

Commonwealth of Australia

Industry Research and Development Act 1986

**Policies and practices of the IR & D Board in relation to the Pre-Seed Fund (PSF) Program
Direction No. 1 of 2001**

I, **NICHOLAS HUGH MINCHIN**, Minister for Industry, Science and Resources of the Commonwealth of Australia, acting under subsection 20(1) of the *Industry Research and Development Act 1986*, give the following direction to the Industry Research and Development Board.

Dated 28/08/2001.

NICHOLAS HUGH MINCHIN

Minister for Industry, Science and Resources

PART 1—PRELIMINARY

Citation

1. This direction may be cited as the Pre-Seed Fund (PSF) Program, Policies and Practices Direction No. 1 of 2001.

Commencement

2. This direction commences on the day on which particulars of the direction are signed and dated.

[NOTE: For the publication of the particulars, see s. 20 (3) of the *Act*.]

Interpretation

3. In this direction:

“**Act**” means the *Industry Research and Development Act 1986*.

“**associate**” will have the meaning determined by the *Board*. Without limiting the *Board*’s discretion, examples of associates may *include* directors and employees and their relatives, and related companies and trusts.

“**AusIndustry**” means AusIndustry, a business unit of the Department of Industry, Science and Resources, and its successors.

“**Board**” means the Industry Research and Development Board.

“**Board may**” is permissive and not mandatory.

“Commonwealth program capital” means amounts invested in or provided to a *licensed fund* by the Commonwealth or its nominee under the *PSF program*.

“committed capital” means amounts the Commonwealth or another *person* agrees to invest in or provide to a *licensed fund*, conditionally or unconditionally, and **“total committed capital”** means the aggregate of those amounts.

“document” means a deed, agreement, instrument or other document of any nature.

“drawdown capital” means *committed capital* that has been invested in or provided to a *licensed fund*.

“economic interest”, in respect of:

- (a) an *eligible company* includes;
 - (i) *new shares* in that *eligible company*;
 - (ii) *new equity convertible notes* in that *eligible company*;
 - (iii) any other form of *investment* (except *new equity convertible notes*) the terms of which do not require the *eligible company* (or any other person) to pay any interest or amount in the nature of interest before the expiry of the term of the *investment* unless there is a default; and
- (b) an *eligible project*, includes proprietary rights in the intellectual property used and created in the course of all or any part of the *R & D activities* conducted during the *eligible project*.

“eligible company” means a company which satisfies the criteria developed under part 5 of this direction.

“eligible institution” means an institution that is incorporated in Australia and is:

- (a) an institution of higher education specified in section 4(1) of the Higher Education Funding Act 1988 or Bond University; or
- (b) the Commonwealth Scientific and Industrial Research Organisation (CSIRO);
- (c) the Defence Science Technology Organisation (DSTO);
- (d) the Australian Institute of Marine Science (AIMS);
- (e) the Australian Nuclear Science Technology Organisation (ANSTO); or
- (f) any other institution which the *Board* considers to be a Commonwealth *public sector research agency* having regard to the following criteria:
 - (i) it is at least 50 per cent owned by the Commonwealth;
 - (ii) it is primarily carrying out *R&D activities*; and
 - (iii) it is:
 - (A) providing services, or making facilities available, in relation to science or technology; or
 - (B) training, or assisting in the training of, persons in the field of scientific or technological research; or

- (C) collecting, interpreting or publishing information relating to science or technology.

“eligible investment” means an *economic interest* in an *eligible company* or an *eligible project*.

“eligible project” means a project which satisfies the criteria developed under part 5 of this direction.

“fund” includes a trust or other investment structure approved by the *Board*.

“government sourced capital” means amounts invested in or provided to a *licensed fund* by:

- (a) any *person*, (other than an *eligible institution*) who in the opinion of the *Board* is funded directly or indirectly by the Commonwealth, a State or Territory; or
- (b) any *person* (other than an *eligible institution*) whom the *Board* considers is directly or indirectly in receipt of funding from a source or sources which is itself or which are themselves funded directly or indirectly by the Commonwealth, a State or Territory (or any combination of them) to such an extent that it is, in the opinion of the *Board*, appropriate to treat any amount invested in or provided to the *fund* by that *person* as *government sourced capital*.

“include” “includes” and “including” are not to be interpreted as words of limitation.

“institution” means a body corporate that is incorporated for a public purpose by:

- (a) an act of the Commonwealth; or
- (b) regulations under an act of the Commonwealth.

“ineligible institution” means:

- (a) a co-operative research centre as defined in the Co-operative Research Centres Program Guidelines;
- (b) an institution controlled, or more than 50 per cent owned, by a state or territory government;
- (c) a non-profit health and medical research centre;
- (d) a government business enterprise; and
- (e) any organisation which the *Board* considers does not meet the criteria required to qualify as an *eligible institution*.

“key personnel”, in relation to a fund manager, means those individuals determined by the *Board* to be *key personnel*.

“licensed fund” means a fund:

- (a) whose manager has been granted a licence in respect of the *fund* according to this direction;
- (b) no more than 49% of the issued voting shares in which are held legally or beneficially by *eligible institutions*;
- (c) no more than 49% of the directors of which represent *eligible institutions*; and

- (d) no more than 49% of the members of any investment or similar committee of which represent *eligible institutions*.

“new equity convertible note” means a note issued by an *eligible company* which provides:

- (a) that the amount of the loan to the *eligible company* that is evidenced, acknowledged or created by the note or to which the note relates:
- (i) either with or without interest (but if with interest on terms that the interest is not payable until the loan is or becomes repayable or in the case of default);
 - (ii) at whatever conversion price;
 - (iii) whether at the option of the holder of the note or not;
 - (iv) whether in whole or in part; or
 - (v) whether exclusively or otherwise,
- is to be or may be:
- (vi) converted into *new shares* in the *eligible company*; or
 - (vii) redeemed, repaid or satisfied by the issue of *new shares* in the *eligible company*; or
- (b) that the holder or owner of the note is to have, or may have, any right or option to have *new shares* in the *eligible company* allotted and issued to him.

“new shares” means, in respect of an *eligible company*, shares in the *eligible company* that have not previously been allotted and issued.

“non-profit enterprise” means an enterprise whose governing documents prohibit the distribution of profits and surpluses to its members or investors.

“person” *includes* a partnership, body corporate, trust or other structure.

“pre-seed stage” means, in respect of an *eligible company* or an *eligible project*, the *pre-seed stage* of its *R&D activities* determined having regard to the following considerations:

- (a) those *R&D activities* are being or have been conducted by an eligible institution;
- (b) funding is necessary for proof of concept research and or market validation through such things as prototype development, trialing, business case development, market research, administration, production and management of intellectual property;
- (c) no management team exists or the management team is beginning to form;
- (d) its *R&D activities* predominantly involve the transition from research to a commercially focused technology capable of informed market appraisal; and
- (e) any other matters the *Board* thinks fit.

“privately sourced capital” means amounts invested in or provided to a *licensed fund* that are not, in the opinion of the *Board*, *government sourced capital*. For the purposes

of the *PSF program*, capital provided by *eligible institutions* will be regarded as privately sourced capital.

“PSF guidelines” means the guidelines developed by the *Board* under part 2 of this direction.

“PSF program” means the program established by this direction and known as the Pre-seed Fund (PSF) Program.

“public sector research agency” means an organisation:

- (a) that is at least 50% owned by the Commonwealth; and
- (b) the activities of which consist primarily of the carrying out of *R&D activities*.

“qualifying researchers” means individuals who are:

- (a) employed by an *eligible institution*; or
- (b) engaged by or working in or with an *eligible institution* and normally resident in Australia.

“R&D activities” means research and development activities as defined in section 4(1) of the *Act*.

“result” means, in relation to *R&D activities*, a result that is capable of being exploited as contemplated by the *Act*.

“sales revenue” means ongoing revenue from:

- (a) the sale, lease, hire or other disposal of a commercialised product; or
- (b) the sale or provision of a service.

However, sales revenue does not include:

- (c) interest on working capital balances (provided it is not in the nature of investment income);
- (d) grant proceeds (both cash and in kind); or
- (e) revenue from research consultancy agreements, contract research, collaborative research and development arrangements and technology licence agreements.

“writing” includes email.

A reference in this direction to an act or other instrument is a reference to that act or other instrument as amended or replaced from time to time.

A reference in this direction to “*PSF guidelines*, licensing agreement or other contractual documents” or similar words is a reference to any one or more or all of them.

A reference in this direction to the singular *includes* the plural and vice versa.