

House of Assembly—No 246

As laid on the table and read a first time, 28 September 2017

South Australia

Research, Development and Innovation Bill 2017

A BILL FOR

An Act to attract, support and facilitate opportunities for research and development and to foster innovation in order to benefit the State; and for other purposes.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Research, Development and Innovation Act 2017*.

5 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Objects and purposes

The objects and purposes of this Act are to—

- 10 (a) create and promote opportunities for research, development and innovation in this State by ensuring that the legal and regulatory environment in the State is responsive and adaptable to such opportunities; and
- (b) create an innovative approach to the delivery of public sector and private sector services; and

- (c) expand and grow existing industries in the State and attract new industries to the State to increase employment and economic opportunities for the State and South Australians; and
- (d) position South Australia as the first choice for industries engaged in research, development and innovation in order to secure broad public benefit; and
- (e) to ensure that the public interest is protected and served in the making of a research and development declaration.

4—Interpretation

In this Act, unless the contrary intention appears—

commercial information means—

- (a) information concerning the trade secrets of a person; or
- (b) information (other than trade secrets) that has a commercial value to a person; or
- (c) any other information concerning the business, professional, commercial or financial affairs of a person;

council has the same meaning as in the *Local Government Act 1999*;

environment has the same meaning as in the *Environment Protection Act 1993*;

public health has the same meaning as in the *South Australian Public Health Act 2011*;

research and development declaration—see section 5.

Part 2—Research and development declarations

5—Research and development declarations

- (1) Subject to this Act, the Governor may, on the recommendation of the Minister and by notice in the Gazette, make a declaration (a **research and development declaration**) in respect of a specified project or activity.
- (2) A research and development declaration in respect of a project or activity may—
- (a) to the extent that the Governor considers necessary for the purposes of the project or activity and subject to this section, provide that an Act, specified provision of an Act, or any other law does not apply, or applies with specified modifications, in respect of the project or activity; and
- (b) impose conditions or other requirements that apply in respect of the project or activity.
- (3) A condition or other requirement imposed under subsection (2)(b) may (without limitation)—
- (a) include conditions or requirements applying in the place of an Act, a provision of an Act, or a law that does not apply or is modified under subsection (2)(a); and
- (b) provide for the payment of costs relating to the research and development declaration.

(4) The Governor must not make a research and development declaration in respect of a project or activity unless the Governor considers that the making of the declaration—

(a) is appropriate having regard to—

(i) whether the project or activity is consistent with the objects and purposes of this Act; and

(ii) whether the applicant and any related parties possess the relevant skills, experience or capacity to give proper effect to the project or activity; and

(iii) whether the project or activity is, on balance, in the public interest; and

(iv) whether any risks identified in respect of the project or activity can be appropriately eliminated or minimised; and

(v) whether there is a risk of loss, harm or other detriment to the community if the project or activity does or does not occur; and

(b) will not give rise to any adverse effects to public health or the environment.

(5) A research and development declaration may not disapply or modify the application of the *Aboriginal Heritage Act 1988* or a provision of that Act.

(6) A research and development declaration applies according to its terms despite any Act or law to the contrary.

(7) For the avoidance of doubt, the power of the Governor to make a research and development declaration is not affected by a provision of another Act that provides for the disapplication or modification of a provision of an Act or law (including by the granting of an exemption from an Act or law).

6—Application for research and development declaration

(1) An application for a research and development declaration under section 5 in respect of a project or activity is to be made to the Minister and must—

(a) provide a detailed description of the project or activity along with an explanation of how the project or activity is appropriate having regard to the matters referred to in section 5(4); and

(b) identify, so far as is reasonably practicable, any Act, any provisions of an Act, and any other law that operate to prevent or restrict the project or activity and how the disapplication or modification (subject to conditions or other requirements) of the identified Act, provision of an Act, or other law is reasonably necessary for the purposes of the project or activity; and

(c) include an assessment of potential risks involved in the project or activity with recommendations as to how any such risks may be eliminated or minimised; and

(d) include any other information required by the Minister.

(2) An application under subsection (1) must—

(a) be in a form approved by the Minister; and

(b) be accompanied by the fee fixed by the Minister.

- (3) A failure to comply with a requirement of this section will not invalidate or otherwise affect a research and development declaration made by the Governor under section 5.
- (4) The Minister may, in relation to a specified project or activity, indicate at any time (irrespective of whether or not an application has been made under this section) that the Minister will not make a recommendation to the Governor for the purposes of section 5(1) in respect of the project or activity.

7—Further information

- (1) The Minister may require an applicant under section 6 to provide further information as the Minister reasonably requires to determine whether or not to make a recommendation to the Governor for the purposes of section 5.
- (2) Without limiting the operation of subsection (1), an applicant must, if requested to do so by the Minister, provide the Minister with a report from an independent expert relating to any matter relevant to the application specified by the Minister.
- (3) A request under subsection (2) may specify that the independent expert must hold such qualifications or experience as are specified by the Minister.

8—Public sector agency to provide relevant information

The Minister may require a public sector agency (within the meaning of the *Public Sector Act 2009*) to provide information to the Minister that the Minister reasonably requires in deciding whether or not to make a recommendation for the purposes of section 5.

9—Consultation

- (1) The Minister must, before making a recommendation to the Governor for the purposes of section 5(1) in respect of a proposed research and development declaration—
- (a) consult (in accordance with any requirements of the regulations) with—
- (i) if the proposed research and development declaration relates to an Act the administration of which is the responsibility of another Minister—that other Minister; and
- (ii) any council the Minister considers would be particularly affected by the proposed research and development declaration such that the council should be consulted; and
- (b) have regard to, as the Minister sees fit, comments received from affected persons in response to the publication of the proposed research and development declaration in accordance with subsection (2).
- (2) The Minister must, for the purposes of subsection (1)(b)—
- (a) publish, as the Minister sees fit, a proposed research and development declaration inviting affected persons to comment within a period allowed by the Minister (which must be a period of not less than 28 days from the date of the publication of the notice under paragraph (b)); and
- (b) notify the general public, by notice in the Gazette, of the publication of the proposed research and development declaration under paragraph (a).

(3) The Minister may, as the Minister sees fit, have regard to any comments received in respect of a proposed research and development declaration from persons other than affected persons.

5 (4) This section is taken to be an exhaustive statement of the requirements of procedural fairness in relation to the making of a research and development declaration.

(5) In this section—

affected person, in relation to a proposed research and development declaration, means a person whose legal rights and interests would be directly affected by the making of the proposed declaration.

10—Commencement and duration of research and development declaration

(1) Subject to this Act, a research and development declaration—

(a) operates from the date of publication in the Gazette or such later date as specified in the declaration; and

15 (b) remains in force for 18 months from that date or such shorter period as specified in the declaration.

(2) The Governor may, on the recommendation of the Minister and by notice published in the Gazette, extend the period for which a research and development declaration remains in force if satisfied that special circumstances justify the extension in the particular case.

20 (3) A research and development declaration may only be extended under subsection (2)—

(a) for a maximum additional period of 18 months; and

(b) once.

11—Variation or revocation of research and development declaration

25 (1) The Governor may, on the recommendation of the Minister and by notice published in the Gazette, vary a research and development declaration.

(2) The Minister must, before making a recommendation for the purposes of subsection (1), undertake any consultation required under section 9 as if the proposed variation was a proposed research and development declaration.

(3) The Governor may revoke a research and development declaration at any time.

30 12—Disallowance

(1) If a research and development declaration is made under section 5, or a variation to a research and development declaration is made under section 11, the Minister must cause a copy of the research and development declaration or the variation (as the case requires) to be laid before both Houses of Parliament.

35 (2) If either House of Parliament passes a resolution disallowing a research and development declaration or a variation of a research and development declaration laid before it under subsection (1), the declaration or the variation (as the case requires) will cease to have effect.

- (3) A resolution of a House of Parliament is not effective for the purposes of subsection (2) unless the resolution is passed within 5 sitting days (which need not fall within the same session of Parliament) after the day on which the declaration or the variation was laid before the House under subsection (1).
- 5 (4) Nothing in this section affects the validity of a research and development declaration or a variation made to a research and development declaration disallowed under this section before the passing of the disallowance resolution.

Part 3—Reporting

13—Reporting to Minister

- 10 (1) The Minister may, at any time during which a research and development declaration remains in force, require a person undertaking a project or activity under the declaration to provide to the Minister a report, containing the particulars required by the Minister, on the project or activity and the operation of the research and development declaration.
- 15 (2) The Minister may require a report under subsection (1) to be provided—
- (a) on 1 or more specified occasions; or
 - (b) at periodic intervals as specified by the Minister.
- (3) Nothing in this section affects the power to impose reporting requirements as a condition of a research and development declaration under section 5(2)(b).

14—Reporting to Parliament

- 20 (1) The Minister may, at any time, prepare a report on the operation and effect of the research and development declaration and a project or activity undertaken under the research and development declaration.
- 25 (2) A report prepared under subsection (1) in respect of a research and development declaration may include recommendations as to law reform measures arising out of the operation or effect of the research and development declaration and the undertaking of a project or activity under the declaration.
- (3) For the purposes of preparing a report under subsection (1) in respect of a research and development declaration, the Minister may require a person to provide the Minister with information relating to the research and development declaration and the project or activity undertaken under the research and development declaration.
- 30 (4) A report under this section must not contain a person's commercial information of a confidential nature unless the Minister has first consulted with the person about the inclusion of the information in the report.
- 35 (5) The Minister must cause a report prepared under subsection (1) to be laid before both Houses of Parliament within 6 sitting days of the completion of the report.

Part 4—Miscellaneous

15—Offence

A person who fails to comply with a condition or requirement of a research and development declaration commits an offence.

5 Maximum penalty:

In the case of a natural person—Imprisonment for 4 years.

In the case of a body corporate—\$120 000.

16—Validity of acts

10 Any act or omission undertaken or made, or purportedly undertaken or made, in good faith by a person or body under a research and development declaration is taken to have been lawfully undertaken or made and such an act or omission is, and remains, lawful and valid despite any Act or law to the contrary.

17—Liability provision

15 (1) No act or omission undertaken or made, or purportedly undertaken or made, by the Governor, the Minister or any other person engaged in the administration of this Act with a view to exercising or performing a power or function under this Act gives rise to any liability (whether based on a statutory or common law duty to take care or otherwise) against the Governor, the Minister or the Crown.

20 (2) A research and development declaration may provide that an act or omission undertaken or made, or purportedly undertaken or made, in good faith by a specified person, or class of persons, under the research and development declaration gives rise to no liability or to limited liability (whether based on a statutory or common law duty to take care or otherwise) against the person or class of persons (as the case requires).

25 (3) A limitation of liability in a research and development declaration provided for under subsection (2) may—

(a) vary according to the circumstances to which it is expressed to apply; and

(b) be subject to any conditions specified in the research and development declaration,

30 and the details of such a limitation of liability must be clearly specified in the declaration.

18—Confidentiality of commercial information

35 (1) Subject to this Act, a person engaged or formerly engaged in the administration, operation or enforcement of this Act or a research and development declaration under this Act must not disclose commercial information of another person obtained in the course of performing functions or exercising powers under this Act or a research and development declaration except—

(a) with the consent of the other person; or

40 (b) where the information is contained in a research and development declaration or a report laid before both Houses of Parliament under section 14(5) or is otherwise publicly available; or

- (c) as authorised by the Minister; or
- (d) in connection with the administration, operation or enforcement of this Act or a research and development declaration; or
- 5 (e) to an agency or instrumentality of this State, another State, a Territory of the Commonwealth or the Commonwealth for the purposes of the proper performance of its functions; or
- (f) to a police officer or a member of the police force of this State, another State, a Territory of the Commonwealth or the Commonwealth; or
- (g) for the purposes of legal proceedings.

10 Maximum penalty: \$20 000.

- (2) Information that has been disclosed under section 18(1) for a particular purpose must not be used for any other purpose by—
- (a) the person to whom the information was disclosed; or
- 15 (b) any other person who gains access to the information (whether properly or improperly and whether directly or indirectly) as a result of that disclosure.

Maximum penalty: \$20 000.

19—Regulations

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- 20 (2) The regulations may—
- (a) make different provision according to the persons, things or circumstances to which they are expressed to apply; and
- (b) be of general or limited application; and
- 25 (c) provide that a matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister.