

SOUTH AUSTRALIA

ECONOMIC DEVELOPMENT ACT 1993

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ECONOMIC DEVELOPMENT ACT 1993

being

Economic Development Act 1993 No. 24 of 1993
[Assented to 22 April 1993]¹

¹ Came into operation 1 May 1993: *Gaz.* 29 April 1993, p. 1476.

2.

An Act to promote the economic development of the State; and for other purposes.

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Economic Development Act 1993*.

Commencement

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

Objects

3. The objects of this Act are—

- (a) to promote internationally focused, competitive, market-driven and sustainable economic development throughout the State;
- (b) to promote a productive partnership or collaboration between public and private enterprise in the State;
- (c) to encourage and facilitate investment, and industrial and commercial development, in the State;
- (d) to contribute to public understanding of the issues affecting the economic development of the State;
- (e) to establish the *Economic Development Board* as the State's primary agency for determining, co-ordinating and implementing economic development strategies for the State.

Interpretation

4. In this Act, unless the contrary intention appears—

"Board" means the *Economic Development Board* established under this Act;

"CEO" means the Chief Executive Officer of the Board.

Note: For definition of divisional penalties (and divisional expiation fees) see Appendix.

Collective name

5. The Board, the CEO and the other staff of the Board may be collectively referred to as the *Economic Development Authority*.

PART 2
ECONOMIC DEVELOPMENT BOARD

DIVISION 1—ESTABLISHMENT OF THE BOARD

Establishment of the Board

6. (1) The *Economic Development Board* is established.
- (2) The Board is a body corporate.
- (3) The Board is an instrumentality of the Crown and holds its property on behalf of the Crown.

Ministerial Control

7. (1) The Board is subject to control and direction by the Minister.
- (2) No Ministerial direction can be given to suppress information or recommendations from a report by the Board under this Act.
- (3) The Minister must ensure that copies of any Ministerial direction given under this section are laid before both Houses of Parliament within 6 sitting days after the direction is given.
- (4) The Board must, in relation to each financial year, enter into a performance agreement with the Minister obliging the Board to meet performance targets established by the agreement in that financial year.
- (5) A direction given during a particular financial year or a performance agreement for a particular financial year must be published in the report of the Board for that financial year.

DIVISION 2—THE CHIEF EXECUTIVE OFFICER

Chief Executive Officer

8. (1) The office of Chief Executive Officer (CEO) of the Board is established.
- (2) The CEO is, subject to the control and direction of the Board, responsible for—
- (a) managing the staff and resources of the Board; and
- (b) giving effect to the policies and decisions of the Board.
- (3) The CEO is to be appointed by the Governor on terms and conditions determined by the Governor.

DIVISION 3—THE BOARD'S MEMBERSHIP

Composition of the Board

9. (1) The Board is to consist of not less than 8 and not more than 13 members.
- (2) The CEO is to be a member of the Board *ex officio* and the remaining members are to be appointed by the Governor.

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(3) The Board's membership must include persons who have, in the Minister's opinion, appropriate expertise in economic development, international business, management and industrial relations and at least one of those persons must be a woman and at least one a man.

(4) One member of the Board will be appointed by the Governor to chair meetings of the Board.

(5) The Governor may appoint a person to be the deputy of a member of the Board, and a person so appointed may act as a member of the Board in the absence of that member.

Conditions of membership

10. (1) A member of the Board (except the CEO) will be appointed for a term, not exceeding three years, specified in the instrument of appointment and, at the expiration of a term of appointment, will be eligible for reappointment.

(2) The Governor may remove a member of the Board from office—

(a) for misconduct; or

(b) for failure or incapacity to carry out the duties of his or her office satisfactorily; or

(c) if serious irregularities have occurred in the conduct of the Board's affairs or the Board has failed to carry out its functions satisfactorily and the Board's membership should, in the opinion of the Governor, be reconstituted for that reason.

(3) The office of a member of the Board becomes vacant if the member—

(a) dies; or

(b) completes a term of office and is not reappointed; or

(c) resigns by written notice to the Minister; or

(d) is convicted of an indictable offence; or

(e) is removed from office under subsection (2).

Remuneration

11. A member of the Board is entitled to such remuneration, allowances and expenses as may be determined by the Governor.

Disclosure of interest

12. (1) A member who has a direct or indirect private interest in a matter under consideration by the Board—

(a) must disclose the nature of the interest to the Board; and

(b) must not take part in any deliberations or decision of the Board in relation to that matter.

Penalty: Division 5 fine or division 5 imprisonment.

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(2) It is a defence to a charge of an offence against subsection (1) to prove that the defendant was not, at the time of the alleged offence, aware of his or her interest in the matter.

(3) A disclosure under this section must be recorded in the minutes of the Board and reported to the Minister.

(4) If, in the Minister's opinion, a particular private interest is of such significance that the holding of the interest is not consistent with the proper discharge of the duties of a member of the Board, the Minister may direct the member either to divest himself or herself of the interest or to resign from the Board (and non-compliance with the direction constitutes misconduct and hence a ground for removal of the member from the Board).

(5) If a member discloses an interest in a contract or proposed contract under this section and takes no part in any deliberations or decision of the Board on the contract—

(a) the contract is not liable to be avoided by the Board; and

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

Members duties of honesty, care and diligence

13. (1) A member of the Board must at all times act honestly in the performance of official functions.

Penalty: Division 4 fine or division 4 imprisonment or both.

(2) A member of the Board must at all times exercise a reasonable degree of care and diligence in the performance of official functions.

(3) If a member of the Board is culpably negligent in the performance of official functions, the member is guilty of an offence.

Penalty: Division 4 fine.

(4) A member is not culpably negligent for the purposes of subsection (3) unless the court is satisfied the member's conduct fell sufficiently short of the standard required of the member to warrant the imposition of a criminal sanction.

(5) A member or former member of the Board must not make improper use of information acquired through his or her official position to gain directly or indirectly a personal advantage for himself, herself or another, or to cause detriment to the Board or the State.

Penalty: Division 4 fine or division 4 imprisonment or both.

(6) A member of the Board must not make improper use of his or her official position to gain directly or indirectly a personal advantage for himself, herself or another or to cause detriment to the Board or the State.

Penalty: Division 4 fine or division 4 imprisonment or both.

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(7) This section—

- (a) operates both inside and outside the State; and
- (b) is in addition to, and does not derogate from, other laws.

Immunity of members

14. (1) A member of the Board incurs no civil liability for—

- (a) an act or omission done or made in pursuance of a Ministerial direction given under this Act; or
- (b) an honest act or omission in the performance or purported performance of functions or duties under this Act.

(2) The immunity conferred by subsection (1)(b) does not extend to culpable negligence.

(3) A civil liability that would, but for this section, attach to a member attaches instead to the Crown.

DIVISION 4—THE BOARD'S PROCEDURES

Proceedings

15. (1) A quorum of the Board consists of one half the total number of its members (ignoring any fraction resulting from the division) plus one.

(2) The member appointed to chair meetings of the Board will preside at meetings of the Board or, in the absence of that member, a member chosen to preside by those present.

(3) A decision carried by a majority of the votes cast by members at a meeting is a decision of the Board.

(4) Each member present at a meeting of the Board has one vote on any question arising for decision and, if the votes are equal, the member presiding at the meeting may exercise a casting vote.

(5) A telephone or video conference between members of the Board will, for the purposes of this section, be taken to be a meeting of the Board at which the participating members are present.

(6) A proposed resolution of the Board—

- (a) of which notice is given to all members of the Board in accordance with procedures determined by the Board; and
- (b) in which a majority of the members of the Board express their concurrence in writing,

is a decision of the Board.

(7) The Board must have accurate minutes kept of its proceedings.

(8) Subject to this Act, the Board may determine its own procedures.

PART 3
FUNCTIONS AND POWERS OF THE BOARD

Functions of the Board

16. (1) The Board has the following functions (which are to be carried out in consultation with the Minister):

- (a) to prepare a plan, or a series of plans, for the growth and sustainable development of the State economy and for the consolidation and growth of sustainable employment in the State; and
- (b) to formulate policies and strategies for implementation of the plan or plans in the private and public sectors; and
- (c) to analyse factors influencing business and investment and to recommend action to enhance the international competitiveness of the State's industry and commerce; and
- (d) to formulate or implement strategies for the development of international trade and marketing, and the attraction of investment to the State, in accordance with the plan or plans for development of the State economy; and
- (e) to negotiate for the expansion of industries in the State, or for the establishment of new industries in the State; and
- (f) to encourage and oversee economic planning and development in sectors of the State's economy; and
- (g) to identify the infrastructure necessary to maintain and expand the State's economy, to develop and recommend strategies for the provision of such infrastructure and to monitor its establishment; and
- (h) to foster, in collaboration with appropriate regional authorities, the development of regional economies in the State; and
- (i) to identify the skills necessary for the maintenance and expansion of the State's economy and to develop strategies for ensuring that those skills are developed and maintained as a basis for the expansion of levels of sustainable employment in the State; and
- (j) to integrate scientific and technological research and its commercial exploitation within the economic framework of the State; and
- (k) to initiate and carry out projects and programs, or to participate as a member of a joint venture in projects and programs, for the economic development of the State; and
- (l) to recommend criteria that should be met by government agencies in relation to the provision of, or the capacity to provide, the infrastructure or services required, in accordance with the Board's economic development plans, for the economic development of the State; and

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- (m) to assist regional development authorities, by making available to them (on terms mutually agreed between the Board and the authorities) the expertise of officers and employees of the Board, to develop and implement regional development strategies, and to empower such authorities to act on the Board's behalf, to an appropriate extent, in pursuance of delegated powers; and
- (n) to carry out any other functions assigned to the Board by the Minister.

(2) Any agreement negotiated by the Board for industrial expansion or development in the State is binding on the State and its instrumentalities if the agreement is consistent with the law of the State and ratified by the Governor.

(3) The Board may, if authorised by the Governor to do so, exercise, in relation to a specified proposal for expansion or development of industry, a specified statutory power to grant an approval, consent, licence or exemption.

(4) If an authorisation is given under subsection (3)—

- (a) the statutory power may be exercised by the Board as if the power had been duly delegated to it by the authority, body or person in whom the power is primarily vested; and
- (b) the Board must consult with that authority, body or person in relation to the exercise of the power (but is not bound to comply with directions as to the exercise of the power given by that authority, body or person); and
- (c) any statutory provisions governing, or incidental to, the exercise of the power must be observed by the Board as if it were that authority, body or person; and
- (d) any statutory provisions for appeal against or review of a decision to exercise the power or to refrain from exercising the power apply in relation to a decision by the Board in relation to the exercise of the power.

(5) An authorisation under subsection (3) is to be given, and may be varied or revoked, by proclamation, and within 6 sitting days after such a proclamation is made, the Minister must have a report, setting out the terms of the proclamation, laid before both Houses of Parliament.

(6) The Board must monitor the extent to which a government agency complies with criteria recommended under subsection (1)(l), and adopted by the Minister responsible for the relevant agency, and any failure to comply with such criteria must be reported in the Board's annual report.

(7) The Board—

- (a) may not acquire shares or any other interest in the capital of a body corporate unless the acquisition has been approved by the Governor; and
- (b) may not enter into a contract to carry out any kind of development project, or to participate in the carrying out of a development project as a partner or a member of a joint venture, unless the contract, or the project, has been approved by the Governor.

(8) Subject to subsection (9), a ratification under subsection (2), or an approval under subsection 7(a) or (b)—

- (a) must be published by the Minister—
 - (i) by notice in the *Gazette* within 14 days after the ratification or approval was given; and
 - (ii) by tabling the ratification or approval in both Houses of Parliament within 6 sitting days after its publication in the *Gazette*; and
- (b) must be published by the Board in its next annual report.

(9) If the Minister is of the opinion that publication of a ratification or approval under subsection (8) might detrimentally affect the commercial interests of any interested party, or might breach a duty of confidence, the ratification or approval need not be published by the Minister or the Board as required by that subsection, but instead—

- (a) the Minister must cause the ratification or approval to be reported to the Economic and Finance Committee of the Parliament within 14 days after the ratification or approval was given; and
- (b) the Board must cause a statement of the fact that the ratification or approval was given to be published in its next annual report.

Powers of the Board

17. (1) The Board has the powers necessary or incidental to the performance of its functions.

(2) The Board may, for example—

- (a) enter into any form of contract or arrangement;
- (b) employ staff or make use of the services of staff employed in the public or private sector;
- (c) engage consultants or other contractors;
- (d) provide services within areas of the Board's expertise on terms and conditions determined by the Board;
- (e) delegate any of its powers to the CEO or to any other person or group of persons;
- (f) establish committees (consisting of members of the Board, persons who are not members of the Board or a combination of members and non-members) and assign to the committees advisory functions or delegated powers.

(3) A delegation of powers by the Board—

- (a) may only be made with the Minister's consent; and
- (b) must be in writing; and

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

(4) The Board cannot delegate a statutory power that the Board is authorised to exercise by the Governor under section 16(3).

(5) An employee of the Board is not, as such, a member of the Public Service (but the Board may employ a person who is on leave from employment in the Public Service or with an instrumentality or agency of the Crown).

Annual report

18. (1) The Board must, on or before 30 September in every year, forward to the Minister a report under this section.

(2) The report must contain—

(a) a report on the Board's operations for the year ending on the preceding 30 June;

(b) a report on the state of the State's economy with particular reference to—

(i) Australian and international standards of efficiency and competitiveness; and

(ii) the extent to which goals set in the Board's plans for the State's economic development have been achieved; and

(c) any information required by or under other provisions of this Act.

(3) The Minister must, within 12 sitting days after receiving a report under this section, have copies of the report laid before both Houses of Parliament.

**PART 4
MISCELLANEOUS**

Budgets

19. (1) The Board must, as required by the Minister, submit to the Minister budgets setting out estimates of the Board's future income and expenditure.

(2) The Minister may approve a budget submitted under this section with or without modification.

(3) The Board may not expend money unless provision for the expenditure is made in a budget approved under this section or unless the expenditure is approved by the Minister.

Banking and investment

20. (1) The Board may establish and operate bank accounts.

(2) Any money of the Board that is not immediately required for the purposes of the Board may be invested in a manner approved by the Treasurer.

Accounts and audit

21. (1) The Board must cause proper accounting records to be kept in relation to its financial affairs, and must have annual statements of account prepared in respect of each financial year.

(2) The accounting records and the statements of account must comply with—

(a) any instructions of the Treasurer under section 41 of the *Public Finance and Audit Act 1987*; and

(b) any further requirements imposed by the Auditor-General.

(3) The Auditor-General may at any time audit the accounts of the Board and must audit the annual statements of account.

Regulations

22. (1) The Governor may make regulations for the purposes of this Act.

(2) A regulation may impose a fine, not exceeding a division 7 for breach of the regulation.

APPENDIX**DIVISIONAL PENALTIES AND EXPIATION FEES**

At the date of assent to this Act divisional penalties and expiation fees are, as provided by section 28a of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	-	\$500	\$100
10	-	\$200	\$75
11	-	\$100	\$50
12	-	\$50	\$25

Note: This appendix is provided for convenience of reference only.