

South Australia

**PUBLIC CORPORATIONS (BIO INNOVATION SA) REGULATIONS 2001**

## REGULATIONS UNDER THE PUBLIC CORPORATIONS ACT 1993

### *Public Corporations (Bio Innovation SA) Regulations 2001*

being

No. 129 of 2001: *Gaz.* 14 June 2001, p. 2252<sup>1</sup>

as varied by

No. 250 of 2001: *Gaz.* 4 December 2001, p. 5263<sup>2</sup>

<sup>1</sup> Came into operation 14 June 2001: reg. 2.

<sup>2</sup> Came into operation 4 December 2001: reg. 2.

**NOTE:**

- *Asterisks indicate repeal or deletion of text.*
- *For the legislative history of the regulations see Appendix.*

## **SUMMARY OF PROVISIONS**

### **PART 1 PRELIMINARY**

1. Citation
2. Commencement
3. Interpretation

### **PART 2 APPLICATION OF ACT TO MINISTER**

4. Application of Act to Minister

### **PART 3 BIO INNOVATION SA**

#### **DIVISION 1—ESTABLISHMENT AND CONSTITUTION OF SUBSIDIARY**

5. Establishment of subsidiary (s. 24)
6. Establishment of board
7. Composition of board
8. Conditions of membership
9. Vacancies or defects in appointment of directors
10. Remuneration
11. Proceedings
12. Disclosure

#### **DIVISION 2—FUNCTIONS AND PERFORMANCE**

13. Functions of subsidiary
14. Charter
15. Performance statement
16. Subsidiary companies
17. Indirect or joint operations by subsidiary

#### **DIVISION 3—THE DIRECTOR OF THE SUBSIDIARY**

18. Director of the subsidiary

#### **DIVISION 4—THE INVESTMENT COMMITTEE**

19. The Investment Committee

#### **DIVISION 5—FINANCIAL AND RELATED MATTERS**

20. Internal audit
21. Quarterly reports
22. Loans, etc., require approval
23. Provision of information
24. Dividends
25. Common seal and execution of documents
26. Annual report

### **APPENDIX LEGISLATIVE HISTORY**

4.

**PART 1  
PRELIMINARY**

**Citation**

1. These regulations may be cited as the *Public Corporations (Bio Innovation SA) Regulations 2001*.

**Commencement**

2. These regulations come into operation on the day on which they are made.

**Interpretation**

3. In these regulations—

"**Act**" means the *Public Corporations Act 1993*;

"**board**" means the board of directors established as the governing body of the subsidiary under Part 3;

"**director**" means a person appointed or holding office as a member of the board under Part 3;

"**Minister**" means the Minister for Innovation;

"**the subsidiary**" means *Bio Innovation SA* established by Part 3.

5.

**PART 2**  
**APPLICATION OF ACT TO MINISTER**

**Application of Act to Minister**

4. The following provisions of the Act apply to the Minister:

- (a) Part 1 (*Preliminary*);
- (b) section 24 (*Formation of subsidiary by regulation*);
- (c) section 25 (*Dissolution of subsidiary established by regulation*);
- (d) the schedule (*Provisions applicable to subsidiaries*).

**PART 3**  
**BIO INNOVATION SA**

**DIVISION 1—ESTABLISHMENT AND CONSTITUTION OF SUBSIDIARY**

**Establishment of subsidiary (s. 24)**

5. (1) *Bio Innovation SA* is established as a subsidiary of the Minister.

(2) The subsidiary—

(a) is a body corporate; and

(b) has perpetual succession and a common seal; and

(c) is capable of suing and being sued in its corporate name.

**Establishment of board**

6. (1) A board of directors is established as the governing body of the subsidiary.

(2) Anything done by the board in the administration of the subsidiary's affairs is binding on the subsidiary.

**Composition of board**

7. (1) The board is to consist of five members.

(2) The Director of the subsidiary appointed under Division 3 is to be a member of the board *ex officio* and the remaining members are to be appointed by the Minister.

(3) One director will be appointed by the Minister to chair meetings of the board.

(4) The Minister may appoint a director to be the deputy of the director appointed to chair the board and the deputy may perform or exercise the functions and powers of that director in his or her absence.

(5) On the office of a director becoming vacant, a person may be appointed in accordance with this regulation to the vacant office.

(6) The Minister may appoint a suitable person to be deputy of a member of the board during any period of absence of the member (and any reference to a director in these regulations will be taken to include, unless the contrary intention appears, a reference to a deputy while acting as a member of the board).

**Conditions of membership**

8. (1) A director (except the Director of the subsidiary) will be appointed for a term, not exceeding three years, specified in the instrument of appointment and, at the expiration of a term of appointment, will be eligible for reappointment.

7.

(2) The office of a director becomes vacant if the director—

- (a) dies; or
- (b) completes a term of office and is not reappointed; or
- (c) resigns by written notice to the Minister; or
- (d) becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or
- (e) is convicted of an indictable offence; or
- (f) is removed from office by the Minister by written notice.

#### **Vacancies or defects in appointment of directors**

9. An act of the board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a director.

#### **Remuneration**

10. A director is entitled to be paid from the funds of the subsidiary such remuneration, allowances and expenses as may be determined by the Minister.

#### **Proceedings**

11. (1) A quorum of the board consists of one-half the total number of its members (ignoring any fraction resulting from the division) plus one.

(2) The director appointed to chair the board will preside at meetings of the board at which he or she is present.

(3) If the director appointed to chair the board is absent from a meeting of the board—

- (a) if another director has been appointed as that director's deputy and is present at the meeting—the deputy; or
- (b) in any other case—a director chosen by the directors present at the meeting,

will preside.

(4) A decision carried by a majority of the votes cast by directors at a meeting is a decision of the board.

(5) Each director present at a meeting of the board has one vote on a question arising for decision and, if the votes are equal, the director presiding at the meeting may exercise a casting vote.

(6) A telephone or video conference between directors will, for the purposes of this regulation, be taken to be a meeting of the board at which the participating directors are present if—

- (a) notice of the conference is given to all directors in the manner determined by the board for that purpose; and

8.

(b) each participating director is capable of communicating with every other participating director during the conference.

(7) A proposed resolution of the board becomes a valid decision of the board despite the fact that it is not voted on at a meeting of the board if—

(a) notice of the proposed resolution is given to all directors in accordance with procedures determined by the board; and

(b) a majority of the directors express their concurrence in the proposed resolution by letter, telex, facsimile transmission, e-mail or other written means of communication setting out the terms of the resolution.

(8) The board must cause accurate minutes to be kept of its proceedings.

(9) Subject to a duty of confidence owed by the subsidiary to another person, the directors may, in their discretion, authorise a person to attend (but not participate in) a meeting of the board and that person may have access to papers provided to directors for the purpose of the meeting.

(10) A person authorised in writing by the Minister or the Treasurer may attend (but not participate in) a meeting of the board and may have access to papers provided to directors for the purpose of the meeting.

(11) If the board considers that a matter to be dealt with at a meeting attended by a representative of the Minister or the Treasurer should be treated as confidential, the board may advise the Minister or the Treasurer (as the case requires) of that opinion giving the reason for the opinion and the Minister or the Treasurer may, subject to subregulation (12), act on that advice as he or she thinks fit.

(12) If the Minister or the Treasurer is satisfied on the basis of the board's advice under subregulation (11) that the subsidiary owes a duty of confidence in respect of a matter, the Minister or the Treasurer must ensure the observance of that duty in respect of the matter, but this subregulation does not prevent a disclosure as required in the proper performance of ministerial functions or duties.

(13) Subject to these regulations, the board may determine its own procedures.

### **Disclosure**

**12.** (1) Where the subsidiary discloses to the Minister or the Treasurer in pursuance of the Act or these regulations a matter in respect of which the subsidiary owes a duty of confidence, the subsidiary must give notice in writing of the disclosure to the person to whom the duty is owed.

(2) A director of the subsidiary does not commit any breach of duty by reporting a matter relating to the affairs of the subsidiary to the Minister or the Treasurer.

## DIVISION 2—FUNCTIONS AND PERFORMANCE

### Functions of subsidiary

**13.** (1) The subsidiary's functions are limited to the following:

- (a) to foster the growth and development of the bioscience industry in South Australia by—
  - (i) providing business support, including funding grants, to companies or persons involved in, or commencing involvement in, the bioscience industry; and
  - (ii) providing funding for bioscience education, information and referral services; and
  - (iii) encouraging participation in the development of products and services relating to the bioscience industry to attract and facilitate the formation of major bioscience, pharmaceutical and agribusiness companies;
- (b) to carry out other functions conferred on the subsidiary by the Minister.

(2) The subsidiary must obtain the approval of the Minister before it makes a material change to its policy direction or budget.

### Charter

**14.** (1) The Minister and the Treasurer must prepare a charter for the subsidiary.

(2) The charter must address—

- (a) the nature and scope of the subsidiary's operations;
- (b) the subsidiary's obligations to report on its operations;
- (c) the form and contents of the subsidiary's accounts and financial statements;
- (d) any accounting, internal auditing or financial systems or practices to be established or observed by the subsidiary;
- (e) the acquisition or disposal of capital or assets.

(3) The charter may deal with any other matter not specifically referred to in subregulation (2).

(4) The charter must be reviewed by the Minister at the end of each financial year.

(5) The Minister and the Treasurer may amend the charter at any time.

(6) The charter, or an amendment to the charter, comes into force and is binding on the subsidiary on a day specified in the charter or amendment (but without affecting any contractual obligations previously incurred by the subsidiary).

(7) On the charter or an amendment to the charter coming into force, the Minister must, within 12 sitting days, have copies of the charter, or the charter in its amended form, laid before both Houses of Parliament.

**Performance statement**

15. (1) The Minister must, when preparing the charter for the subsidiary, also prepare, after consultation with the subsidiary, a performance statement setting the various performance targets that the subsidiary is to pursue in the coming financial year or other period specified in the statement and dealing with such other matters as the Minister considers appropriate.

(2) The Minister must, after consultation with the subsidiary, review the performance statement when reviewing the subsidiary's charter.

(3) The Minister may, after consultation with the subsidiary, amend the performance statement at any time.

**Subsidiary companies**

16. (1) The subsidiary must not, without the approval of the Treasurer—

(a) form a subsidiary company; or

(b) acquire, or enter into any arrangement under which it will at a future time or would on the happening of some contingency hold, relevant interests in shares in a company such that the company becomes a subsidiary of the subsidiary.

(2) The Treasurer may, as a condition of approval under this section, or by direction, require the subsidiary to take steps to include in a subsidiary company's memorandum or articles of association such provisions as the Treasurer considers appropriate—

(a) imposing limitations on the nature or scope of the company's operations; or

(b) imposing other controls or practices,

consistent with those applicable to the subsidiary.

**Indirect or joint operations by subsidiary**

17. The subsidiary must not, without the approval of the Treasurer, establish a trust scheme or a partnership or other scheme or arrangement for sharing of profits or joint venture with another person or undertake any operations or transactions pursuant to such a scheme or arrangement.

**DIVISION 3—THE DIRECTOR OF THE SUBSIDIARY**

**Director of the subsidiary**

18. (1) There will be a Director of the subsidiary who will be the chief executive of the subsidiary.

(2) The Minister will appoint the first Director of the subsidiary on terms and conditions determined by the Minister.

(3) Subject to subregulation (4), each subsequent appointment of a Director will be by the board on terms and conditions determined by the board.

(4) The board must obtain the approval of the Minister before—

- (a) making an appointment under subregulation (3); or
- (b) removing a person from the position of Director of the subsidiary.

(5) The Director is entitled to report directly to the Minister on any matter relating to the subsidiary.

#### **DIVISION 4—THE INVESTMENT COMMITTEE**

##### **The Investment Committee**

**19.** (1) The Minister may establish a committee of the board (to be called *the Investment Committee*).

(2) The committee is to consist of not more than four persons, appointed by the Minister on the recommendation of the board, who have, in the opinion of the board, appropriate expertise in bioscience, finance, law or business.

(3) The board must appoint a member to chair meetings of the committee.

(4) On the office of a member becoming vacant, the Minister may appoint a person to the vacant office.

(5) Each member present at a meeting of the committee has one vote on a question arising for decision and, if the votes are equal, the member presiding at the meeting may exercise a casting vote.

(6) The function of the committee is to advise the board in relation to technical and financial matters relating to funding grants to be made by the subsidiary.

#### **DIVISION 5—FINANCIAL AND RELATED MATTERS**

##### **Internal audit**

**20.** (1) The subsidiary must establish and maintain effective internal auditing of its operations.

(2) The subsidiary must, unless exempted by the Minister, establish an audit committee.

(3) The audit committee will comprise—

- (a) a member of the board of the subsidiary, or such members of the board as the board may from time to time determine; and
- (b) such other person or persons as the board may from time to time appoint,

but may not include the Director of the subsidiary.

(4) The functions of the audit committee include—

- (a) reviewing annual financial statements to ensure that they provide a true and fair view of the state of affairs of the subsidiary; and

- (b) liaising with external auditors; and
- (c) reviewing the adequacy of the accounting, internal auditing, reporting and other financial management systems and practices of the subsidiary on a regular basis.

#### **Quarterly reports**

**21.** The subsidiary must report to the Minister on the subsidiary's financial position on a quarterly basis.

#### **Loans, etc., require approval**

**22.** (1) The subsidiary must not lend or advance to any person any money, securities or property without the prior written approval of the Minister and the Treasurer.

(2) The subsidiary must not undertake commercial borrowings without the prior written approval of the Minister and the Treasurer.

#### **Provision of information**

**23.** (1) The subsidiary must, at the request in writing of the Minister or the Treasurer, furnish such information or records in the possession or control of the subsidiary as the Minister or the Treasurer may require in such manner and form as the Minister or the Treasurer may require.

(2) If a record in the possession or control of the subsidiary is furnished to the Minister or the Treasurer under this regulation, the person to whom it is furnished may make, retain and deal with copies of the record as he or she thinks fit.

(3) If the board considers that information or a record furnished under this regulation contains matters that should be treated as confidential, the board may advise the person to whom it is furnished of that opinion giving the reason for the opinion and the Minister or the Treasurer may, subject to subregulation (4), act on that advice as he or she thinks fit.

(4) If the Minister or the Treasurer is satisfied on the basis of the board's advice under subregulation (3) that the subsidiary owes a duty of confidence in respect of a matter, the Minister or the Treasurer must ensure the observance of that duty in respect of the matter, but this subregulation does not prevent a disclosure as required in the proper performance of ministerial functions or duties.

(5) The subsidiary must—

- (a) notify the Minister if a request is made by the Treasurer under this regulation; and
- (b) notify the Treasurer if a request is made by the Minister under this regulation.

#### **Dividends**

**24.** (1) The Treasurer may, after consultation with the Minister and the subsidiary, by notice in writing to the subsidiary at any time during a financial year, determine that the subsidiary pay a specified dividend, or a specified interim dividend or specified interim dividends, for that financial year, as the Treasurer considers appropriate.

(2) If the Treasurer determines under this regulation that a dividend or interim dividend or dividends be paid by the subsidiary, the dividend or interim dividend or dividends must be paid at the direction of the Treasurer, in the manner and at the time or times determined by the Treasurer, after consultation with the subsidiary and the Minister.

(3) A recommendation under this regulation must be made by the board and may not be made by any person or committee pursuant to a delegation.

#### **Common seal and execution of documents**

**25.** (1) The common seal of the subsidiary must not be affixed to a document except in pursuance of a decision of the board, and the affixing of the seal must be attested by the signatures of two directors.

(2) The board may, by instrument under the common seal of the subsidiary, authorise a director, an employee of the subsidiary (whether nominated by name or by office or title) or any other person to execute documents on behalf of the subsidiary subject to limitations (if any) specified in the instrument of authority.

(3) Without limiting subregulation (2), an authority may be given so as to authorise two or more persons to execute documents jointly on behalf of the subsidiary.

(4) A document is duly executed by the subsidiary if—

- (a) the common seal of the subsidiary is affixed to the document in accordance with this regulation; or
- (b) the document is signed on behalf of the subsidiary by a person or persons in accordance with authority conferred under this regulation.

#### **Annual report**

**26.** (1) The subsidiary must, within three months after the end of each financial year, deliver to the Minister a report on the operations of the subsidiary during that financial year.

(2) The Minister must cause a copy of the report to be laid before both Houses of Parliament within 12 sitting days after receipt of the report.

14.

## **APPENDIX**

### **LEGISLATIVE HISTORY**

Regulation 3:

definition of "Minister" substituted by 250, 2001, reg. 3