

SOUTH AUSTRALIA

INDUSTRIES DEVELOPMENT ACT, 1941

*This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at **11 February 1992**.*

It should be noted that the Act has not been revised (for obsolete references, etc.) by the Commissioner of Statute Revision since its last reprinting on 26 October 1987.

SUMMARY OF PROVISIONS

Section

- 1. Short title
- 2. Interpretation
- 2a. Proclaimed country

The Industries Development Committee

- 3. The Industries Development Committee
- 4. Members of Committee
- 8. Quorum and majority decision
- 9. Vacancies and defects
- 10. Functions of the Committee
- 11. Appointment of officers
- 12. Membership does not affect seat in Parliament
- 13. Provisions as to Auditor-General

Assistance to Industries

- 14. Guarantees to assist the establishment, carrying on or expansion of businesses
- 14a. Other guarantees
- 16. Conditions as to raising of capital
- 16a. Power of Treasurer to grant direct assistance to industry

Miscellaneous Provisions

- 17. Application for guarantee
- 18. Auditor-General to report
- 19. Expert assistance for industries
- 20. Powers of Committee as to inquiry
- 21. Financial provision
- 22. Legal proceedings
- 23. Disposal of money recovered in legal proceedings
- 23a. Summary procedure
- 23b. Vesting of property, rights and liabilities in the Crown
- 24. Regulations

INDUSTRIES DEVELOPMENT ACT, 1941

being

Industries Development Act, 1941, No. 29 of 1941
[Assented to 13 November 1941]

as amended by

Industries Development Act Amendment Act, 1943, No. 23 of 1943 [Assented to 16 December 1943]
Industries Development Act Amendment Act, 1947, No. 50 of 1947 [Assented to 11 December 1947]
Industries Development Act Amendment Act, 1949, No. 46 of 1949 [Assented to 1 December 1949]
Industries Development Act Amendment Act, 1951, No. 34 of 1951 [Assented to 6 December 1951]
Industries Development Act Amendment Act, 1958, No. 39 of 1958 [Assented to 27 November 1958]
Statutes Amendment (Industries Development and Land Settlement Committees) Act, 1965, No. 2 of 1965 [Assented to 24 June 1965]
Industries Development Act Amendment Act, 1971, No. 21 of 1971 [Assented to 15 April 1971]¹
Industries Development Act Amendment Act (No. 2), 1971, No. 65 of 1971 [Assented to 21 October 1971]
Industries Development Act Amendment Act, 1972, No. 90 of 1972 [Assented to 26 October 1972]²
Industries Development Act Amendment Act, 1974, No. 29 of 1974 [Assented to 11 April 1974]³
Industries Development Act Amendment Act (No. 2), 1974, No. 101 of 1974 [Assented to 5 December 1974]
Industries Development Act Amendment Act, 1975, No. 10 of 1976 [Assented to 4 March 1976]
Industries Development Act Amendment Act, 1977, No. 15 of 1977 [Assented to 5 May 1977]
Industries Development Act Amendment Act (No. 2), 1977, No. 45 of 1977 [Assented to 15 December 1977]⁴
Industries Development Act Amendment Act, 1978, No. 23 of 1978 [Assented to 30 March 1978]⁵
Industries Development Act Amendment Act (No. 2), 1978, No. 55 of 1978 [Assented to 31 August 1978]
Industries Development Act Amendment Act, 1981, No. 97 of 1981 [Assented to 23 December 1981]⁶
Industries Development Act Amendment Act, 1985, No. 115 of 1985 [Assented to 10 November 1985]
Statutes Repeal and Amendment (Remuneration) Act, 1990, No. 18 of 1990 [Assented to 19 April 1990]⁷
Parliamentary Committees Act 1991 No. 50 of 1991 [Assented to 21 November 1991]⁸

¹ Came into operation 1 June 1971: *Gaz.* 13 May 1971, p. 2428.

² Came into operation 9 August 1973: *Gaz.* 9 August 1973, p. 850.

³ Came into operation 23 January 1975: *Gaz.* 23 January 1975, p. 258.

⁴ Came into operation 4 May 1978: *Gaz.* 4 May 1978, p. 1541.

⁵ Came into operation 4 May 1978: *Gaz.* 4 May 1978, p. 1540.

⁶ Came into operation 1 January 1982: *Gaz.* 23 December 1981, p. 2467.

⁷ Came into operation 19 April 1990: *Gaz.* 19 April 1990, p. 1136.

⁸ Came into operation 11 February 1992: *Gaz.* 5 December 1991, p. 1668.

N.B. The *Statutes Amendment (Remuneration of Parliamentary Committees) Act, 1978*, was repealed before it was brought into operation.

Note: 1. Asterisks indicate repeal or deletion of text.

2. For the legislative history of the Act see Appendix. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.

An Act to enact certain provisions for the promotion and development of industries, and for incidental purposes.

The Parliament of South Australia enacts as follows:

Short title

1. This Act may be cited as the *Industries Development Act, 1941*.

Interpretation

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

"business" in relation to an industry, includes any industrial activity whether or not that activity is carried on for, or in the expectation of, profit or reward:

"the Committee" means the Industries Development Committee under this Act:

* * * * *

"the Economic and Finance Committee" means the Committee of that name established by the *Parliamentary Committees Act 1991*:

"industry" includes—

- (a) any sporting, cultural or social activity whether or not that activity is carried on for, or in the expectation of, profit or reward;
- (b) any overseas industry:

"member" includes chairman:

* * * * *

"overseas industry" means an industry—

- (a) that is carried on wholly or mainly in a proclaimed country;
- and
- (b) that is or will be of substantial benefit to an industry carried on wholly or mainly in the State:

"proclaimed country" means a country for the time being declared by proclamation under section 2a to be a proclaimed country for the purposes of this Act:

"the Treasurer" means the Treasurer of the State, or any other Minister of the Crown for the time being acting in that office.

3.

Proclaimed country

2a. The Governor may by proclamation—

(a) declare a country to be a proclaimed country for the purposes of this Act;

or

(b) amend, vary or revoke any such declaration.

The Industries Development Committee

The Industries Development Committee

3. (1) The *Industries Development Committee* is established.

* * * * *

Members of Committee

4. (1) The Committee is to consist of five members of whom—

(a) four are to be members of the Economic and Finance Committee nominated from time to time by that Committee;

and

(b) one is to be a person nominated from time to time by the Treasurer.

(2) Of the members nominated by the Economic and Finance Committee, two must be members of the group in the House of Assembly led by the Premier and two must be members of the group in that House led by the Leader of the Opposition.

(3) A Minister of the Crown cannot be a member of the Committee.

* * * * *

Quorum and majority decision

8. (1) At any meeting of the Committee three members form a quorum.

(2) Subject to this Act, every matter coming before the Committee will be decided by a majority of the votes of the members of the Committee present and voting at a meeting of the Committee.

(2a) The members present at a meeting of the Committee must elect one of their number to preside at the meeting.

(3) At meetings of the Committee, the member presiding has a deliberative vote only, and in the event of equality of votes on any question, that question must be adjourned to the next meeting of the Committee.

(4) Notwithstanding subsections (1) and (2), a recommendation that a guarantee be given under this Act is not valid unless at least four members of the Committee concur in it.

Vacancies and defects

9. (1) No act or proceeding of the Committee is invalid or illegal in consequence only of the number of members of the Committee not being complete at the time of the act or proceeding.

(2) Every act and proceeding of the Committee is, notwithstanding any defect in the nomination of a member, as valid as if that member had been properly nominated to the Committee.

Functions of the Committee

10. (1) The functions of the Committee are—

(a) to investigate and report upon such matters relating to assistance to industry as are referred to the Committee by the Treasurer;

and

(b) to perform such other functions and duties as are imposed upon the Committee under this Act.

(2) The functions of the Committee include the investigation of matters referred to it under or pursuant to any Act and the making of such reports and recommendations on any such matter as the Committee thinks fit.

Appointment of officers

11. (1) The Governor may appoint a secretary and such other officers to assist the Committee as the Governor thinks fit.

(2) Every person so appointed will hold office for such period and on such terms and conditions as the Governor determines.

(3) With the consent of the Minister administering any department of the Public Service of the State the Committee may make use of the services of any officer of that department.

Membership does not affect seat in Parliament

12. The seat of a member of the House of Assembly is not liable to be vacated and the member is not liable to any forfeiture, fine or disability by reason that the member is a member of the Committee.

* * * * *

Provisions as to Auditor-General

13. (1) If the Auditor-General is appointed a member of the Committee, the Governor will—

(a) release the Auditor-General from duties as Auditor-General, for the period of membership;

and

(b) appoint some other person to act as the Auditor-General's deputy during that period.

5.

(2) Every person so appointed must make and subscribe before the Executive Council a declaration in the form required by the *Public Finance and Audit Act, 1987*, and the declaration will be kept among the records of the Executive Council.

(3) Every such person has, while acting as the Auditor-General's deputy, all the powers and duties of the Auditor-General.

Assistance to Industries

Guarantees to assist the establishment, carrying on or expansion of businesses

14. (1) Subject to this section, the Treasurer may, for the purpose of assisting a person to establish, carry on or expand a business in any industry—

(a) guarantee the repayment of a loan made or to be made to the person for the purposes of the business or proposed business;

or

(b) give a guarantee (limited to the payment of a fixed or ascertainable amount) in respect of any other liability that has been or may be incurred by the person in connection with the business or proposed business.

(2) No such guarantee will be given unless—

(a) the Committee has first inquired into the business or proposed business in connection with which the guarantee is to be given;

(b) the Committee has reported to the Treasurer—

(i) that in its opinion there is a reasonable prospect that the business or proposed business will be profitable;

or

(ii) in the case of a business consisting of a sporting, cultural or social activity—that there is a reasonable prospect that the business or proposed business will earn an income sufficient to meet its liabilities and commitments;

(c) the Committee has reported to the Treasurer that, in its opinion, the giving of the guarantee will be in the public interest and has recommended that the guarantee be given;

(d) the person on whose behalf the guarantee is to be given has agreed to pay to the Treasurer, as consideration for the guarantee, a commission at an agreed rate, not exceeding two per cent per annum, on the amount in respect of which the guarantee is given, and to comply with any other conditions imposed by the Treasurer on the recommendation of the Committee;

6.

- (e) the person on whose behalf the guarantee is to be given has given the Treasurer such security (if any) as the Treasurer requires for the repayment to the Treasurer of any money that the Treasurer becomes liable to pay by virtue of the guarantee;

and

- (f) in the case of a guarantee in respect of a loan—

- (i) the Treasurer is satisfied that the annual rate of interest payable on the loan makes due allowance for the reduced risk carried by the creditor as a result of the guarantee;

and

- (ii) any stipulations of the Treasurer as to giving the lender security for the loan have been complied with by the person on whose behalf the guarantee is to be given or that person has satisfied the Treasurer that the stipulations will be complied with.

* * * * *

(2a) The Treasurer may, on the recommendation of the Committee, exempt a person from the obligation to comply with subsection (2)(d) or (e) permanently or for a specified period and subject to limitations, restrictions and conditions recommended by the Committee and approved by the Treasurer.

- (3) A guarantee given under this section in respect of a loan may extend—

- (a) to the payment of interest on the loan guaranteed;

- (b) to any expenses incidental to the loan;

and

- (c) to any expenses incurred by the creditor in obtaining or endeavouring to obtain payment of the principal, interest and expenses.

Other guarantees

14a. (1) Subject to this Act, the Treasurer may guarantee the repayment, on such terms and conditions as the Treasurer thinks fit, of any loan made or to be made to any trustees, representative of employees or proposed employees of any person engaged or about to be engaged in an industry, for the purposes of enabling or assisting those trustees to create a prescribed trust fund to acquire for the benefit of those employees an interest in the business of that person in relation to that industry.

7.

(2) No guarantee referred to in subsection (1) will be given unless—

(a) the Committee has first inquired into the business or proposed business in connection with which the guarantee is to be given and has reported to the Treasurer that it is satisfied that a prescribed trust fund will be created and that there are reasonable prospects that—

(i) the business or proposed business will be profitable;

(ii) the objects of the trust in relation to which the guarantee is proposed will be achieved;

and

(iii) the arrangements made by the trustees to repay the loan will be carried out;

and

(b) the Treasurer is satisfied that the annual rate of interest payable on the loan in relation to which the guarantee is proposed makes due allowance for the reduced risk carried by the creditor as a consequence of the guarantee.

(3) In this section—

"prescribed trust fund" means a trust fund created under a trust deed that—

(a) provides that at least one trustee must have had experience in financial matters and be approved by the person engaged or about to be engaged in the relevant business;

(b) provides, subject to paragraph (a), that the trustees are properly representative of the employees who are or may be beneficiaries of the trust fund;

(c) provides that each employee engaged in the relevant business is eligible to be a beneficiary of the trust fund;

and

(d) prevents use of the trust fund to acquire more than a one-third interest in the relevant business.

(4) A guarantee under this section may extend—

(a) to the payment of interest on the loan guaranteed;

(b) to any expenses incidental to the loan;

and

8.

- (c) to any expenses incurred by the creditor in obtaining or endeavouring to obtain payment of the principal, interest and expenses.

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Conditions as to raising of capital

16. The Treasurer may, in consideration of the giving of a guarantee under section 14 in respect of a loan, require the principal debtor to agree that—

- (a) the Treasurer, if at any time satisfied that the business in connection with which the guarantee is given is satisfactorily established, may request the principal debtor to take such reasonable steps as the Treasurer directs for raising capital to repay the loan;

and

- (b) the principal debtor will take such steps accordingly.

* * * * *

Power of Treasurer to grant direct assistance to industry

16a. The Treasurer may, on the recommendation of the Committee—

- (a) make loans on terms and conditions determined by the Treasurer and approved by the Committee for the purpose of assisting in the establishment or development of any industry in the State;
- (b) acquire land and equipment and make it available for use in any industry on terms and conditions determined by the Treasurer and approved by the Committee;

or

- (c) make non-repayable monetary grants for the purpose of assisting in the establishment or development of any industry in the State.

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Miscellaneous Provisions

Application for guarantee

17. (1) An application for a guarantee, grant, loan or other assistance under this Act must be made to the Treasurer, and the applicant must furnish the Treasurer, or the Committee, as the case may require, with all information required by the Treasurer or the Committee in relation to the industry or business in respect of which the guarantee, grant, loan or other assistance is required.

(2) If any person in connection with an application for a guarantee, grant, loan or other assistance wilfully or negligently furnishes to the Treasurer, or the Committee, any false or misleading information, that person is guilty of an offence.

Penalty: \$500.

Auditor-General to report

18. The Auditor-General must, in every annual report, report upon the guarantees, grants, loans and other assistance given or made under this Act.

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Expert assistance for industries

19. (1) The Treasurer may make available to any person engaged, or about to engage, in any industry, the services of accountants, auditors, engineers, or other competent persons.

(2) The Treasurer may enter into an agreement with any person to whom services are provided under this section as to payment for those services.

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Powers of Committee as to inquiry

20. For the purpose of making any inquiry under this Act, the Committee is a commission within the meaning of the *Royal Commissions Act, 1917*, and that Act applies accordingly, but—

- (a) no witness other than an applicant for a guarantee, grant, loan or other assistance may be compelled to disclose to the Committee directly or indirectly any information as to his or her methods, processes or costs of production or manufacture;
- (b) the evidence of any witness before the Committee must, if the witness so requests, be taken in private.

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Financial provision

21. (1) The Treasurer may pay out of the General Revenue of the State any money required to satisfy a liability under any guarantee given pursuant to this Act, and this Act without any further appropriation is a sufficient authority for any such payment.

(2) Any other money required for purposes of this Act will be paid out of money provided by Parliament for those purposes.

Legal proceedings

22. (1) The Treasurer may, in his or her official name, institute and carry on any legal proceedings for any remedy or relief under or by virtue of any guarantee or security given, or any contract made, under this Act.

(2) The Committee may in its official name institute and carry on any legal proceedings for any remedy or relief under any agreement made by it under this Act.

(3) Such proceedings will be instituted in the same court and carried on in accordance with the same practice and procedure as if they were proceedings between subjects.

Disposal of money recovered in legal proceedings

23. (1) All money received or recovered by the Treasurer or the Committee under section 21 or 22 will be paid into the General Revenue of the State.

(2) Any money that the Treasurer or the Committee becomes liable to pay in or as the result of any legal proceedings taken under section 22 will be paid by the Treasurer out of the General Revenue of the State, and this Act without any further appropriation is sufficient authority for such payment.

Summary procedure

23a. An offence against this Act is a summary offence.

Vesting of property, rights and liabilities in the Crown

23b. (1) All property, rights, powers and liabilities (whether vested or contingent) of the South Australian Development Corporation vested in or attached to the Crown on the commencement of the *Industries Development Act Amendment Act, 1981*.

(2) The property, rights and powers referred to in subsection (1) will be administered or exercisable, on behalf of the Crown, by a Minister nominated by the Governor.

(3) The Minister nominated under subsection (2) may deal with or dispose of property that vested in the Crown under this section as he or she thinks fit.

(4) Where an estate or interest in real property vested in the Crown under this section, the Registrar-General must upon the application of the Minister nominated under subsection (2), register that Minister as the proprietor of that estate or interest.

Regulations

24. (1) The Governor may, on the recommendation of the Treasurer, make regulations—

(a) specifically authorizing or approving a particular act or thing;

or

(b) specifically authorizing or approving acts or things of a particular kind.

(2) Where the Treasurer is of the opinion—

(a) that a particular act or thing, or acts or things of a particular kind is not, or are not, such as should be considered in determining whether a contravention of a provision of Part IV of the *Trade Practices Act 1974* of the Commonwealth has been committed;

and

(b) that it is in the public interest that that act or thing, or that acts or things of that kind be authorized or approved,

the Treasurer may recommend the making of a regulation under subsection (1) in relation to the relevant act or thing, or in relation to acts or things of the relevant class.

(3) The Governor may—

(a) make such other regulations as may be necessary or expedient for the purposes of this Act;

and

(b) may, by any such regulation, prescribe a fine (not exceeding \$100) for breach of any regulation.

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APPENDIX

Legislative History

Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 5 of The General Public Acts of South Australia 1837-1975 at page 148.

Certain textual alterations were made to this Act by the Commissioner of Statute Revision when preparing the reprint of the Act that incorporated all amendments in force as at 26 October 1987. A schedule of these alterations was laid before Parliament on 3 November 1987.

Legislative history since 3 February 1976 (entries in bold type indicate amendments incorporated since the last reprint):

Section 2:	definition of "the corporation" substituted by 10, 1976, s. 2; amended by 45, 1977, s. 3(b); repealed by 97, 1981, s. 3(b) definition of "the Economic and Finance Committee" inserted by 50, 1991, Sched. Pt. II definition of "industry" amended by 45, 1977, s. 3(a) definition of "the metropolitan area" deleted in pursuance of the <i>Acts Republication Act, 1967</i> , as the expression no longer appears in the Act definition of "overseas industry" amended by 97, 1981, s. 3(a)
Section 3(2) and (3):	repealed by 50, 1991, Sched. Pt. II
Section 4:	substituted by 50, 1991, Sched. Pt. II
Sections 5 - 7:	repealed by 50, 1991, Sched. Pt. II
Section 8(2a):	inserted by 50, 1991, Sched. Pt. II
Section 8(3):	amended by 50, 1991, Sched. Pt. II
Section 8(4):	amended by 97, 1981, s. 4
Section 9(2):	amended by 50, 1991, Sched. Pt. II
Section 10(1):	amended by 45, 1977, s. 4
Section 12:	substituted by 18, 1990, s. 14; 50, 1991, Sched. Pt. II
Section 12a:	amended by 18, 1990, s. 15; repealed by 50, 1991, Sched. Pt. II
Section 14(1):	substituted by 115, 1985, s. 2(a)
Section 14(2):	amended by 115, 1985, s. 2(b)-(e)
Section 14(2)(g), proviso and second sentence:	repealed by 115, 1985, s. 2(e)
Section 14(2a):	inserted by 115, 1985, s. 2(f)
Section 14(3):	amended by 115, 1985, s. 2(g)
Section 14a:	inserted by 15, 1977, s. 2
Section 16:	amended by 115, 1985, s. 3
Heading preceding section 16a:	substituted by 10, 1976, s. 3; 45, 1977, s. 5; repealed by 97, 1981, s. 5
Section 16a:	amended by 10, 1976, s. 4; 45, 1977, s. 6; substituted by 97, 1981, s. 5
Sections 16b - 16d:	repealed by 97, 1981, s. 5
Section 16e:	substituted by 23, 1978, s. 3; repealed by 97, 1981, s. 5
Section 16f:	amended by 45, 1977, s. 7; repealed by 97, 1981, s. 5
Section 16g:	amended by 45, 1977, s. 8; repealed by 97, 1981, s. 5
Section 16h:	repealed by 97, 1981, s. 5
Section 17(1):	amended by 97, 1981, s. 6(a)
Section 17(2):	amended by 97, 1981, s. 6(b)
Section 18:	redesignated as s. 18(1) by 45, 1977, s. 9; redesignated as s. 18 in pursuance of the <i>Acts Republication Act, 1967</i>
Section 18(2):	inserted by 45, 1977, s. 9; repealed by 97, 1981, s. 7
Section 23b:	inserted by 97, 1981, s. 8
Section 24:	substituted by 55, 1978, s. 2