



Western Australia

Small Business Development Corporation Amendment Act 2020

As at 06 Apr 2020

No. 12 of 2020
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Small Business Development Corporation Amendment Act 2020

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Western Australia

Small Business Development Corporation Amendment Act 2020

No. 12 of 2020

An Act to amend the *Small Business Development Corporation Act 1983*.

[Assented to 6 April 2020]

The Parliament of Western Australia enacts as follows:

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1. Short title

This is the *Small Business Development Corporation Amendment Act 2020*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on the day after that day.

3. Act amended

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

4. Section 3 amended

In section 3(1) insert in alphabetical order:

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;

5. Section 14A amended

- (1) In section 14A:
 - (a) delete “The Commissioner has” and insert:
 - (1) The Commissioner has
 - (b) delete paragraphs (b) and (c) and insert:
 - (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) after paragraph (e) insert:
 - (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);
- (2) At the end of section 14A insert:
 - (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.

6. Sections 14BA and 14BB inserted

After section 14B insert:

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.

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.

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7. Section 14C amended

In section 14C(1) after “provision of this Act” insert:

(other than the power of the Commissioner to authorise the commencement of prosecutions under section 14BA(8))

8. Section 15A amended

In section 15A in the definition of *small business dispute* paragraph (b) after “public sector body” insert:

or local government

9. Section 18B amended

In section 18B(3):

(a) in paragraph (b) delete “proceeding.” and insert:

proceeding; or

(b) after paragraph (b) insert:

(c) a particular investigation carried out under section 14A(1)(b) or (ea).

10. Section 18C amended

(1) In section 18C(2)(b) delete “section 14A(b)” and insert:

section 14A(1)(b)

- (2) In section 18C(5) delete “The Minister” and insert:

Subject to subsection (6), the Minister

- (3) After section 18C(5) insert:

- (6) Subsection (5) does not apply to a report given to the Minister under section 14A(1)(eb).

11. Section 18 amended

In section 18(1) delete the Penalty and insert:

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

12. Section 18AA inserted

After section 18 insert:

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).

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- (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.

13. Part 6 heading replaced

Delete the heading to Part 6 and insert:

Part 6 — Miscellaneous

14. Section 24A inserted

After section 24 insert:

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.



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