencement	1
3.	Interpretation	1
3A.	Administration of the Act	2
4.	Minister may execute guarantees	2
5.	Provisions relating to guarantees	3
6.	Payments under guarantee	4
7.	Offences by applicants	4
8.	Regulations	5
	Notes	
	Compilation table	6

Small Business Guarantees Act 1984

An Act to authorise the execution of guarantees for the repayment of loans made to owners of certain small businesses.

1. Short title

This Act may be cited as the *Small Business Guarantees Act 1984*¹.

2. Commencement

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

3. Interpretation

In this Act, unless the contrary intention appears —

“**section**” means a section of this Act;

“**small business**” means a business enterprise that —

- (a) is carried on for the purpose of manufacturing or processing goods or for any other prescribed purpose; and
- (b) in the opinion of the Minister —
 - (i) is a small business enterprise;
 - (ii) is not a subsidiary of, or does not form part of, a larger enterprise; and
 - (iii) is managed personally by at least one of the persons entitled to a share of the profits of the enterprise;

s. 3A

“**subsection**” means a subsection of the section in which the term is used;

“**Treasurer**” means the Treasurer of the State.

3A. Administration of the Act

Subject to the general direction and control of the Minister, the Small Business Development Corporation, established under section 4(1) of the *Small Business Development Corporation Act 1983* shall administer this Act.

[Section 3A inserted by No. 56 of 1987 s. 4.]

4. Minister may execute guarantees

- (1) The Minister may execute a guarantee in favour of a bank or another person or body of persons, whether corporate or unincorporate, for the repayment of the whole or part of a loan made by that bank or other person or body of persons to the owner of a small business where the Minister is satisfied that —
 - (a) the sole ground for the prior rejection of the loan proposal by the lender was the insufficiency of the security proposed by the borrower and in all other respects the lender accepted the loan proposal as a viable proposition; and
 - (b) the loan moneys are required for capital expenditure or working capital for the establishment of a small business or the expansion or diversification of an existing small business.
- (2) The Minister shall not execute a guarantee under subsection (1) if the amount of the guarantee exceeds the amount prescribed for the purposes of this subsection.
- (3) The Minister shall not execute a guarantee under subsection (1) if the amount of the guarantee, together with the amounts of all other guarantees executed under subsection (1) (excluding guarantees no longer in force), exceed such amount as the

Treasurer may from time to time declare by notice published in the *Gazette*.

- (4) The execution by the Minister of a guarantee under subsection (1) shall be conclusive evidence that the requirements of this Act with respect to the guarantee have been complied with.

- (5) In this section —

“amount of the guarantee” means the principal amount of the loan the subject of the guarantee and does not include any interest charges or expenses chargeable by the lender against the borrower or the expenses of enforcing, or obtaining, or endeavouring to enforce or obtain, payment of the debt guaranteed or those interest charges and expenses.

[Section 4 amended by No. 56 of 1987 s. 5.]

5. Provisions relating to guarantees

- (1) Subject to subsection (2), a guarantee executed under section 4(1) may —
- (a) be subject to such terms and conditions as the Minister thinks fit;
 - (b) include any interest charges and expenses chargeable by the lender against the borrower and the expenses of enforcing or obtaining, or endeavouring to enforce or obtain, payment of the debt guaranteed and those interest charges and expenses; and
 - (c) be expressed to include compound interest.
- (2) The following provisions apply to and in respect of a guarantee executed under section 4(1) —
- (a) the lender shall, if required to do so by the Minister, obtain, take and hold, or retain and hold, such securities as the Minister may require for the repayment of the loan by the borrower to the lender;

s. 6

- (b) the guarantee shall not be enforceable against the Minister unless and until the lender has first taken all reasonable steps to exercise his rights and remedies under all the securities (other than the guarantee) held by or for the lender in respect of the debt guaranteed; and
- (c) the lender shall not, without the consent in writing of the Minister, assign or encumber the benefit of the guarantee.

[Section 5 amended by No. 56 of 1987 s. 6.]

6. Payments under guarantee

- (1) The Treasurer shall cause any money required for fulfilling any guarantee given by the Minister under this Act to be charged to the Consolidated Fund which, to the extent necessary, is hereby appropriated accordingly.
- (2) The Minister shall cause any amounts received or recovered from the borrower or otherwise in respect of moneys paid in fulfilment of a guarantee to be credited to the Consolidated Fund.

[Section 6 amended by No. 6 of 1993 s. 11; No. 49 of 1996 s. 64.]

7. Offences by applicants

A person applying to the Minister for a guarantee under this Act may be required to furnish such accounts, documents and other information relevant to the application as are necessary and a person who, in or in connection with an application for a guarantee under this Act, in furnishing any account, document or information —

- (a) makes or authorises the making of a statement that is false or misleading in a material particular; or
- (b) omits or authorises the omission of any matter or thing without which the account, document or other information is misleading in a material respect,

without having taken all reasonable steps to ensure that the statement was not false or misleading or to ensure that the statement did not omit any matter or thing without which the account, document or information would be misleading, as the case may be, commits an offence.

Penalty: \$5 000.

8. Regulations

The Governor may make regulations for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to the purposes of this Act and the regulations may prescribe fees to be charged in respect of matters arising under or provided for or authorised by this Act.

Notes

- ¹ This is a compilation of the *Small Business Guarantees Act 1984* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Small Business Guarantees Act 1984</i>	80 of 1984	29 Nov 1984	5 Sep 1985 (see s. 2 and <i>Gazette</i> 23 Aug 1985 p. 2991)
<i>Small Business Guarantees Amendment Act 1987</i>	56 of 1987	5 Nov 1987	5 Nov 1987 (see s. 2)
<i>Financial Administration Legislation Amendment Act 1993</i> s. 11	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
<i>Financial Legislation Amendment Act 1996</i> s. 64	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
Reprint 1: The <i>Small Business Guarantees Act 1984</i> as at 21 Mar 2003 (includes amendments listed above)			