

**SENATE ECONOMICS LEGISLATION COMMITTEE**

**PUBLIC HEARING**

**TAX LAWS AMENDMENT (RESEARCH AND DEVELOPMENT) BILL 2010**

**INCOME TAX RATES AMENDMENT (RESEARCH AND DEVELOPMENT)  
BILL 2010**

**JOINT SUBMISSION**

**THE TREASURY**

**DEPARTMENT OF INNOVATION, INDUSTRY, SCIENCE AND RESEARCH**

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## **OPENING STATEMENT TO THE SENATE ECONOMICS LEGISLATION COMMITTEE**

### **Tax Laws Amendment (Research and Development) Bill 2010**

#### **The Treasury and the Department of Innovation, Industry, Science and Research**

Madame Chair, in these opening remarks we wish to give the Committee a brief overview of the Bill.

The Bill refocuses the tax incentive for R&D. Its over-arching aims are to increase base support for all R&D companies, to encourage more small and medium-sized companies to do R&D and to secure productivity growth, economic activity and skilled jobs.

The reforms are consistent with the recommendations of the 2008 review of the National Innovation System and the Government's policy response, Powering Ideas — its 10 year innovation agenda. Since the announcement of the R&D tax incentive in the 2009-10 Budget, the Government has conducted three rounds of public consultation, considered 383 written submissions and met with 550 stakeholders at public forums.

The tax incentive is expected to induce more R&D for a number of reasons: it tilts support to small and medium-sized businesses, it makes cash refunds available to more firms, it is simpler and more predictable than the current concession and it increases certainty by decoupling support from the corporate tax rate

Contrary to some public commentary, the Bill recognises that R&D is often done alongside business-as-usual production activities. It does not skew the tax incentive towards pure research or, as some commentary has suggested, reward only R&D that fails!

The first policy change effected by this Bill is that the rates of support are being significantly increased.

The current law works by offering a deduction against the taxable income of companies of 125 per cent of annual R&D expenditure or 175 per cent of incremental R&D expenditure. There is also a refundable tax offset for R&D undertaken by smaller companies with an annual turnover of less than \$5 million and R&D expenditure not greater than \$2 million. The current law also requires that any intellectual property arising from publicly supported R&D be held in Australia (except in relation to multinational entities that are entitled to claim the 175 per cent deduction).

This Bill increases those rates. A refundable tax offset at the rate of 45 per cent will be available for companies with a turnover of less than \$20 million, without any restriction on the size of their R&D expenditure. This is a doubling of the existing benefit and is equivalent to providing a tax deduction for 150 per cent of R&D expenditure at the current company rate of 30 per cent. A non-refundable tax offset of 40 per cent will be available for all other companies. This is equivalent to a deduction of 133 per cent of R&D expenditure at the current company tax rate, increasing current levels of support by one third.

For business with a turnover of less than \$20 million the benefit will be of practical value even if the company is in tax loss. This is very important for cash starved small businesses or businesses in a start up situation.

There will no longer be a requirement for the resulting intellectual property to be held in Australia. Access to the R&D tax offset has been expanded to include foreign-owned companies operating in Australia that hold their intellectual property offshore. The amount firms can claim under the R&D

tax offset for eligible R&D conducted overseas, if this R&D cannot be undertaken in Australia, has been increased from 10% to 50% of the value of the R&D project undertaken in Australia.

A second change brought about by the Bill is the definition of Core R&D. The definition in this Bill focuses more clearly on underlying experimental activities, and does so in plainer language.

Under the current law, Core R&D activities are experimental activities that are systematic and investigative; involve appreciable novelty or high levels of technical risk; and are conducted for the purpose of acquiring new knowledge or information or creating new or improved materials, products, devices, processes or services.

Activities involve high levels of technical risk if:

- the probability of obtaining a given technical or scientific outcome from the activities cannot be known or determined in advance on the basis of current knowledge, information or experience;
- the uncertainty of obtaining that outcome can only be removed by applying scientific method, in a systematic progression of work, from hypothesis to experiment, observation and evaluation, followed by logical conclusions; and
- that work is based on principles of physical, biological, chemical, medical, engineering or computer sciences.

This definition is problematic. There are multiple overlapping tests and qualifications applied to the basic concept and the plain meaning of words used is not always borne out or supported by the statutory definition. As one example, the statutory definition of ‘high levels of technical risk’ refers simply to unknown probabilities (whether high or low). Something with a *known* high probability of failure would fail the test on the literal words of the definition, whereas something with very little actual risk that had a technically unknown probability of success would pass.

This Bill streamlines the definition of Core R&D to remove these and other contradictions and improve certainty. Under the Bill, core R&D activities are experimental activities:

- Whose outcome cannot be known or determined in advance on the basis of current knowledge, information or experience, but can only be determined by applying a systematic progression of work that
  - : Is based on principles of established science, and
  - : Proceeds from hypothesis to experiment, observation and evaluation, and leads to logical conclusions, and
- That are conducted for the purpose of generating new knowledge (including about the creation of new or improved materials, products, devices, processes or services).

Some stakeholders have claimed that this re-worked definition would skew public financial support toward theoretical research and away from the development of new products or services. This is not the case. Although the rewording highlights the purpose of new knowledge, it is clear that that knowledge can be in the practical form of developing new or improved products, processes etcetera.

It has also been put that, if an Australian company could not access knowledge about a product owned by another company and it sought to bridge that knowledge gap through its own R&D, it

may be denied the tax incentive since it might be argued that its own R&D is not generating new knowledge. Consequently, the argument goes that the Australian company would be not be able to claim R&D support for that new product.

Such an interpretation is not warranted. It ignores the fact that knowledge that is not accessible cannot logically form the benchmark from which the generation of new knowledge can be measured. Almost certainly, if the new knowledge is not available to the Australian company it will also not be generally available. This is clearly stated and explained at paragraph 2.16 of the Explanatory Memorandum to the Bill. R&D to generate knowledge that is not generally available would clearly be sufficiently new. This is illustrated in example 2.9 (*Grandheap Mining*) of the Explanatory Memorandum, in which a firm satisfies the test when it 'undertakes reasonable inquiries' about how ground vibration sensors used for vulcanology might be applied to a mining context. In any case, under the current law, the concept of new knowledge already exists and, moreover, the particular activities may need to involve 'appreciable' novelty, a concept that overlays a further element of degree and subjectivity.

The effect of the knowledge test is to avoid subsidising activities that merely amount to 're-inventing the wheel' or that merely address routine uncertainty in using the knowledge gained from R&D.

An important policy change in this Bill is that supporting R&D is connected more tightly to Core R&D.

The current law defines supporting R&D as 'other activities that are carried on for a purpose directly related to the carrying on of [Core R&D] activities'.

The Bill defines supporting R&D activities as activities directly related to Core R&D activities. However, if a supporting activity is one that is on the exclusions list, produces goods or services; or is directly related to producing goods or services, that supporting activity will qualify for the R&D tax incentive only if it is undertaken for the dominant purpose of supporting Core R&D activities.

The key task of the dominant purpose test for any supporting and excluded activities is to prevent activities that would be conducted regardless of core R&D activities being leveraged off them so as to qualify for the tax incentive. That is, the R&D tax incentive should not cross-subsidise production activities that the experiment is merely 'piggybacking' on.

Another change in this Bill is that the number of activities expressly excluded from Core R&D has been reduced by about half.

Fourteen activities are currently listed as excluded from core R&D activities.

The Bill reduces this list down to seven of these activities, plus a 'software' exclusion, thus halving the number of activities automatically disqualified from Core R&D.

This Bill also makes a change to the restrictions on the ability of software to qualify as core R&D.

Under the current law, the development of computer software by an R&D entity is not core R&D unless the computer software is developed for the purpose, or for purposes that include the purpose, of sale, rent, licences, hire or lease to 2 or more non-associates of the company.

The Bill instead excludes from being core R&D those activities developing, modifying or customising computer software for the dominant purpose of use by the developer or an affiliate for their internal administration.

An issue raised in some submissions is the wording of the objects clause.

The objects clause in the current law provides a general statement of the intent of the law *to provide a tax incentive, in the form of a deduction, to encourage R&D activities in Australia and increase commercial competitiveness.*

The Bill's objects clause describes the essence of R&D, namely to encourage industry to conduct research and development:

- that might otherwise not be conducted because of an uncertain return from the activities
- in cases where the knowledge gained is likely to benefit the wider Australian economy.

This object is stated to be achieved by providing a tax incentive for industry to conduct, in a scientific way, experimental activities for the purpose of generating new knowledge or information in either a general or applied form. In this way the object and the operative provisions are aligned and entirely consistent.

The effect of the existing feedstock provisions is retained in this Bill.

The feedstock provisions in the Bill have the same scope as the existing law. For ease of use the Bill consolidates all the existing feedstock rules in one subdivision and changes the form of the new feedstock adjustment to that of an increase in assessable income, rather than a reduction in the R&D offset.

The new mechanism overcomes several technical flaws in the existing rule that can disadvantage taxpayers and avoids the need to put a value on outputs at the end of each year that are not yet in a marketable state.

Finally, enhanced administration will promote certainty without adding to compliance cost.

The Government has allocated \$31 million to AusIndustry and \$7 million to the ATO to improve administration of the tax incentive, and particularly to help taxpayers to understand and comply with the Bill. This will reduce compliance costs and increase certainty for taxpayers. In particular:

- AusIndustry will provide greater certainty to taxpayers through more extensive advice and guidance, in the form of public findings or rulings, more sector specific guidance and private binding rulings available on request; and
- AusIndustry will conduct more timely and informed audits. Better information through registration will allow more targeted audit activity based on risk, as will closer cooperation between AusIndustry and the ATO.

Transitional costs for taxpayers due to the change will decline over time. The new law is clearer and much shorter than the current law — when consolidated the income tax provisions will occupy only about one-third of the current number of pages of law. The new Industry Research and Development provisions are just under 70% of the corresponding existing law. Significantly, unlike the unlimited period for amending income tax assessments under the existing law, the Bill limits the amendment period to four years.

The Bill includes application, savings and transitional rules that set out the basis on which the new law will apply and ensure a smooth transition from the existing law to the new law. The general result of these rules is that the Bill will apply to expenditure from 1 July 2010 and the old law will

apply to prior expenditure. The Bill also includes some special transitional rules needed to deal effectively with some specific situations that straddle both the existing law and the new law. This provides a clear and logical basis to move to the new law, consistent with that commonly used for measures that are based primarily on expenditure.

That completes our overview of the Bill. We would submit to the Committee that the Bill represents a significant step forward in delivering the tax incentive for R&D, within the Government's Budget goal of being revenue neutral.

For the benefit of the Committee we have prepared commentary in response to several contentions that have been raised by stakeholders during the three rounds of public consultations that have led to this Bill.

The Treasury

Department of Innovation, Industry, Science and Research

20 May 2010

## **GENERAL**

**Contention: The proposed new R&D provisions are more complex than the existing R&D provisions.**

### **Response:**

- The new provisions are substantially simpler, better structured and much shorter than the existing R&D provisions.
  - The new income tax provisions are less than one-third the length of the corresponding provisions in the existing law.
  - The new Industry Research and Development Act 1986 (IR&D Act) provisions are just under 70% of the corresponding existing law.
- Other simplifications in the new provisions include:
  - where practicable, the new law relies on general income tax concepts rather than having specific rules or definitions for R&D; for example prepayments and measuring aggregated turnover of entities;
  - by relying on general rules, it has been possible to leave out some complex detail; for example, the R&D expenditure rule in the new law applies generally whereas the corresponding existing rule has complex subsidiary concepts such as salary expenditure; and
  - some rules have been omitted as necessary, such as the existing statutory requirement to have an R&D plan.
- The new R&D income tax provisions have a clear logical structure, unlike the existing provisions which have been amended on an ad hoc basis over 24 years.

**Contention: The requirement to split core and supporting R&D activities for registration purposes imposes a new compliance burden on business**

### **Response:**

- The requirement to identify both core and supporting activities on registration is not new — it exists currently in section 39J of the IR&D Act. The only difference is that the Bill will expressly require the two types of activities to be clearly separated in the registration form (sections 27A and 27D of the IR&D Act).
- The separation has been introduced to ensure that the R&D tax incentive supports core R&D activity in the first instance. By having supporting activities identified separately, AusIndustry will be able to confirm that their dominant purpose is to support the core activity more easily.
- Where a taxpayer applies to register as a supporting activity something that is in fact a core activity, that should not be a practical concern.
- There could be some transitional compliance costs associated with the separation of supporting from core R&D activities in the early stages of the new tax incentive regime. However, this will eventually dissipate as companies adjust their practices.



- The Government has made important changes to reduce compliance costs under the new tax incentive. These include removing the current statutory requirement for companies to develop, maintain and submit an R&D plan (subsection 73B(2BA) of the Income Tax Assessment Act 1936 (ITAA 1936) and simplifying the benefits available to companies.

**Contention: The dominant purpose test discriminates against R&D that is conducted in a production context**

**Response:**

- The dominant purpose test does not result in R&D conducted in a production context being disadvantaged:
  - Being able to conduct R&D in a production context is an advantage worth far more than any forgone tax incentive.
  - Firms able to do this are at an advantage in comparison to firms unable to ‘piggyback’ their R&D activities.
- The R&D tax incentive focuses assistance on activities that are likely to deliver economy-wide benefits that would not be enjoyed in the absence of public support.
- Supporting activities that would be conducted regardless of the core R&D activities are unlikely to satisfy those criteria.
- Accordingly, a ‘dominant purpose of supporting core R&D’ test applies to supporting activities (subsection 355-30(2) of the ITAA 1997).
  - The test only applies to supporting activities that are production activities (or on the exclusions list), because these are the activities where concerns about leakage of assistance are greatest.
- In both cases, the R&D tax incentive is available for activities that were predominantly undertaken for the purpose of R&D.

**Contention: The start of the incentive should be delayed for a year**

**Response:**

- There is an urgency to passing the R&D tax offset legislation.
- A delay would mean that many taxpayers do not get the substantially increased benefits that the new scheme offers: a doubling of benefits and cash upfront to smaller firms.
- A delay would be a particular problem for a business proposing to start a new R&D project on the basis of those increased benefits.
- It would also delay the better targeting of R&D activities that would benefit the Australian economy.

**Contention: The changes reduce Government funding for business R&D**

**Response:**

- The R&D tax incentive does not “fund” business R&D.
- It is an incentive scheme, not a venture capital scheme.
- The legislation sets the rates for the R&D tax offsets at 40% and 45% (section 355-100 of the ITAA 1997).
- The assistance afforded by those rates should not be increased by applying them to a base that exaggerates an entity’s effective outlay on R&D.

## DEFINITION OF ELIGIBLE R&D ACTIVITIES

**Contention: The proposed changes to the concept of core R&D activities create uncertainty**

**Response:**

- The new definition of *core R&D activities* (in section 355-25 of the ITAA 1997) is more certain than the existing definition. The new definition replaces redundancies, ambiguities, embedded concepts and overlapping tests with a clearer statement of what core R&D activities are.
- The new definition of core R&D activities is **not** doing away with valuable court precedents because there are no court decisions about the current concept of core R&D activities (in paragraph (a) of the definition of *research and development activities* in subsection 73B(1) and subsection 73B(2B) of the ITAA 1936). The court decisions are all about the pre-1996 definition of core R&D activities, which was very different from the existing definition.
- The IR&D Board will also provide greater certainty for taxpayers through more extensive advice and guidance, including advance findings about a particular entity's activities and general public findings about whether activities are core or supporting R&D activities.

**Contention: The new definition effectively requires both novelty AND technical risk, whereas previously one or the other was sufficient**

**Response:**

- The existing criterion of 'high levels of technical risk' requires a knowledge gap that warranted the application of the scientific method (paragraph 73B(2B)(b) of the ITAA 1936).
  - The new law states this requirement more plainly (subsection 355-25(1) of the ITAA 1997).
- The former criterion 'innovation' cross-referred to the ambiguous expression 'appreciable element of novelty' (paragraph 73B(2B)(a) of the ITAA 1936).
  - The new legislation continues to require that R&D be for the purpose of new knowledge (including knowledge embodied in new products etc) (paragraph 355-25(1)(b) of the ITAA 1997).
- The explanatory memorandum (at paragraph 2.18) clarifies that the new knowledge should entail a significantly large step in novelty that a scientific approach is warranted.

**Contention: The proposed new definition of supporting R&D activities introduces a purpose test where none exists currently**

**Response:**

- The *supporting R&D activities* definition (in section 355-30 of the ITAA 1997) replaces a purpose test in paragraph (b) of the current definition of *research & development activities* (in subsection 73B(1) of the *Income Tax Assessment Act 1936*). That existing purpose test applies to all supporting R&D activities.
- The primary test for supporting R&D activities in the Bill is whether an activity is directly related to core R&D activities (subsection 355-30(1)). This test is in similar terms to the test

in the existing law but is expressed without referring to purpose. The Bill also includes (in subsection 355-30(2)) an additional dominant purpose test applying to production activities (and activities that are explicitly precluded from being core R&D activities).

- Business taxpayers and their tax advisers are accustomed to purpose tests because they are prevalent throughout the income tax law. For example, the existing R&D provisions contain more than 40 references to purpose tests of various types whereas the new provisions contain some 16 references.

**Contention: Having both a ‘directly related’ test and a ‘dominant purpose’ test for supporting activities adds to complexity and compliance costs**

**Response:**

- Many firms will only be subject to the ‘directly related’ test, because their supporting R&D activities are neither production activities nor on the exclusions list.
- Where the dominant purpose test does apply, an activity that passes the test of being for the dominant purpose of supporting core R&D will, in most cases, because of that conclusion also clearly be directly related to the core R&D, so the ‘directly related’ test will not impose additional compliance costs.

**Contention: The dominant purpose test shouldn’t apply to activities on the ‘core exclusions list’**

**Response:**

- The Government’s first exposure draft proposed applying the existing exclusions list to supporting activities as well as core R&D activities.
  - There was a view that this had always been the intention and that it had been a drafting anomaly that resulted in the exclusions list only applying to core R&D.
  - Consultations indicated that many were not seeking to claim things on the exclusions list as supporting activities.
- After further review, it was decided that the dominant purpose test for supporting activities (in subsection 355-30(2) of the ITAA 1997) provided a means for appropriately restricting supporting activity claims for items on the exclusions list.
- The scope of the dominant purpose test was also further reviewed.
- The Government accordingly decided to only apply a ‘directly related’ test for supporting activities that were neither on the exclusions list nor production activities (subsection 355-30(1) of the ITAA 1997).
- The exclusions list has also been rationalised in the final bill (subsection 355-25(2) of the ITAA 1997).

## SPECIFIC TECHNICAL ISSUES

### **Contention: The new feedstock rule means that the R&D tax incentive only rewards failed R&D**

#### **Response:**

- The new R&D tax incentive contains a similar feedstock rule (in Subdivision 355-H of the ITAA 1997) to the existing R&D tax concession.
- The feedstock rule appropriately adjusts the extent to which expenditure on goods or materials transformed or processed in R&D activities (along with the cost of energy used in that transformation/processing) can be claimed, to reflect the extent to which those goods, materials and energy costs are recouped through valuable outputs.
- The R&D tax incentive is not intended to 'reward' either success or failure, but to provide an incentive for firms to undertake R&D activities that they might not otherwise have done.
- The prospect that revenue from the sale of outputs from transforming/processing goods or materials might reduce the claim for expenditure on those goods/materials (and related energy) should not be a disincentive to conducting R&D, because the sales revenue must logically be worth far more than the tax offset that it displaces.

### **Contention: In measuring the aggregated turnover of an R&D entity, the special 'grouping' rules in the existing R&D provisions have not been retained**

#### **Response:**

- Yes. For consistency and simplicity the standard definition of *aggregated turnover* in the Income Tax Assessment Act 1997 (ITAA 1997) applies in working out whether an R&D entity has an aggregated turnover of less than \$20 million.
- As part of legislating the new R&D incentive, the R&D provisions have been moved from the Income Tax Assessment Act 1936 to the ITAA 1997. In the ITAA 1997 the concepts of *turnover* and *aggregated turnover* are defined in the small business entity provisions (see Subdivision 328-C of the ITAA 1997) but apply throughout the Act.
- Small business entities are accustomed to using those tests because they use them in determining whether they are eligible for a dozen different tax concessions (listed in subsection 328-10(1)), such as simpler depreciation rules, simplified trading stock rules and the capital gains tax retirement exemption.
- It would be more complex and potentially confusing for taxpayers if, in working out their aggregated turnover, they had to apply a test different from the one they normally use.

**Contention: ‘Grandfathering’ should apply to existing R&D projects for activities that would be disadvantaged under the new rules**

**Response:**

- It would be complex and impractical to attempt to grandfather R&D projects that have already started because:
  - it would be extremely difficult to determine in practice whether an activity is part of the same project, a new project or is an extension of an existing project (and how such extensions should be treated);
  - there would be myriad detailed issues about applying the new law to some activities and the existing law to other activities in the same income year e.g. the treatment of a depreciating asset used on both old and new projects, the treatment of an expenditure related to both an old and new project and whether two sets of registration rules would apply at the same time.
- : These problems would add significantly to the costs of compliance for any taxpayer with projects spanning the old and new regimes.
- Moreover, such uncertainty would allow some taxpayers to claim that a project runs for many years and encompasses all related activities (e.g. a ‘whole of mine’ claim), thus relying on the existing law long after it is repealed; and
- The application and transitional rules in the Bill provide a clear and logical basis to move to the new law, which is commonly used for measures that are based primarily on expenditure. Their general effect is that:
  - the existing R&D provisions apply to expenditure incurred, and the use of depreciating assets, in an income year commencing before 1 July 2010; and
  - the new provisions apply to expenditure incurred, and the use of depreciating assets, in an income year commencing on or after 1 July 2010.
  - In addition, any grandfathering would need to be voluntary, thus introducing even further complexity. Without the voluntary element, many taxpayers, especially smaller entities, would be unable to apply the new law to new R&D depriving them of the more generous benefits under the Bill.

**Contention: The rule about expenditure not at risk should be omitted**

**Response:**

- The ‘expenditure not at risk’ rule (in section 355-405 of the ITAA 1997) is designed to counter arrangements where a company incurs R&D expenditure but knows that it will get its money back. For example, where there is a guaranteed return under a financing arrangement or an indemnity.
  - Expenditure that is not at risk is not eligible for an R&D tax offset but the taxpayer can get a standard deduction (assuming ordinary deduction rules are satisfied).
- This is an important integrity rule that has been in the existing R&D provisions since 1990.

- The new R&D expenditure rule includes a test that the entity reasonably expects to receive the amount of consideration regardless of the results of the activities on which the entity incurs the expenditure (subparagraphs 355-405(1)(a)(ii) and (2)(a)(ii) of the ITAA 1997). This is consistent with the way the Commissioner has administered the existing law about expenditure not at risk.

## **RESEARCH IN A COMMERCIAL OR PRODUCTION ENVIRONMENT**

### **Contention: R&D undertaken in a commercial environment is excluded**

#### **Response:**

- Core R&D may occur in the context of a production activity (section 355-25 of the ITAA 1997).
- In addition, it is open for claimants to demonstrate that directly related production activities are being conducted for the dominant purpose of supporting the experiment (subsection 355-30(2) of the ITAA 1997).
- Whether this is so will depend on the facts.

### **Contention: Experiments on whether something works on a commercial scale are excluded**

#### **Response:**

- It is open for a claimant to demonstrate that the purpose of a production run is to test that an idea is workable on a commercial scale (rather than the 'business as usual' production run being a convenient means of testing the idea).

### **Contention: Production activities are precluded**

#### **Response:**

- Production activities are eligible for the incentive where they are part of the experiment or conducted for the dominant purpose of supporting the experiment. (subsections 355-25(1) and 355-30(2) of the ITAA 1997)
- This is consistent with the objective of focussing assistance on activities that are likely to deliver economy-wide benefits that would not be enjoyed in the absence of public support

### **Contention: The dominant purpose test ignores the extra costs, inefficiencies etc associated with a trial production run**

#### **Response:**

- In considering whether production activities are being conducted for the dominant purpose of supporting an experiment conducted in a production run, regard will be had to factors such as:
  - whether the activities such as monitoring and inspection are more than routine;
  - the extent to which conducting the experiment disrupts normal production practices; or
  - the risk that production outcomes will be significantly compromised (see explanatory Memorandum at paragraph 2.27).



**Contention: The new R&D tax incentive supports the ‘R’ (research) at the expense of the ‘D’ (development)**

**Response:**

- “The Object of [the R&D tax incentive] is to encourage industry to conduct research and development activities that might otherwise not be conducted...” (section 355-5 of the ITAA 1997)
- Eligible core R&D activities include those that experiment with applying existing knowledge to “...the creation of new or improved materials, products, devices, processes or services”. (paragraph 355-25(1)(b) of the ITAA 1997)

## **ADMINISTRATION**

### **Contention: Changes to administrative arrangements**

#### **Response:**

- The Industry Research and Development Board will have better information to conduct its activities, especially risk assessment, as a result of the new registration rules (in Division 2 of Part III of the Industry Research and Development (IR&D) Act) and an increased ability to seek additional information from applicants (section 28H of the IR&D Act).
  - It is intended that the Board, supported by AusIndustry, will conduct its activities on a risk assessment basis, with resources directed towards the high risk end of the spectrum and low/nil risk applicants having minimal interaction with the administrators. In conducting its compliance and review work, the Board will work closely with the ATO.
- The Board will also be able to enhance compliance and certainty through improved advice to taxpayers and their advisers.
  - the Board will be able to make advance findings (binding on the Commissioner of Taxation) about core and supporting R&D activities (Division 3 of Part III of the IR&D Act); and
  - the Board will provide public guidance material in relation to the R&D Tax offset as issues arise with a view to streamlining the administration of the program and reducing uncertainty.

### **Contention: The examples are unrealistic**

#### **Response:**

- The examples are provided to demonstrate to readers of the Bill (including taxpayers, their advisers and administrators) how the provisions work, and the implications of changing facts, rather than to address the circumstances of actual or likely claims by individual claimants.
- Privacy rules limit the scope for using actual claims.
- AusIndustry and the Tax Office will provide guidance material in due course.