



Western Australia

# **Industry and Technology Development Act 1998**

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As at 01 Dec 2010

Version 01-e0-09

Published on [www.legislation.wa.gov.au](http://www.legislation.wa.gov.au)



# Industry and Technology Development Act 1998

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Western Australia

## **Industry and Technology Development Act 1998**

**An Act to encourage, promote, facilitate and assist the development of industry, trade, science, technology and research in the State, to continue the Western Australian Technology and Industry Advisory Council, to repeal —**

- **the *Technology and Industry Development Act 1983*;**
  - **the *Industry (Advances) Act 1947*; and**
  - **the *Inventions Act 1975*,**
- and for related purposes.**

## Part 1 — Preliminary

### 1. Short title

This Act may be cited as the *Industry and Technology Development Act 1998*<sup>1</sup>.

### 2. Commencement

This Act comes into operation on such day as is fixed by proclamation<sup>1</sup>.

### 3. Objects

The objects of this Act are —

- (a) to promote and foster the growth and development of industry, trade, science, technology and research in the State;
- (b) to improve the efficiency of State industry and its ability to compete internationally;
- (c) to encourage the establishment of new industry in the State;
- (d) to encourage the broadening of the industrial base of the State; and
- (e) to promote an environment which supports the development of industry, science and technology and the emergence of internationally competitive industries in the State.

### 4. Interpretation

In this Act, unless the contrary intention appears —

*Account* means the Western Australian Industry and Technology Development Account provided for by section 15;

*appointed member* means a member of the Council appointed under section 22(1)(b);

*chairperson* means the chairperson of the Council;



**committee** means a committee appointed under clause 14 of Schedule 1;

**Council** means the Western Australian Technology and Industry Advisory Council continued under section 20;

**department** means the department of the Public Service principally assisting the Minister in the administration of this Act;

**financial support** means financial support within the meaning of section 9;

**function** does not include power;

**guidelines** means any industry support guidelines approved by the Minister under section 10 and includes any revision of a guideline;

**industry** means any organized activity undertaken by one or more persons (whether or not a legal or economic entity) for a lawful commercial purpose and includes —

- (a) an activity in any branch of trade, commerce or manufacturing;
- (b) researching or developing a commercially focused —
  - (i) innovative idea;
  - (ii) technology, process or product;

**member** means a member of the Council and includes a person appointed under clause 5 of Schedule 1;

**repealed Act** means the *Technology and Industry Development Act 1983* repealed by section 33;

**technology** includes the application of scientific knowledge and practical experience to economic activity and to humanity and the environment;

**technology park** means an area of land declared to be a technology park under section 27;

**Treasurer** means the Treasurer of the State.

## **Part 2 — The Minister**

### **5. Minister continued in existence as a body corporate**

- (1) The body corporate constituted by the Minister and referred to in section 5 of the repealed Act is preserved and continued in existence and is to be known by such designation as is, from time to time, conferred on the Minister by the Governor under the *Constitution Acts Amendment Act 1899*.
- (2) The corporate identity and the rights, obligations and assets of the body corporate are not affected by the repeal of the repealed Act.
- (3) The body corporate —
  - (a) has perpetual succession;
  - (b) may sue and be sued in its corporate name; and
  - (c) is capable of doing and suffering all that bodies corporate may do and suffer.

### **6. Functions of Minister**

The functions of the Minister are —

- (a) to promote the objects of this Act;
- (b) to encourage the development of industry policy for the benefit of the State;
- (c) to facilitate the planning and development of the infrastructure necessary to secure projects of significance to the State;
- (d) to liaise with, and receive advice from, the Council;
- (e) to establish and manage technology parks;
- (f) to promote State industry overseas through the establishment and maintenance of activities, relationships, representations and offices in selected countries;

- (g) to encourage and facilitate the commercialization of the intellectual property and other resources of departments of the Public Service or of State agencies or instrumentalities;
- (h) to use the expertise and resources of the department to provide consultative, advisory or other services for profit;
- (i) to turn to account any intellectual property that is vested in the Minister;
- (j) to apply for, hold, exploit and dispose of any patent, patent right, design right, copyright or similar right; and
- (k) to further the objects of this Act by providing financial support, in accordance with Part 3.

**7. Powers of Minister**

- (1) The Minister has the power to do all things necessary or convenient to be done for or in connection with the performance of the Minister's functions.
- (2) Without limiting subsection (1), the Minister may for the purposes of performing any function —
  - (a) acquire, hold, manage, improve, develop and dispose of any real or personal property;
  - (b) enter into contracts or arrangements;
  - (c) borrow money by way of loan, advance or overdraft;
  - (d) obtain or provide credit;
  - (e) provide, take or arrange security;
  - (f) fix and collect fees, charges or other payments for, or in respect of, the provision of services or the performance of work by the department;
  - (g) act in conjunction with —
    - (i) any person or firm, or a public authority or local government; or

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- (ii) any department of the Public Service or any agency or instrumentality of the State or Commonwealth;
  - (h) with the approval of the Treasurer, invest any money (including holding shares, units and other interests) standing to the credit of the Account;
  - (i) appoint agents and attorneys, and act as agent for other persons; and
  - (j) do anything incidental to any of the Minister's powers.
- (3) Money borrowed by the Minister in the exercise of a power under this section —
  - (a) may only be borrowed with the prior written approval of the Treasurer and on such terms and conditions as the Treasurer approves; and
  - (b) is not to exceed in any one financial year, in total, such amount as the Treasurer approves.
- (4) In this section —
  - acquire* includes taking on lease or licence or in any other manner in which an interest in property may be acquired;
  - dispose* includes dispose by way of lease, licence or bailment or in any other manner in which an interest in property may be disposed of.
- (5) For the purposes of the *State Trading Concerns Act 1916*, the activities of the Minister under this Act are to be taken to have been expressly authorised by Parliament.

**8. Delegation**

- (1) The Minister may delegate the performance of any of the Minister's functions or powers under this Act, other than this power of delegation, to the chief executive officer of the department.

- (2) A delegation of a function or power to the chief executive officer of the department may authorise the chief executive officer to subdelegate the function or power to any other officer of the department in accordance with any conditions specified in the delegation.
- (3) A function performed, or a power exercised, by a delegate or subdelegate is to be taken to be performed or exercised by the Minister.
- (4) A delegate or subdelegate performing a function or exercising a power under this section is to be taken to do so in accordance with the terms of the delegation or subdelegation unless the contrary is shown.
- (5) Sections 58 and 59 of the *Interpretation Act 1984* apply to a subdelegation under subsection (2) as though it were a delegation.
- (6) A delegation or subdelegation must be in writing.

## **Part 3 — Financial support**

### **9. Financial support**

For the purpose of furthering the objects of this Act, the Minister may provide financial support, in accordance with this Part, in the form of any, or a combination, of the following —

- (a) grants;
- (b) loans;
- (c) subsidies;
- (d) guarantees;
- (e) indemnities;
- (f) concessions on any tax, duty or charge due to the State;
- (g) any other direct or indirect financial support or assistance.

### **10. Guidelines**

- (1) The Minister is to approve industry support guidelines with respect to the provision of financial support.
- (2) The Minister may approve any revision of the whole or any part of a guideline or revoke the approval of a guideline.
- (3) The guidelines are not to be inconsistent with this Act or the regulations.

### **11. Provision of financial support**

- (1) Subject to this section, financial support is to be provided in accordance with the guidelines.
- (2) Subject to subsection (3), financial support in respect of which there are no relevant guidelines may be provided if the value of the support in each case does not exceed the maximum amount prescribed by the regulations for the purpose of this subsection.

- (3) Financial support in the form of a guarantee, indemnity or concession (whether or not in accordance with the guidelines) may be provided only if the prior written approval of the Treasurer is obtained in each case.
- (4) Financial support which could not otherwise be provided under this section may be provided if the prior written approval of the Treasurer is obtained in each case.
- (5) Despite anything else in this section, financial support in the form of a concession is subject to any written law imposing, or relating to, the tax, duty or charge to which the concession applies and may be provided only with the agreement of the Minister responsible for the administration of the written law.

## Part 4 — Staff

### 12. Chief executive officer

- (1) A chief executive officer of the department is to be appointed under Part 3 of the *Public Sector Management Act 1994*.
- (2) Subject to the control of the Minister, the chief executive officer is to administer the day to day operations of the department.

### 13. Other staff

- (1) Public service officers may be appointed or made available under Part 3 of the *Public Sector Management Act 1994* as is necessary for the administration of this Act.
- (2) Subject to subsection (3), the chief executive officer may engage a person under —
  - (a) a contract for services; or
  - (b) a contract of service,otherwise than under the *Public Sector Management Act 1994*.
- (3) Subsection (2) does not empower the chief executive officer to engage a person if —
  - (a) the principal place of residence of that person is in this State; or
  - (b) the services the person is engaged to provide, or is to carry out, are to be provided or carried out entirely or predominantly in this State.
- (4) Subsections (2) and (3) do not affect the operation of section 100 of the *Public Sector Management Act 1994*.

### 14. Use of other government staff etc.

- (1) The chief executive officer may by arrangement make use, either full-time or part-time, of the services of any officer or employee —



- (a) in the Public Service;
  - (b) in a State agency or instrumentality; or
  - (c) otherwise in the service of the Crown in right of the State.
- (2) The chief executive officer may by arrangement with —
- (a) a department of the Public Service; or
  - (b) a State agency or instrumentality,
- make use of the facilities of the department, agency or instrumentality.
- (3) An arrangement under subsection (1) or (2) is to be made on such terms as are agreed to by the parties.

## Part 5 — Financial provisions

### 15. Western Australian Industry and Technology Development Account

- (1) An agency special purpose account called the Western Australian Industry and Technology Development Account is established under section 16 of the *Financial Management Act 2006*.
- (2) The Account is to be credited with —
  - (a) moneys from time to time appropriated by Parliament for the purpose of giving effect to this Act, including appropriations made for the purposes of enabling the Council to carry out its functions;
  - (b) all moneys borrowed by the Minister; and
  - (c) all other moneys received under the authority of this Act.
- (3) The Account is to be charged with such expenditure as is necessary —
  - (a) for the purposes of giving effect to this Act, including the expenses of the Council in carrying out its functions under this Act;
  - (b) for the repayment of money borrowed by the Minister and interest on that money; and
  - (c) to provide financial support in accordance with this Act,and any other expenditure authorised under this Act.

*[(4) deleted]*

*[Section 15 amended: No. 77 of 2006 s. 17.]*

### 16. Borrowing from Treasurer

The Minister may borrow from the Treasurer such amounts as the Treasurer approves on such terms and conditions relating to repayment and payment of interest as the Treasurer imposes.

**17. Guarantee by Treasurer**

- (1) The Treasurer may, in the name and on behalf of the Crown in right of the State, guarantee the payment of any money payable by the Minister in respect of money borrowed by the Minister other than from the Treasurer under section 16.
- (2) A guarantee is to be in such form and contain such terms and conditions as the Treasurer determines.
- (3) Before a guarantee is given —
  - (a) the Treasurer is to be given such security as the Treasurer requires; and
  - (b) all instruments that are necessary for the purpose are to be executed.

**18. Effect of guarantee**

- (1) The due payment of moneys payable by the Treasurer under a guarantee given under section 17 is guaranteed by the State.
- (2) Any such payment is to be made by the Treasurer and charged to the Consolidated Account, and this subsection appropriates that Account accordingly.
- (3) The Treasurer is to cause to be credited to the Consolidated Account any amount received or recovered in respect of any payment made by the Treasurer under a guarantee given under section 17.

*[Section 18 amended: No. 77 of 2006 s. 4 and 5(1).]*

**19. Application of *Financial Management Act 2006* and *Auditor General Act 2006***

The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of departments apply to and in respect of the department and the Account.

*[Section 19 amended: No. 77 of 2006 s. 17.]*

## **Part 6 — Western Australian Technology and Industry Advisory Council**

### **20. Continuation of Council**

The Western Australian Technology and Industry Advisory Council established under section 28 of the repealed Act is preserved and continued in existence.

### **21. Functions of Council**

(1) The Council is to —

- (a) provide advice to the Minister, at the initiative of the Council or at the request of the Minister, on any matter relating to the objects of this Act; and
- (b) carry out, collaborate in or procure research, studies or investigations on any matter relating to the objects of this Act, including matters relating to —
  - (i) the role of industry, science and technology in the policies of government;
  - (ii) the social and economic impact of industrial and technological change;
  - (iii) employment and training needs and opportunities relating to industrial, scientific and technological activities in the State;
  - (iv) the adequacy of, priorities among and co-ordination of, scientific, industrial and technological activities in the State;
  - (v) methods of stimulating desirable industrial and technological advances in the State;
  - (vi) the application of industrial, scientific and technological advances to the services of the Government; and
  - (vii) the promotion of public awareness and understanding of development in industry, science and technology.

- (2) The Council may publish and make available any report or finding produced as a result of any research, study or investigation under subsection (1).
- (3) The Council is to liaise with and advise any person, body or organization with respect to the conduct of any research, study or investigation into a matter relating to industry, science and technology in the State.
- (4) In carrying out its functions the Council is to —
  - (a) have regard to the needs of the Western Australian community and the resources of the State;
  - (b) promote developments in industry, science and technology that increase productivity and competitiveness; and
  - (c) support developments that create employment opportunities.
- (5) The Council has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

**22. Composition of Council**

- (1) The Council is to comprise —
  - (a) the chief executive officer of the department; and
  - (b) not less than 6 nor more than 18 other persons appointed as members by the Minister.
- (2) The Minister is to ensure, as far as is practicable, that each person appointed to the Council has expertise that in the Minister's opinion is relevant to the functions of the Council and that the composition of the Council is representative of the interests of the people of the State.
- (3) The Minister is to appoint a chairperson of the Council from among the appointed members of the Council.

**23. Constitution and proceedings of Council**

Schedule 1 has effect.

**24. Remuneration and allowances of members**

A member of the Council and a member of a committee is to be paid such remuneration and travelling and other allowances as the Minister determines on the recommendation of the Public Sector Commissioner.

*[Section 24 amended: No. 39 of 2010 s. 89.]*

**25. Minister may give directions**

- (1) The Minister may give directions in writing to the Council with respect to the performance of its functions or the exercise of its powers, either generally or in relation to a particular matter, and the Council is to give effect to any such direction.
- (2) The text of a direction given under subsection (1) is to be included in the annual report of the Council under section 26.

**26. Annual report of the Council**

- (1) The Council must, as soon as practicable after 1 July, and in any event on or before 31 August, in each year, prepare and give to the Minister a report on its operations and proceedings for the previous financial year.
- (2) The Minister is to cause the Council's report to be laid before each House of Parliament within 7 sitting days of the House after the Minister has received it.
- (3) This section does not affect any duty of the accountable authority of the department under Part 5 of the *Financial Management Act 2006* to prepare and submit an annual report containing information about the Council or the operation of that Act in relation to that annual report.

*[Section 26 amended: No. 77 of 2006 s. 17.]*

## Part 7 — Miscellaneous

### 27. Technology parks

- (1) The Minister may, from time to time, by notice published in the *Gazette* declare as a technology park any area of land which provides a physical environment in which —
  - (a) research into, and the development and use of, industry, science and technology; or
  - (b) the production or assembly of products,may be carried on.
- (2) The Minister may amend or revoke a notice under subsection (1) by subsequent notice published in the *Gazette*.
- (3) A notice under subsection (1) —
  - (a) is to contain a description of the area of land sufficient to identify its location; and
  - (b) may assign a name to the technology park.

### 28. Protection from liability

- (1) An action in tort does not lie against a person for anything that the person has done in the performance or purported performance of a function, or the exercise or purported exercise of a power, under this Act.
- (2) The protection given by this section applies even though the thing done in the performance or purported performance of a function, or the exercise or purported exercise of a power, under this Act may have been capable of being done whether or not this Act had been enacted.
- (3) This section does not relieve the Crown of any liability that it might have for the doing of anything by a person against whom this section provides that an action does not lie.
- (4) In this section, a reference to the doing of anything includes a reference to the omission to do anything.

**29. Confidentiality**

- (1) This section applies to a person who performs any function, or exercises any power, under this Act.
- (2) Any person to whom this section applies must not, directly or indirectly, record, disclose or make use of any information obtained in the course of performing a function or exercising a power under this Act except —
  - (a) for the purpose of performing a function or exercising a power under this Act;
  - (b) as required or allowed by this Act or under another written law;
  - (c) with the written consent of the person, or persons, who provided the information;
  - (d) for the purpose of the investigation of any suspected offence or the conduct of proceedings for any offence; or
  - (e) at the written direction of the Minister, for the purpose of providing information to the general public concerning any conduct or operation of the department or the Minister under this Act.
- (3) Despite subsection (2), a person to whom this section applies must not, in respect of information that would reveal a trade secret or information that has commercial value to the person, or persons, who provided the information —
  - (a) disclose such information publicly; or
  - (b) make any reference to such information, or any characteristic of the information, in a manner likely to reveal the information in any report or statement prepared for the purposes of this Act under the *Financial Management Act 2006*,without the written consent of the person, or persons, who provided the information.



- (4) Sections 81 and 82 of the *Financial Management Act 2006* are not affected by the operation of this section.

Penalty: \$25 000 or 2 years imprisonment, or both.

[Section 29 amended: No. 77 of 2006 s. 17.]

**30. Execution of documents**

- (1) The Minister is to have a common seal.
- (2) A document is duly executed by the Minister if —
- (a) the common seal of the Minister is affixed to it in accordance with subsections (3) and (4); or
  - (b) it is signed on behalf of the Minister by an officer or officers of the department authorised to do so under subsection (5).
- (3) The common seal of the Minister is not to be affixed to any document except as authorised by the Minister.
- (4) The common seal of the Minister is to be affixed to a document in the presence of the Minister, and the Minister is to sign the document to attest that the common seal was so affixed.
- (5) The Minister may, by writing under the Minister's seal, authorise an officer or officers of the department to sign documents on behalf of the Minister, either generally or subject to such conditions or restrictions as are specified in the authorisation.
- (6) A document purporting to be executed in accordance with this section is to be presumed to be duly executed until the contrary is proved.
- (7) Where a document is produced bearing a seal purporting to be the common seal of the Minister it is to be presumed that the seal is the common seal of the Minister until the contrary is proved.

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**31. Regulations**

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for giving effect to the purposes of this Act.
- (2) Without limiting the generality of subsection (1), regulations may be made, in relation to a technology park —
  - (a) prohibiting or regulating the construction of buildings;
  - (b) prescribing the materials for, and the design and siting of, buildings;
  - (c) prescribing requirements for the maintenance of buildings;
  - (d) regulating the use of land and prohibiting activities on the land;
  - (e) prohibiting changes in the use of land or prescribing conditions on which the use of land may be changed;
  - (f) prescribing requirements for landscaping;
  - (g) prohibiting or regulating any activity that may impair the amenity of the park or interfere with other activities in the park; and
  - (h) prohibiting or regulating any activity that may endanger life or property.
- (3) Regulations made under subsection (2) are to apply in addition to any other law.
- (4) The regulations may create offences and may provide for a penalty not exceeding \$5 000.

**32. Review of Act**

- (1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after every fifth anniversary of its commencement.

- (2) In the course of that review the Minister is to consider and have regard to —
  - (a) the attainment of the objects of this Act;
  - (b) the effectiveness of operations of, and the need for the continuation of, the department and the Council; and
  - (c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Act.
- (3) The Minister is to prepare a report on the review and cause the report to be laid before each House of Parliament as soon as is practicable after it is prepared.

**Part 8 — Repeals, transitional provisions and consequential amendments**

**33. Repeals and transitional provisions**

- (1) The following Acts are repealed —
  - (a) the *Technology and Industry Development Act 1983*;
  - (b) the *Industry (Advances) Act 1947*; and
  - (c) the *Inventions Act 1975*.
- (2) The transitional provisions set out in Schedule 2 have effect.

[34. *Omitted under the Reprints Act 1984 s. 7(4)(e).*]

## Schedule 1 — The Council

[Section 23]

### Division 1 — Constitution and proceedings of the Council

#### 1. Term of office

- (1) Subject to subclause (2), an appointed member holds office for such term, not exceeding 3 years, as is specified in the instrument of his or her appointment, but may from time to time be re-appointed.
- (2) An appointed member whose term of office expires by the passage of time continues in office until he or she is re-appointed or his or her successor comes into office.

#### 2. Resignation, removal, etc.

- (1) The office of an appointed member becomes vacant if he or she —
  - (a) resigns the office by written notice addressed to the Minister;
  - (b) is an insolvent under administration as that expression is defined in the *Corporations Act 2001* of the Commonwealth; or
  - (c) is removed from office by the Governor under subclause (2).
- (2) The Governor may remove an appointed member from office if the Governor is satisfied that the member —
  - (a) has neglected his or her duty;
  - (b) has misbehaved;
  - (c) is incompetent; or
  - (d) is suffering from mental or physical incapacity impairing the performance of his or her functions.

#### 3. Leave of absence

The Council may grant leave of absence to a member on such terms and conditions as it thinks fit.

**4. Chairperson unable to act**

If the chairperson is unable to act by reason of sickness, absence or other cause, or during any vacancy in that office, a member chosen by the Council is to be deputy chairperson and is to perform the functions and exercise the powers of the chairperson.

**5. Appointed member unable to act**

- (1) If an appointed member other than the chairperson is unable to act by reason of sickness, absence or other cause, the Minister may appoint another person to act temporarily in his or her place and, while so acting according to the tenor of his or her appointment, that other person is to be taken to be a member of the Council.
- (2) The appointment of a person under subclause (1) may be terminated at any time by the Minister.

**6. Chief executive officer unable to attend**

The chief executive officer may, in writing delivered to the person presiding at a meeting of the Council, nominate a senior officer of the department to represent him or her at that meeting if the chief executive officer is unable to attend by reason of sickness, absence or other cause, and while so attending the person so nominated is to be taken to be a member of the Council.

**7. Saving**

No act or omission of a person acting in place of another under clause 4, 5 or 6 is to be questioned on the ground that the occasion for his or her appointment or acting had not arisen or had ceased.

**8. Meetings**

- (1) Subject to this clause, meetings are to be held at the times and places that the Council determines at intervals not longer than 2 months.
- (2) A special meeting of the Council may at any time be convened by —
  - (a) the chairperson; or
  - (b) any 4 members.
- (3) The first meeting of the Council is to be convened by the chairperson.

**9. Presiding officer**

- (1) The chairperson is to preside at all meetings of the Council at which he or she is present.
- (2) If both the chairperson and any deputy chairperson are absent from a meeting the members present are to appoint one of their number to preside.

**10. Voting**

- (1) At any meeting of the Council each member present has a deliberative vote.
- (2) Subject to subclause (3), if the votes cast on a question are equally divided, the question remains unresolved until a subsequent meeting of the Council.
- (3) If the votes cast on a question at a meeting of the Council were equally divided and the votes cast on the question at a subsequent meeting of the Council are again equally divided, the question is to be taken to have been resolved in the negative.

**11. Minutes**

The Council is to cause accurate minutes to be kept of the proceedings at its meetings and is to submit to the Minister a copy of the minutes of each meeting within 14 days after the meeting at which the minutes were confirmed was held.

**12. Resolution without meeting**

A resolution in writing signed or assented to by each member by letter or facsimile is as effectual as if it had been passed at a meeting of the Council.

**13. Telephone or video meetings**

A communication between not less than one half of the members in office by telephone or audio-visual means is a valid meeting of the Council if each participating member is capable of communicating with every other participating member instantaneously at all times during the proceedings.

**14. Committees**

- (1) The Council may appoint committees to assist it in the performance of its functions and may discharge or alter any committee so appointed.
- (2) A committee may include persons who are not members of the Council but, unless the Minister approves, must include at least one person who is —
  - (a) a member of the Council; or
  - (b) an officer or employee in the department.
- (3) Subject to the directions of the Council, a committee may determine its own procedures.

**15. Council to determine own procedures**

Subject to this Act, the Council is to determine its own procedures.

**Division 2 — Disclosure of interests, etc.**

**16. Disclosure of interests**

- (1) A member who has a material personal interest in a matter being considered or about to be considered by the Council must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Council.  
Penalty: \$5 000.
- (2) A disclosure under subclause (1) is to be recorded in the minutes of the meeting.

**17. Voting by interested members**

A member who has a material personal interest in a matter that is being considered by the Council —

- (a) must not vote whether at a meeting or otherwise —
    - (i) on the matter; or
    - (ii) on a proposed resolution under clause 18 in respect of the matter, whether relating to that member or a different member;
- and



- (b) must not be present while —
  - (i) the matter; or
  - (ii) a proposed resolution of the kind referred to in paragraph (a)(ii),is being considered at a meeting.

**18. Clause 17 may be declared inapplicable**

Clause 17 does not apply if the Council has at any time passed a resolution that —

- (a) specifies the member, the interest and the matter; and
- (b) states that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter.

**19. Quorum where clause 17 applies**

- (1) If a member of the Council is disqualified under clause 17 in relation to a matter, a quorum is present during the consideration of the matter if at least 2 members are present who are entitled to vote on any motion that may be moved at the meeting in relation to the matter.
- (2) The Minister may deal with a matter insofar as the Council cannot deal with it because of subclause (1).

**20. Minister may declare clauses 17 and 19 inapplicable**

- (1) The Minister may by writing declare that clause 17 or 19 or both of them do not apply in relation to a specified matter either generally or in voting on particular resolutions.
- (2) The Minister is to cause a copy of a declaration made under subclause (1) to be laid before each House of Parliament within 14 sitting days of such House after it is made.

*[Schedule 1 amended: No. 10 of 2001 s. 220.]*

## **Schedule 2 — Transitional provisions**

[Section 33(2)]

### **1. Interpretation**

In this Schedule —

*commencement day* means the day on which this Act comes into operation;

*Industry Act* means the *Industry (Advances) Act 1947*;

*Inventions Act* means the *Inventions Act 1975*.

### **2. Technology parks declared under the repealed Act**

A notice declaring a technology park under section 4 of the repealed Act in effect immediately before the commencement day continues to have effect as if it had been made under section 27 of this Act.

### **3. Secrecy**

(1) Section 20 of the repealed Act continues to have effect on and after the commencement day in respect of every person referred to in subsection (2) of that section as if the repealed Act had not been repealed.

(2) Section 16 of the Inventions Act continues to have effect on and after the commencement day in respect of every person referred to in subsection (1) of that section as if the Inventions Act had not been repealed.

### **4. Staff**

A contract for services under section 16(2) of the repealed Act in existence immediately before the commencement day is to continue to have effect, subject to the operation of this Act, according to its terms and conditions.

### **5. Money to be credited to Account**

(1) Any money standing to the credit of the Inventions Assistance Trust Fund, established under the Inventions Act, immediately before the commencement day is to be placed to the credit of the Account.

- (2) A reference in any agreement, instrument or other document to —
- (a) the “Western Australian Technology and Industry Development Account” provided for under the repealed Act; or
  - (b) the “Inventions Assistance Trust Fund” established under the Inventions Act,

has effect on and after the commencement day as if it were a reference to the Account.

**6. Applications under repealed Acts**

An application for assistance under the repealed Act, the Inventions Act or the Industry Act in respect of which a final decision is not made before the commencement day is to be considered and determined by the Minister as if it were an application for financial support under this Act.

**7. Transfer of assets, liabilities and records under the Industry Act or the Inventions Act**

- (1) On the commencement day all assets that were, immediately before the commencement day vested in or under the control of or standing to the credit of —
- (a) the Minister, within the meaning of the Inventions Act, for the purposes of that Act; or
  - (b) the Treasurer for the purposes of the Industry Act,
- are, subject to subclause (4), vested in the Minister.
- (2) On the commencement day the Minister becomes liable to pay, bear or discharge all of the liabilities of —
- (a) the Minister, within the meaning of the Inventions Act, that have been incurred for the purposes of that Act; or
  - (b) the Treasurer that have been incurred for the purposes of the Industry Act,
- and that existed immediately before the commencement day.
- (3) On and after the commencement day the Minister is to have control of all registers, papers, documents, minutes, receipts, books of account

and other records (however compiled, recorded or stored) relating to —

- (a) the operations of the Minister, within the meaning of the Inventions Act, under that Act; or
  - (b) the operations of the Treasurer under the Industry Act.
- (4) Any trust, condition or stipulation to which an asset vested in the Minister by subclause (1) is subject is to be given effect to by the Minister.

**8. Agreements, instruments and proceedings under the Industry Act or the Inventions Act**

- (1) Any agreement, instrument, guarantee or indemnity made or given —
- (a) by the Minister, within the meaning of the Inventions Act, under that Act; or
  - (b) by the Treasurer under the Industry Act,

and subsisting immediately before the commencement day has effect on and after the commencement day as if —

- (c) that agreement, instrument, guarantee or indemnity had been made or given by the Minister; and
  - (d) unless the context otherwise requires, any reference in that agreement, instrument, guarantee or indemnity to the Treasurer, or the Minister within the meaning of the Inventions Act, were a reference to the Minister.
- (2) If anything has been lawfully commenced by or under the authority of —
- (a) the Minister within the meaning of the Inventions Act; or
  - (b) the Treasurer under the Industry Act,

before the commencement day that thing may be carried on and completed by or under the authority of the Minister under this Act.

- (3) Without limiting the generality of subclause (2), any legal or other proceedings or any remedies that might, but for —
- (a) the repeal of the Inventions Act, have been commenced or continued or available by or against or to the Minister within the meaning of that Act; or

- (b) the repeal of the Industry Act, have been commenced or continued or available by or against or to the Treasurer under that Act,

may be commenced or continued, or are available, by or against or to the Minister.

**9. Officials to take cognizance of clauses 5, 7 and 8**

Any relevant official who records and registers documents under a written law is to take cognizance of clauses 5, 7 and 8 and is authorised to make any entry or memorial or register any document necessary to show the effect of those clauses.

**10. Evidence**

A statement in an agreement, instrument or other document —

- (a) that any asset has become vested in the Minister; or
- (b) that the Minister has become responsible for any liability,

under clause 7 is presumed to be true until the contrary is proved.

**11. *Interpretation Act 1984* not affected**

Nothing in this Schedule limits the operation of the *Interpretation Act 1984*.

### Notes

- <sup>1</sup> This is a compilation of the *Industry and Technology Development Act 1998* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

#### Compilation table

Short title	Number and year	Assent	Commencement
<i>Industry and Technology Development Act 1998</i>	13 of 1998	20 May 1998	1 Jul 1998 (see s. 2 and <i>Gazette</i> 26 Jun 1998 p. 3369)
<i>Corporations (Consequential Amendments) Act 2001</i> s. 220	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<b>Reprint 1: The <i>Industry and Technology Development Act 1998</i> as at 5 Dec 2003</b> (includes amendments listed above)			
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 4, 5(1) and 17	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2 and <i>Gazette</i> 19 Jan 2007 p. 137)
<i>Public Sector Reform Act 2010</i> s. 89	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and <i>Gazette</i> 5 Nov 2010 p. 5563)

## Defined terms

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

<b>Defined term</b>	<b>Provision(s)</b>
Account.....	4
acquire.....	7(4)
appointed member.....	4
chairperson.....	4
commencement day .....	Sch. 2 cl. 1
committee .....	4
Council.....	4
department .....	4
dispose .....	7(4)
financial support .....	4
function .....	4
guidelines.....	4
industry .....	4
Industry Act .....	Sch. 2 cl. 1
Inventions Act.....	Sch. 2 cl. 1
member .....	4
repealed Act .....	4
technology.....	4
technology park.....	4
Treasurer.....	4