



**MINISTER FOR STATE DEVELOPMENT,
EMPLOYMENT AND INDUSTRIAL RELATIONS
PUBLIC SERVICE COMMISSIONER**

DIRECTIVE No. 2/07
March 2007

- 1. TITLE:** **Rewards for Creating Commercially Valuable Intellectual Property**

- 2. PURPOSE:** To prescribe the conditions for offering monetary rewards to eligible employees who develop intellectual property that is successfully commercialised with positive revenue returns to the Queensland Government.

- 3. LEGISLATIVE PROVISION:** Section 34 of the *Public Service Act 1996*

- 4. APPLICATION:** This directive applies to -
 - public service officers; and
 - public service officers engaged on contract under sections 69 and 70 of the *Public Service Act 1996*; and
 - temporary employees engaged under section 113(2)(a) of the *Public Service Act 1996*; and
 - general employees engaged under section 112(2)(a) of the *Public Service Act 1996*.

- 5. STANDARD:** The requirements and entitlements prescribed in the Schedule apply.

- 6. EFFECTIVE DATE:** This Directive is to operate from **12 March 2007**.

SCHEDULE A

REWARDS FOR CREATING COMMERCIALY VALUABLE INTELLECTUAL PROPERTY

GENERAL REQUIREMENTS

1. Definitions

For the purposes of this directive:

Author means the person who authored or made the Copyright protected material as specified in the *Copyright Act 1968*.

Breeder means the person who bred the plant variety the subject of the Plant breeders rights as specified in the *Plant Breeder's Rights Act 1994*.

Business case means the business case referred to in Step 1 of the Approval Process in this Directive.

Circuit layout rights means the circuit layout rights which protect the original integrated circuit layout within the meaning of the *Circuit Layouts Act 1989*.

Circuit layout maker means the person who made the circuit layout the subject of Circuit layout rights as specified in the *Circuit Layouts Act 1989* (despite any provision in that Act deeming a person's employer to be the maker).

Copyright means the rights under the *Copyright Act 1968* which protect original material authored or made by a person and expressed in material form.

Creator means the Author, Breeder, Circuit layout maker, Designer or Inventor in relation to an IP Asset, whether alone or in conjunction with other persons, and **Created** has a corresponding meaning.

Designer means the designer of the design the subject of Design rights as specified in the *Designs Act 2003*.

Design rights means the rights of the owner of a registered design of a product (not the product itself) within the meaning of the *Designs Act 2003*.

Financial, shareholding or other interests in the Organisation means

- any equity interests, including stock options etc;
- receiving any income or in kind payment from the Organisation; and

any service with the Organisation as an officer, director, or in any other position in the Organisation, whether or not remuneration is received for such service.

Intellectual property (IP) means all rights in relation to Copyright, Circuit layout rights, Designs, Patents and Plant breeders' rights.

Inventor means the person who invented the invention the subject of Patent rights as specified in the *Patents Act 1990*.

IP Asset means an asset in the form of the rights protected by any one of the categories of IP listed under the definition of Intellectual property and Created in connection with a Creator's work for the Queensland Government.

Organisation means the external organisation with whom the agency has entered into an agreement to commercialise the IP Asset.

Patent rights means the rights of the owner of either a registered standard patent or registered innovation patent in relation to an invention under the *Patents Act 1990*.

Plant breeders' rights means the rights which protect registered new varieties of plant within the meaning of the *Plant Breeder's Rights Act 1994*.

Positive revenue return means, when the revenue received by the Queensland Government, acting through the agency, exceeds Revenue neutral by the Threshold level.

Revenue neutral means the point when income received by the Queensland Government, acting through the agency, for the commercialisation of the IP Asset equals the cost expended and/or to be expended by the agency to commercialise the IP Asset, as determined by the agency.

Successful commercialisation of IP means the commercialisation of the IP Asset by the agency and/or with an Organisation in which the employee/s does not hold any ownership or Financial, shareholding or other interests in the Organisation.

Superannuable salary is the portion of an employee's remuneration package on which superannuation contributions are normally calculated.

Threshold level means:

- \$50,000 (excluding GST) in any given year; or
- a cumulative total amount of \$150,000 (excluding GST).

2. Eligibility

The State may, at its sole discretion, through the employee's agency, provide a reward to the employee/s on the following conditions:

- the agency has received a Positive revenue return from the successful commercialisation of an IP Asset; and
- the IP Asset has been Created by an eligible public service employee or group of employees during the course of their employment with the State; and
- the IP Asset has resulted from a project outlined in the Business case;
- the employee's ongoing work performance is deemed satisfactory and the employee is not subject to disciplinary action; and
- any other conditions outlined in this Directive have been met.

3. Reward

A reward may include all or any of the following types of reward:

- lump sum cash payments;
- periodic payment of a fixed amount or differing amounts over a set number of instalments;
- a combination of lump sum cash payments and periodic payment of a fixed amount or differing amounts over a set number of instalments for a set number of years; or
- leave flexibilities, as agreed between the parties;

to be determined by consultation between the employee/s and chief executive of their agency and will be, or equivalent to, up to 33% of the total Positive revenue return;

but will not exceed \$20,000 per employee per year and \$100,000 in total benefits per employee, and will not exceed \$500,000 in total benefits made to a group of employees.

In exceptional circumstances, an agency may request that consideration be given to providing benefits in excess of \$100,000 per employee.

Such a request should be included in the Business case provided to the chief executive of the Department of State Development and Trade, the chief executive of the Department of Employment and Industrial Relations and the Public Service Commissioner and is subject to endorsement by the Premier.

Such a request must:

- outline the justification for exceeding the \$100,000 limit; and
- address the issue of the flow of revenue to the agency and consolidated revenue.

4. Approval Process

Process guidelines are provided in a flowchart at Attachment 1.

Step 1

Consideration to provide a reward under this Directive may be initiated by the chief executive, a senior officer or an individual employee or group of employees.

In the event that the chief executive decides to provide a reward to an eligible employee, the chief executive must provide a Business case in the format provided in Attachment 2, to the chief executive of the Department of State Development and Trade, the chief executive of the Department of Employment and Industrial Relations and the Public Service Commissioner jointly seeking endorsement to apply rewards to eligible employee/s in their agency.

Business case

The Business case should contain the following information:

- details of compliance with any applicable government requirements, priorities, principles or guidelines;
- background and development of the IP Asset, including why the employee/s is/are the Creator of the IP Asset;
- details of the executed commercialisation agreement, including details of when Revenue neutral is expected to be reached, and when the Threshold level is expected to be reached;
- written declaration (in the format provided in Attachment 3) that the employee/s do not hold any ownership or Financial, shareholding or other interest in the Organisation not stated in the declaration, and that the employee/s are not entitled to any reward until the Threshold level has been reached;
- the number, classifications, and locality of the employee/s to which the reward may apply;
- details of the reward package to be offered to the employee/s;

- the process to be used to evaluate whether providing rewards under this Directive has been effective; and
- the means of recording and monitoring all agreements executed in relation to the commercialisation of the IP Asset.

Step 2

The chief executive of the Department of State Development and Trade, the chief executive of the Department of Employment and Industrial Relations and the Public Service Commissioner may endorse the chief executive's Business case when jointly satisfied that:

- all required information is captured in the Business case;
- any conflicts or ownership of Financial, shareholding or other interests in the Organisation declared by the employee/s do not affect or have the potential to materially affect the commercialisation of the IP Asset or the amount of the reward; and
- the provision of a reward to the employee/s is considered justified.

Step 3

Upon endorsement of the Business case by the chief executive of the Department of State Development and Trade, the chief executive of the Department of Employment and Industrial Relations and the Public Service Commissioner, the employee/s will be offered an agreement by way of a deed with the State, acting through the agency, in relation to the application of the reward to the employee/s.

5. Deed

The chief executive and the eligible employee/s are to execute a deed as per Attachment 4.

6. Reporting requirements

Agencies who have executed deeds with employee/s are to provide information (as per Attachment 5) to the Administrator (Crown Copyright and other Intellectual Property) for reporting purposes by 31 July each year.

7. Other conditions of employment

Approved rewards under this Directive will apply in addition to, but separate from, other employment conditions prescribed in applicable awards, certified agreements, contracts of employment, former determinations of the Governor-in-Council or a Directive (eg rewards are to be paid or provided to an employee, as agreed in the executed deed, regardless of whether the employee is full time, part time or on paid leave or authorised unpaid leave).

8. Superannuation

Employer and employee superannuation contributions are to be based on the employee's Superannuable salary.

The employee's Superannuable salary does not include rewards under this Directive.