

## **Small Business Development Corporation Amendment Bill 2019**

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Western Australia

LEGISLATIVE ASSEMBLY

**Small Business Development Corporation  
Amendment Bill 2019**

**A Bill for**

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

The Parliament of Western Australia enacts as follows:

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1     **1.       Short title**

2               This is the *Small Business Development Corporation*  
3               *Amendment Act 2019*.

4     **2.       Commencement**

5               This Act comes into operation as follows —

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

9     **3.       Act amended**

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

12    **4.       Section 3 amended**

13              In section 3(1) insert in alphabetical order:

14

15                      *government entity* means any of the following —

- 16                      (a)   a department of the Public Service;  
17                      (b)   a local government;  
18                      (c)   the Parliamentary Commissioner for  
19                              Administrative Investigations appointed under  
20                              the *Parliamentary Commissioner Act 1971*, the  
21                              Australian Small Business and Family  
22                              Enterprise Ombudsman established under the  
23                              *Australian Small Business and Family*  
24                              *Enterprise Ombudsman Act 2015*  
25                              (Commonwealth) or any other ombudsman or  
26                              equivalent office under a written law or a law  
27                              of the Commonwealth;  
28                      (d)   a body, whether corporate or unincorporate, or  
29                              the holder of an office, post or position, being a  
30                              body or office, post or position that is

- 1 established or continued for a public purpose
- 2 under a written law;
- 3 (e) the Australian Competition and Consumer
- 4 Commission established by the *Competition*
- 5 *and Consumer Act 2010* (Commonwealth);
- 6 (f) the Australian Securities and Investments
- 7 Commission referred to in the *Australian*
- 8 *Securities and Investments Commission*
- 9 *Act 2001* (Commonwealth);
- 10 (g) the Commissioner, as defined in the *Taxation*
- 11 *Administration Act 1953* (Commonwealth)
- 12 section 2(1);
- 13 (h) any person or office prescribed by the
- 14 regulations;
- 15 **local government** includes a regional local government
- 16 and a regional subsidiary;
- 17

18 **5. Section 14A amended**

- 19 (1) In section 14A:
- 20 (a) delete “The Commissioner has” and insert:
- 21
- 22 (1) The Commissioner has
- 23
- 24 (b) delete paragraphs (b) and (c) and insert:
- 25
- 26 (b) to receive complaints about any matter that
- 27 affects the commercial activities of small
- 28 business, and do either or both of the following
- 29 in relation to a complaint —
- 30 (i) investigate a matter complained about
- 31 and any person in relation to the matter
- 32 (including, without limitation, a public
- 33 sector body or local government);

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- 1 (ii) provide assistance to attempt to resolve  
2 the complaint;  
3  
4 (c) after paragraph (e) insert:  
5  
6 (ea) to investigate any matter that affects the  
7 commercial activities of small business, and  
8 any person in relation to the matter (including,  
9 without limitation, a public sector body or local  
10 government);  
11 (eb) to give to the Minister, or to any government  
12 entity, a report on an investigation carried out  
13 under paragraph (b) or (ea);  
14  
15 (2) At the end of section 14A insert:  
16  
17 (2) The Commissioner need not investigate a matter,  
18 provide assistance or give a report if, in a particular  
19 case, the Commissioner considers it inappropriate to do  
20 so.  
21

22 **6. Sections 14BA and 14BB inserted**

23 After section 14B insert:  
24

25 **14BA. Commissioner may request documents, things and**  
26 **information**

- 27 (1) For the purpose of carrying out an investigation under  
28 section 14A(1)(b) or (ea), the Commissioner may do  
29 any of the following —  
30 (a) request a person to produce to the  
31 Commissioner any document or thing specified,  
32 or of a kind specified, in the request that the

- 
- 1 Commissioner considers relates to the  
2 investigation;
- 3 (b) request a person to give to the Commissioner  
4 any information specified, or of a kind  
5 specified, in the request that the Commissioner  
6 considers relates to the investigation;
- 7 (c) keep any document or thing produced for the  
8 purpose of taking an extract from, or making a  
9 copy of, the document or thing.
- 10 (2) If the Commissioner keeps a document or thing under  
11 subsection (1)(c), the Commissioner must return the  
12 document or thing as soon as practicable after taking  
13 the extract or making the copy.
- 14 (3) A request under subsection (1) —
- 15 (a) may be made orally or in writing; and  
16 (b) must specify the time within which the  
17 document, thing or information requested must  
18 be produced or given to the Commissioner; and  
19 (c) may require that the document, thing or  
20 information be verified by statutory declaration  
21 when produced or given.
- 22 (4) A person must not, without reasonable excuse, fail to  
23 comply with a request made of the person under  
24 subsection (1).  
25 Penalty for this subsection: a fine of \$20 000.
- 26 (5) A person of whom the Commissioner has made a  
27 request under subsection (1) must not produce a  
28 document or thing, or give information, that —
- 29 (a) the person knows is false or misleading in a  
30 material particular; or

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- 1 (b) omits anything without which the document,  
2 thing or information is, to the person's  
3 knowledge, misleading in a material particular.

4 Penalty for this subsection: a fine of \$20 000.

- 5 (6) A person of whom the Commissioner has made a  
6 request under subsection (1) must not alter, suppress or  
7 destroy any document or thing that the person is  
8 requested to produce.

9 Penalty for this subsection: a fine of \$20 000.

10 **14BB. Reports by Commissioner**

- 11 (1) In this section, information is *adverse information* in  
12 relation to a person if, were the information to be  
13 published, the publication of the information would be  
14 likely to adversely affect the interests of the person.

- 15 (2) The Commissioner must not give a report under  
16 section 14A(1)(eb) to the Minister or a government  
17 entity that contains adverse information in relation to a  
18 person mentioned in the report, unless the  
19 Commissioner has given the person a reasonable  
20 opportunity to make written submissions in relation to  
21 the matter.

- 22 (3) The Commissioner is not required to amend a report as  
23 a result of a submission but must include the  
24 submission with the report when the report is given to  
25 the Minister or the government entity.  
26



1   **7.       Section 15A amended**

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

4  
5           or local government  
6

7   **8.       Section 18B amended**

8           In section 18B(3):

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

10  
11               proceeding; or  
12

13           (b)   after paragraph (b) insert:

14  
15               (c)   a particular investigation carried out under  
16               section 14A(1)(b) or (ea).  
17

18   **9.       Section 18C amended**

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

20  
21               section 14A(1)(b)  
22

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

24  
25               Subject to subsection (6), the Minister  
26

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

2

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

5

6       **10. Section 18 amended**

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

8

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

10

11       **11. Section 18AA inserted**

12               After section 18 insert:

13

14       **18AA. Complainant identity protected**

15               (1) In this section —

16                       *complainant* means —

- 17                       (a) a person who makes a complaint to the  
18                       Commissioner about a matter that affects the  
19                       commercial activities of small business; or  
20                       (b) a person who discloses information to the  
21                       Commissioner that, whether alone or with other  
22                       information, results in the Commissioner  
23                       commencing an investigation under  
24                       section 14A(1)(b) or (ea).

25               (2) Despite any other provision in this Act, the  
26               Commissioner is not required to, and may refuse to,  
27               disclose information that might —

- 28                       (a) identify or tend to identify a person as a  
29                       complainant; or

- 1                   (b) enable the identity of a complainant to be  
2                   ascertained.  
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