



New South Wales

Innovation Council Act 1996 No 77

Contents

	Page
Part 1 Preliminary	
1 Name of Act	2
2 Commencement	2
3 Definitions	2
<hr/>	
Part 2 The Innovation Council	
4 Establishment of Innovation Council	3
5 Object of Council	3
6 Membership and procedure of Council	3
<hr/>	
Part 3 Operations and functions of Council	
7 Ministerial control of Council	4
8 Functions of Council	4
9 Committees	5

Innovation Council Act 1996 No 77

Contents

	Page
10 Delegation of functions	6
11 Council to report to Minister	6
12 Publication of results of Council investigations	6
13 Power to require certain information	6

Part 4 General

14 Council may arrange for use of services of staff or facilities	8
15 Cost of administration of Act	8
16 Application of certain Acts	8
17 Protection from liability	8
18 Service of documents on Council	8
19 Act binds Crown	9
20 Regulations	9
21 Repeal of Science and Technology Council Act 1979 No 125	9
22 Savings and transitional provisions	9
23 Consequential amendment of other laws	9
24 Review of Act	9

Schedules

1 Provisions relating to members of Council	10
2 Provisions relating to procedure of Council	15
3 Savings and transitional provisions	17
4 Amendments	20



New South Wales

Innovation Council Act 1996 No 77

Act No 77, 1996

An Act to make provision for the establishment, management and functions of the New South Wales Innovation Council, to repeal the *Science and Technology Council Act 1979* and dissolve the New South Wales Science and Technology Council, and for other purposes. [Assented to 1 November 1996]

Section 1 Innovation Council Act 1996 No 77

Part 1 Preliminary

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Innovation Council Act 1996*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

In this Act:

Chairperson means the Chairperson of the Council.

Council means the New South Wales Innovation Council established by section 4.

Department means the Department of State and Regional Development.

Deputy Chairperson means the Deputy Chairperson of the Council.

exercise a function includes perform a duty.

function includes a power, authority or duty.

member means a member of the Council.

public authority means:

- (a) any public or local authority constituted by or under an Act other than this Act, or
- (b) any Department, or
- (c) a person prescribed by the regulations.

Part 2 The Innovation Council

4 Establishment of Innovation Council

- (1) There is established by this Act a body corporate with the corporate name of the New South Wales Innovation Council.
- (2) The Council is, for the purposes of any Act, a statutory body representing the Crown.

5 Object of Council

- (1) The object of the Council is to assist in the creation of jobs, investment, exports and interstate trade by raising the level of innovative activity in New South Wales.
- (2) The Council's role in achieving that object is:
 - (a) to investigate issues relevant to the promotion of innovation, and
 - (b) to facilitate the flow of information and ideas between the Government, industry and the research community, and
 - (c) to advise on proposed programs, and Government initiatives, that promote public and private sector innovation.

6 Membership and procedure of Council

- (1) The Council is to consist of 16 members appointed by the Governor.
- (2) Of the members, one is to be appointed Chairperson of the Council and another is to be appointed Deputy Chairperson of the Council by the relevant instrument of appointment as a member or by a later instrument.
- (3) Of the members, one must be an officer of the Department. That person is the Council's Executive Member.
- (4) Schedule 1 has effect with respect to the members of the Council.
- (5) Schedule 2 has effect with respect to the procedure of the Council.

Part 3 Operations and functions of Council

7 Ministerial control of Council

The Council is, in the exercise of its functions, subject to the control and direction of the Minister.

8 Functions of Council

- (1) The Council has the following functions:
- (a) to investigate issues relevant to the promotion of innovation in the private and public sectors of New South Wales,
 - (b) to provide an ongoing source of intelligence, information, comment and analysis to the Department, the Minister and the Government on issues relevant to the promotion of innovation in the private and public sectors of New South Wales,
 - (c) to facilitate the communication of information about innovation between the Government, industry and the research community,
 - (d) to co-operate with the Department in support of programs established by the Department, where the objects of the program are similar to the object of the Council,
 - (e) to promote and take part in activities and programs so as to increase the understanding in the private and public sectors of New South Wales of the importance of innovation in improving the international and interstate competitiveness of New South Wales businesses and in improving public sector efficiency in New South Wales,
 - (f) to provide the Minister and the Department with guidance on issues relevant to the conduct of research and development in New South Wales, having regard to their effect on public and private sector innovation in New South Wales,
 - (g) to advise the Minister and the Department on appropriate Government responses to trends in the provision of education and training, having regard to the impact of those trends on future levels of innovation,

- (h) to advise the Minister and the Department on activities and programs that promote the demonstration and commercialisation of new technology in New South Wales and, where appropriate, to institute, or participate in the institution of, such activities or programs (in a manner consistent with the other functions of the Council),
 - (i) to promote activities and programs in such a way as to co-ordinate, so far as practicable, those activities and programs with any Commonwealth Government initiatives, the objects of which are similar to the object of the Council,
 - (j) to alert the private and public sectors of New South Wales to any new business opportunities that arise from the exploitation of technology,
 - (k) to advise the Minister and the Government on programs that the Government could undertake for the purpose of increasing the ability of new firms in New South Wales, in particular, small to medium size enterprises, to access technology and to manage innovation,
 - (l) to provide a source of independent advice to the Government in relation to applicants for Government funding under innovation-related assistance schemes administered by the Department.
- (2) In the exercise of its functions, the Council must:
- (a) have regard to community needs and resources, and
 - (b) promote innovation that increases productivity and employment opportunities.
- (3) The Council's functions may be exercised at the request of the Minister or the Director-General of the Department, or on the Council's own initiative.
- (4) In this section:
firms includes corporations and partnerships.

9 Committees

- (1) The Council may, with the approval of the Minister, establish committees for the purpose of assisting the Council to exercise its functions.

- (2) All such committees must be chaired by a member of the Council. It does not matter that some or all of the other members of any committee are not members of the Council.

10 Delegation of functions

- (1) The Council may delegate to an authorised person any of the functions of the Council, other than this power of delegation.
- (2) A delegate may sub-delegate to an authorised person any function delegated by the Council if the delegate is authorised in writing to do so by the Council.
- (3) In this section:
authorised person means any person, or any person of a class:
(a) prescribed by the regulations, or
(b) approved by the Minister.

11 Council to report to Minister

- (1) The Council must, if requested to do so, give the Minister advice on any matter relevant to the Council's object or functions.
- (2) The Council must inform the Minister of any intention to investigate any matter relevant to its object.
- (3) If a member does not support any report, advice or recommendation to be made to the Minister or the Department by the Council, the report, advice or recommendation may, if the member so requires, be accompanied by a minority report.
- (4) The Council must meet with the Minister at least once a year for the purpose of briefing the Minister on its current, and proposed, activities.

12 Publication of results of Council investigations

The Council may publish the results of any of its investigations.

13 Power to require certain information

- (1) The Council may, in relation to the exercise of any of its functions, require any public authority to furnish the Council with a copy of any report or information that is in the possession of the public authority and that the public authority is entitled to make available to the Council.

- (2) For this purpose, a public authority is not required to furnish the Council with any document that it would otherwise not be required to disclose under the *Freedom of Information Act 1989*.

Part 4 General

14 Council may arrange for use of services of staff or facilities

The Council may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a public authority.

15 Cost of administration of Act

The expenses of the Council in exercising its functions under this Act are to be paid out of money to be provided by Parliament.

16 Application of certain Acts

The Council is, for the purposes of the *Public Finance and Audit Act 1983*, the *Annual Reports (Departments) Act 1985*, or any other Act prescribed by the regulations, taken to be part of the Department.

17 Protection from liability

Anything done or omitted to be done by the Council, a member, or any person acting under the direction of the Council does not, if it was done or omitted to be done in good faith for the purpose of executing this Act, subject a member or a person so acting personally to any action, liability, claim or demand.

18 Service of documents on Council

- (1) A document may be served on the Council by leaving it at, or by sending it by post to:
 - (a) the office of the Council, or
 - (b) if it has more than one office, any of its offices.
- (2) Nothing in this section affects the operation of any provision of a law or of rules of court authorising a document to be served on the Council in any other manner.

19 Act binds Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

20 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

21 Repeal of Science and Technology Council Act 1979 No 125

The *Science and Technology Council Act 1979* is repealed.

22 Savings and transitional provisions

Schedule 3 has effect.

23 Consequential amendment of other laws

- (1) The Act and Regulation specified in Schedule 4 are amended as set out in that Schedule.
- (2) The amendment of the *Freedom of Information (General) Regulation 1995* by this Act does not prevent the further amendment or repeal of that regulation.

24 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Provisions relating to members of Council

(Section 6 (4))

1 Terms of office of first members

- (1) This clause applies to the first 16 members appointed by the Governor.
- (2) Of the first 16 members appointed by the Governor:
 - (a) 5 members are to be appointed for a period of 3 years, and
 - (b) 5 members are to be appointed for a period of 2 years, and
 - (c) 5 members are to be appointed for a period of 1 year, and
 - (d) the member appointed as Chairperson is to be appointed for a period of 3 years.
- (3) Subject to this Schedule, a member (including the Chairperson) holds office for such period as is specified by the member's instrument of appointment, but is eligible (if otherwise qualified) for reappointment for one term (not exceeding 3 years) only.

2 Terms of office of subsequent members

- (1) Subject to this Schedule, a member (including the Chairperson) holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for reappointment for one term (not exceeding 3 years) only.
- (2) This clause does not apply to the first 16 members appointed by the Governor.

3 Remuneration

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

4 Deputies

- (1) The Minister may, from time to time, appoint a person to be the deputy of a member, and the Minister may revoke any such appointment.
- (2) In the absence of a member, the member's deputy:
 - (a) may, if available, act in the place of the member, and
 - (b) while so acting, has all the functions of the member and is taken to be a member.
- (3) The deputy of a member who is Chairperson or Deputy Chairperson of the Council does not have the member's functions as Chairperson or Deputy Chairperson.
- (4) A person while acting in the place of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

5 Disclosure of pecuniary interests

- (1) If
 - (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Council, and
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,the member 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.
- (2) A disclosure by a member at a meeting of the Council that the member:
 - (a) is a member, or is in the employment, of a specified company or other body, or
 - (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

- (3) Particulars of any disclosure made under this clause must be recorded by the Council in a book kept for that purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee (if any) determined by the Council.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Council otherwise determines:
 - (a) be present during any deliberation of the Council with respect to the matter, or
 - (b) take part in any decision of the Council with respect to the matter.
- (5) For the purposes of the making of a determination by the Council under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
 - (a) be present during any deliberation of the Council for the purpose of making the determination, or
 - (b) take part in the making by the Council of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Council.

6 Vacancy in office of members

- (1) The office of a member becomes vacant if the member:
 - (a) dies, or
 - (b) completes a term of office and is not reappointed, or
 - (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) is removed from office by the Governor under this clause or under Part 8 of the *Public Sector Management Act 1988*, or

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- (e) is absent from 3 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Council or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Council for having been absent from those meetings, or
 - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (g) becomes a mentally incapacitated person, or
 - (h) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
 - (i) is the Executive Member and ceases to be an officer of the Department.
- (2) The Governor may remove a member from office at any time.

7 Filling of vacancy in office of member

- (1) If the office of any member becomes vacant, a person may be appointed, subject to this Act, to fill the vacancy.
- (2) If the vacancy is in the office of Executive Member, the person who fills the vacancy must be an officer of the Department.
- (3) A person who fills a casual vacancy as a member is to hold office for the balance of the term of office of the person's predecessor or until the person sooner vacates the office.
- (4) Such a person is eligible (if otherwise qualified) for reappointment for one term only.

8 Effect of certain other Acts

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member.

- (2) If by or under any Act provision is made:
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,
- the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as such a member.
- (3) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown.

Schedule 2 Provisions relating to procedure of Council

(Section 6 (5))

1 Frequency of meetings

The Council must not meet more than 6 times a year unless at least 12 of the members agree to each additional meeting.

2 Convening of meetings

Meetings of the Council may be convened by the Chairperson or by any 5 members.

3 Quorum

The quorum for a meeting of the Council is 9 members.

4 Presiding member

- (1) A meeting of the Council is to be presided over by:
 - (a) the Chairperson, or
 - (b) in the absence of the Chairperson, the Deputy Chairperson, or
 - (c) in the absence of the Chairperson and the Deputy Chairperson, a member elected by the members present at the meeting.
- (2) The person presiding at any meeting of the Council has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

5 Voting

A decision supported by a majority of the votes cast at a meeting of the Council at which a quorum is present is the decision of the Council.

6 Transaction of business outside meetings or by telephone

- (1) The Council may, if it thinks fit, transact any of its business by the circulation of papers among all of its members, and a resolution in writing approved in writing by a majority of the members is taken to be a decision of the Council.

- (2) The Council may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if a member who speaks on a matter at the meeting can be heard by the other members.
- (3) For the purposes of
 - (a) the approval of a resolution under subclause (1), or
 - (b) a meeting held in accordance with subclause (2),each member has the same voting rights as the member has at an ordinary meeting of the Council.
- (4) A resolution approved under subclause (1) is to be recorded in the minutes of the meetings of the Council.
- (5) Papers may be circulated among members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

7 Minutes

The Council must cause full and accurate minutes to be kept of its proceedings at meetings.

8 General procedure

- (1) The first meeting of the Council is to be convened by the Minister.
- (2) The procedure for the calling of meetings of the Council and for the conduct of business at those meetings is, subject to this Act, to be as determined by the Council.

Schedule 3 Savings and transitional provisions

(Section 22)

Part 1 Preliminary

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later day.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

2 Dissolution of Science and Technology Council

The New South Wales Science and Technology Council, constituted under the *Science and Technology Council Act 1979*, is dissolved. In this Part that body is referred to as the *former Council*.

3 Members of Science and Technology Council to vacate office

A person who, immediately before the dissolution of the former Council, held office as a member of that Council:

- (a) ceases to hold that office, and
- (b) is not entitled to any remuneration or compensation because of the loss of that office.

4 Transfer of assets, rights and liabilities of former Council

- (1) The assets, rights and liabilities of the former Council are transferred to the Council.
- (2) On the transfer, the following provisions have effect:
 - (a) the assets of the former Council vest in the Council by virtue of this clause and without the need for any conveyance, transfer, assignment or assurance,
 - (b) the rights and liabilities of the former Council become by virtue of this clause the rights and liabilities of the Council,
 - (c) all proceedings commenced before the transfer by or against the former Council and pending immediately before the transfer are taken to be proceedings pending by or against the Council,
 - (d) any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities before the transfer by, to or in respect of the former Council is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the Council.
- (3) The operation of this clause is not to be regarded:
 - (a) as a breach of contract or confidence or otherwise as a civil wrong, or
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
 - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.
- (4) The operation of this clause is not to be regarded as an event of default under any contract or other instrument.
- (5) No attornment to the Council by a lessee from the former Council is required.

(6) In this clause:

asset means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents.

instrument means an instrument (other than this Act) that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order or process of a court.

liabilities means any liabilities, debts or obligations (whether present or future and whether vested or contingent).

rights means any rights, powers, privileges or immunities (whether present or future and whether vested or contingent).

5 Stamp duty

Stamp duty is not chargeable in respect of

- (a) a transfer of assets, rights or liabilities by operation of clause 4, or
- (b) anything certified by the Minister as having been done in consequence of such a transfer (for example, the transfer or registration of an interest in land).

6 Construction of references to New South Wales Science and Technology Council

A reference in any Act, in any instrument made under any Act or in any document of any kind to the New South Wales Science and Technology Council is taken to be a reference to the Innovation Council.

Schedule 4 Amendments

(Section 23)

4.1 Freedom of Information (General) Regulation 1995

[1] Schedule 3 Public authorities

Omit the matter relating to the NSW Science and Technology Council from Part 3.

[2] Schedule 3, Part 3

Insert in alphabetical order:

New South Wales Innovation Council	Department of State and Regional Development
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4.2 Public Finance and Audit Act 1983 No 152

Schedule 2 Statutory bodies

Omit “New South Wales Science and Technology Council.”.

[Minister’s second reading speech made in—
Legislative Council on 19 September 1996
Legislative Assembly on 26 September 1996]