

NOTICE 744 OF 2008

**DEPARTMENT OF SCIENCE AND TECHNOLOGY
NOTICE OF INTRODUCTION OF BILL INTO PARLIAMENT**

The Minister of Science and Technology intends introducing the Bill set out below into Parliament during 2008:

Intellectual Property Rights from Publicly Financed Research and Development
Bill

Enquiries:

The Director-General
Attention: Mr. Tsitso Daniel Rasenyalo
Department of Science and Technology
Private Bag X894
PRETORIA
0001

Building 53 Scientia Campus
Meiring Naude Drive
BRUMMERIA
0184

Telephone: 012 843 6659
Fax: 0866 85 0663
E-mail: tsitso.rasenyalo@dst.gov.za

REPUBLIC OF SOUTH AFRICA

INTELLECTUAL PROPERTY RIGHTS FROM PUBLICLY FINANCED RESEARCH AND
DEVELOPMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. of) (The English text is the official text
of the Bill)*

(MINISTER OF SCIENCE AND TECHNOLOGY)

[B - 2008]

B I L L

To provide for more effective utilisation of intellectual property derived from publicly financed research and development; to establish the National Intellectual Property Management Office and the Intellectual Property Fund and to provide for the establishment of offices of technology transfer at institutions; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Definitions

1. In this Act, unless the context indicates otherwise—

"BBBEE" means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);

"commercialisation" means the process by which any intellectual property arising from publicly financed research and development is or may be adapted or used for any purpose that may provide any benefit to society or commercial use on reasonable terms, and

"commercialise" must be interpreted accordingly;

"Department" means the Department of Science and Technology;

"disclosure" means the provision of full details of potential intellectual property contemplated in section 5 of this Act;

"funding agency" means the State or an organ of state or a state agency or component established for the purposes of funding research and development;

"institution" means—

- (a) any higher education institution contemplated in the definition of **"higher education institution"** contained in section 1 of the Higher Education Act, 1997 (Act No. 101 of 1997);
- (b) any statutory institution listed in Schedule 1; and
- (c) any institution identified as such by the Minister under section 3(2);

"intellectual property" means any creation of the mind that is capable of being protected by law from use by any other person, whether in terms of South African law or foreign law, and includes any rights in such creation, but excludes copyright in a thesis, dissertation, article, handbook or any other publication which, in the ordinary course of business, is associated with conventional academic work;

"intellectual property transaction" means any agreement in respect of intellectual property and includes licensing, assignment and any arrangement in which the intellectual property rights are transferred to a third party;

"intellectual property creator" means the person involved in the conception of intellectual property and identifiable as such for the purposes of enforcement of intellectual property rights, where applicable;

"Minister" means the Minister responsible for the Department;

"NIPMO" means the National Intellectual Property Management Office established by section 8;

"offshore" means outside the borders of the Republic;

"prescribed" means prescribed by regulation;

"publicly financed research and development" means research and development undertaken using funds allocated by a funding agency for such purpose;

"recipient" means any entity, whether corporate or incorporate, that receives funding from a funding agency to undertake research and development, and includes a trust or an institution;

"regulation" means any regulation made in terms of section 17 of this Act;

"revenue" means all income and benefits, including non-monetary benefits, derived from intellectual property transactions, and includes all actual, non-refundable royalties, other grant of rights and other payments made to the institution or any commercialisation entity owned wholly or in part by an institution as a consideration in respect of an intellectual property transaction, but excludes a donation;

"small enterprise" means a **"small enterprise"** as defined in section 1 of the National Small Enterprise Act, 1996 (Act No. 102 of 1996);

"this Act" includes the regulations made in terms of this Act.

Objects of Act

2. (1) The object of this Act is to make provision that intellectual property developed from publicly financed research and development is utilised and commercialised for the benefit of society, whether it be for a social, economic, military or any other benefit.

(2) This Act furthermore seeks to ensure that—

- (a) human ingenuity and creativity is acknowledged and rewarded;
- (b) the people of the Republic, particularly small enterprises and BBBEE entities, have preferential access to opportunities arising from the production of knowledge from publicly financed research and development and the attendant intellectual property;
- (c) following the evaluation of a disclosure, researchers may publish their research findings for the public good; and
- (d) where necessary, the State may use the results of publicly financed research and development and the attendant intellectual property in the interest of the people of the Republic.

Application of Act

3. (1) This Act applies to intellectual property arising from publicly financed research and development.

(2) (a) Subject to paragraph (b), the Minister may, in addition to the institutions to which this Act applies, by notice in the Gazette, identify any other institution to which this Act applies if he or she is satisfied that the institution may develop intellectual property from publicly financed research and development.

(b) Any identification contemplated in paragraph (a) must be done with the concurrence of the Minister responsible for the institution concerned.

Choice in respect of intellectual property

4. (1) Subject to section 15(2), intellectual property arising from publicly financed research and development shall be owned by the recipient.

(2) A recipient that prefers not to retain ownership in its intellectual property or not to obtain statutory protection for the intellectual property must—

(a) make the choice in accordance with the guidelines published by NIPMO by notice in the *Gazette*; and

(b) within the period set out in section 5(2)(d) notify NIPMO of the decision and the reasons therefor.

(3) NIPMO may, within the prescribed period, after considering the reasons provided by the recipient in terms of subsection (2)(b) and any prejudice that may be suffered by the State if no statutory protection for the intellectual property is obtained, acquire ownership in the intellectual property and, where applicable, obtain statutory protection for the intellectual property.

(4) (a) Should NIPMO decide not to acquire ownership in the intellectual property in terms of subsection (3), NIPMO must, in writing, notify the recipient of its decision.

(b) Subject to the reasons given in terms of subsection (2)(b), and on notification contemplated in paragraph (a), the recipient must give the intellectual property creator the option to acquire ownership in the intellectual property and to obtain statutory protection for the intellectual property, provided that in the case where a private entity or organisation had provided some funding, such private entity or organisation shall first be offered such option before the intellectual property creator.

Management obligations and disclosure duties

5. (1) A recipient must—
- (a) put in place mechanisms for the management of intellectual property, intellectual property transactions and, where applicable, the commercialisation of intellectual property and appropriate capacity building relating thereto;
 - (b) in the case of an institution, manage revenues due to it from intellectual property transactions and the commercialisation thereof, including managing the benefit sharing arrangements with intellectual property creators at the institution;
 - (c) negotiate and enter into intellectual property transactions with third parties on intellectual property belonging to the recipient;
 - (d) attend to any other matter concerning intellectual property identification, protection, development, management and commercialisation; and

(e) report to NIPMO on a biannual basis and as provided for in this Act, on all matters pertaining to the intellectual property contemplated in this Act, in a manner stipulated by NIPMO.

(2) The recipient must, in respect of intellectual property—

- (a) provide effective and practical measures and procedures for the disclosure of intellectual property;
- (b) ensure that personnel involved with the research and development make a disclosure to it within 90 days of identification by such personnel of possible intellectual property and before the intellectual property is made public;
- (c) assess the intellectual property to determine whether it merits statutory protection and, where appropriate, apply for and ensure that it obtains statutory protection in its name;
- (d) refer disclosures for which it elects not to retain ownership or not to obtain statutory protection to NIPMO within 30 days of it making such an election;
- (e) disclose intellectual property for which it elects to obtain statutory protection and the state of commercialisation thereof to NIPMO on a biannual basis;
- (f) assess all publicly financed research and development for intellectual property which may be prejudiced by publication; and
- (g) provide NIPMO with full reasons if intellectual property is not commercialised.

Establishment of office of technology transfer at institutions

6. (1) Unless determined otherwise by the Minister in consultation with the Minister responsible for higher education, or any other Cabinet minister to which an institution reports, any institution must, within 12 months of the coming into effect of this Act—

- (a) establish and maintain an office of technology transfer; or
- (b) designate persons or an existing structure within the institution to undertake the responsibilities of the office of technology transfer.

(2) An office of technology transfer is responsible for undertaking the obligations of the institution in terms of this Act.

(3) Two or more institutions may with the concurrence of NIPMO establish a regional office of technology transfer.

(4) (a) NIPMO may, on terms and conditions determined by it, provide assistance to institutions for the establishment of offices of technology transfer.

- (b) The assistance contemplated in paragraph (a) may include—
- (i) financial assistance;
 - (ii) co-ordinating the establishment of a regional office of technology transfer, where applicable; and
 - (iii) development of appropriately skilled personnel for the offices of technology transfer.

Functions of office of technology transfer

7. (1) The functions of an office of technology transfer must be performed by appropriately qualified personnel whom, when considered collectively, has interdisciplinary knowledge, qualifications and expertise in the identification, protection, management and commercialisation of intellectual property and in intellectual property transactions.

(2) An office of technology transfer must, in respect of publicly financed research and development—

- (a) develop and implement, on behalf of the institution or region, policies for disclosure, identification, protection, development, commercialisation and benefit-sharing arrangements;
- (b) receive disclosures of potential intellectual property arising from publicly financed research and development;
- (c) analyse the disclosures for any commercial potential, the likely success of such commercialisation, the existence and form of the intellectual property rights, the stage of development thereof and the appropriate form for protecting those rights;
- (d) attend to all aspects of statutory protection of the intellectual property;
- (e) refer disclosures to NIPMO on behalf of an institution;
- (f) attend to all aspects of intellectual property transactions and the commercialisation of the intellectual property;
- (g) conduct evaluations on the scope of statutory protection of the intellectual property in all geographic territories subject to commercialisation potential of the intellectual property; and
- (h) liaise with NIPMO as provided for in this Act.

Establishment of National Intellectual Property Management Office

8. (1) There is hereby established an office within the Department, called the National Intellectual Property Management Office (NIPMO).

(2) The Minister may, by notice in the *Gazette*, assign the operation of NIPMO to any public entity whose objects are consistent with NIPMO's functions.

Functions of NIPMO

9. (1) NIPMO must promote the objects of this Act, which includes the statutory protection, management and commercialisation of the intellectual property referred to it by a recipient in terms of section 4.

(2) NIPMO must ensure that it has the capacity to consider any intellectual property referred to it by a recipient in terms of section 4, and to deal with it in accordance with this Act.

(3) NIPMO must liaise with the recipients or any other party it deems fit to determine the viability of—

- (a) obtaining statutory protection for the intellectual property referred to it, if it is in the national interest;
- (b) concluding any intellectual property transactions; or
- (c) commercialisation of such intellectual property.

(4) NIPMO must, furthermore—

- (a) manage information in respect of intellectual property contemplated in this Act, including data concerning the recipients;
- (b) provide incentives to recipients and their intellectual property creators, to reward them for proactively securing protection for intellectual property and commercialising it and, generally, for promoting innovation;
- (c) provide assistance to institutions with—
 - (i) the establishment of offices of technology transfer and related capacity building;
 - (ii) intellectual property transactions;
 - (iii) commercialisation of intellectual property; and
 - (iv) any other matter provided for in this Act;
- (d) provide appropriate standards and best practices in consultation with a recipient, without limiting the power of the recipient to act in its own interests in terms of this Act;
- (e) provide guidelines for intellectual property transactions involving non-South African entities and persons, and managing the implementation of such guidelines; and
- (f) monitor, evaluate and review the obligations of recipients in terms of this Act.

(5) In addition to its other functions, NIPMO may do anything necessary to meet the objects of this Act and to carry out any other function consistent with those objects that may be prescribed.

(6) Any decision of NIPMO that adversely affects a recipient must be dealt with in terms of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

Rights of intellectual property creators in institutions to benefit sharing

10. (1) Intellectual property creators at an institution and their heirs are granted a specific right to a portion of the revenues that accrue to the institution from their intellectual property for as long as revenues are derived from such intellectual property, provided that they are South African citizens or ordinarily resident in the Republic until such rights expire.

(2) Intellectual property creators at institutions and their heirs are entitled to at least 20 per cent of the revenues generated by such intellectual property, or such higher amount as the Minister may prescribe.

(3) The portion of revenues contemplated in subsection (2) must be shared in equal proportions between the qualifying intellectual property creators or their heirs unless otherwise agreed between those creators and the recipient or determined in accordance with institutional policies.

(4) The benefits to intellectual property creators and their heirs are a first call on the applicable revenue ahead of any institutional distribution.

(5) The recipient may distribute the balance of the revenues generated by intellectual property as it deems fit, but must apportion part of it for funding, among other things—

- (a) more research and development;
- (b) the operations of the office of technology transfer; and
- (c) statutory protection of intellectual property.

(6) (a) This section prevails over a provision of a law mentioned in the second column of Schedule 1 existing at the commencement of this Act to the extent that it is inconsistent with such a provision.

(b) Despite paragraph (a), any arrangement relating to benefit sharing that existed at the commencement of this Act by virtue of a provision contemplated in that paragraph continues in terms of that provision as if this section had not been enacted.

Conditions for intellectual property transactions

11. (1) The recipient determines the nature and conditions of intellectual property transactions relating to any intellectual property held by it, but must take into account the following:

- (a) Preference must be given to non-exclusive licensing;
- (b) preference must be given to BBBEE entities and small enterprises;
- (c) preference must be given to parties that seek to use the intellectual property in ways that provide optimal benefits to the economy and quality of life of the people of the Republic;
- (d) exclusive licence holders must undertake, where feasible, to manufacture, process and otherwise commercialise within the Republic;
- (e) each intellectual property transaction must provide the State with an irrevocable and royalty free licence authorising the State to use or have the intellectual property

used throughout the world for the health, security and emergency needs of the Republic;

- (f) if a holder of an exclusive licence is unable to continue with the commercialisation of the intellectual property within the Republic during the duration of the licence and the recipient wishes to retain the exclusive licence, the recipient must furnish NIPMO with full reasons for retaining exclusivity;
- (g) a recipient must supply the reasons contemplated in paragraph (f) within 30 days of it becoming aware that the holder of the licence is unable to continue commercialising the intellectual property, or such extended time as may be agreed upon with NIPMO; and
- (h) NIPMO may request that the exclusive licence contemplated in paragraph (f) be converted to a non-exclusive licence if a recipient fails to furnish the reasons within the period contemplated in paragraph (g), or if NIPMO is not satisfied with such reasons.

(2) Each intellectual property transaction must contain a condition to the effect that should a party fail to commercialise the intellectual property to the benefit of the people of the Republic, the State is entitled to exercise the rights contemplated in section 14.

(3) (a) Each intellectual property transaction involving assignment of intellectual property by an institution to a small enterprise in return for shareholding as a consideration must contain a condition providing that in the event of the liquidation of that small enterprise, the intellectual property shall revert to the institution.

(b) The Minister may prescribe the terms and conditions for other intellectual property transactions involving assignment of intellectual property by a recipient.

Restrictions on offshore intellectual property transactions

12. (1) Offshore intellectual property transactions are subject to the following conditions:

- (a) A recipient must advise NIPMO of its intention to conclude an intellectual property transaction offshore;
- (b) subject to paragraph (c), offshore intellectual property transactions may occur only in accordance with prescribed regulations and any guidelines contemplated in section 9(4)(e); and
- (c) any intellectual property transaction which does not comply with the regulations and guidelines requires prior approval of NIPMO.

(2) A recipient wishing to undertake an intellectual property transaction offshore in the form of an assignment or exclusive licence must satisfy NIPMO that—

- (a) there is insufficient capacity in the Republic to develop or commercialise the intellectual property locally; and
- (b) the Republic will benefit from such offshore transaction.

Intellectual Property Fund

13. (1) There is hereby established an Intellectual Property Fund to be managed by NIPMO.

(2) The purpose of the Intellectual Property Fund is to—

- (a) provide financial support to institutions for the statutory protection and maintenance of intellectual property rights, subject to subsection (3);
- (b) finance any costs incurred by NIPMO for obtaining statutory protection of the intellectual property; and
- (c) finance any costs incurred by NIPMO when acting in terms of section 14.

(3) An institution may recover the costs incurred in obtaining statutory protection for the intellectual property contemplated in this Act from the Intellectual Property Fund—

- (a) to the extent determined by NIPMO;
- (b) on such terms as may be determined by NIPMO; and
- (c) on condition that the intellectual property is not assigned to an entity which is not an institution.

Acquisition of intellectual property rights by State

14. (1) The rights acquired by the State in terms of this section are additional to the rights granted to the State in terms of any other legislation in the Republic.

(2) NIPMO must conduct reviews of non-commercialised intellectual property in consultation with the recipients.

(3) If a review contemplated in subsection (2) shows that the intellectual property in question can be commercialised, NIPMO must engage in further consultations with the recipient in an endeavour to ensure that the intellectual property is commercialised.

(4) NIPMO may require a recipient to grant a licence in any field of use to any person on reasonable terms if, after the consultations contemplated in subsection

(3)—

(a) the intellectual property is still not being commercialised; or

(b) no agreement can be reached with the recipient.

(5) NIPMO may, on behalf of the State, demand the assignment of rights to any intellectual property if a recipient fails to make a disclosure to NIPMO as provided for in this Act.

Co-operation between private entities or organisations and institutions

15. (1) A private entity or organisation may become an exclusive licensee of intellectual property emanating from publicly financed research and development undertaken at an institution if such private entity or organisation has the capacity to manage and commercialise the intellectual property in a manner that benefits the Republic.

(2) Any private entity or organisation may become a co-owner of the intellectual property emanating from publicly financed research and development undertaken at an institution if—

- (a) there has been a contribution of resources, which may include relevant background intellectual property by the private entity or organisation;
- (b) there is joint intellectual property creatorship;
- (c) appropriate arrangements are made for benefit sharing for intellectual property creators at the institution; and
- (d) the institution and the private entity or organisation conclude a separate agreement for the commercialisation of the intellectual property.

(3) Should the private entity or organisation mentioned in subsection (1) or (2) not commercialise the intellectual property in the Republic, the provisions of section 14 of this Act shall apply with the changes required by the context.

(4) (a) Any research and development undertaken at an institution and funded by a private entity or organisation on a full cost basis shall not be deemed to be publicly financed research and development and the provisions of this Act relating to publicly financed intellectual property shall not apply thereto.

(b) For the purposes of paragraph (a) "**full cost**" means the full economic cost of undertaking research and development as determined in accordance with generally acceptable accounting practices, and includes all applicable direct and indirect cost as may be prescribed.

Confidentiality

16. Employees of NIPMO and the offices of technology transfer may not disclose any information in regard to any matter which may come to their knowledge in

terms of this Act, or any work arising from the implementation of this Act, or by virtue of the office held by them to any person, except—

- (a) in so far as the provisions of the Constitution of the Republic of South Africa, 1996, the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), and this Act require or provide for the publication of or access by the public or any interested person to information relating to such matter;
- (b) in so far as it may be necessary for the effective governance and management of NIPMO or the offices of technology transfer, or for the purpose of due and proper performance of any function in terms of this Act; or
- (c) upon an order of a competent court.

Regulations

17. The Minister may make regulations regarding—

- (a) any matter that may or must be prescribed in terms of this Act; and
- (b) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.

Short title and commencement

18. This Act is called the Intellectual Property Rights from Publicly Financed Research and Development Act, 2008, and takes effect on a date determined by the President by proclamation in the *Gazette*.

SCHEDULE 1
(Section 1: Paragraph (b) of definition of "institution")

| Institution | Founding law |
|---|---|
| Human Sciences Research Council | Human Sciences Research Act, 1968 (Act No. 23 of 1968) |
| Water Research Commission | Water Research Act, 1971 (Act No. 34 of 1971) |
| Council for Scientific and Industrial Research | Scientific Research Council Act, 1988 (Act No. 46 of 1988) |
| Council for Mineral Technology | Mineral Technology Act, 1989 (Act No. 30 of 1989) |
| Agricultural Research Council | Agricultural Research Act, 1990 (Act No. 86 of 1990) |
| South African Medical Research Council | South African Medical Research Council Act, 1991 (Act No. 58 of 1991) |
| South African Bureau of Standards | Standards Act, 1993 (Act No. 29 of 1993) |
| Council for Geoscience | Geoscience Act, 1993 (Act No. 100 of 1993) |
| National Research Foundation | National Research Foundation Act, 1998 (Act No. 23 of 1998) |
| South African Nuclear Energy Corporation, Limited | Nuclear Energy Act, 1999 (Act No. 46 of 1999) |

MEMORANDUM ON THE OBJECTS OF THE INTELLECTUAL PROPERTY RIGHTS FROM PUBLICLY FINANCED RESEARCH AND DEVELOPMENT BILL

1. BACKGROUND

The Intellectual Property Rights from Publicly Financed Research and Development Bill (“the Bill”) came as a result of a need for the creation of a proper framework and enabling legislation for the effective management of intellectual property arising from publicly financed research. The Intellectual Property Rights from Publicly Financed Research Policy was approved by Cabinet during February 2006 for public comment. In May 2007, Cabinet gave final approval of the Policy Framework and also approved that the draft Bill be gazetted for public comment.

2. OBJECTS OF BILL

The Bill seeks to provide for the effective utilisation of intellectual property derived from publicly financed research and development. In order to achieve this, the Bill provides for the following:

- (a) The creation of an obligation, by intellectual property creators using public finances, to declare potential intellectual property.
- (b) The sharing of benefits derived from the successful commercialisation of intellectual property with the creators of such property.
- (c) The granting of a right to institutions to secure income from successful commercialisation of publicly financed research.
- (d) The creation of institutional arrangements to manage such processes at institutions centrally, through the requirement for the creation of a designated function of an Office on Technology Transfer (OTT) at each institution.
- (e) The establishment of the State’s rights in intellectual property secured with public financing.
- (f) The establishment of a requirement that small enterprises and Broad-Based Black Economic Empowerment entities receive preference in respect of transactions involving intellectual property derived from publicly financed research.
- (g) The establishment of a requirement for preference for commercialisation of intellectual property derived from publicly financed research in the Republic, including regulating commercialisation of such intellectual property outside the Republic.
- (h) The establishment of the criteria under which intellectual property derived from research that is partially publicly financed can be managed and commercialised.
- (i) The creation of an office function in respect of intellectual property rights from publicly financed research and development, under the Department of Science and Technology, to be called the National Intellectual Property Management Office (NIPMO).
- (j) NIPMO’s main functions will be to—
 - (i) record declarations of intellectual property by recipients of public funds for research and development;
 - (ii) track the registration of intellectual property emanating from public financed research and development and intellectual property transactions in respect of intellectual property derived from publicly financed research;
 - (iii) assist institutions in establishing institutional arrangements;
 - (iv) operate an intellectual property fund for supporting the protection of intellectual property; and
 - (v) assess intellectual property transactions which are concluded outside the Republic.

3. DEPARTMENTS/INSTITUTIONS/BODIES CONSULTED

- 3.1 **Departments of:** Education; Trade and Industry; Health; Minerals and Energy; Agriculture; Public Enterprise; Arts and Culture.
- 3.2 **Other government:** FOSAD Economic Cluster.
- 3.3 **Science Councils, members of COHORT, and higher education institutions:** Medical Research Council, Council for Scientific and Industrial Research, Human Sciences Research Council, Mintek; National Advisory Council on Innovation, University of the Witwatersrand, Nelson Mandela Metropolitan University, North West University, Higher Education South Africa (HESA); Centre for Educational Technology (University of Cape Town), University of Cape Town, University of Pretoria, University of the Western Cape, University of Johannesburg, University of Stellenbosch, Tshwane University of Technology, Water Research Commission, North-West University, National Research Foundation, University of Johannesburg, Deputy Vice-Chancellors Forum and University of KwaZulu-Natal.
- 3.4 **State-owned enterprises and public bodies:** South African Nuclear Energy Corporation, Eskom and Pebble-Bed Modular Reactor.
- 3.5 **Industry and private sector bodies, law firms and networking bodies:** South African Research and Innovation Management Association, Licensing Executives Society of South Africa, South African Institute of Intellectual Property Lawyers, Bouwers Inc. (representing Anglo Platinum and Anglo Operations Limited), DM Kisch Inc., Gaby Gess Attorneys, SAPPI, Intellectual Property Group—Sasol Technology (Pty) Ltd, Adams & Adams Attorneys, Carlo Scollo Lavizzari Attorneys, Venture Solutions, Aids Law Project, Maxum Business Incubator at the Innovation Hub, AfricaBio, DNAbiotec, African Centre for Biosafety, Freedom to Innovate South Africa, African Commons Project (iCommons), Aids Law Clinic.
- 3.6 **International experts and institutions consulted as part of international benchmarking exercise:** Natural Sciences and Engineering Research Council of Canada (Ottawa, Canada), Management Solutions Inc. (Ottawa, Canada), MaRS Centre (Toronto, Canada), Aggregate Therapeutics Inc (Toronto, Canada), Ontario Society for Excellence in Technology Transfer, (Toronto, Canada), McMaster University and C4 Network (Canada), Borden Ladner Gervais LLP (Ottawa, Canada), Wisconsin Alumni Research Foundation (USA), National Institute of Health (Maryland, USA), Emory University (Atlanta, Georgia, USA), Council on Governmental Relations, an Association of Research Universities (USA), Joe Allen from Allen & Associates, Inc, (USA), Marcel Mongeon (Mongeon Consulting, Canada), Prof. Prabuddha Ganguli (Vision-IPR, India), Dr Todd Sherer (Associate Vice President and Director: Office of Technology Transfer, Emory University, USA), Dr Adi Paterson (General Manager: PBMR, South Africa).

4. Implication for provinces

None

5. Financial Implications

- 5.1 **Intellectual Property Fund:** The Bill requires that institutions protect intellectual property emanating from publicly financed research and development. In this regard, there will be costs associated with obtaining this protection. At present, the Patent Support Fund established by the Department of Science and Technology under its instrument, the Innovation Fund, provides subsidies to institutions for this purpose. The Patent Support Fund will form the basis of the dedicated fund as proposed in the Bill. It is envisaged that with the enactment of the Bill, there will in time be increased

patenting activities and thus there will be a need to adequately capitalise this fund.

5.2 Institutional Arrangements and Capacity Development:

- 5.2.1 NIPMO will need to assist institutions in developing appropriate capacities to effectively manage and commercialise intellectual property developed with public funds. In the first instance, there will be harmonisation of existing capacity development initiatives in this area.
- 5.2.2 In addition, the establishment of capacity for NIPMO will also require additional funding.
- 5.2.3 Some support with the establishment of intellectual property management offices in the form of designated Offices of Technology Transfer at some institutions will need to be provided by NIPMO, on a case by case basis, based on intensity of research activity and national interest.
- 5.3 An initial budget of R90 million over a three year period is estimated for the activities set out in 5.1 and 5.2 above.

6. Parliamentary procedure

The State Law Advisers and the Department of Science and Technology are of the view that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution, since it contains no provisions to which the procedure set out in section 74 or 76 of the Constitution applies. The State Law Advisers are of the opinion that it is not necessary to refer the Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions relating to customary law or customs of traditional communities.
