

South Australia



ANNO QUADRAGESIMO NONO
ELIZABETHAE II REGINAE
A.D. 2000

**GOVERNMENT BUSINESS ENTERPRISES (COMPETITION)
(MISCELLANEOUS) AMENDMENT ACT 2000**

No. 2 of 2000

[Assented to 13 April 2000]

An Act to amend the Government Business Enterprises (Competition) Act 1996.

SUMMARY OF PROVISIONS

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2. Commencement
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4. Amendment of s. 16—Principles of competitive neutrality
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7. Amendment of s. 20—Confidentiality

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Government Business Enterprises (Competition) (Miscellaneous) Amendment Act 2000*.

(2) The *Government Business Enterprises (Competition) Act 1996* is referred to in this Act as "the principal Act".

Commencement

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

Amendment of s. 3—Interpretation

3. Section 3 of the principal Act is amended—

(a) by inserting before the definition of "declared GBE" the following definition:

"confidential information" means—

- (a) information that is commercially sensitive or otherwise of its nature confidential; or
- (b) information that is provided on a confidential basis; or
- (c) information that is declared by its terms to be confidential or is affected by a contractual requirement as to confidentiality; or
- (d) information that is otherwise affected by a requirement as to confidentiality,

but does not include information that is publicly available (unless the information became publicly available through a breach of a duty of confidentiality);;

(b) by striking out the definition of "government agency" and substituting the following definitions:

"government agency" means—

- (a) a Minister; or
- (b) a department or an administrative unit of the Public Service; or
- (c) any other agency or instrumentality of the Crown that is subject to control or direction by a Minister;

"local government agency" means—

- (a) a council, or a body established by a council, under the *Local Government Act 1934*; or
- (b) the Local Government Finance Authority of South Australia;

Amendment of s. 16—Principles of competitive neutrality

4. Section 16 of the principal Act is amended—

(a) by striking out from subsection (1) "relationship with" and substituting "control by";

(b) by striking out subsections (2), (3) and (4) and substituting the following subsections:

(2) The principles of competitive neutrality are principles identified in policies published by the Minister from time to time for the purposes of this Part.

(3) The Minister may publish policies under subsection (2)—

(a) by making the policies available for inspection by the public at a place determined by the Minister; and

(b) by publishing the policies in such other manner as the Minister thinks fit.

(4) Policies published by the Minister under subsection (2)—

(a) may include provisions which define or limit the scope of the application of principles of competitive neutrality under this Act; and

(b) may operate by reference to materials referred to in the policies; and

(c) may amend, or provide for the substitution of, policies previously published under this section.

Amendment of s. 18—Assignment of Commissioner

5. Section 18 of the principal Act is amended by striking out subsection (2) substituting the following subsection:

(2) However—

(a) the Minister must not assign a complaint to a Commissioner unless the Minister is satisfied that the matter has been referred to the relevant government or local government agency for investigation (or further investigation) and report and the Minister is satisfied that there is no reasonable prospect of the matter being resolved by agreement between the parties; and

(b) the Minister may refuse to assign a complaint to a Commissioner if the Minister considers that a previous investigation by a Commissioner has found that the business activities of the relevant government or local government agency on which the complaint is based comply with principles of competitive neutrality (unless there has been a change in the principles, or a change in the business activities of the government or local government agency, which affects the relevance of that finding); and

(c) the Minister may refuse to assign a complaint to a Commissioner if the Minister considers that the complaint is frivolous or vexatious, or that the matter raised in the complaint is trivial.

Amendment of s. 19—Investigation of complaint by Commissioner**6. Section 19 of the principal Act is amended—**

- (a) by striking out from subsection (3) "report the result of an investigation" and substituting "prepare a report on the outcome of the investigation and give a copy of the report";
- (b) by striking out subsection (4) and substituting the following subsections:
- (4) The report must set out or include—
- (a) a determination as to whether the grounds of the complaint have been substantiated; and
- (b) the Commissioner's reasons for making the determination; and
- (c) if the Commissioner finds that the principles of competitive neutrality have been infringed by a government or local government agency—the Commissioner's recommendations in relation to the matter (which may include recommendations for the implementation of policies or practices to avoid further infringement of the same kind).
- (5) The Commissioner must also prepare a summary of the contents of a report under this section.
- (6) The Minister must ensure that copies of any summary are available for inspection by the public at a place determined by the Minister.
- (7) A summary must not disclose confidential information.

Amendment of s. 20—Confidentiality**7. Section 20 of the principal Act is amended—**

- (a) by striking out from subsection (1) "disclose confidential information obtained in the course of that work" and substituting ", in respect of confidential information obtained in the course of that work, disclose or use the confidential information";
- (b) by striking out from subsection (1)(b) "the person who is entitled to benefit of the duty of confidentiality" and substituting "a person who is entitled to the benefit of a duty of confidentiality in respect of the information";
- (c) by striking out subsection (2) and substituting the following subsections:
- (2) A complainant must not, in respect of confidential information obtained through the provision of a report of an investigation under this Act—
- (a) disclose the confidential information; or
- (b) use the confidential information for a purpose unrelated to the making or resolution of the complaint,
- except—
- (c) as authorised by the Minister; or

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- (d) as authorised by a person who is entitled to the benefit of a duty of confidentiality in respect of the information; or
- (e) as authorised or required by law.

Maximum penalty: \$10 000.

(3) A reference in this section to an investigation includes an investigation undertaken by a government or local government agency under or in connection with the operation of the principles of competitive neutrality or otherwise under or in connection with the operation of Part 4.