

EXPLANATORY MEMORANDUM

Small Business Development Corporation
Amendment (COVID-19 Response) Bill 2022

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Overview of the Bill

The purpose of the Small Business Development Corporation Amendment (COVID-19 Response) Bill 2022 (**Bill**) is to allow for the Small Business Development Corporation (**SBDC**) to undertake efficient and effective distribution of small business assistance packages.

The SBDC has played a central role in managing financial assistance programs for small businesses impacted by trading restrictions introduced in response to the COVID-19 pandemic, including by establishing eligibility criteria and guidelines, developing terms, conditions and application processes, promoting the programs and managing enquiries, assessing individual applications for the various programs, and making payment recommendations.

However, the SBDC has had to partner with other Departments to distribute funds under these programs because it does not have the legislative authority to disburse grants and financial assistance directly to small businesses.

Part 2 of the *Small Business Development Corporation Act 1983 (WA)* (**SBDC Act**) establishes the functions of the Corporation and Part 3 the functions of the Small Business Commissioner.

The Corporation's current function to provide operational funding, grants and financial assistance to non-government organisations working with, or on behalf of, small business is set out in section 11(2)(e).

The Bill will expand the Corporation's powers and functions to provide financial assistance and grants in relation to small businesses to include:

- small businesses; and
- persons who are not small businesses for the purposes of financially benefitting small businesses.

Currently, financial assistance is urgently required by some small business operators in industries including hospitality, accommodation, tourism, travel and events.

The SBDC is best placed to expedite the rollout of elements of the Level 1 COVID-19 Business Assistance Package and other similar programs in an appropriate manner. However, in addition to receiving and assessing applications from businesses quickly, the SBDC requires the legislative authority to be able to disburse grants and financial assistance directly to small businesses, to enable the distribution of the funds in a timely and efficient manner.

Summary of each clause

PART 1 – PRELIMINARY

- Clause 1 The short title of the Act is the *Small Business Development Corporation Amendment (COVID-19 Response) Act 2022*.
- Clause 2 Provides that sections 1 and 2 are to come into operation upon Royal Assent. The rest of the Act comes into operation on the day after that day.
- Clause 3 Provides that this Act will amend the *Small Business Development Corporation Act 1983 (WA)*.
- Clause 4 This clause replaces the long title of the SBDC Act to incorporate that the Corporation is empowered to give financial assistance, grants and operational funding in relation to small businesses.

PART 2 – SMALL BUSINESS DEVELOPMENT CORPORATION

- Clause 5 Clause 5(1) replaces subsection 11(2)(e) of the SBDC Act to remove references to non-government organisations and guidelines and states that its operation is subject to the proposed section 11AA.

Clause 5(2) inserts proposed subsection 11(3)(c) to clarify that the Corporation has the power to enter into contracts or other arrangements in the performance of its functions.

Clause 5(3) deletes section 11(4) as proposed section 11AA replaces this provision.

The purpose of the amendments is to incorporate provisions relating to the Corporation's function to provide financial assistance, grants and operational funding in relation to small businesses into one section.

It is also made clear that the power to contract applies in relation to the Corporation's functions in section 11(3).

- Clause 6 This provision extends the Corporation's functions to provide financial assistance and grants in relation to small businesses and makes provision for guidelines to be made and published.

Proposed subsection 11AA(1)(a) enables the Corporation to give financial assistance and grants to small businesses in accordance with any guidelines made under subsection 11AA(2).

Proposed subsection 11AA(1)(b)(i) replaces deletions made in Clause 5 to retain the Corporation's ability to provide financial assistance, grants and operational funding to non-government organisations working with, or on behalf of, small businesses in accordance with guidelines developed under subsection 11AA(3).

Proposed subsection 11AA(1)(b)(ii) enables the Corporation to give financial assistance and grants to persons who are not small businesses for the purposes of financially benefiting small businesses, in accordance with the guidelines that must be made under subsection 11AA(3).

The purpose of these amendments is to ensure that the Corporation is empowered to disburse funds to provide financial assistance directly to small businesses, as well as to non-government entities that support small businesses and to other entities for the purpose of financially benefitting small businesses.

The concept of "small business" to which the Corporation's amended functions relate has the meaning provided in section 3 of the SBDC Act.

Proposed subsection 11AA(1)(c) ensures that the Corporation can enter into a contract or other arrangement with a person identified in relation to financial assistance, a grant or operational funding.

The purpose of this provision is to make explicit the power to contract in relation to any financial assistance, grants and operational funding.

Proposed section 11AA(2) states that the Corporation may make guidelines with respect to providing small businesses with financial assistance or grants. Discretion has been provided with respect to making guidelines to give funds to small businesses because this may not be appropriate in all circumstances, including for ex-gratia payments.

Proposed section 11AA(3) states that the Corporation must make guidelines with respect to providing funds to non-government entities to support small businesses and to other entities for the purpose of financially benefitting small businesses.

The purpose of this provision is to ensure sound governance practices in the disbursement of funds.

Proposed section 11AA(4) enables the Corporation to amend or revoke guidelines made under sections 11AA(2) and 11AA(3) .

The purpose of this provision is to make clear that there is a power to amend or revoke these guidelines.

Proposed section 11AA(5) states that all guidelines made or amended must be published on the Corporation's website.

It is intended that the term "guidelines" relates to whether a person, small business or non-government organisation is eligible for financial assistance, a grant or operational funding. In comparison, contracts are formed when the person is eligible.

Clause 7 This clause inserts proposed subsection 19(3)(ba) to pay financial assistance, grants or operational funding payments under section 11AA(1).

The purpose of this provision is to make clear that money held in the Small Business Development Corporation Account may be applied to financial assistance, grants and operational funding in relation to small businesses.