



# Industry Research and Development Act 1986

No. 89 of 1986

## TABLE OF PROVISIONS

### PART I—PRELIMINARY

#### Section

1. Short title
2. Commencement
3. Object of Act
4. Interpretation
5. Extension of Act to external Territories

### PART II—ADMINISTRATION

6. Establishment of Board
7. Functions of Board
8. Powers of Board
9. Constitution of Board
10. Period of appointment of members
11. Duties of Chairperson
12. Remuneration and allowances
13. Leave of absence
14. Resignation
15. Termination of appointment
16. Disclosure of interests by members of Board
17. Acting appointments
18. Meetings of Board
19. Additional functions of Board
20. Guidelines for policies and practices of Board
21. Delegation
22. Committees
23. Directions of Board to committees
24. Disclosure of interests by members of committees
25. Staff

TABLE OF PROVISIONS—*continued*

PART III—GRANTS AND AGREEMENTS

*Division 1—Discretionary Grants*

Section

- 26. Eligible activities
- 27. Eligible companies
- 28. Agreements for discretionary grants
- 29. Restrictions applicable to discretionary grants

*Division 2—Generic Technology Grants*

- 30. Generic technology
- 31. Agreements for generic technology grants
- 32. Restrictions applicable to generic technology grant agreements

*Division 3—National Interest Agreements*

- 33. National interest agreements
- 34. Provisions of national interest agreements

*Division 4—Miscellaneous*

- 35. Applications
- 36. Results of projects to be exploited
- 37. Adjustment of subsidies because of financial assistance
- 38. Repayment of subsidies on breach of agreement
- 39. Payments to be made to persons incurring cost

PART IV—FINANCE

- 40. Money to be appropriated
- 41. Notice of money available for Board
- 42. Advances in respect of subsidies
- 43. Subsidies not to exceed money available

PART V—MISCELLANEOUS

- 44. Offences
- 45. Time for prosecutions
- 46. Annual Report
- 47. Confidentiality
- 48. Regulations

PART VI—AMENDMENTS OF INDUSTRIAL RESEARCH AND  
DEVELOPMENT INCENTIVES ACT 1976

- 49. Principal Act
- 50. Interpretation
- 51. Approved employees
- 52. Repeal of Part II
- 53. Repeal of section 39



# Industry Research and Development Act 1986

No. 89 of 1986

---

---

## An Act relating to financial assistance by the Commonwealth for certain research and development

[Assented to 25 June 1986]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

### PART I—PRELIMINARY

#### Short title

1. This Act may be cited as the *Industry Research and Development Act 1986*.

#### Commencement

2. This Act shall come into operation on 1 July 1986.

#### Object of Act

3. The object of this Act is to promote the development, and improve the efficiency and international competitiveness, of Australian industry by the provision of financial assistance for research and development activities.

**Interpretation**

- 4. (1)** In this Act, unless the contrary intention appears—
- “acting Chairperson” means a person acting as Chairperson under section 17;
- “acting member” means a person acting as a member under section 17, and includes an acting Chairperson;
- “agreement under this Act” means—
- (a) a discretionary grant agreement;
  - (b) a generic technology grant agreement; or
  - (c) a national interest agreement;
- “application” means—
- (a) an application for a discretionary grant;
  - (b) an application for a generic technology grant; or
  - (c) an application for a national interest agreement;
- “appointed member” means the Chairperson or a member referred to in paragraph 9 (1) (c);
- “approved research institute” means an approved research institute within the meaning of section 73A of the *Income Tax Assessment Act 1936*;
- “Board” means the Industry Research and Development Board established by this Act;
- “Chairperson” means the Chairperson of the Board, but does not include an acting Chairperson;
- “committee” means a committee appointed under section 22;
- “company” means—
- (a) a body of persons; or
  - (b) an association of persons,
- whether corporate or unincorporate;
- “discretionary grant” means a grant of financial assistance under a discretionary grant agreement;
- “discretionary grant agreement” means an agreement entered into by the Board under section 28;
- “eligible activity” means—
- (a) the manufacture of goods;
  - (b) mining operations or operations for the recovery of naturally occurring petroleum or of natural gas;
  - (c) construction operations relating to buildings or works;
  - (d) the production of software for computers or for similar equipment;
  - (e) an activity in respect of which a declaration under section 26 is in force; or
  - (f) the development of systems and processes in relation to an activity referred to in paragraph (a), (b), (c), (d) or (e);

“eligible company” means a company—

- (a) that carries on an eligible activity in Australia; or
- (b) in respect of which a declaration under section 27 is in force;

“generic technology grant” means a grant of financial assistance under a generic technology agreement;

“generic technology grant agreement” means an agreement entered into by the Board under section 31;

“member” means the Chairperson or another member of the Board, but does not include an acting member;

“national interest agreement” means an agreement entered into by the Board under section 33;

“research and development activities” means systematic investigation or experimentation activities—

- (a) that involve innovation, technology transfer into Australia or technical risk;
- (b) that are carried out in Australia; and
- (c) the object of which is new knowledge (with or without a specific practical application) or new or improved materials, products, devices, processes or services;

“researcher” means a person who, or a body, an organisation, or an institution, that, in the opinion of the Board, is capable of carrying out a project of research and development activities and, without limiting the foregoing, includes a Department of State, a company and an approved research institute;

“subsidy” means—

- (a) a discretionary grant;
- (b) a generic technology grant; or
- (c) a payment by the Commonwealth under a national interest agreement.

(2) For the purposes of this Act—

- (a) an external Territory to which this Act extends; and
- (b) such areas of the sea or seabed adjacent to Australia or to an external Territory to which this Act extends as are prescribed,

shall be taken to be part of Australia.

(3) A reference in this Act to an area of generic technology shall be read as a reference to an area of technology in respect of which a declaration under section 30 is in force.

(4) A company shall be deemed for the purposes of this Act to carry on an eligible activity if, under an agreement, that activity is carried on, for and on behalf of, the company.

(5) A researcher shall be deemed for the purposes of this Act to carry out a project if, under an agreement, that project is carried out, for and on behalf of, the researcher.

(6) A reference in this Act to expenditure incurred or to be incurred by a researcher shall be read as a reference to expenditure incurred or to be incurred by the researcher that, in the opinion of the Board, is reasonable expenditure.

(7) For the purposes of this Act—

- (a) the Chairperson may be referred to as the Chairman or Chairwoman, as the case requires;
- (b) the acting Chairperson may be referred to as the acting Chairman or the acting Chairwoman, as the case requires; and
- (c) the Chairperson of a committee may be referred to as the Chairman of the committee or Chairwoman of the committee, as the case requires.

#### **Extension of Act to external Territories**

5. (1) This Act extends to all the external Territories, other than Norfolk Island.

(2) If, and so long as, the regulations so prescribe, this Act extends to Norfolk Island.

## **PART II—ADMINISTRATION**

### **Establishment of Board**

6. There is established by this Act a Board by the name of the Industry Research and Development Board.

### **Functions of Board**

7. The functions of the Board are—

- (a) such functions as are conferred on it by a provision of this Act (other than this section);
- (b) to make recommendations to the Minister on the proportions of the money to be committed in a financial year for the purposes of this Act that should be committed in respect of each of discretionary grants, generic technology grants and payments under national interest agreements;
- (c) such functions as are conferred on it by any other Act; and
- (d) any functions specified in a direction in force under section 19.

### **Powers of Board**

8. The Board has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

### **Constitution of Board**

9. (1) The Board shall consist of—

- (a) a Chairperson;
- (b) where the Minister considers it appropriate—the person who, at any time, is performing the duties of an office in the Australian

Public Service that is designated by the Minister, by notice in writing published in the *Gazette*, for the purposes of this paragraph; and

(c) not less than 4, or more than 10, other members.

(2) The appointed members shall be appointed by the Governor-General in writing.

(3) The appointed members shall be appointed as part-time members.

(4) A member holds office on such terms and conditions (in respect of matters not provided for by this Act) as are determined by the Minister in writing.

(5) The performance of the functions or the exercise of the powers of the Board is not affected by a vacancy in the office of Chairperson or because the number of members referred to in paragraph (1) (c) falls below 4 for not longer than 6 months.

#### **Period of appointment of members**

10. Subject to this Act, an appointed member holds office for such period, not exceeding 5 years, as is specified in the instrument of the member's appointment, but he or she is eligible for re-appointment.

#### **Duties of Chairperson**

11. It is the duty of the Chairperson, or an acting Chairperson, to ensure the efficient and orderly conduct of the business of the Board, and for that purpose, the Chairperson or an acting Chairperson—

- (a) shall make, or cause to be made, such inquiries into applications or into any other matter relevant to the operation of this Act as the Chairperson thinks necessary;
- (b) may make, or cause to be made, to the Board such reports in relation to applications as the Chairperson thinks fit; and
- (c) may determine the form of the records to be kept by the Board.

#### **Remuneration and allowances**

12. (1) The appointed members shall be paid—

- (a) such remuneration as is determined by the Remuneration Tribunal; and
- (b) such allowances as are prescribed.

(2) This section has effect subject to the *Remuneration Tribunals Act 1973*.

#### **Leave of absence**

13. (1) The Minister may grant leave to the Chairperson to be absent from a meeting or meetings of the Board.

(2) The Chairperson may grant leave to another member to be absent from a meeting or meetings of the Board.

### **Resignation**

**14.** The Chairperson or another appointed member may resign the office of Chairperson or member, as the case may be, by writing signed by him or her and delivered to the Governor-General.

### **Termination of appointment**

**15. (1)** The Governor-General may terminate the appointment of an appointed member—

- (a) for misbehaviour; or
- (b) for physical or mental incapacity.

**(2)** If an appointed member—

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (b) fails, without reasonable excuse, to comply with the member's obligations under section 16; or
- (c) is absent from 3 consecutive meetings of the Board otherwise than—
  - (i) on business of the Board undertaken with the approval of the Board or of a committee; or
  - (ii) on leave of absence granted under section 13,

the Governor-General shall remove the member from office.

### **Disclosure of interests by members of Board**

**16. (1)** A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Board shall, as soon as possible after the relevant facts have come to the knowledge of the member, disclose the nature of that interest at a meeting of the Board.

**(2)** A disclosure under sub-section (1) shall be recorded in the minutes of the meeting of the Board and the member shall not, unless the Minister or the Board otherwise determines—

- (a) be present during any deliberation of the Board with respect to that matter; or
- (b) take part in any decision of the Board with respect to that matter.

**(3)** For the purpose of the making of a determination by the Board under sub-section (2) in relation to a member who has made a disclosure under sub-section (1), a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not—

- (a) be present during any deliberation of the Board for the purpose of making the determination; or
- (b) take part in the making by the Board of the determination.

**(4)** In this section, a reference to a member shall be read as including a reference to an acting member.



**Acting appointments**

**17. (1)** The Minister may appoint a member or other person to act as Chairperson—

- (a) during a vacancy in the office of Chairperson, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Chairperson is absent from Australia or is, for any other reason, unable to perform the duties of the office of Chairperson,

but a person so appointed shall not continue so to act for more than 12 months.

**(2)** Where the number of members referred to in paragraph 9 (1) (c) is less than 10, the Minister may appoint a person who is not a member to act as a member, but a person so appointed shall not continue so to act—

- (a) if and after the number of those members ceases to be less than 10; or
- (b) for longer than 12 months.

**(3)** The Minister may appoint a person who is not a member to act in the place of a member referred to in paragraph 9 (1) (c) during any period, or during all periods, when the member is acting as Chairperson, is absent from Australia or is, for any other reason, unable to perform the duties of the office of member, but a person so appointed shall not continue so to act for longer than 12 months.

**(4)** An appointment of a person under sub-section (1) or (3) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

**(5)** Where a person is acting as the Chairperson otherwise than because of a vacancy in the office of Chairperson and the office of Chairperson becomes vacant while the person is so acting then, subject to sub-section (4), the person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the day on which the vacancy occurred expires, whichever occurs first.

**(6)** The Minister may—

- (a) determine the terms and conditions of appointment, including remuneration and allowances, of a person appointed to act as the Chairperson or a member; and
- (b) terminate such an appointment at any time.

**(7)** A person appointed to act as the Chairperson or another member may resign by writing signed by the person and delivered to the Minister.

**(8)** While a person is acting as the Chairperson or as another member, the person has and may exercise all the powers, and shall perform all the duties, of the Chairperson or the member, as the case may be.

(9) Anything done by or in relation to a person purporting to act under sub-section (1), (2) or (3) is not invalid on the grounds that—

- (a) the occasion for the person's appointment had not arisen;
- (b) there is a defect or irregularity in connection with the person's appointment;
- (c) the person's appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

### **Meetings of Board**

**18. (1)** The Board shall hold such meetings as are necessary for the efficient performance of its functions.

**(2)** The Chairperson—

- (a) may, at any time, convene a meeting of the Board; and
- (b) shall, if directed by the Minister to convene a meeting of the Board, convene a meeting of the Board.

**(3)** The Chairperson shall preside at all meetings of the Board at which he or she is present.

**(4)** If the Chairperson is not present at a meeting of the Board, the members present at the meeting shall elect one of their number to preside at the meeting.

**(5)** At a meeting of the Board, 4 members constitute a quorum.

**(6)** Questions arising at a meeting of the Board shall be determined by a majority of the votes of the members present and voting and—

- (a) if the Chairperson is present—the Chairperson has a deliberative vote and, in the case of an equality of votes, also has a casting vote; or
- (b) if the Chairperson is not present and a question arising at the meeting cannot be determined by a majority of the votes of the members present and voting—the question shall be deferred to a meeting at which the Chairperson is present.

**(7)** The Board shall cause minutes of its meetings to be kept.

**(8)** In this section—

- (a) a reference to the Chairperson shall, if there is an acting Chairperson, be read as a reference to the acting Chairperson; and
- (b) a reference to a member shall be read as including a reference to an acting member.

### **Additional functions of Board**

**19. (1)** The Minister may, by notice in writing delivered to the Chairperson and expressed to be given under this section, give directions to the Board that a function specified in the directions, being a function relating to the object of this Act, is an additional function of the Board.

(2) The Minister shall forthwith cause to be published in the *Gazette* particulars of any directions given under sub-section (1) and of any revocation of any such directions.

#### **Guidelines for policies and practices of Board**

20. (1) The Minister may, from time to time, by notice in writing delivered to the Chairperson and expressed to be given under this section, give directions to the Board with respect to the policies and practices to be followed by the Board in the performance of its functions, and the exercise of its powers, under this Act (including, but without limiting the generality of the foregoing, the policies and practices to be followed by the Board with respect to the entering into by the Board of discretionary grant agreements, generic technology agreements or national interest agreements and the provisions to be included in such agreements), and the Board shall comply with any such directions that are in force.

(2) The Minister shall not give directions under sub-section (1) unless and until the Minister—

(a) has given the Chairperson—

- (i) particulars in writing of the proposed directions; and
- (ii) an invitation to the Board in writing to give the Minister, within a time specified in the invitation, any comments in writing which the Board wishes to give in relation to the proposed directions; and

(b) has considered any comments given in response to that invitation.

(3) The Minister shall forthwith cause to be published in the *Gazette* particulars of any directions given under sub-section (1) and of any revocation of any such directions.

(4) Nothing in this section authorises the Minister to give directions to the Board in relation to a particular researcher.

(5) In this section, a reference to the Chairperson shall, if there is an acting Chairperson, be read as a reference to the acting Chairperson.

#### **Delegation**

21. (1) The Board may, by resolution, either generally or as otherwise provided by the resolution, delegate to the Chairperson, another member or a member of the staff assisting the Board, all or any of its powers under this Act, other than this power of delegation.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Board.

(3) A delegation of a power under this section—

- (a) may be revoked by a resolution of the Board (whether or not constituted by the persons constituting the Board at the time the power was delegated);
- (b) does not prevent the exercise of the power by the Board; and

(c) continues in force notwithstanding a change in the membership of the Board.

(4) Section 34A of the *Acts Interpretation Act 1901* applies in relation to a delegation under this section as if the Board were a person.

(5) A certificate signed by the Chairperson stating any matter with respect to a delegation of a power under this section is evidence of that matter unless evidence to the contrary is given.

(6) A document purporting to be a certificate mentioned in sub-section (5) shall, unless the contrary is established, be deemed to be such a certificate and to have been duly given.

(7) In this section, a reference to the Chairperson shall, if there is an acting Chairperson, be read as a reference to the acting Chairperson.

### **Committees**

**22. (1)** The Minister may, from time to time, by notice in writing published in the *Gazette*, appoint such committees as the Minister considers necessary for providing advice to the Board on matters relating to the operation of this Act.

(2) A committee shall consist of not more than 7 members (who may include a member or members of the Board) who shall be appointed by the Minister and shall hold office during the pleasure of the Minister.

(3) The Minister may appoint a member of a committee to be the Chairperson of the committee.

(4) Where the Minister notifies a committee that he or she does not propose to appoint a Chairperson of the committee under sub-section (3), the committee shall elect a member of the committee to be the Chairperson of the committee.

(5) A member of a committee shall hold office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Minister.

(6) A member of a committee may resign by writing signed by the member and delivered to the Minister.

(7) The Board may refer to a committee for advice any matter relating to the operation of this Act.

(8) A committee shall cause minutes of its meetings to be kept.

### **Directions of Board to committees**

**23. (1)** The Board may, from time to time, give directions with respect to—

(a) the matters to be taken into account by a committee in giving advice in relation to a matter or matters; or

(b) the practices to be followed by the committee in the performance of its functions.

(2) Directions under sub-section (1) shall be in writing and shall be given to the Chairperson of the committee to which the directions are given.

(3) The Board shall not give directions to a committee under sub-section (1) unless and until the Board—

(a) has given to the Chairperson of the committee—

- (i) particulars in writing of the proposed directions; and
- (ii) an invitation to the Committee in writing to give the Board, within a time specified in the invitation, any comments in writing which the committee wishes to give in relation to the proposed directions; and

(b) has considered any comments given in response to the invitation.

(4) The Board shall forthwith cause to be published in the *Gazette* particulars of any directions given under sub-section (1) and of any revocation of any such directions.

#### **Disclosure of interests by members of committees**

24. (1) A member of a committee who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the committee shall, as soon as possible after the relevant facts have come to the knowledge of the member, disclose the nature of that interest at a meeting of the committee.

(2) A disclosure under sub-section (1) shall be recorded in the minutes of the meeting of the committee and a member of a committee shall not, unless the Minister or the committee otherwise determines—

- (a) be present during any deliberation of the committee with respect to that matter; or
- (b) take part in any decision of the committee with respect to that matter.

(3) For the purpose of the making of a determination by the committee under sub-section (2) in relation to a member of a committee who has made a disclosure under sub-section (1), a member of a committee who has a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not—

- (a) be present during any deliberation of the committee for the purpose of making the determination; or
- (b) take part in the making by the committee of the determination.

#### **Staff**

25. The staff required to assist the Board and committees in the performance of their functions shall be persons appointed or employed under the *Public Service Act 1922*.

## **PART III—GRANTS AND AGREEMENTS**

### ***Division 1—Discretionary Grants***

#### **Eligible activities**

**26.** The Minister may, by notice in writing published in the *Gazette*, declare an activity to be an eligible activity for the purposes of the definition of “eligible activity” in sub-section 4 (1).

#### **Eligible companies**

**27. (1)** Where the Board considers that it would be consistent with the object of this Act for a company which proposes to commence to carry on an eligible activity in Australia to be an eligible company, the Board may, by resolution, declare that company to be an eligible company for the purposes of this Act.

**(2)** A declaration under sub-section (1) may be revoked by a resolution of the Board (whether or not constituted by the persons constituting the Board at the time the declaration was made).

#### **Agreements for discretionary grants**

**28. (1)** Where—

- (a)** a company, being an eligible company, is carrying out, or proposes to carry out, a project of research and development activities; or
- (b)** a company, not being an eligible company, is carrying out, or proposes to carry out, a project of research and development activities on behalf of 2 or more bodies corporate where at least one of those bodies corporate is an eligible company,

and the company makes an application to the Board for a grant under this Division in respect of the project, the Board, subject to this Act and to any relevant directions under section 20, may, in its discretion, enter into an agreement, on behalf of the Commonwealth, with the company, for and in relation to, the making of a grant of financial assistance under this Division to the company in respect of expenditure in respect of the project incurred or to be incurred by the company.

**(2)** The Board shall not enter into an agreement under sub-section (1)—

- (a)** after 30 June 1991; or
- (b)** in relation to a project that will commence after that day.

#### **Restrictions applicable to discretionary grants**

**29. (1)** There shall be specified in a discretionary grant agreement—

- (a)** the financial year or years in which any discretionary grant is, or discretionary grants are, to be payable under the agreement; and
- (b)** the amount of the discretionary grant, or the aggregate of the amounts of the discretionary grants, payable under the agreement in that year or in each of those years.

(2) The provisions of a discretionary grant agreement shall be such that the amount of the discretionary grant, or of the aggregate of the discretionary grants, payable to a company under the agreement shall not exceed an amount equal to 50% of the total amount that, in the opinion of the Board, is or will be the expenditure incurred, or to be incurred, by the company, after the date of the making of the application because of which the agreement is entered into, in respect of the project to which the agreement relates.

### ***Division 2—Generic Technology Grants***

#### **Generic technology**

30. (1) The Minister may, by notice in writing published in the *Gazette*, declare an area of technology to be an area of generic technology for the purposes of this Act.

(2) Without limiting the generality of sub-section (1), the Minister may make a declaration under that sub-section in relation to—

- (a) an area of technology that includes other areas of technology; or
- (b) an area of technology that is included in another area of technology.

(3) Subject to sub-section (4), a declaration under sub-section (1) remains in force for 3 years unless it is revoked.

(4) Where—

- (a) a declaration under sub-section (1) of an area of generic technology has been in force for longer than 2 years; and
- (b) the Minister, after reviewing the effectiveness of support for research and development activities in that area and all other matters that he or she considers relevant, is satisfied that the period for which the declaration should remain in force should be longer than 3 years,

the Minister (whether or not an earlier declaration or declarations under this sub-section in relation to that area has or have been made) may, by notice in writing published in the *Gazette* specifying the longer period, declare that the declaration under sub-section (1) is to remain in force for that longer period unless it is revoked.

#### **Agreements for generic technology grants**

31. (1) Where a researcher is carrying out, or proposes to carry out, a project of research and development activities in an area of generic technology and the researcher makes an application to the Board for a grant under this Division in respect of the project, the Board, subject to this Act and to any relevant directions under section 20, may, in its discretion, enter into an agreement, on behalf of the Commonwealth, with the researcher for and in relation to the making of a grant of financial assistance under this Division to the researcher in respect of expenditure in respect of the project incurred or to be incurred by the researcher.

- (2) The Board shall not enter into an agreement under sub-section (1)—
- (a) after 30 June 1991; or
  - (b) in relation to a project that will commence after that day.

**Restrictions applicable to generic technology grant agreements**

32. (1) There shall be specified in a generic technology grant agreement—
- (a) the financial year or years in which any generic technology grant is, or generic technology grants are, to be paid under the agreement; and
  - (b) the amount of the generic technology grant, or the aggregate of the amounts of the generic technology grants, payable under the agreement in that year or in each of those years.
- (2) A generic technology grant agreement may be made in relation to a project in an area of technology which was an area of generic technology when the application for the generic technology grant in relation to the project was made but which has ceased to be an area of generic technology.

***Division 3—National Interest Agreements***

**National interest agreements**

33. (1) Where the Board is satisfied that it is in the national interest that the Commonwealth should undertake a project of research and development activities, the Board, subject to this Act and to any relevant directions under section 20, may, on behalf of the Commonwealth, enter into an agreement with a researcher for the carrying out of that project.

(2) The Minister may request the Board to consider entering into a national interest agreement in respect of a project of research and development activities specified by the Minister.

(3) A researcher may make an application to the Board for a national interest agreement.

**Provisions of national interest agreements**

34. (1) A national interest agreement—
- (a) may provide that the Commonwealth is to bear the total amount that is or will be the expenditure on the project to which the agreement relates;
  - (b) where paragraph (a) applies to the agreement—shall provide that all incorporeal property resulting from the project shall belong to the Commonwealth; and
  - (c) where paragraph (a) does not apply to the agreement—shall provide that the Commonwealth shall have a share in all incorporeal property resulting from the project and that the share of the Commonwealth in any such incorporeal property shall bear to the sum of the shares in the property the same proportion as the total amount that is or will be paid by the Commonwealth under the agreement bears to the total amount that is or will be the expenditure on the project to which the agreement relates.



(2) In this section, “incorporeal property” includes copyrights, patent rights and trademarks.

#### ***Division 4—Miscellaneous***

##### **Applications**

35. (1) An application shall be in accordance with a form approved by the Board.

(2) An application shall be deemed not to have been made until it has been received on behalf of the Board by a member of the staff assisting the Board or by a person appointed by the Board to receive applications.

(3) The Board may refuse to consider an application unless the applicant furnishes such further information, or makes available to the Board such books or records, as the Board specifies, being information, books or records that the Board requires for the performance of its functions under this Act, including the preparation of a report of the Board under section 46.

##### **Results of projects to be exploited**

36. The Board shall not enter into an agreement under this Act in relation to a project of research and development activities unless it is satisfied that the results of that project will, where appropriate, be exploited on normal commercial terms and otherwise in a manner that will be for the benefit of the Australian economy.

##### **Adjustment of subsidies because of financial assistance**

37. Where a researcher has received financial assistance otherwise than under this Act (whether or not from, or out of money provided by, the Commonwealth) and it appears to the Board that the financial assistance has aided the researcher to carry out a project that is the subject of an agreement under this Act, the Board may reduce the amount of any subsidy to the researcher in respect of that project to such extent as it thinks appropriate because of that financial assistance.

##### **Repayment of subsidies on breach of agreement**

38. Nothing in this Act shall be taken as preventing the inclusion in an agreement under this Act with a researcher of provision for the repayment by the researcher to the Commonwealth on breach by the researcher of the agreement, or in any other circumstances specified in the agreement, of the whole or a part of a subsidy paid to the researcher under the agreement.

##### **Payments to be made to persons incurring cost**

39. Nothing in this Act or in an agreement under this Act shall be read as allowing the payment of any subsidy payable under an agreement under this Act in respect of a project otherwise than to—

- (a) the person incurring the cost of that project; or

- (b) where that person has assigned the right to receive the payment to another person and has notified the Board in writing of the assignment—that other person.

#### **PART IV—FINANCE**

##### **Money to be appropriated**

**40.** Payments of subsidies shall be made out of money appropriated by the Parliament for the purposes of this Act.

##### **Notice of money available for Board**

**41. (1)** The Minister shall, as soon as practicable after each 1 July, by notice in writing to the Chairperson, specify the total amount expected to be available to the Board during the financial year commencing on that 1 July.

**(2)** In this section, a reference to the Chairperson shall, if there is an acting Chairperson, be read as a reference to the acting Chairperson.

##### **Advances in respect of subsidies**

**42. (1)** Subject to sub-section (2), the Board may, in its discretion, authorise the payment to a researcher of an advance in respect of a subsidy that may become payable to the researcher.

**(2)** The Board shall not authorise the payment to a researcher under sub-section (1) of an amount in respect of a subsidy in an amount that exceeds the amount that, in the opinion of the Board, would be the amount of the subsidy payable to the researcher in respect of expenditure to be incurred by the researcher during the 3 months immediately following the authorisation of the payment of the amount.

**(3)** Where the Board has authorised a payment to a researcher under sub-section (1) in relation to a project, the Board may terminate the authorisation or reduce the amount of the payments authorised if, in the opinion of the Board, the project, or expenditure on the project, is not progressing to the extent estimated by the Board when the authorisation was given.

**(4)** Where an advance has been made to a researcher in pursuance of sub-section (1) in respect of a subsidy, the researcher is liable, if the subsidy does not become payable or the amount of the subsidy is less than the advance, to repay to the Commonwealth, upon demand being made by the Board, the amount of the advance or so much of the advance as exceeds the amount of the subsidy, as the case may be.

**(5)** Where a researcher is liable to repay an amount to the Commonwealth under sub-section (4), the Commonwealth may recover that amount as a debt due to the Commonwealth by action in a court of competent jurisdiction.

(6) Where a researcher is liable to repay an amount to the Commonwealth under sub-section (4), that amount may be deducted from any other amount that is payable to the researcher under this Act and, where the first-mentioned amount is so deducted, the other amount shall, notwithstanding the deduction, be deemed to have been paid in full to the researcher.

**Subsidies not to exceed money available**

43. The Board shall not authorise payment of a subsidy or of an advance in respect of a subsidy unless money appropriated by the Parliament is available for the payment of that subsidy or advance, as the case may be, together with all other subsidies, and advances in respect of subsidies, that have been authorised but not paid.

**PART V—MISCELLANEOUS**

**Offences**

44. (1) A person shall not knowingly obtain or attempt to obtain (whether for the person or for another person) subsidy that is not payable.

Penalty:

- (a) in the case of a natural person—\$10,000 or imprisonment for 5 years, or both; or
- (b) in the case of a body corporate—\$50,000.

(2) A person shall not, in or in relation to an application or in relation to an agreement under this Act—

- (a) make to the Board or to a person exercising a power or performing a function or a duty in relation to this Act a statement, either orally or in writing, that is to the knowledge of the person false or misleading in a material particular; or
- (b) give to the Board or to a person exercising a power or performing a function or duty in relation to this Act an account, book, document or other record that is to the knowledge of the person false or misleading in a material particular.

Penalty:

- (a) in the case of a natural person—\$1,000 or imprisonment for 6 months, or both; or
- (b) in the case of a body corporate—\$5,000.

(3) Where, in proceedings for an offence against sub-section (1) or (2) in respect of any conduct engaged in by a corporation, it is necessary to establish the state of mind of the corporation, it is sufficient to show that a director, servant or agent of the corporation, being a director, servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.

- (4) Any conduct engaged in on behalf of a corporation—
- (a) by a director, servant or agent of the corporation within the scope of his or her actual or apparent authority; or
  - (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the corporation, where the giving of such direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent,

shall be deemed, for the purposes of sub-sections (1) and (2), to have been engaged in by the corporation.

(5) A reference in sub-section (3) to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for the intention, opinion, belief or purpose.

(6) A person shall not be convicted of both an offence against or arising out of sub-section (1) and an offence against or arising out of sub-section (2) in respect of the same claim for subsidy.

(7) A reference in sub-section (6) to a person being convicted of an offence includes a reference to an order being made under section 19B of the *Crimes Act 1914* in relation to the person in respect of an offence.

(8) An offence against sub-section (1) is an indictable offence.

(9) Notwithstanding that an offence against sub-section (1) is an indictable offence, a court of summary jurisdiction may hear and determine proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.

(10) Where, in accordance with sub-section (9), a court of summary jurisdiction convicts a person of an offence against sub-section (1), the penalty that the court may impose is—

- (a) if the person is a natural person—a fine not exceeding \$2,000 or imprisonment for a period not exceeding 12 months, or both; or
- (b) if the person is a body corporate—a fine not exceeding \$10,000.

(11) In this section, “subsidy” includes an advance in respect of a subsidy.

### **Time for prosecutions**

45. Notwithstanding anything in any other law, proceedings for an offence against this Act may be instituted within the period of 3 years after the commission of the offence.

### **Annual Report**

46. (1) The Board shall, as soon as practicable after 30 June in each year after 1986, prepare and give to the Minister a report on the activities of the Board during the financial year that ended on that 30 June.

- (2) A report under this section in relation to a financial year—
- (a) shall contain an analysis of the effectiveness of the operations under this Act during the year in achieving the object of this Act, being an analysis that deals separately with discretionary grants agreements, generic technology grant agreements and national interest grant agreements;
  - (b) shall set out, in relation to each agreement under this Act entered into during the year—
    - (i) the name of the researcher, or each researcher, who is a party to the agreement;
    - (ii) the total amount of subsidy payable under the agreement;
    - (iii) the proportion of the expenditure on the project to which the agreement relates which is represented by that amount;
    - (iv) subject to section 47, particulars of the research and development activities to which the agreement relates;
    - (v) in the case of a generic technology grant agreement or a national interest agreement—the name of each researcher (other than natural persons and the parties to the agreement) who is expected to be involved in the project to which the agreement relates; and
    - (vi) in the case of agreements referred to in sub-paragraph (v)—subject to section 47, particulars of the expected commercial application of any results of the project to which the agreement relates;
  - (c) shall set out—
    - (i) the name of each researcher to whom subsidy was paid during the year; and
    - (ii) the amount of subsidy paid to each researcher in the year; and
  - (d) shall include particulars of any directions or other matter, particulars of which were published in the *Gazette* in accordance with this Act during the year.
- (3) The Minister shall cause a copy of the report given under sub-section (1) to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister received the report.

### **Confidentiality**

47. (1) The Board, a committee, a member or an acting member of the Board, a member of a committee or a member of the staff assisting the Board shall not, except for the purposes of this Act, of the *Census and Statistics Act 1905*, of the *Income Tax Assessment Act 1936* or of the *Industrial Research and Development Incentives Act 1976* or unless required or permitted by law to do so, supply information to a person if the supplying of the information would constitute a breach of confidence.

- (2) Sub-section (1) does not apply to the supply of information to—
- (a) the Minister;

- (b) the Secretary to the Department; or
- (c) an officer of the Department designated in writing by the Secretary to the Department as being an officer who is to receive information under this Act.

### **Regulations**

48. The Governor-General may make regulations, not inconsistent with this Act, prescribing matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## **PART VI—AMENDMENTS OF INDUSTRIAL RESEARCH AND DEVELOPMENT INCENTIVES ACT 1976**

### **Principal Act**

49. The *Industrial Research and Development Incentives Act 1976*<sup>1</sup> is in this Part referred to as the Principal Act.

### **Interpretation**

50. Section 4 of the Principal Act is amended—

- (a) by omitting from sub-section (1) the definitions of “acting Chairman”, “acting member”, “Advisory Committee” and “appointed member” and substituting the following definition:
  - “‘acting Chairperson’ means an acting Chairperson of the new Board appointed under section 17 of the *Industry Research and Development Act 1986*;”;
- (b) by omitting “this Act” from the definition of “Board” in sub-section (1) and substituting “the *Industrial Research and Development Incentives Act 1976*”;
- (c) by omitting from the definition of “Chairman” in that sub-section “, but does not include an acting Chairman”;
- (d) by inserting after the definition of “Chairman” in sub-section (1) the following definition:
  - “‘Chairperson’ means the Chairperson of the new Board;”;
- (e) by omitting from sub-section (1) the definition of “member”;
- (f) by inserting after the definition of “new” in sub-section (1) the following definition:
  - “‘new Board’ means the Industry Research and Development Board established by the *Industry Research and Development Act 1986*;”;
- (g) by omitting from sub-section (1) the definition of “Technical Standing Committee”; and
- (h) by inserting after sub-section (1) the following sub-section:
  - “(1A) On and after 1 July 1986 any reference in this Act or in an agreement to the Board or the Chairman shall, unless the context

*Industry Research and Development No. 89, 1986*

otherwise requires, be read as including a reference to the new Board or the Chairperson of the new Board (including an acting Chairperson of the new Board), respectively.”.

**Approved employees**

**51.** Section 7 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “the Technical Standing Committee” and substituting “a committee”;
- (b) by omitting from sub-section (1) “Committee” and substituting “committee”; and
- (c) by omitting from sub-section (2) “the Technical Standing Committee” and substituting “a committee”.

**Repeal of Part II**

**52.** Part II of the Principal Act is repealed.

**Repeal of section 39**

**53.** Section 39 of the Principal Act is repealed.

---

**NOTE**

1. No. 85, 1976, as amended. For previous amendments, see Nos. 36 and 211, 1978; No. 44, 1981; No. 80, 1982; Nos. 39 and 121, 1983; No. 165, 1984; and Nos. 33 and 65, 1985.

*[Minister's second reading speech made in—  
Senate on 8 May 1986  
House of Representatives on 4 June 1986]*