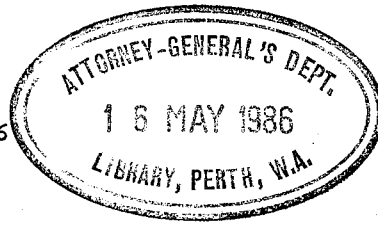


1986



THE PARLIAMENT OF THE COMMONWEALTH

OF AUSTRALIA

SENATE

INDUSTRY RESEARCH AND DEVELOPMENT BILL 1986

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Industry,
Technology and Commerce, Senator the Honorable John N Button)

INDUSTRY RESEARCH AND DEVELOPMENT BILL 1986: OUTLINE

This Bill proposes a new scheme to encourage research and development (R&D) in industry. The Government's main scheme for assistance to R&D in industry is the 150 per cent tax concession to be provided under Section 73B of the Income Tax Act 1936. However, the tax concession will not assist all worthwhile R&D. This Bill is designed to support worthwhile R&D which would not be assisted by the tax concession. There are three main elements in the new scheme which will become effective on 1 July 1986:

- Discretionary grants for R&D, providing a similar level of support as the tax scheme provides. These grants would be aimed at firms such as new innovative companies or firms wishing to restructure their activities which have insufficient tax liability to benefit from the tax scheme
- Generic technology grants to support R&D on technologies of fundamental and wide-ranging significance for industry competitiveness in the 1990s eg biotechnology, new materials. These grants would bridge the gap between research centres and industry by funding the development of research in collaboration with industry to a stage where the private sector would take up further development.
- National interest agreements to be awarded for projects with significant national benefits which would not be undertaken by industry on a commercial basis.

These elements of the new scheme will operate in accordance with guidelines provided by the Minister and published in the Gazette. The new scheme will be administered by a small Board to be known as the Industry Research and Development Board which will be assisted by advisory committees and also a secretariat to be staffed by officers of the public service.

The present Australian Industrial Research and Development Incentives Board which administers the Australian Industrial Research and Development Incentives Scheme (AIRDIS) will cease to exist as from 30 June 1986. AIRDIS, which provides assistance to industrial research and development through commencement grants, project grants and public interest projects, will terminate from that date except that residual obligations from that scheme will be discharged by the new Board. There will therefore be consequential changes to the Industry Research and Development Incentives Act 1976.

The proposed Act will be essentially enabling in nature with detailed operating and selection criteria being contained in Ministerial Directions in order to provide flexibility in meeting industry policy objectives.

Financial Impact Statement

The legislation will involve an outlay of \$12.5 million by the Commonwealth in 1986-87, and proposed outlays of \$22.4 million in 1987-88, building up to \$36.5 million in 1990-91. The figure for 1986-87 includes forward estimate for the National Biotechnology Program Research Grants Scheme which will be incorporated in the generic technology grants element of the new scheme. In addition existing forward obligation for AIRDIS would have to be met.

NOTES ON CLAUSES

Clauses 1 and 2

1. The first two clauses of the Bill provide for the short title and commencement of the legislation. The provisions of the Bill will come into effect on 1 July 1986.

Clause 3

2. The object of the Act is set out in this clause ie to promote the development and improve the efficiency of Australian industry by the provision of financial assistance for research and development.

Clause 4

Sub-clause 4(1)

3. The definitions of significant words and expressions used for the purposes of the proposed legislation as set out in clause 3 of the proposed Act are detailed in sub-clause 4(1). Among these are "eligible activities" which provides for eligibility for discretionary grants to manufacturing, mining, construction and computer software production. The Minister may by declaration further extend "eligible activities". The discretion to extend eligibility is necessary in order to provide for areas of technology which may be closely related to industry but which would not be covered in the areas specified in the definition, for example, some areas of biotechnology such as tissue culture.

Sub-clause 4(2)

4. This sub-clause specifies certain geographical areas to be taken to be part of Australia.

Sub-clause 4(3)

5. An area of generic technology for the purposes of the proposed Act is an area of technology which the Minister has declared to be a generic technology by notice in the Gazette.

Sub-clause 4(4)

6. For the purposes of the proposed Act, a company or organisation shall be deemed to carry on an eligible activity if that activity is carried out for it under an agreement.

Sub-clause 4(5)

7. For the purposes of the proposed Act, a researcher shall be deemed to carry out a project of research and development if the project is carried out for it under an agreement.

Sub-clause 4 (6)

8. This sub-clause indicates for the purposes of the proposed Act, the application of the terms "Chairperson", "Chairman", "Chairwoman", "acting Chairperson", "acting Chairman" and "Acting Chairwoman".

Clause 5

9. This clause enables the Minister, by notice published in the Gazette, to extend the proposed Act to an external Territory.

Clause 6

10. Clause 6 establishes the proposed Industry Research and Development Board.

Clauses 7 and 8

11. These clauses set out the functions and powers of the proposed Board. Sub-clause 7 (b) provides for the Board to advise the Minister on the allocation of funds to each of the three elements of the Scheme, within a budget allocation determined annually by the Government.

Clause 9

12. Sub-clause 9(1) specifies that the proposed Board shall consist of a Chairperson and not less than 4 or more than 10 other members. In addition the Minister may appoint an official as an ex officio member. Sub-clause (2) stipulates that members must be appointed by the Governor-General in writing. Sub-clause (3) requires that the members shall be appointed as part-time members. Sub-clause (4) stipulates that, in regard to matters not provided for in the proposed Act, the Minister will determine the terms and conditions on which a member holds office. The powers of the Board can be exercised and its functions performed though there is a vacancy in the Office of Chairperson or the number of members falls below 4 for up to 6 months [Sub-clause (5)].

Clause 10

13. A member of the proposed Board may be appointed for a period of up to five years and is eligible for re-appointment.

Clause 11

14. The Chairperson or acting Chairperson is responsible for the orderly and efficient conduct of the Board's business. For this purpose the Chairperson has the power to enquire, or to arrange for enquiry, into applications for assistance or into any other matter relevant to the operation of the Act. The Chairperson may also report, or arrange for reports to be made, to the Board on applications. The Chairperson may also decide on the form in which the Board's records will be kept.

Clause 12

15. Remuneration of the Chairperson and other members of the proposed Board is as determined by the Remuneration Tribunal pursuant to the Remuneration Tribunals Act 1973.

Clause 13

16. Leave of absence from a meeting or meetings of the proposed Board may be granted to the Chairperson of the Board by the Minister and to other members of the Board by the Chairperson.

Clause 14

17. Resignation of the Chairperson or other members of the proposed Board may be made to the Governor General in writing.

Clause 15

18. This clause specifies the circumstances under which the Governor-General may terminate the appointment of a member of the proposed Board. It also specifies the circumstances under which he shall remove a member from office.

Clause 16

19. Members of the proposed Board will be required to disclose to the Board any direct or indirect pecuniary interest in a matter the Board is considering or intends to consider. Unless the Minister or the Board otherwise determines, a member making such a disclosure shall not take part in any decision of the Board on the matter. The disclosure must be recorded in the minutes of the meeting at which it is made.

Sub-clause 17(1)

20. Where the office of Chairperson is vacant or where he or she is unable to perform the duties of the office the Minister may appoint an Acting Chairperson to serve for up to 12 months.

Sub-clause 17(2)

21. Where the number of members of the proposed Board is less than 10 the Minister may appoint an acting member. A person so appointed cannot continue to act if the number of members reaches 10 or for longer than 12 months.

Sub-clause 17(3)

22. Where a member of the proposed Board is acting as Chairperson, or cannot perform his or her duties, the Minister may appoint a person to act in that member's position for up to 12 months.

Sub-clause 17(4)

23. The instrument of appointment of a person under clause 17 may prescribe the circumstances under which the person may act.

Sub-clause 17(5)

24. This sub-clause applies where a person is acting as Chairperson of the proposed Board because of the inability of the Chairperson to perform the duties of the office. If, in such circumstances, the office of Chairperson becomes vacant the Acting Chairperson may continue to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months expires from the date the vacancy occurs. The first of these events to occur is the operative one.

Sub-clause 17(6)

25. The Minister may determine the terms and conditions of appointment, including remuneration and allowances, of a person appointed to act as Chairperson or member. The Minister may terminate such an appointment at any time.

Sub-clause 17(7)

26. A person acting as Chairperson or member may resign by delivering notification to the Minister in writing.

Sub-clause 17(8)

27. An acting Chairperson or acting member may exercise all the powers of the position and shall perform all the duties of the position.

Sub-clause 17(9)

28. This sub-clause provides that anything done by or in relation to a person professing to act under sub-clauses 17(1), 17(2), or 17(3) is not invalid on a number of grounds eg. an irregularity in connection with the appointment or if the reason for the appointment failed to occur or ceased to occur.

Sub-clauses 18(1) to 18(5)

29. The proposed Board shall hold such meetings as are necessary for it to perform its functions efficiently. The Chairperson of the Board may convene a meeting at any time and shall do so if the Minister directs. The Chairperson, if present, will preside at meetings of the proposed Board. If he or she is not present the members present may elect one of their number to preside at the meeting. The quorum for a meeting of the Board is 4 members.

Sub-clause 18(6)

30. This sub-clause provides that questions arising at meetings of the proposed Board shall be determined by a majority of the members present and voting. The Chairperson, if present, has a deliberative vote and, in cases where votes are equal, has a casting vote. If the Chairperson is not present and a question arising at the meeting cannot be decided it must be deferred to a meeting at which the Chairperson is present.

Sub-clause 18(7)

31. The proposed Board must ensure that minutes of its meetings are kept.

Sub-clause 18(8)

32. In Clause 18 a reference to Chairperson applies to acting Chairperson. Similarly a reference to a member also applies to an acting member.

Clause 19

33. The Minister may direct the proposed Board to accept additional functions related to the objects of the proposed Act. The direction must be in writing delivered to the Chairperson. The Minister must publish any such directions, and any subsequent revocation of them, in the Gazette. A number of areas related to R&D are currently being reviewed, for example, research associations and assistance to inventors. It may be appropriate for the Board to administer any programs which may arise from these reviews.

Clause 20

34. The Minister may direct the proposed Board with regard to its policies and practices in performing its proposed functions and exercising its proposed powers. The Board shall comply with such directions unless they are revoked by the Minister. Such directions and any revocation of them must be gazetted by the Minister. The Minister is required to consult the Board about directions before giving them and is not authorised to give a direction in relation to a particular company.

It is envisaged that detailed policies and practices will be determined by Ministerial Directions. An example is proposed guidelines which will ensure that discretionary grants are directed to companies unable to benefit from the 150 per cent tax concession for expenditure on R&D to be provided for in the Income Tax Assessment Act 1936. The use of Ministerial directions to provide guidelines for policy and practices gives flexibility to the Board to administer the Scheme in such a way as to better meet industry policy objectives. Similarly in the case of generic technologies, criteria and guidelines will be required, and these may vary from time to time in line with industry and technological development.

Clause 21

35. Clause 21 will enable the proposed Board to delegate to the Chairperson, another member of the proposed Board or a member of the Board's staff all or any of its powers under the proposed Act except the power of delegation. This is necessary for efficient day to day administration of the Scheme.

Clause 22

36. Clause 22 will empower the Minister, by notice in the Gazette, to create such committees as he or she considers necessary for providing advice to the proposed Board. A committee will consist of not more than 7 members and the Minister may appoint a committee member to be Chairperson of the committee. Otherwise the committee will elect one of its members to be Chairperson. The Minister will determine the conditions under which members of a committee hold office in respect of matters for which the Act does not provide. A member's resignation is to be in writing to the Minister. The Board may refer any matter relating to the operation of the proposed Act to a committee for advice. A committee shall keep minutes of its meetings.

Clause 23

37. The proposed Board may give directions to a committee on matters to be taken into account in providing advice and on practices to be followed. Such directions are to be given to the committee Chairperson in writing. Before giving directions the proposed Board must give the Chairperson of the committee the opportunity to comment in writing on the proposed directions. These directions or their revocation must be gazetted.

Clause 24

38. Clause 24 provides for disclosure by members of direct or indirect pecuniary interest in matters subject to consideration of the Committee. The provisions with regard to such disclosure parallel those for disclosure of pecuniary interest by members of the proposed Board as set out in clause 16.

Clause 25

39. Staff required to assist the proposed Board and committees shall be persons employed under the Public Service Act 1922.

Clause 26

40. When the legislation is enacted sub-clause 4(1) will provide for four specific activities to be "eligible activities" for the purposes of making discretionary grants. Clause 26 will permit the Minister to declare additional activities to be eligible activities and to revoke such declarations. Declarations and revocations of declarations must be gazetted.

Clause 27

41. This clause empowers the proposed Board to declare that a company is an eligible company for the purposes of the Act where it proposes to carry on an eligible activity but at present does not do so.

Clause 28

42. Clause 28 provides that the proposed Board may, at its discretion, enter into a discretionary grant agreement with a company which applies for such a grant. To qualify for the grant the applicant must be an eligible company carrying out research and development or if it is not an eligible company is carrying out research and development on behalf of two or more bodies corporate including an eligible company. In entering such an agreement the Board must act within the terms of the proposed Act and any relevant directions given by the Minister under clause 20. The Board will not be able to enter into an agreement for discretionary grants after 30 June 1991 or in relation to a project to be commenced after that date.

Clause 29

43. A discretionary grant agreement shall specify:

- . the financial year or years in which the grant is to be payable under the agreement; and
- . the amount payable under the agreement in that year or in each of those years.

The agreement is to provide that the amount payable shall not exceed 50 per cent of the proposed Board's estimate of future expenditure by the applicants on the project.

Sub-clauses 30(1), 30(2) and 30(3)

44. The Minister may declare an area of technology to be an area of generic technology for the purposes of the Act. The declaration must be by notice published in the Gazette. An area of technology so declared may overlap or be included in another area of technology. A declaration remains in force for three years unless sooner revoked.

Sub-clause 30(4)

45. This sub-clause empowers the Minister to extend the period for which a declaration of an area of generic technology remains in force. The Minister may take such action provided the declaration has been in force for longer than 2 years and he or she has reviewed the effectiveness of support for research and development activities in that area. Extension of the period of declaration may be made by notice published in the Gazette.

Clause 31

46. The proposed Board may enter into a generic technology grant agreement with a researcher (a researcher includes a person, body, organisation, institution or company capable of carrying out a project of research and development). In entering such an agreement the Board must act within the terms of the proposed Act and any relevant directions given by the Minister under clause 20. The researcher must be carrying out, or propose to carry out, a project of research and development in a declared area of generic technology and must have applied to the Board for such a grant. Generic technology grant agreements shall not be entered into after 30 June 1991 or in relation to a project to be commenced after that date.

Clause 32

47. A generic technology grant agreement shall specify:
- . the financial year or years in which the grant is to be paid under the agreement; and
 - . the amount payable under the agreement in that year or each of those years.

Clause 33

48. Where the proposed Board is satisfied that it is in the national interest that the Commonwealth should undertake a project of research and development the Board may, on the Commonwealth's behalf, enter an agreement with a researcher for the carrying out of the project. In entering such an agreement the Board must act within the terms of the proposed Act and any relevant directions given by the Minister under clause 20. The researcher is to be a person, body organisation or institution, including a company, capable of carrying out a project of research and development. A person may apply to the proposed Board for a national interest agreement between it and the person.

Clause 34

49. A national interest agreement may provide that the Commonwealth is to bear the total cost of the project to which the agreement relates. In such instances all incorporeal property (including copyrights, patent rights and trademarks) arising from the project shall be the property of the Commonwealth. Where the Commonwealth bears less than the total cost of the project its entitlement to patent rights will be in proportion to the cost borne by it.

Clause 35

50. Applications shall be in a form approved by the proposed Board.

Clause 36

51. Before entering any agreement under the proposed Act the proposed Board is to satisfy itself that the results of the research and development will as appropriate be exploited on normal commercial terms and in a manner to benefit the Australian economy.

Clause 37

52. Where a project which is the subject of an agreement under the proposed Act has, in the proposed Board's belief, been assisted by finance from other sources, the Board may reduce the amount of assistance under the agreement.

Clause 38

53. An agreement under the proposed Act may contain provision for the repayment to the Commonwealth of the whole or part of any assistance paid under the agreement. Such repayment is intended to be claimable by the Commonwealth where the agreement is breached or in other circumstances specified in clause 38.

Clause 39

54. Payment of any assistance shall be made to:
- . the person incurring the cost of the project; or
 - . where that person has assigned the right to receive the payment to another person and has notified the proposed Board in writing of the assignment - that other person.

Clause 40

55. Assistance shall be paid out of money appropriated by Parliament for the purposes of the proposed Act.

Clause 41

56. As soon as practicable after 1 July in any financial year the Minister is to notify the Chairperson or Acting Chairperson in writing of the total amount of money expected to be available to the Board during the financial year commencing on that day.

Clause 42

57. The proposed Board may make advance payments of assistance under agreements, limited to expected expenditure during the 3 months immediately following authorisation of such a payment. The proposed Board may terminate the authorisation or reduce the amount of the authorised payment if in the opinion of the Board the project is not progressing at the level estimated by the Board when it authorised the advanced payment. Where an advance exceeds the amount of the

assistance or the assistance does not become payable the beneficiary is liable to repay the amount overpaid. The Commonwealth may take legal action to recover that sum or deduct it from any other amount payable to the beneficiary under the proposed Act.

Clause 43

58. The proposed Board is not to authorise payment of assistance or an advance of assistance unless sufficient appropriation is available, taking into account its other commitments.

Clauses 44 and 45

59. Clause 44 provides for penalties for offences against the proposed Act. Clause 45 permits legal action to be instituted up to three years after an offence against the proposed Act has been committed.

Clause 46

60. This clause requires the proposed Board to present the Minister with an annual report on its activities. Clause 46(2) sets out certain information to be included in the report including an analysis of the effectiveness of its operations and particulars of matters published in the Gazette which relate to the Board's operations. The Minister is required to table the report in Parliament.

Sub-clause 47(1)

61. This sub-clause provides that the proposed Board, a member of it, a committee or a member of the Board's staff shall not, with certain exceptions, supply information to another person if it would constitute a breach of confidence. The exceptions provide for transmission of certain information to the Australian Bureau of Statistics; transmission of information on registrations for the 150 per cent tax concession from the proposed Board to the Australian Tax Office; and transmission of necessary information gathered by the existing Australian Industrial Research and Development Incentives Board to the proposed Board.

Sub-clause 47(2)

62. This sub-clause will enable the proposed Board to supply information provided to the Board in confidence to the Minister, the Secretary of the Department or an officer designated in writing by the Secretary to the Department for the purposes of this sub-clause.

Clause 48

63. This clause will enable the Governor-General to make regulations for the purposes of the proposed Act.

Clause 49

64. This clause defines the Industrial Research and Development Incentives Act 1976 as the principal Act.

Clause 50 and 51

65. These clauses will effect certain minor amendments to the Principal Act for the purpose of terminating the operations of the Australian Industrial Research and Development Incentives Board (AIRDIB) and facilitating the performance of its residual functions by the proposed Board.

Clause 52

66. This clause repeals part II of the Principal Act which relates to the setting up and functions of the AIRDIB.

Clause 53

67. This clause will repeal of section 39 of the Principal Act which authorises the carrying out of public interest projects by the AIRDIB. This will bring public interest projects into line with the other two forms of assistance provided for by the Principal Act, project grants and commencement grants which are not capable of being provided in respect of projects either commencing after 30 June 1986.