

# 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 by 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*.