

SOUTH AUSTRALIA

**SMALL BUSINESS CORPORATION OF SOUTH AUSTRALIA ACT, 1984**

## SUMMARY OF PROVISIONS

### PART I PRELIMINARY

Section

1. Short title
2. Commencement
3. Interpretation

### PART II SMALL BUSINESS CORPORATION OF SOUTH AUSTRALIA

4. Establishment of the Corporation
5. Constitution of the Corporation
6. Terms and conditions of office
7. Quorum, etc.
8. Validity of acts of Corporation and immunity of members
9. Disclosure of interest

### PART III FUNCTIONS AND POWERS OF THE CORPORATION

10. Functions and powers of the Corporation
11. Corporation subject to control and direction of Minister
12. Staff, etc.
13. Power of Corporation to give guarantees in respect of small businesses
14. Power of Corporation to make certain grants to assist small businesses
15. Borrowing and investment
16. Delegation by Corporation

### PART IV MISCELLANEOUS

17. Expenditure of Corporation to be in accordance with approved budget
18. Fees in respect of guarantees of the Treasurer
19. Accounts and audit
20. Annual report
21. Applications for guarantees or grants
22. Information furnished by applicants to be kept confidential
23. Summary proceedings
24. Regulations

**SMALL BUSINESS CORPORATION OF SOUTH AUSTRALIA ACT, 1984**

being

Small Business Corporation of South Australia Act, 1984,  
No. 17 of 1984 [Assented to 3 May 1984]<sup>1</sup>

<sup>1</sup> Came into operation 30 August 1984: *Gaz.* 30 August 1984, p. 692.

3.

**An Act to establish a corporation to be known as the "Small Business Corporation of South Australia"; to define its functions and powers; and for other purposes.**

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PRELIMINARY

**Short title**

1. This Act may be cited as the *Small Business Corporation of South Australia Act, 1984*.

**Commencement**

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

**Interpretation**

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

"appointed member", in relation to the Corporation, means a member of the Corporation appointed by the Governor under Part II:

"the Corporation" means the Small Business Corporation of South Australia established under this Act:

"small business" means—

(a) a business—

(i) that is wholly owned by a natural person or natural persons in partnership or by a proprietary company within the meaning of the *Companies (South Australia) Code*;

(ii) that is managed personally by the owner or one or more of the owners or directors (as the case may require);

and

(iii) that does not form part of a larger business;

or

(b) a business or undertaking, or business or undertaking of a class, declared under subsection (2), to be a small business or class of small businesses.

4.

(2) The Minister may, by notice published in the *Gazette*—

(a) declare a business or undertaking, or businesses or undertakings of a specified class, to be a small business or class of small businesses for the purposes of this Act;

or

(b) vary or revoke any such declaration.

PART II

SMALL BUSINESS CORPORATION OF SOUTH AUSTRALIA

**Establishment of the Corporation**

4. (1) There shall be a corporation entitled the "Small Business Corporation of South Australia".

(2) The Corporation—

- (a) shall be a body corporate with perpetual succession and a common seal;
- (b) shall be capable in its corporate name of acquiring, holding, dealing with and disposing of real and personal property;
- (c) shall be capable of acquiring or incurring any other rights or liabilities, and of suing and being sued;
- (d) shall hold its property on behalf of the Crown;

and

- (e) shall have the powers, authorities, duties and functions prescribed by or under this or any other Act.

(3) Where an apparently genuine document purports to bear the common seal of the Corporation, it shall be presumed in any legal proceedings, in the absence of proof to the contrary, that the document has been duly executed by the Corporation.

**Constitution of the Corporation**

5. (1) The Corporation shall consist of seven members of whom—

- (a) one shall be the person for the time being holding or acting in the office of the permanent head of the Department of State Development or in any other office in that Department from time to time nominated by the permanent head;

and

- (b) the remainder shall be persons appointed by the Governor upon the nomination of the Minister.

(2) A chairman and a deputy chairman of the Corporation shall be appointed by the Governor, upon the nomination of the Minister, from amongst the members of the Corporation.

**Terms and conditions of office**

6. (1) Subject to subsection (2), an appointed member shall be appointed for a term of office of three years and upon such conditions as may be determined by the Governor upon the recommendation of the Minister.

(2) Three of the members first appointed upon the commencement of this Act shall be appointed for a term of office of eighteen months.

6.

(3) An appointed member shall, upon the expiration of his term of office, be eligible for reappointment.

(4) The Governor may appoint a person nominated by the Minister to be a deputy of a member of the Corporation and that person may, in the absence of that member, act as a member of the Corporation.

(5) The Governor may remove an appointed member of the Corporation from office for—

- (a) breach of, or non-compliance with, the conditions of his appointment;
- (b) mental or physical incapacity to carry out satisfactorily the duties of his office;
- (c) neglect of duty;

or

- (d) dishonourable conduct.

(6) The office of an appointed member of the Corporation shall become vacant if—

- (a) he dies;
- (b) his term of office expires;
- (c) he resigns by written notice addressed to the Minister;

or

- (d) he is removed from office by the Governor pursuant to subsection (5).

(7) Upon the office of an appointed member becoming vacant, a person shall be appointed, in accordance with this Act, to the vacant office, but where the office of a member becomes vacant before the expiration of the term for which he was appointed, a person appointed in his place shall be appointed only for the balance of the term of his predecessor.

**Quorum, etc.**

7. (1) Four members of the Corporation shall constitute a quorum of the Corporation, and no business shall be conducted at a meeting of the Corporation unless a quorum is present.

(2) The chairman of the Corporation or, in his absence, the deputy chairman of the Corporation shall preside at a meeting of the Corporation at which he is present and, in the absence of both the chairman and the deputy chairman from a meeting, the members present shall decide who is to preside at the meeting.

(3) A decision carried by a majority of the votes of the members of the Corporation present at a meeting shall be a decision of the Corporation.

(4) Each member of the Corporation shall be entitled to one vote on a matter arising for decision by the Corporation, and the person presiding at the meeting shall, in the event of an equality of votes, have a second or casting vote.

7.

(5) The Corporation shall cause accurate minutes to be kept of the business conducted at meetings of the Corporation.

(6) Subject to this Act, the business of the Corporation shall be conducted in a manner determined by the Corporation.

**Validity of acts of Corporation and immunity of members**

**8.** (1) An act or proceeding of the Corporation shall not be invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

(2) No personal liability shall attach to a member of the Corporation for an act or omission by that person or the Corporation in good faith in the exercise or discharge, or purported exercise or discharge, of his or its powers, duties or functions under this Act.

(3) A liability that would, but for subsection (2), lie against a member of the Corporation shall lie against the Crown.

**Disclosure of interest**

**9.** (1) A member of the Corporation who is directly or indirectly interested in a contract, or proposed contract, made by, or in the contemplation of, the Corporation—

(a) shall, as soon as he becomes aware of the contract or proposed contract, disclose the nature of his interest to the Corporation;

and

(b) shall not take part in any deliberations or decision of the Corporation with respect to that contract.

Penalty: One thousand dollars.

(2) A disclosure made under this section shall be recorded in the minutes of the Corporation.

(3) Where a member makes a disclosure of interest in respect of a contract or proposed contract in accordance with this section—

(a) the contract is not void, or liable to be avoided, on any ground arising from the member's interest in the contract;

and

(b) the member is not liable to account to the Corporation for any profits derived from the contract.



PART III

FUNCTIONS AND POWERS OF THE CORPORATION

**Functions and powers of the Corporation**

**10.** (1) The functions of the Corporation are as follows:

- (a) to provide advice to persons engaged in, or proposing to establish, small businesses;
  - (b) to promote awareness of the value of proper management practices in the conduct of small businesses and to promote, co-ordinate and, if necessary, conduct training and educational programmes relating to the management of small businesses;
  - (c) to disseminate information for the guidance of persons engaged in, or proposing to establish, small businesses;
  - (d) to monitor the effect upon small business of—
    - (i) the policies and practices of the Governments of the State and Commonwealth and of local government;and
    - (ii) Commonwealth and State law (including local government by-laws),and to make appropriate representations in the interests of small business;
  - (e) to consult and co-operate with persons and bodies representative of small business and, where appropriate, represent their views to governments;
  - (f) to provide financial assistance to small businesses by way of the guarantee of loans or the making of grants under this Act;
- and
- (g) generally, to promote and assist the development of the small business sector of the State's economy.

(2) For the purposes of this Act, the Corporation may—

- (a) acquire, hold, deal with and dispose of real and personal property;
  - (b) enter into any kind of contract or arrangement with other persons;
  - (c) acquire or incur any other rights or liabilities;
- or
- (d) exercise any other powers that are contemplated by this Act or necessary or expedient for the efficient performance of its functions.

**Corporation subject to control and direction of Minister**

11. The Corporation shall, in the exercise and performance of its powers and functions, be subject to the general control and direction of the Minister.

**Staff, etc.**

12. (1) The Governor may, subject to and in accordance with the provisions of the *Public Service Act, 1967*, appoint officers to assist in the administration of this Act and an officer so appointed shall hold office subject to and in accordance with that Act.

(2) The Minister may, by notice published in the *Gazette*, determine—

(a) that specified provisions of the *Public Service Act, 1967*, shall not apply to or in relation to an officer appointed under subsection (1);

and

(b) that provisions contained in, or referred to in, the notice shall apply to and in relation to the officer in lieu of those provisions,

and the notice shall have effect according to its terms.

(3) The Minister may, by notice published in the *Gazette*, vary or revoke a notice published under subsection (2).

(4) The Corporation may appoint officers and employees to assist it in the administration of this Act, and the *Public Service Act, 1967*, shall not apply to or in relation to persons so appointed.

(5) The Corporation may, with the approval of the Minister administering a department of the public service of the State, upon terms mutually arranged, make use of the services of an officer or use any facilities of the department.

**Power of Corporation to give guarantees in respect of small businesses**

13. (1) Subject to subsection (2), the Corporation may guarantee liabilities of a person under a loan entered into, or to be entered into, for the purposes of a small business or proposed small business.

(2) The giving of a guarantee under subsection (1) is subject to the following provisions:

(a) the total amount of each person's liabilities in respect of which guarantees are given under this section must not exceed such limit as is from time to time fixed by the Treasurer;

(b) the total amount of all liabilities in respect of which guarantees are given under this section must not exceed such limit as is from time to time fixed by the Treasurer;

(c) the Corporation must be satisfied—

(i) that the person is not able to obtain the loan upon reasonable terms and conditions without the guarantee of the Corporation;

(ii) that it is in the public interest for the Corporation to give the guarantee;

- (iii) that there are reasonable prospects of the business or proposed business being financially viable;
- (d) the person must agree to pay to the Corporation as consideration for the guarantee such commission on the amount of the loan as is fixed by the Corporation;
- (e) the person must give such security (if any) as the Corporation requires for repayment of any amount which the Corporation becomes liable to pay by virtue of the guarantee;
- (f) the Corporation must be satisfied that the annual rate of interest payable on the loan makes due allowance for the reduced risk carried by the creditor by virtue of the guarantee;
- (g) the person must comply with, or agree to comply with, any other conditions imposed by the Corporation as to giving the lender security for the loan or as to any other matter.

(3) Any liabilities incurred by the Corporation in pursuance of this section are guaranteed by the Treasurer.

(4) A liability of the Treasurer under a guarantee arising by virtue of subsection (3) shall be satisfied out of the Consolidated Account which is appropriated by this section to the necessary extent.

**Power of Corporation to make certain grants to assist small businesses**

**14.** (1) Subject to subsection (2), the Corporation may make a grant to assist a person conducting or engaged in a small business—

- (a) to obtain advice with respect to the management of the business;
- (b) to undertake training or educational programmes relating to the management of small businesses;

or

- (c) to improve by any other means the efficiency of the business.

(2) The making of a grant under subsection (1) is subject to the following provisions:

- (a) the total amount paid in relation to each business by way of grants under this section must not exceed such limit as is from time to time fixed by the Minister;
- (b) the Corporation must be satisfied—
  - (i) that it is in the public interest to make the grant;
  - (ii) that there are reasonable prospects of significantly improving the efficiency of the business and of the business being financially viable;
- (c) the person receiving the grant must comply with, or agree to comply with, such conditions as may be imposed by the Corporation to secure the objects of the grant.

**Borrowing and investment**

15. (1) The Corporation may, for the purposes of this Act, borrow moneys from the Treasurer or, with the consent of the Treasurer, from any other person.

(2) Liabilities incurred by the Corporation under subsection (1) with the consent of the Treasurer are guaranteed by the Treasurer.

(3) A liability of the Treasurer under a guarantee arising by virtue of subsection (2) shall be satisfied out of the Consolidated Account which is appropriated by this section to the necessary extent.

(4) Any moneys of the Corporation that are not immediately required for the purposes of the Corporation may be invested in such manner as the Treasurer may approve.

**Delegation by Corporation**

16. (1) The Corporation may, with the approval of the Minister, delegate any of its powers or functions.

(2) A delegation under this section—

(a) may be made to a member of the Corporation or an officer or employee engaged in the administration of this Act;

(b) may be made subject to such conditions as the Corporation thinks fit;

and

(c) is revocable at will and does not derogate from the power of the Corporation to act in any matter itself.

(3) A person to whom powers or functions are delegated under this section is disqualified from acting in pursuance of the delegation in relation to any matter in which he has a direct or indirect pecuniary interest.

PART IV

MISCELLANEOUS

**Expenditure of Corporation to be in accordance with approved budget**

17. Except as authorized by the Minister and the Treasurer, no moneys shall be expended by the Corporation except in accordance with a budget approved by the Minister and the Treasurer.

**Fees in respect of guarantees of the Treasurer**

18. The Corporation shall be liable to pay to the Treasurer such fees in respect of guarantees arising by virtue of this Act as are prescribed upon the recommendation of the Treasurer.

**Accounts and audit**

19. (1) The Corporation shall cause proper accounts to be kept of its financial affairs.

(2) The Auditor-General may at any time, and shall at least once in every year, audit the accounts of the Corporation.

(3) For the purposes of an audit under subsection (2), the Auditor-General may exercise in relation to the accounts of the Corporation and the members and employees of the Corporation the powers that are vested in the Auditor-General by the *Audit Act, 1921*, in respect of public accounts and accounting officers.

**Annual report**

20. (1) The Corporation shall, on or before the thirtieth day of September in each year, deliver to the Minister a report upon the operations of the Corporation during the period of twelve months expiring on the preceding thirtieth day of June.

(2) The report must incorporate the audited statement of accounts of the Corporation for the period to which the report relates.

(3) The Minister shall, as soon as practicable after his receipt of the report, cause a copy of the report to be laid before each House of Parliament.

**Applications for guarantees or grants**

21. (1) An application for a guarantee or grant under this Act must be made in writing to the Corporation.

(2) An applicant for a guarantee or grant must furnish the Corporation with all information required by the Corporation in relation to the business or proposed business in respect of which the guarantee or grant is sought.

(3) A person who, in connection with an application for a guarantee or grant under this Act, furnishes to the Corporation any information that is to his knowledge false or misleading in a material particular shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

**Information furnished by applicants to be kept confidential**

22. No person who is or has been engaged in the administration of this Act shall disclose information as to a person's affairs furnished by the person in connection with an application for a guarantee or grant under this Act unless the disclosure is required in the administration of this Act or made with the consent of the person.

Penalty: One thousand dollars.

**Summary proceedings**

23. Proceedings for an offence against this Act shall be disposed of summarily.

**Regulations**

24. The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.