



Industry Research and Development Amendment (Innovation and Science Australia) Act 2016

No. 63, 2016

***An Act to amend the *Industry Research and
Development Act 1986*, and for related purposes***

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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No. 63, 2016

An Act to amend the *Industry Research and Development Act 1986*, and for related purposes

[Assented to 20 October 2016]

The Parliament of Australia enacts:

1 Short title

This Act is the *Industry Research and Development Amendment
(Innovation and Science Australia) Act 2016*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
|---------------------------------|---|---------------------|
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. The whole of this Act | The day this Act receives the Royal Assent. | 20 October 2016 |

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—Main amendments

Industry Research and Development Act 1986

1 Title

Repeal the title, substitute:

An Act relating to industry, innovation, science and research, and for related purposes

2 Section 3

Repeal the section, substitute:

3 Object of Act

The object of this Act is to position Australia as a leading innovation nation by:

- (a) facilitating the provision of independent strategic advice about investment in industry, innovation, science and research; and
- (b) supporting and encouraging collaboration in the development and delivery of programs relating to industry, innovation, science and research; and
- (c) authorising spending on programs relating to industry, innovation, science and research; and
- (d) promoting the development, and improving the efficiency and international competitiveness, of Australian industry by encouraging R&D activities, innovation and science activities and venture capital activities.

3 Subsection 4(1)

Insert:

accountable authority has the meaning given by the *Public Governance, Performance and Accountability Act 2013*.

4 Subsection 4(1) (definition of *appointed member*)

After “Chairperson”, insert “, the Deputy Chairperson”.

5 Subsection 4(1) (definition of *Board*)

Omit “Innovation Australia”, substitute “Innovation and Science Australia”.

6 Subsection 4(1)

Insert:

Deputy Chairperson means the Deputy Chairperson of the Board.

7 Subsection 4(1) (definition of *member*)

After “Chairperson”, insert “, the Deputy Chairperson”.

8 Subsection 4(1)

Insert:

non-corporate Commonwealth entity has the meaning given by the *Public Governance, Performance and Accountability Act 2013*.

official has the meaning given by the *Public Governance, Performance and Accountability Act 2013*.

9 Subsection 4(1) (definition of *researcher*)

Repeal the definition.

10 Subsection 4(1) (definition of *technical assessment*)

Repeal the definition.

11 Subsections 4(5) and (6)

Repeal the subsections.

12 At the end of section 4

Add:

- (9) A reference in this Act to research is a reference to research in any field.

13 Section 6

Repeal the section, substitute:

6 Establishment of Innovation and Science Australia

The body known immediately before the commencement of this section as Innovation Australia is continued in existence with the new name Innovation and Science Australia.

Note: See also section 25B of the *Acts Interpretation Act 1901*.

14 Paragraph 7(aaa)

Repeal the paragraph, substitute:

- (aa) to provide independent strategic advice to the Secretary, the Minister and other Ministers in relation to industry, innovation, science and research matters; and
- (ab) to undertake audits of, and prepare, review and amend plans in relation to, industry, innovation, science and research matters; and
- (ac) to promote investment in industry, innovation, science and research; and
- (ad) to commission and publish research in relation to industry, innovation, science and research matters; and

15 Paragraph 7(d)

Repeal the paragraph, substitute:

- (d) to do anything incidental or conducive to the performance of any of the above functions.

16 Paragraph 9(1)(a)

Omit “Chairperson;” insert “Chairperson; and”.

17 After paragraph 9(1)(a)

Insert:

- (aa) a Deputy Chairperson; and

18 Paragraph 9(1)(c)

Omit “4, or more than 13”, substitute “3, or more than 12”.

19 Subsection 9(2)

Omit “Governor-General”, substitute “Minister”.

20 Subsection 9(5)

After “Chairperson”, insert “or Deputy Chairperson,”.

21 Subsection 9(5)

Omit “4”, substitute “3”.

22 Subsection 10(3)

Omit “Governor-General”, substitute “Minister”.

23 Section 14

Repeal the section, substitute:

14 Resignation

The Chairperson, the Deputy Chairperson or another appointed member may resign the office of Chairperson, Deputy Chairperson or member, as the case may be, by writing signed by him or her and delivered to the Minister.

24 Section 15

Omit “Governor-General” (wherever occurring), substitute “Minister”.

25 Subsection 17(1)

Omit “a member or other person”, substitute “the Deputy Chairperson, a member or other person”.

26 After subsection 17(1)

Insert:

- (1A) The Minister may appoint a member or other person to act as Deputy Chairperson:
- (a) during a vacancy in the office of Deputy Chairperson, whether or not an appointment has previously been made to the office; or

- (b) during any period, or during all periods, when the Deputy Chairperson is absent from Australia or is, for any other reason, unable to perform the duties of the office of Deputy Chairperson;

but a person so appointed must not continue to act in that appointment for more than 12 months.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

27 Subsection 18(4)

Repeal the subsection, substitute:

- (4) If the Chairperson is not present at a meeting of the Board:
- (a) the Deputy Chairperson is to preside; or
 - (b) if the Deputy Chairperson is not present—the members present must appoint one of their number to preside at the meeting.

28 Sections 18A to 20

Repeal the sections, substitute:

19 Minister may give directions to the Board

Directions conferring additional functions

- (1) The Minister may, by notifiable instrument, give directions to the Board that a function specified in the direction (being a function relating to the object of this Act, the *Pooled Development Funds Act 1992* or the *Venture Capital Act 2002*) is an additional function of the Board.

Directions about the performance of functions and exercise of powers

- (2) The Minister may, by notifiable instrument, give written directions to the Board about the performance of its functions or the exercise of its powers.
- (3) Without limiting subsection (2), the Minister may give directions to the Board in relation to:

- (a) the provision of technical assessments to the Minister in relation to programs or activities, or proposals for programs or activities, under or in connection with this Act; or
 - (b) the provision of a report or advice on a matter that relates to:
 - (i) any of the Board’s functions or powers; or
 - (ii) the operation of this Act, the *Pooled Development Funds Act 1992* or the *Venture Capital Act 2002*; or
 - (iii) the operation of the Commonwealth’s income tax laws as they operate in relation to this Act, the *Pooled Development Funds Act 1992* or the *Venture Capital Act 2002*; or
 - (c) policies and practices to be followed by the Board in the performance of its functions and the exercise of its powers.
- (4) Subsection (2) does not empower the Minister to direct that the Board perform any of its functions, or exercise any of its powers, in a particular way in a particular case.

Limits and obligations relating to directions under this section

- (5) A direction under subsection (1) or (2) must not confer a function on the Board to commit or authorise the expenditure of Commonwealth money.
- (6) The Board must comply with a direction given under this section.

29 Subsections 21(1) and (2)

Repeal the subsections, substitute:

- (1) The Board may, by resolution, delegate any or all of its functions and powers to any of the following:
 - (a) the Chairperson;
 - (b) the Deputy Chairperson;
 - (c) a member of the Board;
 - (d) a committee;
 - (e) a member of the staff assisting the Board who is an SES employee, or acting SES employee.

30 Subsection 22(1A)

Omit “21(2)”, substitute “21(1)”.

31 Subsection 22A(1)

After “assisting the committee”, insert “who is an SES employee, or acting SES employee,”.

32 Subsection 22A(1)

Omit “21(2)”, substitute “21(1)”.

33 Subsection 22A(1A)

Repeal the subsection.

34 After Part III

Insert:

**Part IV—Programs relating to industry,
innovation, science and research**

33 Industry, innovation, science and research programs

- (1) The Minister may, by legislative instrument, prescribe one or more programs in relation to industry, innovation, science or research, including in relation to the expenditure of Commonwealth money under such programs.
- (2) A program may only be prescribed under subsection (1) to the extent that it is with respect to one or more legislative powers of the Parliament.
- (3) The legislative instrument must specify the legislative power or powers of the Parliament in respect of which the instrument is made.
- (4) The legislative instrument may make provision in relation to:
 - (a) a description of the program; or
 - (b) the purpose of the program; or
 - (c) eligibility criteria relating to the program; or
 - (d) a process for making applications in relation to the program;or

- (e) whether application fees are payable in relation to the program.
- (5) Subsections (3) and (4) do not limit subsection (1).
- (6) The Minister may, by writing, delegate to another Minister, the Minister's power under subsection (1).
- (7) In performing functions and exercising powers under the delegation, the delegate must comply with any directions of the Minister.

34 Arrangements relating to industry, innovation, science and research programs

- (1) The Commonwealth may make, vary or administer an arrangement:
 - (a) in relation to the carrying out of activities by a person under a program prescribed by legislative instrument under subsection 33(1); and
 - (b) for money to be payable by the Commonwealth to the person for that purpose.
- (2) The power conferred on the Commonwealth by subsection (1) may be exercised on behalf of the Commonwealth by a Minister or an accountable authority of a non-corporate Commonwealth entity.

Note: For the power to delegate, see section 36.

- (3) In this section:

administer an arrangement includes give effect to.

arrangement includes contract, agreement or deed.

make an arrangement includes enter into.

vary an arrangement means:

- (a) vary in accordance with the terms or conditions of the arrangement; or
- (b) vary with the consent of the non-Commonwealth party or parties to the arrangement.

35 Terms and conditions relating to industry, innovation, science and research program arrangements

- (1) If a party to an arrangement under section 34 is a State or Territory:
 - (a) the terms and conditions on which money may be payable by the Commonwealth under the arrangement must be set out in a written agreement between the Commonwealth and the State or Territory; and
 - (b) the State or Territory must comply with the terms and conditions.
- (2) If a party to an arrangement under section 34 is a corporation to which paragraph 51(xx) of the Constitution applies:
 - (a) the terms and conditions on which money may be payable by the Commonwealth under the arrangement must be set out in a written agreement between the Commonwealth and the corporation; and
 - (b) the corporation must comply with the terms and conditions.
- (3) Without limiting subsection (2), the terms and conditions must provide for the circumstances in which the corporation must repay amounts to the Commonwealth.
- (4) An agreement under subsection (1) or (2) may be entered into on behalf of the Commonwealth by a Minister or an accountable authority of a non-corporate Commonwealth entity.

Note: For the power to delegate, see section 36.
- (5) This section does not, by implication, prevent an arrangement under section 34 between the Commonwealth and a person other than a State or Territory or a corporation to which paragraph 51(xx) of the Constitution applies from being made subject to terms and conditions.

36 Minister or accountable authority may delegate powers in relation to arrangements

Delegation by a Minister

- (1) A Minister may, by writing, delegate any or all of his or her powers under section 34 or 35 to an official of any non-corporate Commonwealth entity.
- (2) In exercising powers under a delegation, the delegate must comply with any directions of the Minister concerned.

Delegation by an accountable authority

- (3) An accountable authority of a non-corporate Commonwealth entity may, by writing, delegate any or all of his or her powers under section 34 or 35 to an official of any non-corporate Commonwealth entity.
- (4) In exercising powers under a delegation, the delegate must comply with any directions of the accountable authority concerned.

37 Relationship of this Part with certain other Acts

- (1) Section 23 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the power of accountable authorities in relation to arrangements and commitments) does not authorise the accountable authority of a non-corporate Commonwealth entity to exercise, on behalf of the Commonwealth, a power conferred on the Commonwealth by section 33 of this Act.
- (2) This Part does not, by implication, limit the operation of the *Financial Framework (Supplementary Powers) Act 1997*.

38 Executive power of the Commonwealth

This Part does not, by implication, limit the executive power of the Commonwealth.

35 Paragraph 44(6)(a)

Omit “to which Ministerial directions under section 18A or 19 apply”, substitute “to which this Act relates”.

36 Section 46

Repeal the section, substitute:

46 Annual report

The Board must, as soon as practicable after the end of each financial year, prepare and give to the Minister, for presentation to the Parliament, a report on its operations during that year.

Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains extra rules about annual reports.

37 Subsection 47(3) (definition of *protected information*)

After “covered by”, insert “Part III of”.

38 Section 48A

Repeal the section, substitute:

48A Fees for making applications

- (1) The Minister may, by legislative instrument, prescribe fees, or a method of working out fees:
 - (a) for making applications to the Board under Part III; or
 - (b) for the purposes of paragraph 33(4)(e).
- (2) The fees must not be such as to amount to taxation.

39 Application and transitional provisions

- (1) A person who, immediately before the commencement of this item, was a member of the Board continues, after that commencement, as a member of the Board as if the person had been appointed by the Minister.
- (2) The amendments made by this Part apply in relation to appointed members whether the members were appointed before or after the commencement of this Part.

Schedule 1 Amendments
Part 1 Main amendments

- (3) If a direction under section 18A, 19, 19B or 20 of the *Industry Research and Development Act 1986* was in force immediately before the commencement of this item, the direction is taken, after that commencement, to have been given under section 19 as inserted by item 28 of this Schedule.

Part 2—Consequential and other amendments

Income Tax Assessment Act 1997

40 The whole of the Act

The *Income Tax Assessment Act 1997* is amended as follows:

- (a) by omitting “*Innovation Australia” (wherever occurring) and substituting “*Innovation and Science Australia”;
- (b) by omitting “Innovation Australia” (wherever occurring) and substituting “Innovation and Science Australia”;
- (c) by omitting “**Innovation Australia**” (wherever occurring) and substituting “**Innovation and Science Australia**”;
- (d) by omitting “*Innovation Australia*” (wherever occurring) and substituting “*Innovation and Science Australia*”;
- (e) by omitting “***Innovation Australia***” (wherever occurring) and substituting “***Innovation and Science Australia***”.

Industry Research and Development Act 1986

41 Paragraph 9(1)(b)

Omit “notice in writing published in the *Gazette*”, substitute “notifiable instrument”.

42 Subsection 22(1)

Omit “from time to time, by notice in writing published in the *Gazette*”, substitute “by notifiable instrument”.

43 Application provision

The amendment of subsection 22(1) of the *Industry Research and Development Act 1986* made by item 42 of this Schedule does not apply in relation to committees appointed before the commencement of this item.

44 Subsection 23(1)

Omit “from time to time”, substitute “by notifiable instrument”.

45 Subsection 23(4)

Repeal the subsection.

46 Transitional provision

If, immediately before the commencement of this item, a direction under subsection 23(1) of the *Industry Research and Development Act 1986* was in force, the direction is taken, after that commencement, to have been given under that subsection as amended by item 44 of this Schedule.

Pooled Development Funds Act 1992

47 Subsection 4(1) (definition of *Board*)

Omit “Innovation Australia”, substitute “Innovation and Science Australia”.

Taxation Administration Act 1953

48 The whole of the Act

The *Taxation Administration Act 1953* is amended as follows:

- (a) by omitting “*Innovation Australia” (wherever occurring) and substituting “*Innovation and Science Australia”;
- (b) by omitting “*Innovation Australia’s” (wherever occurring) and substituting “*Innovation and Science Australia’s”;
- (c) by omitting “Innovation Australia” (wherever occurring) and substituting “Innovation and Science Australia”;
- (d) by omitting “**Innovation Australia**” (wherever occurring) and substituting “**Innovation and Science Australia**”.

Venture Capital Act 2002

49 The whole of the Act

The *Venture Capital Act 2002* is amended as follows:

- (a) by omitting “*Innovation Australia” (wherever occurring) and substituting “*Innovation and Science Australia”;
- (b) by omitting “*Innovation Australia’s” (wherever occurring) and substituting “*Innovation and Science Australia’s”;

- (c) by omitting “Innovation Australia” (wherever occurring) and substituting “Innovation and Science Australia”;
 - (d) by omitting “Innovation Australia’s” (wherever occurring) and substituting “Innovation and Science Australia’s”;
 - (e) by omitting “**Innovation Australia**” (wherever occurring) and substituting “**Innovation and Science Australia**”;
 - (f) by omitting “*Innovation Australia*” (wherever occurring) and substituting “*Innovation and Science Australia*”.
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[Minister’s second reading speech made in—
House of Representatives on 1 September 2016
Senate on 13 October 2016]

(104/16)
