

Western Australia

## **Industry (Advances) Act 1947**

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# Industry (Advances) Act 1947

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## NOTES



## Industry (Advances) Act 1947

**An Act to enable financial assistance to be granted, directly by or through sources approved by the Treasurer, in respect of industry and certain business and other activities; to validate certain past financial assistance granted; and for purposes connected therewith.**

*[Long title amended by No. 6 of 1994 s.13; No. 14 of 1995 s.44.]*

*[Assented to 24 December 1947.]*

Be it enacted —

**1. Short title**

This Act may be cited as the *Industry (Advances) Act 1947*.

**2. Interpretation**

In this Act, unless the contrary intention appears —

**“approved applicant”** means, in relation to any application, a person who or which has accepted the terms and conditions of financial assistance approved under this Act;

**“Bank”** means a bank as defined in section 5 of the *Banking Act 1959* of the Commonwealth;

**“decentralized location”** means a location in —

- (a) an area of the State beyond such distance from the General Post Office in Forrest Place Perth as is prescribed for the purposes of this definition;

- (b) an area of the State prescribed as a special region for the purpose of this definition; or
- (c) an area of the State prescribed as a region for particular purposes in relation to a prescribed Scheme;

**“industry”** means —

- (a) the converting of any raw material into a different marketable form; or
- (b) the adding of value to a product by the addition of expertise or the conversion of materials, or both; or
- (c) the provision of specialised services and maintenance or repair facilities as direct support for resource based production (not being actual resources production derived from mining, farming or pastoral activities),

and shall be taken to include the provision of tourist accommodation facilities in a decentralized location;

**“person”** includes a body or association (corporate or incorporate) and a partnership;

**“prescribed Scheme”** or **“Scheme”** means a Scheme referred to in section 7A;

**“section”** means section of this Act;

**“security”** includes a statutory lien or charge;

**“subsection”** means subsection of the section in which the term is used;

**“Treasurer”** means the Treasurer of the State;

**“Under Treasurer”** means the person holding or acting in the office of that name in the Public Service of the State.

*[Section 2 inserted by No. 79 of 1980 s.4; amended by No. 6 of 1994 s.13; No. 14 of 1995 s.44.]*

**3. Power to grant financial assistance in certain circumstances**

- (1) The Treasurer, by making or guaranteeing any advance or by arranging for a Bank to make or guarantee any advance or as otherwise provided by this Act, and subject to such terms and conditions as he may impose, may render financial assistance —
- (a) to an approved applicant engaged in industry;
  - (b) in accordance with a prescribed Scheme, to an approved applicant recommended as eligible to participate in that Scheme; or
  - (c) for the purposes of —
    - (i) any activity which was, immediately prior to the coming into operation of the *Industry (Advances) Amendment Act 1980*, in receipt of financial assistance under this Act; or
    - (ii) any other Act by virtue of the provisions of which the Treasurer is authorized to render financial assistance under this Act,

where the Treasurer is satisfied that, in the best interests of the State, such assistance should be given.

- (2) In respect of any financial assistance rendered under this section, or for the purposes of the implementation of any prescribed Scheme, the Treasurer may —
- (a) enter into and execute on behalf of the State —
    - (i) any agreement;
    - (ii) any instrument of guarantee; or
    - (iii) any indemnity required for the purposes of The Residual Indemnity Scheme for Small Businesses;
  - (b) take and enforce any security, whether by way of mortgage or otherwise;

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- (c) make payment, repayment, or payment of interest, in accordance with or for the purposes of any agreement or instrument entered into on behalf of the State;
- (d) subject to any agreement or instrument entered into on behalf of the State, direct the amount, manner and times of the financial assistance, the rate of interest (if any) to be charged, and the manner and times of payment or repayment of the moneys involved in the assistance, whether rendered directly or by or through the Bank; and

*[(e) deleted]*

in accordance with a direction given under this Act.

*[(3) deleted]*

- (4) A Bank shall give effect to any arrangement made with it under this Act by —
  - (a) the Treasurer; or
  - (b) a person to whom the power to make such arrangements has been delegated under section 3A.

*[Section 3 inserted by No. 79 of 1980 s.5; amended by No. 46 of 1982 s.2; No. 14 of 1995 s.44.]*

**3A. Delegation**

- (1) The Treasurer may, by writing signed by him, delegate to the Minister all or any of his functions and powers under this Act with the exception of his power of delegation, and may in like manner delegate to —
  - (a) the Under Treasurer, or any specified officer of the Treasury, the power to make arrangements with a Bank for the purposes of this Act; and
  - (b) the Under Treasurer, or to any specified officer —
    - (i) of the Treasury; or



(ii) so authorized by the Minister for the purposes of a specified prescribed Scheme,

the power to execute on behalf of the State any agreement or instrument, including any indemnity, or to sign any other document, and under this Act to give effect to, or vary, the terms of financial assistance under this Act,

where the rendering or variation of that financial assistance has been approved by the Treasurer or by the Minister pursuant to a power delegated to the Minister by the Treasurer.

- (2) A person to whom a function or power is delegated by the Treasurer under this Act may perform the function or exercise the power in the same manner and with the same effect as if the function or power were directly so conferred by this Act and not by delegation.
- (3) A delegation under this Act does not prevent the performance of a function or the exercise of a power by the Treasurer, and may be revoked wholly or in part by the Treasurer at any time.
- (4) Where the performance of a function or the exercise of a power is dependent upon the opinion, belief, satisfaction or other state of mind of the Treasurer in relation to a matter, that function or power when delegated may be performed or exercised by the delegate upon the opinion, belief, satisfaction or state of mind of the delegate in relation to the matter.
- (5) Where a person purports to perform a function or exercise a power conferred on the Treasurer by this Act, it shall be presumed, unless the contrary is established, that the person is duly authorized as a delegate of the Treasurer to perform the function or exercise the power.
- (6) A document purporting to be signed by a person as a delegate of the Treasurer under this Act shall be deemed, unless the contrary is established, to have been signed by such a delegate and to have been so signed pursuant to the performance of a

**s. 3B**

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function or the exercise of a power duly delegated to the person by the Treasurer.

*[Section 3A inserted by No. 79 of 1980 s.5; amended by No. 14 of 1995 s.44.]*

**3B. Delegation**

No agreement or instrument of guarantee or indemnity for the purposes of this Act shall be entered into or executed on behalf of the State unless or until —

- (a) all relevant particulars of the matter in relation to which the financial assistance is to be rendered have been disclosed to the satisfaction of the Treasurer;
- (b) the terms and conditions of the financial assistance to be rendered are approved by the Treasurer; and
- (c) the applicant furnishes such security, if any, as the Treasurer may require, and executes all such instruments as may be necessary for that purpose.

*[Section 3B inserted by No. 79 of 1980 s.5.]*

**3C. Guarantees not to terminate by automatic operation of law**

The liability of the State pursuant to any guarantee under this Act shall not be affected or discharged by reason only —

- (a) of the granting to the person to whom the financial assistance is rendered of any time or other indulgence or consideration;
- (b) of any transaction that may take place between the person to whom the financial assistance is granted and any person having the benefit of the guarantee; or
- (c) of any other act or omission of the person having the benefit of the guarantee,

whereby the liability of the State as guarantor would but for this provision have been affected or discharged, but nothing in this section shall operate to prevent the termination of such a

guarantee by the State for any such reason where the Treasurer so determines and the circumstances so permit.

*[Section 3C inserted by No. 79 of 1980 s.5; amended by No. 14 of 1995 s.44.]*

#### **4. Applicants**

- (1) A person desirous of obtaining financial assistance under this Act or a particular prescribed Scheme may apply, to the Treasurer or in such other manner as may be prescribed in relation to any particular prescribed Scheme, for approval as an approved applicant for the purposes of this Act or of that Scheme.
- (2) An applicant may be required to furnish such accounts, documents and other information relevant to his application as are necessary, and a person who, in or in connection with an application for financial assistance under this Act or a prescribed Scheme, in furnishing any such account, document or information —
  - (a) makes or authorizes the making of a statement that is false or misleading in a material particular; or
  - (b) omits or authorizes the omission of any matter or thing without which the account, document or other information is misleading in a material respect,

without having taken all reasonable steps to ensure that the statement was not false or misleading or to ensure that the statement did not omit any matter or thing without which the accounts, document or information would be misleading, as the case may be, commits an offence against this Act.

Penalty: \$5 000.

*[Section 4 inserted by No. 79 of 1980 s.7.]*

**5. Payment guaranteed**

The payment of all moneys payable by the Treasurer or any delegate of the Treasurer under any guarantee or indemnity given by the Treasurer under the authority of this Act is guaranteed by the Government of the State, and any liability arising under any such guarantee or indemnity shall be charged to the Consolidated Fund which is to the necessary extent appropriated accordingly.

*[Section 5 amended by No. 6 of 1993 s.11; No. 14 of 1995 s.44; No. 49 of 1996 s.64.]*

**5A. Indemnities to lending institutions**

- (1) In relation to The Residual Indemnity Scheme for Small Businesses, the Treasurer is authorized on behalf of the State to undertake, by instrument in writing to indemnify a lending institution against any loss incurred by it in respect of any advance made by it to an approved applicant under and for the purposes of that Scheme.
- (2) The payment of all moneys payable by the Treasurer under an instrument of indemnity entered into under the authority of this section is hereby guaranteed by the Government of the State, and any liability arising under any such indemnity shall be charged to the Consolidated Fund which is to the necessary extent appropriated accordingly.
- (3) The manager, secretary, accountant or other executive or administrative officer of a lending institution indemnified under this section in relation to any advance, or any bank at which any account, record or document of that lending institution is kept, shall, whenever requested by the Minister to do so, make available to the Minister or a person appointed in writing by the Minister such information as the Minister may require relating to or connected with any such advance.

*[Section 5A inserted by No. 79 of 1980 s.8; amended by No. 6 of 1993 s.11; No. 14 of 1995 s.44; No. 49 of 1996 s.64.]*

[6, 7. Repealed by No. 14 of 1995 s.44.]

**7A. Prescribed Schemes**

- (1) For the purposes of this Act the following Schemes are prescribed —
- (a) *The Guarantee Scheme*, whereby any term loan granted by a lending institution to an approved applicant may be guaranteed by the Treasurer on behalf of the Government of the State where —
    - (i) the applicant is unable to obtain normal commercial funding;
    - (ii) the proposal relates to the establishment or development of an industry not likely to be in conflict with the interests in the same field of activity in the State of existing businesses which have not benefited from Government assistance; and
    - (iii) the provision of financial assistance under the Scheme is in the best interests of the State;
  - (b) *The Residual Indemnity Scheme for Small Businesses*, whereby any term loan granted by a lending institution to an approved applicant may, subject to such limitations as may be prescribed, be supported by an instrument of indemnity entered into by the Treasurer on behalf of the Government of the State where —
    - (i) the proposal relates to a business engaged in industry, employing not more than 20 persons in full time employment (other than the proprietor or dependants of the proprietor);
    - (ii) the applicant is unable to meet the collateral requirements of normal commercial funding;
    - (iii) funds are required for the expansion of an established business, by way of capital expenditure or working capital;

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- (iv) the net equity of the proprietor is considered for the purposes of the Scheme to constitute a sufficient proportion having regard to the circumstances; and
  - (v) the provision of financial assistance under the Scheme is in the best interests of the State;
- (c) *The Capital Establishment Assistance Scheme*, whereby, subject to such limitations as may be prescribed, a capital establishment grant, by way of a convertible loan progressively converted to a grant, may be made by the Minister on behalf of the Government of the State to an approved applicant where —
- (i) the proposal relates to the establishment of an industry not likely to be in conflict with the interests in the same field of activity in the State of existing businesses which have not benefited from Government assistance;
  - (ii) the provision of financial assistance under the Scheme is in the best interests of the State;
- (d) *The Regional Industry Assistance Scheme*, whereby, subject to such limitations as may be prescribed, a capital grant, payable either in a lump sum or by instalments, may be made by the Minister on behalf of the Government of the State to an approved applicant where —
- (i) the proposal relates to the expansion of the operation of an established business engaged in industry in a decentralized location, or the diversification of the business to meet the needs of the region in which it is located; and
  - (ii) the provision of financial assistance under the Scheme is in the best interests of the State.
- (2) In any proceedings, whether under this Act or otherwise, any question —

- (a) as to the best interests of the State, may be determined by the Treasurer;
- (b) whether or not the establishment or development of an industry would, at the time of approval of the application under this Act, have been likely to be in conflict with the interests in the same field of activity in the State of any other business, may be determined —
  - (i) where the approval was given by the Treasurer, by the Treasurer; and
  - (ii) where the approval was given by the Minister under a power delegated to the Minister by the Treasurer, by the Minister,

for the purposes of establishing the eligibility of an applicant to obtain financial assistance under a Scheme.

- (3) Regulations made on the recommendation of the Treasurer under section 8 may make provision, where there is no such provision in this Act, or no sufficient provision, in respect of the terms and conditions applicable to a Scheme or any matter or thing necessary to give effect to a Scheme.

*[Section 7A inserted by No. 79 of 1980 s.9; amended by No. 46 of 1982 s.3.]*

## **8. Regulations**

The Governor may make regulations not inconsistent with the provisions of this Act which may be necessary or convenient for giving effect to the provisions of this Act, or for facilitating the operation thereof.

*[Section 8 amended by No. 14 of 1995 s.44.]*

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**Notes**

- <sup>1.</sup> This is a compilation of the *Industry (Advances) Act 1947* and includes all amendments effected by the other Acts referred to in the following Table.

**Compilation table**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Industry (Advances) Act 1947</i>	53 of 1947	24 Dec 1947	24 Dec 1947
	21 of 1959	8 Oct 1959	8 Oct 1959
	32 of 1961	6 Nov 1961	6 Nov 1961
	79 of 1980	5 Dec 1980	1 May 1981 (see <i>Gazette</i> 1 May 1981 p.1369)
	46 of 1982	26 Aug 1982	26 Aug 1982
<i>Financial Administration Legislation Amendment Act 1993, Part 4</i>	6 of 1993	27 Aug 1993	Deemed operative 1 Jul 1993
R & I Bank Amendment Act 1994, section 13	6 of 1994	11 Apr 1994	Sections 5, 6, 7, 8, 12 and 13 and Schedule 1 proclaimed 26 Apr 1994 (see <i>Gazette</i> 26 Apr 1994 p.1743); Balance on assent
<i>Bank of Western Australia Act 1995, section 44</i>	14 of 1995	4 Jul 1995	1 Dec 1995 (see section 2 and <i>Gazette</i> 29 Nov 1995 p.5529)
<i>Financial Legislation Amendment Act 1996, section 64</i>	49 of 1996	25 Oct 1996	25 Oct 1996 (see section 2 (1))

- <sup>2.</sup> Clause 1 of Part B of Schedule 2 of the *Bank of Western Australia Act 1995* (Act No. 14 of 1995) reads as follows —

“

- 1. Provision relating to *Industry (Advances) Act 1947***
- (1) Any security for the repayment of advances taken under the *Industry (Advances) Act 1947* and vested in the Bank immediately



before the commencement of section 44 is vested in the Treasurer on the commencement of that section.

- (2) Any relevant official who records and registers documents under a written law is to take cognizance of subclause (1) and is authorized to make any entry or memorial or register any document necessary to show the effect of that subclause.
- (3) A statement in an instrument executed by or on behalf of the Treasurer that any security has become vested in the Treasurer under subclause (1) is evidence of that fact.

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