

[AS REPORTED FROM THE COMMERCE AND MINING
COMMITTEE]

House of Representatives, 18 July 1977

Words struck out by the Committee are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line.

Hon. Mr Adams-Schneider

**DEVELOPMENT FINANCE CORPORATION
AMENDMENT (NO. 2)**

ANALYSIS

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A BILL INTITULED

An Act to amend the Development Finance Corporation Act 1973 to provide for the establishment of a Small Business Agency to promote, encourage, and assist small businesses in New Zealand

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. **Short Title**—This Act may be cited as the Development Finance Corporation Amendment Act (No. 2) 1976, and shall be read together with and deemed part of the Development Finance Corporation Act 1973* (hereinafter referred to as the principal Act).

*1973, No. 32
Amendment: 1976, No. 133

No. 169—2

Price 10c

2. New Part IA (establishing Small Business Agency) inserted—The principal Act is hereby amended by inserting, after Part I, the following new Part:

“PART IA

“SMALL BUSINESS AGENCY

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“9A. Interpretation—(1) References in this Part of this Act to ‘the Agency’ are references to the Corporation acting in relation to the Small Business Agency provided for by section 9c of this Act.

“(2) Nothing in this Part of this Act shall limit or affect the operation of any other provision of this Act that applies to any small business to which this Part of this Act also applies. 10

“9B. Application of this Part to small businesses—(1) Subject to subsection (2) of this section, a business is a small business for the purposes of this Part of this Act if it is carried on for profit and comes within any class, description, or definition which the Minister may from time to time specify, following a recommendation of the Board, by notice in the *Gazette*. 15 20

“(2) The Board may, with the approval of the Minister, by notice in the *Gazette* signed by the Chairman, further limit the application of this Part of this Act to small businesses by declaring that particular powers and discretions conferred on the Agency by this Part will be exercised only in respect of small businesses coming within any particular class, description, or definition which the Board may specify in the notice. 25

“(3) A notice under this section may from time to time be amended or revoked, and may make any incidental, transitional, or supplementary provision which is necessary or desirable to give effect to this section. 30

“(4) As soon as is practicable after this Part comes into force the Board shall proceed to prepare and make recommendations to the Minister for the purposes of subsection (1) of this section. 35

“9c. Corporation to maintain Small Business Agency—(1) The Corporation shall, as part of its operations under this Act, establish and maintain a division called the Small Business Agency. 40

“(2) The provisions of section 3 (4) of this Act shall extend to the Agency to the intent that the Board shall have authority to exercise and perform the powers, functions, and duties conferred or imposed on the Agency by or under this Act.

5 “9D. Functions of Agency—(1) The general functions of the Agency shall be—

“(a) To encourage, promote, and facilitate the establishment, carrying on, expansion, and development of efficient small businesses in New Zealand:

10 “(b) To maintain close liaison with, and to encourage co-operation and co-ordination among, any organisations and persons *(including Government departments and Government agencies)* that are engaged in, or concerned with, activities relating to
15 or affecting the carrying on, expansion, and development of efficient small businesses in New Zealand:

“(c) To collaborate with organisations and individuals *(including financial institutions, educational institutions, Government departments, and Government agencies)*—

20 “(i) In the development of schemes or programmes of financial or technical assistance to small businesses; and

25 “(ii) In the provision of services designed to promote efficient and effective management and productivity in small businesses.

New

30 “(2) In this section, ‘organisation’ includes a Government department and a Government agency.

“9E. General powers of Agency—(1) The Agency may from time to time—

35 “(a) Establish regional information or referral centres or offices in any region in collaboration with any person or organisation within that region:

“(b) Provide, or facilitate the provision of, advisory, consultancy, and other services for small businesses complementary to or in co-ordination with services being otherwise provided:

40 “(c) Arrange, either by itself or with any other organisation or person, training and educational programmes suitable for small businesses:

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- “(d) Undertake or commission research, either by itself or jointly with any other organisation or person, or evaluate research concerning small businesses, including research concerning forms of financial or technical assistance most suited to small businesses or classes of small businesses: 5
- “(e) Review the performance and welfare of small businesses as an element in the economy in the light of existing policies of the Government or other institutions and existing or proposed legislation, and make recommendations to the Minister arising out of any such review: 10
- “(f) Collect, prepare, and disseminate information relating to small businesses, including information in the form of reports, pamphlets, books, journals, and other publications: 15
- “(g) Advise the Minister on any matter relating to small businesses that may be referred to the Agency by the Minister:
- “(h) Lay down the circumstances in which charges will be made for any services or acts performed by the Agency, and from time to time fix appropriate charges in respect of those services or acts (whether rendered by the Agency alone or in conjunction with any other person or organisation): 20
- “(i) Engage the services of technical and professional advisers in such manner and on such terms and conditions as it thinks fit. 25

“9F. Agency to promote financial assistance to small businesses—(1) Without restricting the general provisions in section 9D (c) of this Act, the Agency shall be concerned to promote the availability of financial advice and suitable forms of financial assistance to meet the needs of small businesses. 30

“(2) Without limiting section 7 (1) (d) of this Act but subject to subsection (3) of this section, the Agency may, either solely or jointly with another person or other persons, guarantee, in such manner and on such conditions as it thinks fit, the payment or repayment of money that is payable, or to become payable, or that may become payable for the purposes of a small business by any person carrying on that business (in this section and in section 9G called ‘the debtor’) to any other person (in this section and in section 9G called ‘the creditor’). 35 40

Struck Out

“(3) The power to enter into a guarantee under subsection (2) of this section shall not be exercised unless—

5 “(a) It appears to the Board that the proposed debtor is unable to borrow money on reasonable terms without a guarantee of the debtor’s obligations in respect of the loan; and

“(b) The prior approval of the Minister of Finance to the exercise of the said power has been obtained.”

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New

“(3) The power to enter into a guarantee under subsection (2) of this section shall not be exercised unless the prior approval of the Minister of Finance to its exercise has been obtained.”

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“(4) The Agency may assist any small business in connection with an application or proposed application to an institution or person for financial assistance by—

“(a) Making or obtaining an evaluation of the merits of the application or proposed application:

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“(b) Supporting the application in whole or in part as it thinks fit.

“9G. Further provisions as to guarantee by Agency—(1)

25 Any sum required for fulfilling a guarantee given by the Agency under section 9F (2) of this Act shall be paid by the Minister of Finance out of the Consolidated Revenue Account without further appropriation than this section, and any sum received by the Agency by way of repayment of a sum so paid out, or for interest thereon, shall be paid into the same Account.

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“(2) If pursuant to a guarantee given under section 9F (2) of this Act the Agency makes a payment to the creditor in respect of a debt secured by a mortgage or specific or floating charge, such sum shall be repayable to the Agency by the debtor, together with interest thereon, and the Agency shall 35 as from the time of payment have the benefit of all remedies vested in the creditor by virtue of such mortgage or charge with liberty to exercise the rights and powers arising thereunder in its own name and without any assignment by the creditor.”

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3. Constitution of Board—Section 10 (1) of the principal Act is hereby amended by repealing paragraph (d), and substituting the following paragraph:

“(d) Not less than 4 nor more than 6 other directors.”

Struck Out

4. Meetings of Board—Section 15 (3) of the principal Act is hereby amended by omitting the figure “3”, and substituting the figure “4”.

New

4. Meetings of the Board—Section 15 of the principal Act is hereby amended—

(a) By omitting from subsection (3) the figure “3”, and substituting the figure “4”;

(b) By inserting after subsection (3) the following subsection:

“(3A) Notwithstanding subsection (3) of this section, where the number of appointed directors (excluding the director appointed as the Chairman of the Board) does not exceed 4, the quorum shall be 3 directors, of whom one shall be—

“(a) The Secretary of Trade and Industry; or

“(b) The Secretary to the Treasury; or

“(c) An officer attending the meeting pursuant to subsection (6) of this section instead of the Secretary of Trade and Industry or the Secretary to the Treasury.”

5. Small Business Agency Account—(1) The principal Act is hereby further amended by inserting, after section 20A (as inserted by section 6 of the Development Finance Corporation Amendment Act 1976), the following section:

“20B. (1) The Corporation shall establish in its books of account, and may open at any bank, an account to be known as the Small Business Agency Account.

“(2) There shall in each year be paid and credited to that account all money appropriated by Parliament for the purposes of the Small Business Agency and all other money received by the Corporation therefor.

“(3) There shall from time to time be charged against that account—

“(a) All money payable by the Corporation in connection with the exercise and performance of the powers, functions, and duties of the Small Business Agency; and

“(b) Such amounts, determined in a manner approved by the Minister, as are required to reimburse the

Corporation the expenses incurred by it in connection with the exercise and performance of the said powers, functions, and duties.

- “(4) Funds shall not be transferred to or from the Small Business Agency Account, except as provided for in subsections (2) and (3) of this section, without the consent of the Minister of Finance.

- “(5) No money in the Small Business Agency Account shall be deemed to form part of the annual surplus of the Corporation for the purposes of section 20 of this Act.”

New

5A. Fees and travelling allowances—Section 22 of the principal Act is hereby amended by adding, after subsection (2), the following subsection:

- “(3) There may be paid to any member of a committee of the Board (not being a director or employee of the Corporation) remuneration by way of fees, travelling allowances, and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly as if the members of the committee were members of a statutory Board within the meaning of that Act.”

- 6. Annual reports and accounts**—Section 25 of the principal Act is hereby amended by adding the following subsection:

- “(4) In its application to the Small Business Agency this section shall be read with this modification namely, that the finances, proceedings, and operations of the Agency shall be the subject of separate accounts and reports, and that the same shall be laid before Parliament separately from the reports and accounts relating to the other activities of the Corporation.”

New

- 7. Legal protection**—Section 32A of the principal Act (as inserted by section 10 of the Development Finance Corporation Amendment Act 1976) is hereby further amended by renumbering that section as subsection (1), and adding the following subsection:

- “(2) Where the Corporation, in the exercise of any functions other than in the circumstances specified in subsection (1) of this section, is requested to provide any advice or other assistance, it shall not be liable to any action for damages by reason of its refusal to give such advice or assistance.”