



# **Industry Research and Development Act 1986**

**No. 89, 1986**

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## About this compilation

### This compilation

This is a compilation of the *Industry Research and Development Act 1986* that shows the text of the law as amended and in force on 1 July 2016 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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# **An Act to encourage certain research and development**

## **Part I—Preliminary**

### **1 Short title**

This Act may be cited as the *Industry Research and Development Act 1986*.

### **2 Commencement**

This Act shall come into operation on 1 July 1986.

### **3 Object of Act**

The object of this Act is to promote the development, and improve the efficiency and international competitiveness, of Australian industry by encouraging R&D activities, innovation activities and venture capital activities.

### **4 Interpretation**

- (1) In this Act, unless the contrary intention appears:

***appointed member*** means the Chairperson or a member referred to in paragraph 9(1)(c).

***approved form*** has the meaning given by section 32.

***Australia*** has the same meaning as in the *Income Tax Assessment Act 1997*.

***Board*** means Innovation Australia, established by section 6.

***Chairperson*** means the Chairperson of the Board.

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**Commissioner** has the same meaning as in the *Income Tax Assessment Act 1997*.

**committee** means a committee appointed under section 22.

**consolidated group** has the same meaning as in the *Income Tax Assessment Act 1997*.

**constitutional corporation** has the same meaning as in the *Income Tax Assessment Act 1997*.

**core R&D activities** has the same meaning as in the *Income Tax Assessment Act 1997*.

**core technology** has the meaning given by subsection 28E(2).

**decision-making principles** has the meaning given by section 32A.

**entity** has the same meaning as in the *Income Tax Assessment Act 1997*.

**head company** has the same meaning as in the *Income Tax Assessment Act 1997*.

**income year** has the same meaning as in the *Income Tax Assessment Act 1997*.

**internal review decision** has the meaning given by section 30D.

**MEC group** has the same meaning as in the *Income Tax Assessment Act 1997*.

**member** means the Chairperson or another member of the Board.

**PDF** has the same meaning as in the *Pooled Development Funds Act 1992*.

**R&D activities** has the same meaning as in the *Income Tax Assessment Act 1997*.

**R&D entity** has the same meaning as in the *Income Tax Assessment Act 1997*.



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**researcher** means an entity that the Board believes is capable of carrying out a project of R&D activities or innovation activities.

**research field** means a research field specified in regulations made for the purposes of this definition.

**research service provider** means an entity registered under section 29A.

**reviewable decision** has the meaning given by section 30A.

**significant scientific link** has the meaning given by subsection 28D(3).

**subsidiary member** has the same meaning as in the *Income Tax Assessment Act 1997*.

**supporting R&D activities** has the same meaning as in the *Income Tax Assessment Act 1997*.

**technical assessment** means:

- (a) in relation to a proposal for research and development or a proposal for innovation in respect of which an application has been made for the expenditure of Commonwealth money under a program to which Ministerial directions under section 18A apply—an assessment of, and the provision of advice and recommendations concerning:
  - (i) the eligibility of the proposal, and of the applicant, to participate in the program; and
  - (ii) the technical merit of the proposal; and
  - (iii) any other matter specified in the Ministerial directions; and
- (b) in relation to the progress of particular research and development or a particular innovation initiative in respect of which the expenditure of Commonwealth money has been approved under such a program—an assessment of, and the provision of advice and recommendations concerning:
  - (i) the progress of that research and development or of that innovation initiative; and

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- (ii) any other matter specified in the Ministerial directions.
- (5) A researcher shall be deemed for the purposes of this Act to carry out a project if, under an agreement, that project is carried out, for and on behalf of, the researcher.
- (6) A reference in this Act to expenditure incurred or to be incurred by a researcher shall be read as a reference to expenditure incurred or to be incurred by the researcher that, in the opinion of the Board, is reasonable expenditure.
- (8) For the purposes of this Act, the *Pooled Development Funds Act 1992*, the *Venture Capital Act 2002* and any other Act, a person gives information, or produces a document, to the Board if the person gives the information, or produces the document, to:
  - (a) the Board; or
  - (b) a member of the Board; or
  - (c) a committee; or
  - (d) a member of a committee; or
  - (e) a member of the staff assisting the Board or a committee (see section 25); or
  - (f) a consultant assisting the Board or a committee (see section 25).

## 5 Application

This Act extends to every external Territory referred to in the definition of *Australia*.

## Part II—Administration

### 6 Establishment of Innovation Australia

There is established by this section a board by the name of Innovation Australia.

### 7 Functions of Board

The functions of the Board are:

- (aaa) in accordance with Ministerial directions under section 18A or 19—to provide technical assessments to the Minister in relation to:
  - (i) proposals for research and development, or proposals for innovation, under programs to which those directions apply; or
  - (ii) the progress of particular research and development or particular innovation initiatives in respect of which the expenditure of Commonwealth money has been approved under such programs; and
- (a) such functions as are conferred on it by a provision of this Act (other than this section); and
- (b) to evaluate, and to advise the Minister about, the operation of this Act, the *Pooled Development Funds Act 1992* and the *Venture Capital Act 2002*, and the Commonwealth's income tax laws as they operate in relation to those Acts; and
- (c) such functions as are conferred on it by the *Pooled Development Funds Act 1992*, the *Venture Capital Act 2002* or any other Act; and
- (ca) to give information it obtains under Part 2, 3 or 4 of the *Venture Capital Act 2002* to the Commissioner for the purposes of implementing and administering the taxation law (within the meaning of the *Taxation Administration Act 1953*); and

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- (d) any functions specified in a direction in force under section 19.

## 8 Powers of Board

The Board has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

## 9 Constitution of Board

- (1) The Board shall consist of:
  - (a) a Chairperson;
  - (b) where the Minister considers it appropriate—the person who, at any time, is performing the duties of an office or position in the Australian Public Service that is designated by the Minister, by notice in writing published in the *Gazette*, for the purposes of this paragraph; and
  - (c) not less than 4, or more than 13, other members.
- (2) The appointed members shall be appointed by the Governor-General in writing.
- (3) The appointed members shall be appointed as part-time members.
- (4) A member holds office on such terms and conditions (in respect of matters not provided for by this Act) as are determined by the Minister in writing.
- (5) The performance of the functions or the exercise of the powers of the Board is not affected by a vacancy in the office of Chairperson or because the number of members referred to in paragraph (1)(c) falls below 4 for not longer than 6 months.

## 10 Period of appointment of members

- (1) Subject to this Act, an appointed member holds office for such period, not exceeding 3 years, as is specified in the instrument of the member's appointment, but he or she is eligible for re-appointment.

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- (2) A person must not be appointed as an appointed member if the person has, at any time before that appointment, served 2 consecutive terms as a member of the Board (whether or not either or both of those terms commenced or ended before the commencement of this subsection).
- (3) Before the Governor-General appoints a person as an appointed member for a particular period, the Minister must be satisfied that appointing the member for that period would be appropriate, having regard to the desirability of ensuring, if practicable, that the periods for which the appointed members are appointed do not all end at the same time.

**11 Duties of Chairperson**

It is the duty of the Chairperson to ensure the efficient and orderly conduct of the business of the Board, and for that purpose, the Chairperson:

- (a) must make, or cause to be made, such inquiries as the Chairperson thinks necessary into:
  - (i) applications made under this Act, the *Pooled Development Funds Act 1992* or the *Venture Capital Act 2002*; or
  - (ii) any other matter relevant to the operation of this Act, the *Pooled Development Funds Act 1992* or the *Venture Capital Act 2002*; and
- (b) may make, or cause to be made, to the Board such reports in relation to those applications as the Chairperson thinks fit; and
- (c) may determine the form of the records to be kept by the Board.

**12 Remuneration and allowances**

- (1) The appointed members shall be paid:
  - (a) such remuneration as is determined by the Remuneration Tribunal; and

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- (b) such allowances as are prescribed.
- (2) This section has effect subject to the *Remuneration Tribunal Act 1973*.

### 13 Leave of absence

- (1) The Minister may grant leave to the Chairperson to be absent from a meeting or meetings of the Board.
- (2) The Chairperson may grant leave to another member to be absent from a meeting or meetings of the Board.

### 14 Resignation

The Chairperson or another appointed member may resign the office of Chairperson or member, as the case may be, by writing signed by him or her and delivered to the Governor-General.

### 15 Termination of appointment

- (1) The Governor-General may terminate the appointment of an appointed member:
  - (a) for misbehaviour; or
  - (b) for physical or mental incapacity.
- (2) If an appointed member:
  - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
  - (b) fails, without reasonable excuse, to comply with the member's obligations under section 16; or
  - (c) is absent from 3 consecutive meetings of the Board otherwise than:
    - (i) on business of the Board undertaken with the approval of the Board or of a committee; or

- (ii) on leave of absence granted under section 13;  
the Governor-General shall remove the member from office.

## **16 Disclosure of interests by members of Board**

- (1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Board shall, as soon as possible after the relevant facts have come to the knowledge of the member, disclose the nature of that interest at a meeting of the Board.
- (2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting of the Board and the member shall not, unless the Minister or the Board otherwise determines:
  - (a) be present during any deliberation of the Board with respect to that matter; or
  - (b) take part in any decision of the Board with respect to that matter.
- (3) For the purpose of the making of a determination by the Board under subsection (2) in relation to a member who has made a disclosure under subsection (1), a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not:
  - (a) be present during any deliberation of the Board for the purpose of making the determination; or
  - (b) take part in the making by the Board of the determination.

## **17 Acting appointments**

- (1) The Minister may appoint a member or other person to act as Chairperson:
  - (a) during a vacancy in the office of Chairperson, whether or not an appointment has previously been made to the office; or

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- (b) during any period, or during all periods, when the Chairperson is absent from Australia or is, for any other reason, unable to perform the duties of the office of Chairperson;

but a person so appointed shall not continue so to act for more than 12 months.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

- (2) Where the number of members referred to in paragraph 9(1)(c) is less than 10, the Minister may appoint a person who is not a member to act as a member, but a person so appointed shall not continue so to act:

- (a) if and after the number of those members ceases to be less than 10; or
- (b) for longer than 12 months.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

- (3) The Minister may appoint a person who is not a member to act in the place of a member referred to in paragraph 9(1)(c) during any period, or during all periods, when the member is acting as Chairperson, is absent from Australia or is, for any other reason, unable to perform the duties of the office of member, but a person so appointed shall not continue so to act for longer than 12 months.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

## 18 Meetings of Board

- (1) The Board shall hold such meetings as are necessary for the efficient performance of its functions.
- (2) The Chairperson:
  - (a) may, at any time, convene a meeting of the Board; and
  - (b) shall, if directed by the Minister to convene a meeting of the Board, convene a meeting of the Board.



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- (3) The Chairperson shall preside at all meetings of the Board at which he or she is present.
- (4) If the Chairperson is not present at a meeting of the Board, the members present at the meeting shall elect one of their number to preside at the meeting.
- (5) At a meeting of the Board, 4 members constitute a quorum.
- (6) Questions arising at a meeting of the Board shall be determined by a majority of the votes of the members present and voting and:
  - (a) if the Chairperson is present—the Chairperson has a deliberative vote and, in the case of an equality of votes, also has a casting vote; or
  - (b) if the Chairperson is not present and a question arising at the meeting cannot be determined by a majority of the votes of the members present and voting—the question shall be deferred to a meeting at which the Chairperson is present.
- (7) The Board shall cause minutes of its meetings to be kept.

**18A Minister may give directions concerning the provision of technical assessments**

- (1) The Minister may, in relation to any program relating to research and development matters or innovation matters that is administered by the Department, by notice in writing delivered to the Chairperson, give directions to the Board concerning the provision to the Minister of technical assessments:
  - (a) of proposals for research and development, or proposals for innovation, under that program; and
  - (b) of the progress of research and development, or innovation, in respect of which the expenditure of Commonwealth money has been approved under that program.
- (2) Without limiting the generality of subsection (1), Ministerial directions that the Board provide a technical assessment of a research and development proposal, or an innovation proposal, may include a requirement that the Board consider and report to

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the Minister on whether the proposal is likely to lead to results that can be exploited on normal commercial terms or will otherwise benefit the Australian economy.

### 19 Additional functions of Board

The Minister may, by notice in writing delivered to the Chairperson and expressed to be given under this section, give directions to the Board that a function specified in the directions, being a function relating to the object of this Act, the *Pooled Development Funds Act 1992* or the *Venture Capital Act 2002*, is an additional function of the Board.

#### 19A General provisions concerning direction powers under sections 18A and 19

- (1) For the avoidance of doubt, a direction given to the Board after the commencement of this section under section 18A or 19 must not confer a function on the Board to commit, authorise or recommend the expenditure of Commonwealth money.
- (2) The Minister must publish in the *Gazette* any direction under section 18A or 19 or any revocation of such a direction.

#### 19B Minister may require provision of advice

- (1) The Minister may, by writing given to the Board, require the Board to advise the Minister about a matter connected with the operation of:
  - (a) this Act, the *Pooled Development Funds Act 1992* or the *Venture Capital Act 2002*; or
  - (b) the Commonwealth's income tax laws as they operate in relation to this Act, the *Pooled Development Funds Act 1992* or the *Venture Capital Act 2002*.
- (2) The Board must comply with such a requirement.
- (3) A requirement made under subsection (1) is not a legislative instrument.

**20 Directions for policies and practices of Board**

- (1) The Minister may, from time to time, by notice in writing delivered to the Chairperson and expressed to be given under this section, give directions to the Board with respect to the policies and practices to be followed by the Board in the performance of its functions and the exercise of its powers, and the Board shall comply with any such directions that are in force.
- (2) Subject to subsection (2A), the Minister must not give directions under subsection (1) unless and until the Minister:
  - (a) has given the Chairperson:
    - (i) particulars in writing of the proposed directions; and
    - (ii) an invitation to the Board in writing to give the Minister, within a time specified in the invitation, any comments in writing which the Board wishes to give in relation to the proposed directions; and
  - (b) has considered any comments given in response to that invitation.
- (2A) Subsection (2) does not apply if the directions are given in accordance with a request made by the Board.
- (3) The Minister shall forthwith cause to be published in the *Gazette* particulars of any directions given under subsection (1) and of any revocation of any such directions.
- (4) Subsection (1) does not empower the Minister to direct that the Board perform any of its functions, or exercise any of its powers, in a particular way in a particular case.

**20A Minister may give advice to Board or committee**

- (1) The Minister may give advice to the Board, or to a committee, on any matter that relates, directly or indirectly, to the performance of any of the Board's functions.

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- (2) The advice is to be in writing, delivered to the Chairperson of the Board or of the committee, as the case may be, and is to be expressed to be given under this section.
- (3) The advice must not relate to a particular person.
- (4) The Board or committee must consider the advice at its first meeting after the advice is received, but the Board or committee is not required to act in accordance with the advice.

### 21 Delegation by Board

- (1) The Board may, by resolution, delegate to the Chairperson, another member or a member of the staff assisting the Board, all or any of its functions and powers, other than its functions or powers:
  - (a) for PDFs—to make or revoke registration declarations under the *Pooled Development Funds Act 1992*; and
  - (b) to register entities or revoke registration under Part 7A of the *Pooled Development Funds Act 1992*; and
  - (c) to register limited partnerships as VCLPs, ESVCLPs or AFOFs or revoke registration under Part 2 of the *Venture Capital Act 2002*; and
  - (d) to approve ESVCLPs' investment plans, and their replacement plans, under Part 2 of the *Venture Capital Act 2002*; and
  - (e) to register entities as eligible venture capital investors or revoke registration under Part 3 of the *Venture Capital Act 2002*; and
  - (f) to make determinations under Part 4 of the *Venture Capital Act 2002*.
- (2) The Board may, by resolution, delegate to a committee all or any of its functions and powers (including those referred to in paragraphs (1)(a) to (f)).
- (3) A delegation of a function or power under this section:

- (a) may be revoked by a resolution of the Board (whether or not constituted by the persons constituting the Board at the time the function or power was delegated); and
  - (c) continues in force notwithstanding a change in the membership of the Board.
- (4) Section 34A of the *Acts Interpretation Act 1901* applies in relation to a delegation under this section as if the Board were a person.
- (5) A certificate signed by the Chairperson stating any matter with respect to a delegation of a function or power under this section is evidence of that matter unless evidence to the contrary is given.
- (6) A document purporting to be a certificate mentioned in subsection (5) shall, unless the contrary is established, be deemed to be such a certificate and to have been duly given.

## **22 Committees**

- (1) The Minister may, from time to time, by notice in writing published in the *Gazette*, appoint such committees as the Minister considers necessary for providing advice to the Board on matters relating to the operation of this Act, the *Pooled Development Funds Act 1992* or the *Venture Capital Act 2002*.
- (1A) In addition to providing advice to the Board as mentioned in subsection (1), a committee may exercise any functions or powers delegated to it by the Board under subsection 21(2).
- (2) A committee shall consist of not more than 7 members (who may include a member or members of the Board) who shall be appointed by the Minister in accordance with subsections (2A), (2B), (2BA) and (2C) and shall hold office, for the periods for which they are appointed, during the pleasure of the Minister.
- (2A) A member of a committee is to be appointed for a particular period, not exceeding 3 years, determined by the Minister.
- (2B) A person must not be appointed as a member of a committee if the person has, at any time before that appointment, served 2

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consecutive terms as a member of the committee (whether or not either or both of those terms commenced or ended before the commencement of this subsection).

- (2BA) Despite subsection (2B), a person may be appointed as a member of a committee for no more than 2 further consecutive terms if:
- (a) during the previous 2 consecutive terms the person was not the Chairperson of the committee; and
  - (b) the person will be the Chairperson of the committee in those further terms.
- (2C) Before the Minister appoints a person as a member of a committee for a particular period, the Minister must be satisfied that appointing the member for that period would be appropriate, having regard to the desirability of ensuring, if practicable, that the periods for which the committee members are appointed do not all end at the same time.
- (3) The Minister may appoint a member of a committee to be the Chairperson of the committee.
- (4) Where the Minister notifies a committee that he or she does not propose to appoint a Chairperson of the committee under subsection (3), the committee shall elect a member of the committee to be the Chairperson of the committee.
- (5) A member of a committee shall hold office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Minister.
- (6) A member of a committee may resign by writing signed by the member and delivered to the Minister.
- (7) The Board may refer to a committee for advice any matter relating to the operation of this Act, the *Pooled Development Funds Act 1992* or the *Venture Capital Act 2002*.
- (8) A committee shall cause minutes of its meetings to be kept.

**22A Delegation by committee**

- (1) A committee may, by resolution, delegate to a member of the committee or to a member of the staff assisting the committee all or any of its functions and powers (including a function or power delegated to the committee by the Board under subsection 21(2), despite paragraph 34AB(1)(b) of the *Acts Interpretation Act 1901*).
- (1A) However, a committee must not delegate a function or power that:
  - (a) is referred to in paragraph 21(1)(a), (b), (c), (d), (e) or (f); and
  - (b) was delegated to the committee by the Board under subsection 21(2).
- (2) A delegation of a function or power under this section:
  - (a) may be revoked by a resolution of the committee (whether or not constituted by the persons constituting the committee when the function or power was delegated); and
  - (b) continues in force notwithstanding a change in the membership of the committee.
- (3) A certificate signed by the Chairperson of a committee stating any matter with respect to a delegation of a function or power under this section is evidence of that matter unless evidence to the contrary is given.
- (4) A document purporting to be a certificate mentioned in subsection (3) shall, unless the contrary is established, be taken to be such a certificate and to have been duly given.

**23 Directions of Board to committees**

- (1) The Board may, from time to time, give directions with respect to:
  - (a) the matters to be taken into account by a committee in giving advice in relation to a matter or matters; or
  - (b) the practices to be followed by the committee in the performance of its functions.

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- (2) Directions under subsection (1) shall be in writing and shall be given to the Chairperson of the committee to which the directions are given.
- (3) The Board shall not give directions to a committee under subsection (1) unless and until the Board:
  - (a) has given to the Chairperson of the committee:
    - (i) particulars in writing of the proposed directions; and
    - (ii) an invitation to the Committee in writing to give the Board, within a time specified in the invitation, any comments in writing which the committee wishes to give in relation to the proposed directions; and
  - (b) has considered any comments given in response to the invitation.
- (4) The Board shall forthwith cause to be published in the *Gazette* particulars of any directions given under subsection (1) and of any revocation of any such directions.

### 24 Disclosure of interests by members of committees

- (1) A member of a committee who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the committee shall, as soon as possible after the relevant facts have come to the knowledge of the member, disclose the nature of that interest at a meeting of the committee.
- (2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting of the committee and a member of a committee shall not, unless the Minister or the committee otherwise determines:
  - (a) be present during any deliberation of the committee with respect to that matter; or
  - (b) take part in any decision of the committee with respect to that matter.
- (3) For the purpose of the making of a determination by the committee under subsection (2) in relation to a member of a committee who



has made a disclosure under subsection (1), a member of a committee who has a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not:

- (a) be present during any deliberation of the committee for the purpose of making the determination; or
- (b) take part in the making by the committee of the determination.

## **25 Staff, consultants etc.**

- (1) The staff required to assist the Board and committees in the performance of their functions shall be persons engaged under the *Public Service Act 1999*.
- (2) The Board and committees may also be assisted by consultants, or other persons, engaged by the Commonwealth.

## Part III—Functions relating to the R&D tax offset

### Division 1—Introduction

#### 26 Objects

The objects of this Part are:

- (a) to provide integrity for the working out of tax offsets under Division 355 (about R&D) of the *Income Tax Assessment Act 1997*; and
- (b) to increase certainty through findings about matters relevant to the working out of those tax offsets; and
- (c) to improve access for small and medium R&D entities to quality research services by maintaining a register of research service providers.

Note: The integrity mentioned in paragraph (a) is provided, for example, by:

- (a) the Board registering entities seeking these tax offsets; and
- (b) the Board conducting compliance checks on those entities.

#### 26A Simplified outline

The following is a simplified outline of this Part:

- The Board may, on application by an R&D entity, register the R&D entity for R&D activities. This registration is needed before the R&D entity can be entitled to a tax offset (an ***R&D tax offset***) under Division 355 of the *Income Tax Assessment Act 1997* for the R&D activities.
- The R&D entity can seek an advance finding to get early notice about whether an activity is considered to be an R&D activity.
- The R&D entity can seek a finding that an activity cannot be conducted in Australia. The finding is needed before

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expenditure incurred on the activity can count towards an R&D tax offset.

- The Board may register entities as research service providers capable of providing research services to R&D entities.
- Internal and external review can be sought for certain decisions under this Part.

## **Division 2—Registering for the R&D tax offset**

### **Subdivision A—Introduction**

#### **27 Simplified outline**

The following is a simplified outline of this Division:

- The Board may register an R&D entity for R&D activities conducted during an income year.
- The Board may make findings about the nature of an R&D entity's activities both before and after registration. This includes findings made on application by the R&D entity after registration.
- These findings bind the Commissioner for the purposes of any entitlement of the R&D entity to a tax offset under Division 355 of the *Income Tax Assessment Act 1997* for the activities.
- The Board will register an R&D entity's activities consistently with any findings made about the entity's application. Any findings made about these activities after registration will, if necessary, automatically vary the entity's registration.
- Registrations can also be varied and revoked.

### **Subdivision B—Registering R&D entities for R&D activities**

#### **27A Registering R&D entities for R&D activities**

- (1) The Board must, on application by an R&D entity, decide whether to register or refuse to register the entity for either or both of the following for an income year:

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- (a) one or more specified activities as core R&D activities conducted during the income year;
- (b) one or more specified activities as supporting R&D activities conducted during the income year.

Note 1: A decision under this subsection is reviewable (see Division 5).

Note 2: For requirements of applications, see section 27D.

- (2) If the Board decides under subsection (1) to register the R&D entity, the Board must do so consistently with:
  - (a) any findings already in force under subsection 27B(1) in relation to the application; and
  - (b) any findings already in force under subsection 28A(1) (advance findings about the nature of activities) in relation to the R&D entity.
- (3) For each activity registered under subsection (1) as a supporting R&D activity for an R&D entity for an income year, the registration is to also specify:
  - (a) one or more activities as the corresponding core R&D activities; and
  - (b) if any of those activities specified as a core R&D activity is not registered under paragraph (1)(a) for the R&D entity for the income year—each income year for which that core R&D activity:
    - (i) was registered under paragraph (1)(a) for the R&D entity; or
    - (ii) is proposed to be registered under paragraph (1)(a) for the R&D entity.

### **27B Findings about applications for registration**

- (1) The Board may make one or more findings to the following effect when considering an R&D entity's application for the purposes of subsection 27A(1):
  - (a) that all or part of an activity mentioned in the application was a core R&D activity conducted during the income year;

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- (b) that all or part of an activity mentioned in the application was not an activity of a kind covered by paragraph (a);
- (c) that all or part of an activity mentioned in the application was a supporting R&D activity conducted:
  - (i) during the income year; and
  - (ii) in relation to one or more specified core R&D activities for which the entity has been or could be registered under section 27A for an income year;
- (d) that all or part of an activity mentioned in the application was not an activity of a kind covered by paragraph (c).

Note 1: A finding is reviewable (see Division 5).

Note 2: The Board could make a finding under paragraph (b) if, for example, the Board has insufficient information to make a finding under paragraph (a). Similarly, the Board could make a finding under paragraph (d) if it has insufficient information to make a finding under paragraph (c).

Note 3: The Board may also make findings after registration (see subsection 27J(1)).

- (2) If the Board makes a finding under subsection (1) in relation to the R&D entity's application, the Board may specify in the finding the times to which the finding relates.

Example: A finding under paragraph (1)(a) could specify the times during the income year that an activity was a core R&D activity.

- (3) This section has effect subject to section 32B (findings cannot be inconsistent with any earlier findings).

### **27C Notice of decision about registration**

- (1) The Board must notify an applicant in writing of the Board's decision under subsection 27A(1) about the application.
- (2) The notice must include a certificate for each finding (if any) made under subsection 27B(1) for the application. The certificate must set out:
  - (a) a description of the finding; and
  - (b) the Board's reasons for the finding; and

- (c) the activity affected by the finding; and
- (d) the matters (if any) specified in regulations made for the purposes of this paragraph.

The notice and certificate may set out other matters.

Note: The notice could also mention the applicant's right to have the finding reviewed under Division 5 (see section 30B).

- (3) The Board must give the Commissioner a copy of the notice if the notice includes one or more certificates.
- (4) A failure to comply with this section does not affect the validity of the decision or finding.

### **Subdivision C—Applying to register R&D activities**

#### **27D Applying to register R&D activities**

An application to register activities under section 27A for an income year must be:

- (a) in the approved form; and
- (b) accompanied by the fee (if any) specified in regulations made under section 48A for the purposes of this section; and
- (c) made within:
  - (i) 10 months after the end of the income year; or
  - (ii) a further period allowed by the Board in accordance with the decision-making principles.

Note 1: A refusal to allow a further period is reviewable (see Division 5).

Note 2: Section 32 deals with approved forms.

Note 3: Section 32A deals with the decision-making principles.

#### **27E Board may request further information**

- (1) The Board may request the applicant in writing to give specified information, or specified kinds of information, to the Board about the application.

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- (2) The request may be for the information or kinds of information to be given within:
- (a) 30 days after the request was made; or
  - (b) a further period allowed by the Board in accordance with the decision-making principles.

Note 1: A refusal to allow a further period is reviewable (see Division 5).

Note 2: Section 32A deals with the decision-making principles.

Note 3: A failure by the entity to give the information may result in a finding under paragraph 27B(1)(b) or (d).

- (3) The request may be for the information or kinds of information to be given in the approved form.

Note: Section 32 deals with approved forms.

- (4) Subsections (2) and (3) do not limit subsection (1).

**Subdivision D—Examining registrations**

**27F Examining a registration**

- (1) The Board may conduct one or more examinations of all or part of an R&D entity's registration under section 27A for an income year for the purposes of making one or more findings under subsection 27J(1).

Note: A finding under subsection 27J(1) will support the entity's registration, or cause the variation of that registration.

- (2) The Board may examine an R&D entity's registration on its own initiative.

- (3) The Board must examine an R&D entity's registration if:
- (a) requested by the Commissioner; or
  - (b) the R&D entity has applied for one or more findings under subsection 27J(1) about the registration.

Note: A finding under subsection 27J(1) can only bind the Commissioner for the purposes of the R&D entity's income tax assessment for the income year if the finding is made within 4 years after the end of the



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income year (see subsection 355-705(1) of the *Income Tax Assessment Act 1997*).

- (4) If the R&D entity applies for a finding under subsection 27J(1) about the registration, the Board must:
- (a) make one or more findings under subsection 27J(1) about the registration; or
  - (b) if justified in accordance with the decision-making principles—refuse to make a finding under subsection 27J(1) about the registration.

Note 1: The Board may make a finding that differs from that sought by the R&D entity.

Note 2: A finding, or a refusal to make a finding, is reviewable (see Division 5).

Note 3: Section 32A deals with the decision-making principles.

### 27G Applying for findings

An application for one or more findings under subsection 27J(1) must be:

- (a) in the approved form; and
- (b) accompanied by the fee (if any) specified in regulations made under section 48A for the purposes of this section.

Note 1: An application can seek findings for several activities.

Note 2: Section 32 deals with approved forms.

### 27H Board may request information during an examination

- (1) When examining an R&D entity's registration, the Board may request the entity in writing to give specified information, or specified kinds of information, to the Board about the entity's registration.
- (2) The request may be for the information or kinds of information to be given within:
  - (a) 30 days after the request was made; or

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- (b) a further period allowed by the Board in accordance with the decision-making principles.

Note 1: A refusal to allow a further period is reviewable (see Division 5).

Note 2: Section 32A deals with the decision-making principles.

Note 3: A failure by the entity to give the information may result in a finding under paragraph 27J(1)(b) or (d).

- (3) The request may be for the information or kinds of information to be given in the approved form.

Note: Section 32 deals with approved forms.

- (4) Subsections (2) and (3) do not limit subsection (1).

**27J Findings about a registration**

- (1) The Board may make one or more findings to the following effect about an R&D entity's registration under section 27A for an income year (the **registration year**):
- (a) that all or part of a registered activity was a core R&D activity conducted during the registration year;
  - (b) that all or part of a registered activity was not an activity of a kind covered by paragraph (a);
  - (c) that all or part of a registered activity was a supporting R&D activity conducted during the registration year and in relation to:
    - (i) one or more specified registered core R&D activities; or
    - (ii) one or more specified core R&D activities for which the entity has been registered in an earlier income year; or
    - (iii) one or more specified core R&D activities yet to be conducted for which the entity could be registered in the registration year if those activities were conducted during the registration year; or
    - (iv) several specified core R&D activities, each covered by subparagraph (i), (ii) or (iii);
  - (d) that all or part of a registered activity was not an activity of a kind covered by paragraph (c).

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Note 1: A finding is reviewable (see Division 5).

Note 2: The Board could make a finding under paragraph (b) if, for example, the Board has insufficient information to make a finding under paragraph (a). Similarly, the Board could make a finding under paragraph (d) if it has insufficient information to make a finding under paragraph (c).

- (2) If the Board makes a finding under subsection (1) in relation to the R&D entity's registration, the Board may specify in the finding the times to which the finding relates.

Example: A finding under paragraph (1)(a) could specify the times during the registration year that a registered activity was a core R&D activity.

- (3) This section has effect subject to section 32B (findings cannot be inconsistent with any earlier findings).

### **27K Notice of findings or of decisions refusing to make findings**

- (1) The Board must notify the R&D entity, and the Commissioner, in writing of any findings under subsection 27J(1) about the entity's registration under section 27A.
- (2) The notice must include a certificate for each finding. The certificate must set out:
- (a) a description of the finding; and
  - (b) the Board's reasons for the finding; and
  - (c) the registered activity affected by the finding; and
  - (d) the effect of the finding on the entity's registration; and
  - (e) the matters (if any) specified in regulations made for the purposes of this paragraph.

The notice and certificate may set out other matters.

Note 1: For the effect of the finding on the entity's registration, see section 27L (about automatic variations to registrations).

Note 2: The notice could also mention the applicant's right to have the finding reviewed under Division 5 (see section 30B).

- (3) The Board must notify the R&D entity in writing of any decision under paragraph 27F(4)(b) refusing to make a finding under

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subsection 27J(1) in response to an application under section 27G by the R&D entity.

- (4) A failure to comply with this section does not affect the validity of a finding or decision.

**27L Automatic variations so registration is consistent with findings**

- (1) If an R&D entity is registered under section 27A for an income year, then while a finding is in force:
- (a) under subsection 27B(1) in relation to the application for the registration; or
  - (b) under subsection 27J(1) in relation to the registration;
- the registration is taken always to have existed in a form consistent with the finding.

Note 1: This subsection will cease to apply if the finding is set aside on review (see Division 5).

Note 2: A finding has no effect to the extent of any inconsistency with a finding already in force under this Part in relation to the R&D entity (see section 32B).

- (2) If:
- (a) a finding under subsection 28A(1) (advance findings about the nature of activities) comes into force for an R&D entity about an activity conducted during an income year; and
  - (b) the R&D entity is later registered under section 27A for the activity for the income year;
- then, after registration and while the finding is in force, the registration is taken to exist in a form consistent with the finding.

Note 1: This subsection will cease to apply if the finding is set aside on review (see Division 5).

Note 2: A finding has no effect to the extent of any inconsistency with a finding already in force under this Part in relation to the R&D entity (see section 32B).

- (3) This section has effect for the purposes of this Act and the *Income Tax Assessment Act 1997*.

## **27M Varying registrations on application**

- (1) The Board may, by notice in writing given to an R&D entity, vary the entity's registration under section 27A for an income year if:
- (a) the entity applies for the variation; and
  - (b) the variation is consistent with the Board's findings (if any) in force under this Part in relation to the R&D entity; and
  - (c) making the variation is justified in accordance with the decision-making principles.

Note 1: A decision not to vary is reviewable (see Division 5).

Note 2: Section 32A deals with the decision-making principles.

- (2) An application for a variation must be:
- (a) in the approved form; and
  - (b) accompanied by the fee (if any) specified in regulations made under section 48A for the purposes of this section.

Note: Section 32 deals with approved forms.

- (3) Section 27E applies to an application under this section in a way corresponding to the way that section applies to an application under section 27D.

Note: This means the Board may request further information about the application for variation.

- (4) For the purposes of this Act and the *Income Tax Assessment Act 1997*, the effect of a variation is that the entity's registration under section 27A for the income year is taken always to have existed as varied.

## **27N Revoking registrations**

- (1) The Board may, by notice in writing given to an entity, revoke the entity's registration under section 27A for an income year if the Board is satisfied that the entity was not an R&D entity at any time when an activity covered by the registration was conducted during the income year.

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Note: A decision to revoke under this subsection is reviewable (see Division 5).

- (2) The Board may, by notice in writing given to an R&D entity, revoke the entity's registration under section 27A for an income year if the entity requests the Board to do so.
- (3) A request for a revocation under subsection (2) must be:
  - (a) in the approved form; and
  - (b) accompanied by the fee (if any) specified in regulations made under section 48A for the purposes of this section.

Note: Section 32 deals with approved forms.

- (4) For the purposes of this Act and the *Income Tax Assessment Act 1997*, the effect of a revocation under this section is that the entity is taken never to have been registered under section 27A for the income year.

Note: This subsection will cease to apply if a revocation under subsection (1) is set aside on review (see Division 5).

- (5) The Board must notify the Commissioner of a revocation under this section.

## Division 3—Other findings

### Subdivision A—Introduction

#### 28 Simplified outline

The following is a simplified outline of this Division:

- An R&D entity can seek a finding (an *advance finding*) about whether an activity is an R&D activity.
- An advance finding binds the Commissioner for the purpose of working out tax offsets (*R&D tax offsets*) under Division 355 of the *Income Tax Assessment Act 1997*.
- An R&D entity can seek a finding that an activity cannot be conducted in Australia.
- An R&D tax offset will only be available for expenditure incurred on an activity conducted outside Australia if a finding that the activity cannot be conducted in Australia has come into force.
- The Board may also make a finding about whether particular technology is core technology for R&D activities.
- An effect of a finding that the technology is core technology for the R&D activities is that an R&D tax offset will not be available for expenditure incurred in acquiring, or in acquiring the right to use, the technology for the R&D activities.

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**Subdivision B—Advance findings about the nature of activities**

**28A Advance findings about the nature of activities**

- (1) The Board must, on application by an R&D entity for a finding under this subsection about an activity, do one or more of the following:
- (a) find that all or part of the activity is a core R&D activity;
  - (b) find that all or part of the activity is a supporting R&D activity in relation to one or more specified core R&D activities for which the entity has been or could be registered under section 27A for an income year;
  - (c) make a finding to the effect that all or part of the activity is neither:
    - (i) a core R&D activity; nor
    - (ii) a supporting R&D activity of a kind covered by paragraph (b);
  - (d) if justified in accordance with the decision-making principles—refuse to make a finding about all or part of the activity.

Note 1: A finding, or a refusal to make a finding, is reviewable (see Division 5).

Note 2: For requirements of applications, see section 28G.

Note 3: A finding binds the Commissioner for the purposes of income tax assessments for certain income years (see subsections 355-705(2) and (3) of the *Income Tax Assessment Act 1997*).

Note 4: Section 32A deals with the decision-making principles.

- (2) The Board must not make a finding under subsection (1) about an activity unless the Board is satisfied that the activity:
- (a) is being conducted, or has been completed, during the income year in which the application is made; or
  - (b) is yet to be conducted, but that it is reasonable to expect that the activity will be conducted in any or all of the following income years:
    - (i) the income year in which the application is made;



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- (ii) either of the next 2 income years.
- (3) If the Board makes a finding under subsection (1) about an activity that is being conducted, or has been completed, during the income year in which the application is made, the Board may specify in the finding the times to which the finding relates.
- (4) This section has effect subject to section 32B (findings cannot be inconsistent with any earlier findings).

**28B Applications made on behalf of R&D entities**

- (1) An application for a finding under subsection 28A(1) may be made on behalf of an R&D entity by an entity who:
  - (a) is specified in regulations made for the purposes of this subsection; and
  - (b) is acting with the R&D entity's written consent.

The application is taken to be made by the R&D entity.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

- (2) If:
  - (a) an entity could, under subsection (1), make an application on behalf of more than one R&D entity for the same finding for the same activity; and
  - (b) the entity applies (the **joint application**) under subsection 28G(2) for the finding on behalf of those R&D entities;the joint application is taken to be a separate application under subsection 28G(1) for the finding by each of those R&D entities.

### Subdivision C—Findings about activities to be conducted outside Australia

#### 28C Findings about activities to be conducted outside Australia

- (1) The Board must, on application by an R&D entity for a finding under this subsection about an activity, do one or more of the following:
- (a) find that all or part of the activity is an activity (the *overseas activity*) that meets the conditions in section 28D;
  - (b) find that all or part of the activity is not an activity that meets the conditions in section 28D;
  - (c) if justified in accordance with the decision-making principles—refuse to make a finding about all or part of the activity.

Note 1: A finding, or a refusal to make a finding, is reviewable (see Division 5).

Note 2: For requirements of applications, see section 28G.

Note 3: An effect of a finding under paragraph (a) is that a tax offset may be available for expenditure incurred on the overseas activity after the finding comes into force (see Division 355 of the *Income Tax Assessment Act 1997*, in particular paragraphs 355-210(1)(d) and (e) of that Act).

Note 4: Section 32A deals with the decision-making principles.

- (2) For the purposes of this Act and the *Income Tax Assessment Act 1997*, a finding under subsection (1) comes into force at the start of the income year in which the application for the finding is made.
- (3) This section has effect subject to section 32B (findings cannot be inconsistent with any earlier findings).

**28D Conditions for a finding that an overseas activity cannot be conducted in Australia etc.**

*Must be an R&D activity*

- (1) The first condition is that the overseas activity is covered by a finding under paragraph 28A(1)(a) or (b) (findings that activities are R&D activities).

*Must have significant scientific link to Australian core activities*

- (2) The second condition is that the overseas activity has a significant scientific link to one or more core R&D activities (the **Australian core activities**):
- (a) that are conducted or to be conducted solely within Australia; and
  - (b) that:
    - (i) are registered under section 27A for the R&D entity for an income year; or
    - (ii) are reasonably likely to be conducted and be registered under section 27A for the R&D entity for an income year.
- (3) The overseas activity has a **significant scientific link** to the Australian core activities if:
- (a) the Australian core activities cannot be completed without the overseas activity being conducted; and
  - (b) the conditions (if any) specified in regulations made for the purposes of this subsection are met.

*Must be unable to be conducted within Australia etc.*

- (4) The third condition is that the overseas activity cannot be conducted solely in Australia because:
- (a) conducting it requires access to a facility, expertise or equipment not available in Australia; or
  - (b) conducting it in Australia would contravene the *Biosecurity Act 2015* or a law relating to quarantine; or

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- (c) conducting it requires access to a population (of living things) not available in Australia; or
- (d) conducting it requires access to a geographical or geological feature not available in Australia; or
- (e) it meets a condition (if any) specified in regulations made for the purposes of this subsection.

*Expenditure must be less than that incurred on Australian core activities*

- (5) The fourth condition is that the total actual and reasonably anticipated expenditure of any entity in all income years on:
  - (a) the overseas activity; and
  - (b) each other activity (if any) conducted wholly or partly outside Australia that has a significant scientific link to the Australian core activities;is less than the total actual and reasonably anticipated expenditure of any entity in all income years on:
  - (c) the Australian core activities; and
  - (d) activities conducted solely within Australia that are supporting R&D activities in relation to the Australian core activities.

**Subdivision D—Findings about whether technology is core technology**

**28E Findings about whether technology is core technology**

- (1) If an R&D entity has acquired, or has acquired the right to use, particular technology wholly or partly for the purposes of one or more R&D activities conducted, or to be conducted, during one or more income years, the Board may:
  - (a) find that the technology is core technology for the R&D activities; or
  - (b) find that the technology is not core technology for the R&D activities; or

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- (c) if justified in accordance with the decision-making principles—refuse to make a finding about the technology and the R&D activities.

Note 1: A finding, or a refusal to make a finding, is reviewable (see Division 5).

Note 2: A finding under paragraph (a) means that a tax offset will not be available for expenditure incurred in acquiring, or in acquiring the right to use, the technology for the R&D activities (see subsection 355-225(2) of the *Income Tax Assessment Act 1997*).

Note 3: Section 32A deals with the decision-making principles.

- (2) Particular technology is **core technology** for one or more R&D activities if:

- (a) a purpose of the R&D activities was or is:

- (i) to obtain new knowledge based on that technology; or
- (ii) to create new or improved materials, products, devices, processes, techniques or services to be based on that technology; or

- (b) the R&D activities were or are an extension, continuation, development or completion of the activities that produced that technology.

- (3) The Board must make a finding under paragraph (1)(a) or (b) if requested by the Commissioner to make a finding under this section.

- (4) In addition to subsection (3), the Board:

- (a) may make a finding under subsection (1) on its own initiative; and
- (b) must make a decision under subsection (1) if the R&D entity applies for a finding under this section.

Note: For requirements of applications, see section 28G.

- (5) This section has effect subject to section 32B (findings cannot be inconsistent with any earlier findings).

**Subdivision E—Matters relevant to findings under this Division**

**28F Notice of decision about findings**

- (1) The Board must notify an applicant in writing of each of the Board's decisions under subsection 28A(1) or 28C(1) about the application.
- (2) The Board must notify an R&D entity in writing of each of the Board's decisions under subsection 28E(1) that relates to the R&D entity.
- (3) A notice under subsection (1) or (2) must include a certificate for each finding (if any) to which the decision relates. The certificate must set out:
  - (a) a description of the finding; and
  - (b) the Board's reasons for the finding; and
  - (c) a description of the activity affected by the finding; and
  - (d) for a finding under subsection 28E(1)—a description of the technology affected by the finding; and
  - (e) the matters (if any) specified in regulations made for the purposes of this paragraph.

The notice and certificate may set out other matters.

Note: The notice could also mention the applicant's right to have the finding reviewed under Division 5 (see section 30B).

- (4) The Board must give the Commissioner a copy of the notice if the notice includes one or more certificates.
- (5) A failure to comply with this section does not affect the validity of a decision or finding.

**28G Applying for findings**

*Applications for findings*

- (1) An application for one or more findings under this Division must be:

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- (a) in the approved form; and
- (b) accompanied by the fee (if any) specified in regulations made under section 48A for the purposes of this subsection.

Note 1: An application can seek findings for several activities.

Note 2: Section 32 deals with approved forms.

### *Joint applications for identical advance findings*

- (2) An application for identical findings under subsection 28A(1) on behalf of several R&D entities must be:
  - (a) in the approved form; and
  - (b) accompanied by the fee (if any) specified in regulations made under section 48A for the purposes of this subsection.

Note: The application is taken to be a separate application under subsection (1) of this section for the finding by each of those R&D entities (see subsection 28B(2)).

## **28H Board may request further information**

- (1) The Board may request in writing:
  - (a) for an application taken to be made by an R&D entity because of section 28B—the entity that acted on behalf of the R&D entity in relation to the application; or
  - (b) otherwise—the applicant;to give specified information, or specified kinds of information, to the Board about the application.
- (2) The request may be for the information or kinds of information to be given within:
  - (a) 30 days after the request was made; or
  - (b) a further period allowed by the Board in accordance with the decision-making principles.

Note 1: A refusal to allow a further period is reviewable (see Division 5).

Note 2: Section 32A deals with the decision-making principles.

Note 3: A failure by the entity to give the information may result in a refusal to make the finding.

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- (3) The request may be for the information or kinds of information to be given in the approved form.

Note: Section 32 deals with approved forms.

- (4) Subsections (2) and (3) do not limit subsection (1).



## **Division 4—Research service providers**

### **Subdivision A—Introduction**

#### **29 Simplified outline**

The following is a simplified outline of this Division:

- The Board may register entities as research service providers capable of providing research services to R&D entities.
- Near the end of each financial year, registered research service providers will be asked if they want their registrations to continue for the next financial year.
- Registrations can be varied and revoked.
- Details of registrations are set out in a register available on the internet.

### **Subdivision B—Registering research service providers**

#### **29A Registering research service providers**

- (1) The Board must, on application by an entity, decide whether to register or refuse to register the entity as a research service provider capable of providing services in one or more specified research fields to R&D entities registered under section 27A.  
Note: A decision under this subsection is reviewable (see Division 5).
- (2) The Board must not register the entity under subsection (1) unless the Board is satisfied that the entity meets the criteria specified in regulations made for the purposes of this subsection.
- (3) A registration under this section is subject to the conditions (if any) specified in regulations made for the purposes of this subsection.

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**Subdivision C—Applying for registration**

**29B Applying for registration**

An application to be registered under section 29A must be:

- (a) in the approved form; and
- (b) accompanied by the fee (if any) specified in regulations made under section 48A for the purposes of this section.

Note: Section 32 deals with approved forms.

**29C Board may request further information about an application**

- (1) The Board may request the applicant in writing to give specified information, or specified kinds of information, to the Board about the application.
- (2) The request may be for the information or kinds of information to be given within 30 days after the request was made.
- (3) The request may be for the information or kinds of information to be given in the approved form.

Note: Section 32 deals with approved forms.

- (4) Subsections (2) and (3) do not limit subsection (1).
- (5) The Board may refuse to consider the application if the applicant fails to give the information within:
  - (a) the 30 days referred to in subsection (2); or
  - (b) a further period allowed by the Board in accordance with the decision-making principles.

Note 1: A refusal to allow a further period is reviewable (see Division 5).

Note 2: Section 32A deals with the decision-making principles.

**29D Board may need to make inquiries about an application**

- (1) The Board may notify the applicant in writing that the Board:

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- (a) needs to make inquiries in order to determine whether the applicant meets the criteria for registration referred to in subsection 29A(2); and
  - (b) requires the applicant to pay the Board a specified amount towards the cost of those inquiries.
- (2) The Board may refuse to consider the application until the applicant pays the Board that amount.
- (3) An amount specified in a notice under subsection (1) must not exceed the higher of:
  - (a) \$1,000; and
  - (b) the amount (if any) specified in regulations made for the purposes of this subsection;and must not be such as to amount to taxation.

### **Subdivision D—Varying or revoking registrations**

#### **29E Duration of registrations**

- (1) At least 2 months before the end of each financial year, the Board must give each research service provider a notice:
  - (a) asking the provider if it wishes to continue to be registered under section 29A; and
  - (b) attaching an approved form to be completed by the provider and returned to the Board if the provider wishes to continue to be registered.

This subsection does not apply to a provider who becomes registered under section 29A in May or June of that financial year.

Note: Section 32 deals with approved forms.

- (2) The Board may, by notice in writing given to the provider, revoke the provider's registration under section 29A if the provider does not return the completed form within:
  - (a) 30 days after the notice under subsection (1) was given; or
  - (b) a further period allowed by the Board in accordance with the decision-making principles.

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Note 1: A decision to revoke under this subsection is reviewable (see Division 5).

Note 2: Section 32A deals with the decision-making principles.

- (3) For the purposes of this Act and the *Income Tax Assessment Act 1997*, the revocation takes effect at the end of that financial year.

Note: This subsection will cease to apply if the revocation is set aside on review (see Division 5).

**29F Varying registrations—on application**

- (1) The Board may, by notice in writing given to a research service provider, vary the provider's registration under section 29A if:
- (a) the provider applies for the variation; and
  - (b) the Board is satisfied that the provider would still meet the criteria for registration referred to in subsection 29A(2) were the application to be successful.

Note: A refusal to vary is reviewable (see Division 5).

- (2) An application for a variation must be:
- (a) in the approved form; and
  - (b) accompanied by the fee (if any) specified in regulations made under section 48A for the purposes of this section.

Note: Section 32 deals with approved forms.

- (3) Sections 29C and 29D apply to applications under this section in a way corresponding to the way those sections apply to applications under section 29B.

Note: This means the Board may request further information about the application for variation, and make inquiries about the application for variation.

**29G Varying registrations—otherwise than on application**

- (1) The Board may, by notice in writing given to a research service provider, vary the provider's registration under section 29A so that the provider ceases to be registered to provide services in one or more specified research fields.

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Note 1: A decision to vary is reviewable (see Division 5).

Note 2: This subsection will cease to apply if the variation is set aside on review (see Division 5).

- (2) The Board may do so if the Board is satisfied that the provider does not meet the criteria for registration referred to in subsection 29A(2) in so far as those criteria relate to those research fields.

### **29H Revoking registrations**

- (1) The Board may, by notice in writing given to a research service provider, revoke the provider's registration under section 29A if the Board is satisfied:
- (a) that the provider has ceased to meet the criteria for registration referred to in subsection 29A(2); or
  - (b) that the provider has breached a condition, referred to in subsection 29A(3), of the registration.

Note 1: A decision to revoke under this subsection is reviewable (see Division 5).

Note 2: This subsection will cease to apply if the revocation is set aside on review (see Division 5).

Note 3: Revocation can also happen under subsection 29E(2) if the provider does not appropriately indicate that it wishes to continue to be registered for the next financial year.

- (2) The Board may, by notice in writing given to a research service provider, revoke the provider's registration under section 29A if the provider requests the Board to do so.
- (3) A request for a revocation under subsection (2) must be in the approved form.

Note: Section 32 deals with approved forms.

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**Subdivision E—Register of research service providers**

**29J Register of research service providers**

- (1) The Board is to make available for inspection on the internet a register that includes details of:
  - (a) registrations in force under this Division; and
  - (b) registrations that have been revoked under this Division during the current financial year or the previous financial year.

Note 1: A registration in force under this Division includes the research fields for which the provider is registered.

Note 2: A registration in force under this Division is that registration as varied under section 29F or 29G.

- (2) The register is not a legislative instrument.

## Division 5—Review

### 30 Simplified outline

The following is a simplified outline of this Division:

- An entity affected by a reviewable decision may ask the Board to conduct an internal review of that decision.
- The entity, or another entity affected by the resulting internal review decision, may ask the Administrative Appeals Tribunal to review the internal review decision.

#### 30A Reviewable decisions

Each of the following decisions of the Board is a *reviewable decision*:

Reviewable decisions		
Item	Decision	Provision under which decision is made
1	Registering or refusing to register an entity for activities	Subsection 27A(1)
2	A finding made when considering an application for registration of activities	Subsection 27B(1)
3	Refusing to allow a further period for making an application for registration of activities	Paragraph 27D(c)
4	Refusing to allow a further period for giving further information about an application for registration of activities	Paragraph 27E(2)(b)
5	Refusing to make a finding about a registration of activities	Paragraph 27F(4)(b)
6	Refusing to allow a further period for	Paragraph 27H(2)(b)

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<b>Reviewable decisions</b>		
<b>Item</b>	<b>Decision</b>	<b>Provision under which decision is made</b>
	giving further information about an examination of a registration of activities	
7	A finding made about a registration of activities	Subsection 27J(1)
8	Refusing to vary on application a registration of activities	Subsection 27M(1)
9	Refusing to allow a further period for giving further information about an application for variation of a registration of activities	Paragraph 27E(2)(b), as that paragraph applies because of subsection 27M(3)
10	Revoking a registration of activities	Subsection 27N(1)
11	An advance finding, or refusing to make an advance finding, about the nature of an activity	Subsection 28A(1)
12	A finding, or refusing to make a finding, about an activity to be conducted outside Australia	Subsection 28C(1)
13	A finding, or refusing to make a finding, about particular technology	Subsection 28E(1)
14	Refusing to allow a further period for giving further information about an application for: (a) an advance finding about the nature of an activity; or (b) a finding about an activity to be conducted outside Australia; or (c) a finding that technology is core technology	Paragraph 28H(2)(b)
15	Registering or refusing to register an entity as a research service provider	Subsection 29A(1)
16	Refusing to allow a further period for giving further information about an application for registration as a research	Subsection 29C(3)



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<b>Reviewable decisions</b>		
<b>Item</b>	<b>Decision</b>	<b>Provision under which decision is made</b>
	service provider	
17	Revoking a research service provider's registration for not returning a completed form about continuing that registration	Subsection 29E(2)
18	Refusing to vary on application a research service provider's registration	Subsection 29F(1)
19	Refusing to allow a further period for giving further information about an application for variation of a research service provider's registration	Subsection 29C(3), as that subsection applies because of subsection 29F(3)
20	Varying a research service provider's registration otherwise than on application	Subsection 29G(1)
21	Revoking a research service provider's registration	Subsection 29H(1)
22	Refusing to allow a further period for making an application for review of a decision	Subsection 30C(3)

**30B Notice of reviewable decision and internal review rights**

- (1) When making a reviewable decision relating to an entity, the Board must give written notice to the entity of the following things:
  - (a) the making of the decision;
  - (b) the reasons for the decision;
  - (c) the entity's right to have the decision reviewed under this Division.
- (2) If written notice of any of these things is given to the entity under another provision of this Part, notice of the thing does not have to be given twice.

Note: Other provisions of this Part require notice to be given about decisions covered by item 2, 7 or 11 of the table in section 30A.

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- (3) A failure to comply with this section does not affect the validity of the decision.

**30C Applications for internal review of reviewable decisions**

*Applications by affected entities*

- (1) An application for review of a reviewable decision may be made by or on behalf of any entity whose interests are affected by the reviewable decision.
- (2) An application under subsection (1) must be in the approved form.

Note: Section 32 deals with approved forms.

- (3) An application under subsection (1) for review of a reviewable decision must be made within:
- (a) 28 days after the entity to which the decision relates is notified of the decision under this Part; or
  - (b) such further period as the Board allows in accordance with the decision-making principles.

Note 1: A refusal to allow a further period is reviewable (see section 30A).

Note 2: Section 32A deals with the decision-making principles.

*Applications by Commissioner*

- (4) The Commissioner may, at any time, apply to the Board for review of a reviewable decision.

**30D Internal review of reviewable decisions**

- (1) After receiving an application for review of a reviewable decision, the Board must review the decision.

*Making internal review decisions*

- (2) After reviewing the reviewable decision, the Board must make a decision (an **internal review decision**):
- (a) confirming the reviewable decision; or

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- (b) varying the reviewable decision; or
- (c) setting aside the reviewable decision and substituting a new decision.

Note: An internal review decision is reviewable by the Administrative Appeals Tribunal (see section 30E). Under the *Administrative Appeals Tribunal Act 1975*, notice of the internal review decision must be given to any person whose interests are affected by the decision.

*Deemed internal review decisions*

- (3) If the Board does not make a decision under subsection (2) before the end of the period of 90 days after the day on which the Board received the application for review, the Board is taken, at the end of that period, to have made a decision (also an ***internal review decision***) confirming the reviewable decision.

Note: Under the *Administrative Appeals Tribunal Act 1975*, notice must be given to any person whose interests are affected by the internal review decision taken to be made under this subsection.

- (4) However, an internal review decision (the ***deemed decision***) is taken not to have been made under subsection (3) if:
  - (a) after the end of the period referred to in that subsection, the Board makes a decision under subsection (2) about the applicable reviewable decision; and
  - (b) an application has yet to be made under section 30E to the Administrative Appeals Tribunal for review of the deemed decision.

*Matters relevant to all internal review decisions*

- (5) For the purposes of this Act and the *Income Tax Assessment Act 1997*, an internal review decision takes effect on the day on which the reviewable decision took effect.
- (6) The Board must notify the Commissioner in writing of:
  - (a) the making of an internal review decision; and
  - (b) the reasons for that decision.

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**30E External review by AAT of internal review decisions**

- (1) Application may be made to the Administrative Appeals Tribunal for review of an internal review decision of the Board.
- (2) Subsection 43(6) of the *Administrative Appeals Tribunal Act 1975* has effect for the purposes of this Act and the *Income Tax Assessment Act 1997* for:
  - (a) an internal review decision as varied by the Tribunal under section 43 of the *Administrative Appeals Tribunal Act 1975*; or
  - (b) a decision made by the Tribunal under that section in substitution for an internal review decision.

Note: This means that the varied or substituted decision takes effect from the day on which the reviewable decision took effect (see subsection 30D(5)).

- (3) If an internal review decision is taken to be made under subsection 30D(3), section 29 of the *Administrative Appeals Tribunal Act 1975* applies as if:
  - (a) paragraph 29(1)(d) of that Act applied to the internal review decision; and
  - (b) the prescribed time for the purposes of that paragraph were the end of the period of 28 days starting on the day on which the internal review decision is taken to be made.
- (4) Despite section 35 of the *Administrative Appeals Tribunal Act 1975*:
  - (a) hearings of proceedings for review of an internal review decision are to be held in private; and
  - (b) during the proceedings, the Tribunal may, by order:
    - (i) give directions as to the persons who may be present during all or part of a hearing of the proceedings; and
    - (ii) give directions of a kind mentioned in subsection 35(3) or (4) of that Act.

## **Division 6—Consolidated groups and MEC groups**

### **31 Registrations and findings not effective for subsidiary members for group R&D activities**

- (1) An R&D entity's registration under section 27A for an income year has no effect to the extent that the registration is for an activity conducted during a period that the R&D entity is a subsidiary member of a consolidated group or MEC group, of which the head company is an R&D entity.

Example: If an activity is conducted by the R&D entity during all of an income year, and part way through the income year the R&D entity becomes a subsidiary member of a consolidated group:

- (a) the R&D entity can apply to be registered for the activity for the income year, and that registration will be effective in respect of the first part of the income year; and
- (b) the head company of the group can apply to be registered for the activity for the income year in respect of the second part of the income year.

- (2) If:

- (a) a finding is made under this Part on application by an R&D entity that is a subsidiary member of a consolidated group or MEC group; and
  - (b) the head company of the group is also an R&D entity;
- the finding has no effect to the extent that the finding is for an activity conducted during a period that the R&D entity is a subsidiary member of the group.

### **31A What happens to findings if R&D entity joins a group**

- (1) If a finding (the *actual finding*) under this Part:
- (a) is in force for an R&D entity immediately before the time (the *joining time*) it becomes a subsidiary member of a consolidated group or MEC group, of which the head company is an R&D entity; and

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- (b) is for an activity to be conducted wholly or partly after the joining time;  
a corresponding finding (the *deemed finding*) in the same terms is taken to come into force at the joining time for the head company and the activity.
- (2) The deemed finding ceases to be in force if the R&D entity ceases to be a subsidiary member of the group.
- (3) The result of any review (see Division 5) of an actual finding is taken to apply in a corresponding way to the deemed finding.
- (4) Neither section 28F (notice of decision about findings) nor Division 5 (review) applies to the deemed finding.

### **31B What happens to findings if R&D entity leaves a group**

- (1) The consequences in subsection (2) apply if a finding (the *group finding*) under this Part:
  - (a) is for an R&D entity that is the head company of a consolidated group or MEC group; and
  - (b) is in force immediately before the time (the *leaving time*) another R&D entity ceases to be a subsidiary member of the group; and
  - (c) is for an activity to be conducted by or for the other R&D entity wholly or partly after the leaving time; and
  - (d) is not a deemed finding.
- (2) The consequences are as follows:
  - (a) a corresponding finding (the *continuing finding*) in the same terms is taken to come into force at the leaving time for the other R&D entity and the activity;
  - (b) everything that happened under this Part before the leaving time in relation to the group finding is taken to have happened in relation to the continuing finding;
  - (c) the group finding ceases to be in force at the leaving time.

## Division 7—Other matters

### 32 Approved forms

- (1) This section applies if a provision of this Part requires a thing to be in the approved form.
- (2) To be in the approved form for the provision, the thing must:
  - (a) be in writing in a form approved by the Board; and
  - (b) include the information required by the form; and
  - (c) include any other material (including documents) required by the form.
- (3) The Board may approve, in writing, a form for the purposes of paragraph (2)(a). When doing so, the Board must ensure the form requires the production of information, or other material (including documents), specified in regulations made for the purposes of this subsection.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

### 32A *Decision-making principles*

The Minister may, by legislative instrument, make principles (the ***decision-making principles***) that the Board must comply with when deciding the following:

- (a) whether to allow a thing to be given under this Part within a further period than that specified in this Part;
- (b) whether refusing to make a finding sought under this Part is justified;
- (c) whether making a variation sought under section 27M is justified.

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**32B General rules about findings under this Part**

- (1) A finding made under this Part in relation to an R&D entity has no effect to the extent of any inconsistency with a finding already in force under this Part in relation to the R&D entity.

Example: A finding under subsection 27J(1) in relation to an R&D entity's registration has no effect to the extent of any inconsistency with:

- (a) a finding already in force under that subsection in relation to that registration; or
  - (b) a finding already in force under subsection 27B(1) in relation to the application for that registration; or
  - (c) a finding already in force under subsection 28A(1) (advance findings about the nature of activities) in relation to the R&D entity.
- (2) Subsection 33(3) of the *Acts Interpretation Act 1901* does not apply to the power to make a finding under this Part.

Note: This means the power to make a finding does not itself include the power to vary or revoke that finding. A finding can only be varied or revoked on review under Division 5.

**32C Alternative constitutional basis**

- (1) Without limiting its effect apart from this subsection, this Part also has the effect it would have if:
- (a) subsection (2) had not been enacted; and
  - (b) each reference in this Part to an R&D entity were, by express provision, confined to an R&D entity that:
    - (i) is a constitutional corporation; or
    - (ii) has its registered office (within the meaning of the *Corporations Act 2001*) or principal place of business (within the meaning of that Act) located in a Territory.
- (2) Without limiting its effect apart from this subsection, this Part also has the effect it would have if:
- (a) subsection (1) had not been enacted; and
  - (b) this Part, by express provision, confined applications, registrations, findings and decisions under this Part to be in



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relation to activities, or parts of activities, conducted or to be conducted:

- (i) solely in a Territory; or
- (ii) solely outside of Australia; or
- (iii) solely in a Territory and outside of Australia; or
- (iv) for the dominant purpose of supporting core R&D activities conducted, or to be conducted, solely in a Territory.

## Part V—Miscellaneous

### 44 Offences

- (6) A person shall not be convicted of both an offence against section 135.2 of the *Criminal Code* and an offence against section 136.1, 137.1 or 137.2 of the *Criminal Code* in respect of the same application for:
  - (a) the expenditure of Commonwealth money under a program to which Ministerial directions under section 18A or 19 apply; or
  - (b) an advance in respect of money that may be paid under such a program.
- (7) A reference in subsection (6) to a person being convicted of an offence includes a reference to an order being made under section 19B of the *Crimes Act 1914* in relation to the person in respect of an offence.

### 45 Time for prosecutions

Notwithstanding anything in any other law, proceedings for an offence against this Act may be instituted within the period of 3 years after the commission of the offence.

### 46 Annual report

- (1) The Board shall, as soon as practicable after 30 June in each year after 1986, prepare and give to the Minister a report on the operations of the Board during the financial year that ended on that 30 June.
- (2) A report under this section in relation to a financial year:
  - (a) must contain an analysis of the effectiveness of the operations of the Board under this Act, the *Pooled Development Funds Act 1992* and the *Venture Capital*

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*Act 2002* during the year in achieving the objects of those Acts; and

- (b) if the Board has entered into agreements under this Act, including agreements entered into under transitional arrangements, during the year—must set out, in relation to each such agreement entered into:
  - (i) the name of each party to the agreement (other than the Commonwealth);
  - (ii) the total amount of Commonwealth money payable under the agreement;
  - (iii) the proportion of the expenditure on the project to which the agreement relates which is represented by that amount;
  - (iv) subject to section 47, particulars of the R&D activities to which the agreement relates; and
- (c) if the Board has entered into agreements under this Act, including agreements entered into under transitional arrangements, and those agreements are still in force during the year—must set out, in relation to each such agreement entered into:
  - (i) the name of each researcher to whom Commonwealth money has been paid in respect of a research and development program during the year; and
  - (ii) the amount of Commonwealth money paid to that researcher in respect of that program in the year; and
- (ca) must set out:
  - (i) the total number of applications during the year for registration under section 27A for a tax offset under Division 355 of the *Income Tax Assessment Act 1997*; and
  - (ii) the total amounts of the offsets involved; and
  - (iii) an analysis of the operation of the R&D tax offset scheme for the year; and
- (d) shall include particulars of any directions or other matter, particulars of which were published in the *Gazette* in accordance with this Act during the year; and

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- (e) must include particulars of any advice given to the Board or a committee by the Minister under section 20A but need not state whether the Board or committee acted in accordance with the advice; and
  - (f) must set out a copy of the register mentioned in section 29J as it exists at the end of the year.
- (2A) The report must also contain:
- (a) a list of all PDFs in existence as at the end of the financial year; and
  - (b) a list of all companies that became PDFs during the financial year; and
  - (c) a list of all companies that ceased to be PDFs during the financial year; and
  - (d) a list of the entities registered under Part 7A of the *Pooled Development Funds Act 1992* as at the end of the financial year; and
  - (e) a list of the entities that became registered under Part 7A of the *Pooled Development Funds Act 1992* during the financial year; and
  - (f) a list of the entities whose registration under Part 7A of the *Pooled Development Funds Act 1992* was revoked during the financial year; and
  - (g) a list of the partnerships registered under Part 2 of the *Venture Capital Act 2002* as at the end of the financial year; and
  - (h) a list of the partnerships that became registered under Part 2 of the *Venture Capital Act 2002* during the financial year; and
  - (i) a list of the partnerships whose registration under Part 2 of the *Venture Capital Act 2002* was revoked during the financial year; and
  - (j) a list of the entities registered under Part 3 of the *Venture Capital Act 2002* as at the end of the financial year; and
  - (k) a list of the entities that became registered under Part 3 of the *Venture Capital Act 2002* during the financial year; and

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- (l) a list of the entities whose registration under Part 3 of the *Venture Capital Act 2002* was revoked during the financial year.
- (3) The Minister shall cause a copy of the report given under subsection (1) to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister received the report.
- (4) In this section:  
***transitional arrangements*** means arrangements provided for in item 28 of Schedule 1 to the *Industry Research and Development Amendment Act 2004*.

**47 Confidentiality**

- (1) An official to whom this section applies must not, unless required or permitted by law to do so, disclose protected information to a person if disclosing of the protected information would constitute a breach of confidence.
- (2) An official to whom this section applies may disclose protected information to:
  - (a) the Minister; or
  - (aa) a person employed as a member of staff of the Minister under section 13 or 20 of the *Members of Parliament (Staff) Act 1984*; or
  - (b) the Secretary of the Department; or
  - (c) an officer of the Department designated in writing by the Secretary of the Department as being an officer who is to receive information under this Act.
- (2A) An official to whom this section applies may disclose protected information if the disclosure is made:
  - (a) in the course of performing a duty or function, or exercising a power, under this Act; or
  - (b) for the purposes of enabling another person to perform duties or functions, or exercise powers, under this Act; or

## Section 47

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- (c) for the purposes of enabling a person to perform duties or functions, or exercise powers, under the *Census and Statistics Act 1905* or the *Income Tax Assessment Act 1997*.

(3) In this section:

***disclose*** means divulge or communicate.

***officer of the Department*** includes a consultant or other person providing services to the Department.

***official to whom this section applies*** means the following:

- (a) the Board;
- (b) a person who is or has been a member of the Board;
- (c) a committee;
- (d) a person who is or has been a member of a committee;
- (e) a person who is or has been a member of the staff assisting the Board or a committee (see section 25);
- (f) a person who is or has been a consultant assisting the Board or a committee (see section 25);
- (g) a person who was a member, or an acting member, of the former Industry Research and Development Board that was established by this Act (as in force before the commencement of Schedule 12 to the *Tax Laws Amendment (2007 Measures No. 5) Act 2007*);
- (h) a person who was a member of the staff assisting the former Industry Research and Development Board that was established by this Act (as in force before the commencement of Schedule 12 to the *Tax Laws Amendment (2007 Measures No. 5) Act 2007*);
- (i) a person who was a consultant assisting the former Industry Research and Development Board that was established by this Act (as in force before the commencement of Schedule 12 to the *Tax Laws Amendment (2007 Measures No. 5) Act 2007*).

***protected information*** means information that relates to a matter covered by this Act.

**48 Regulations**

The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

**48A Fees for making applications under Part III**

- (1) The regulations may specify:
  - (a) fees for making applications to the Board under Part III; and
  - (b) a method for indexing the fees.
- (2) The fees must not be such as to amount to taxation.

## Endnotes

### Endnote 1—About the endnotes

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## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can



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Endnote 1—About the endnotes

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be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

## Endnotes

### Endnote 2—Abbreviation key

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#### Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnote 3—Legislation history

## Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Industry Research and Development Act 1986	89, 1986	25 June 1986	1 July 1986	
Research and Development Legislation Amendment Act 1988	59, 1988	15 June 1988	1 July 1988	s. 18
Taxation Laws Amendment Act (No. 4) 1989	167, 1989	19 Dec 1989	s. 31: 19 Jan 1989 Part 4 (ss. 35–37): 25 Jan 1989 Remainder: Royal Assent	—
Taxation Laws Amendment Act 1990	35, 1990	7 June 1990	7 June 1990	s. 45
Industry, Technology and Commerce Legislation Amendment Act 1991	66, 1991	15 June 1991	15 June 1991	ss. 2(2)–(4) and 20
Taxation Laws Amendment Act (No. 5) 1992	224, 1992	24 Dec 1992	ss. 91–112: Royal Assent	ss. 106 and 108
Industry, Technology and Regional Development Legislation Amendment Act 1994	58, 1994	9 Apr 1994	29 June 1994 ( <i>see Gazette</i> 1994, No. S211)	—
Taxation Laws Amendment Act (No. 4) 1994	181, 1994	19 Dec 1994	Schedule 1 (items 22–85): 13 Oct 1994 Remainder: Royal Assent	Sch. 4 (items 1, 8)

## Endnotes

### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Industry Research and Development Amendment Act 1995	84, 1995	1 July 1995	s. 3 (items 3, 4, 10, 11): 1 July 1988 s. 3 (items 5, 6, 12, 13): 24 Dec 1992 s. 3 (items 7, 8): 19 Dec 1994 Remainder: Royal Assent	ss. 4 and 5
Statute Law Revision Act 1996	43, 1996	25 Oct 1996	Schedule 4 (items 1, 94): Royal Assent	—
Taxation Laws Amendment Act (No. 3) 1996	78, 1996	19 Dec 1996	Schedule 4 (items 58–75): Royal Assent	Sch. 4 (item 69)
Industry Research and Development Amendment Act 1996	82, 1996	19 Dec 1996	Schedule 1 (items 1–3): 19 Dec 1994 ( <i>a</i> ) Schedule 1 (items 13, 14): 6 Dec 1995 ( <i>a</i> ) Schedule 1 (items 21–23): 15 June 1991 ( <i>a</i> ) Remainder: Royal Assent	—
Taxation Laws (Technical Amendments) Act 1998	41, 1998	4 June 1998	Schedule 6 (Part 6): ( <i>b</i> )	—
Tax Law Improvement Act (No. 1) 1998	46, 1998	22 June 1998	Schedule 2 (items 548, 549): ( <i>c</i> )	Sch. 2 (item 549)
Industry Research and Development Amendment Act 1999	15, 1999	9 Apr 1999	9 Apr 1999	ss. 4 and 5
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Schedule 1 (items 544, 545): 5 Dec 1999 ( <i>see s</i> 2(1), (2) and <i>Gazette</i> 1999, No. S584)	—

## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000	137, 2000	24 Nov 2000	Sch 2 (items 245–247, 418, 419): 24 May 2001 (s 2(3))	Sch. 2 (items 418, 419)
Corporations (Repeals, Consequential and Transitional) Act 2001	55, 2001	28 June 2001	ss. 4–14 and Schedule 3 (item 276): 15 July 2001 (see s. 2(1) and <i>Gazette</i> 2001, No. S285)	ss. 4–14
Taxation Laws Amendment (Research and Development) Act 2001	170, 2001	1 Oct 2001	Sch 1 (items 2–2B, 7): 1 Oct 2001 (s 2(1)) Sch 2 (items 45–50): 29 Jan 2001 (s 2(2)) Sch 2 (items 85–91): 30 Jun 2001 (s 2(3))	Sch 1 (item 2B) s 2(3)
<b>as amended by</b> Taxation Laws Amendment Act (No. 2) 2002	57, 2002	3 July 2002	Sch 12 (item 63): 1 Oct 2001 (s 2(1) item 61)	—
Industry Research and Development Amendment Act 2004	15, 2004	11 Mar 2004	Sch 1: 11 Sept 2004 (s 2(1) item 2) Remainder: 11 Mar 2004 (s 2(1) item 1)	Sch 1 (items 25, 28)
Tax Laws Amendment (2007 Measures No. 5) Act 2007	164, 2007	25 Sept 2007	Sch 11 (items 49–78) and Sch 12 (items 1–52, 279–287): 25 Sept 2007 (s 2(1) items 8, 9)	Sch 11 (item 78) and Sch 12 (items 279–287)
Statute Law Revision Act 2010	8, 2010	1 Mar 2010	Sch 1 (item 34): 1 Mar 2010 (s 2(1) item 4)	—
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Sch 7 (item 75): 19 Apr 2011 (s 2(1) item 18)	—

## Endnotes

### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 2 (items 708–710) and Sch 3 (items 10, 11): 27 Dec 2011 (s 2(1) item 5, 12)	Sch 3 (items 10, 11)
Tax Laws Amendment (Research and Development) Act 2011	93, 2011	8 Sept 2011	Sch 2 and Sch 4 (items 1–6, 16–18): 8 Sept 2011 (s 2(1) item 2)	Sch 4 (items 1–6, 16–18)
Statute Law Revision Act 2013	103, 2013	29 June 2013	Sch 4 (item 16): 29 June 2013 (s 2(1) item 16)	—
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 7 (item 5): 24 June 2014 (s 2(1) item 9)	—
Tribunals Amalgamation Act 2015	60, 2015	26 May 2015	Sch 8 (item 27) and Sch 9: 1 July 2015 (s 2(1) items 19, 22)	Sch 9
Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015	62, 2015	16 June 2015	Sch 2 (item 27) and Sch 4: 16 June 2016 (s 2(1) items 2, 4) Sch 3 (item 1): 16 June 2015 (s 2(1) item 3)	Sch 3 (item 1) and Sch 4
Act and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 304): 5 Mar 2016 (s 2(1) item 2)	—
Territories Legislation Amendment Act 2016	33, 2016	23 Mar 2016	Sch 5 (items 69–73): 1 July 2016 (s 2(1) item 7)	—

(a) Subsections 2(2)–(4) of the *Industry Research and Development Amendment Act 1996* provide as follows:

(2) Items 1, 2 and 3 of Schedule 1 are taken to have commenced on 19 December 1994, immediately after the commencement of Schedule 4 to the *Taxation Laws Amendment Act (No. 4) 1994*.

## Endnote 3—Legislation history

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- (3) Items 13 and 14 of Schedule 1 are taken to have commenced at 2.30 pm Australian Eastern Standard Time on 6 December 1995.
- (4) Items 21, 22 and 23 of Schedule 1 are taken to have commenced on 15 June 1991, immediately after the commencement of section 17 of the *Industry, Technology and Commerce Legislation Amendment Act 1991*.
- (b) The *Industry Research and Development Act 1986* was amended by Schedule 6 (Part 6) only of the *Taxation Laws (Technical Amendments) Act 1998*, subsection 2(16) of which provides as follows:
- (16) Part 6 of Schedule 6 is taken to have commenced immediately after the commencement of section 110 of the *Taxation Laws Amendment Act (No. 5) 1992*.
- Section 110 of the *Taxation Laws Amendment Act (No. 5) 1992* commenced on 24 December 1992.
- (c) The *Industry Research and Development Act 1986* was amended by Schedule 2 (item 548) only of the *Tax Law Improvement Act (No. 1) 1998*, subsection 2(2) of which provides as follows:
- (2) Schedule 2 (except item 3 of it) commences immediately after the commencement of Schedule 1.
- Schedule 1 commenced on 22 June 1998.

## Endnotes

### Endnote 4—Amendment history

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### Endnote 4—Amendment history

Provision affected	How affected
Title .....	am. No. 59, 1988
<b>Part I</b>	
s. 3 .....	am. No. 59, 1988; No. 15, 2004; No. 164, 2007; No. 93, 2011
s. 4 .....	am. No. 66, 1991; No. 224, 1992; No. 78, 1996; No. 15, 2004; No. 164, 2007; No. 93, 2011; No. 31, 2014; No. 33, 2016
s. 5 .....	rs No. 33, 2016
<b>Part II</b>	
s. 6 .....	rs. No. 164, 2007
s. 7 .....	am. No. 66, 1991; No. 224, 1992; No. 15, 2004; No. 164, 2007; No. 93, 2011
s. 9 .....	am. No. 59, 1988; No. 146, 1999
s. 10 .....	am. No. 15, 1999
s. 11 .....	am. No. 224, 1992; No. 164, 2007; No. 93, 2011
s. 12 .....	am. No. 43, 1996
s. 16 .....	am. No. 164, 2007
s. 17 .....	am. No. 164, 2007; No. 46, 2011
Notes to s. 17(1)–(3) .....	ad. No. 46, 2011
s. 18 .....	am. No. 164, 2007
s. 18A .....	ad. No. 15, 2004
s. 19 .....	am. No. 15, 2004; No. 164, 2007
s. 19A .....	ad. No. 15, 2004
s. 19B .....	ad. No. 164, 2007
Heading to s. 20 .....	am. No. 78, 1996
s. 20 .....	am. No. 66, 1991; No. 224, 1992; No. 78, 1996; No. 164, 2007
s. 20A .....	ad. No. 78, 1996
s. 21 .....	am. No. 59, 1988; No. 224, 1992; No. 164, 2007
s. 22 .....	am. No. 59, 1988; No. 224, 1992 ; No. 15, 1999; No. 164, 2007; No. 93, 2011
s. 22A .....	ad. No. 59, 1988



## Endnote 4—Amendment history

Provision affected	How affected
	am. No. 224, 1992; No. 164, 2007; No. 46, 2011
Heading to s. 25 .....	rs. No. 15, 1999
s. 25 .....	am. Nos. 15 and 146, 1999
<b>Part III</b>	
Part III .....	rep. No. 15, 2004
	ad. No. 93, 2011
<b>Division 1</b>	
s. 26 .....	rep. No. 15, 2004
	ad. No. 93, 2011
s. 26A .....	ad. No. 93, 2011
<b>Division 2</b>	
<b>Subdivision A</b>	
s. 27 .....	am. No. 59, 1988
	rep. No. 15, 2004
	ad. No. 93, 2011
<b>Subdivision B</b>	
ss. 27A–27C .....	ad. No. 93, 2011
<b>Subdivision C</b>	
ss. 27D, 27E .....	ad. No. 93, 2011
<b>Subdivision D</b>	
ss. 27F–27H .....	ad. No. 93, 2011
ss. 27J–27N .....	ad. No. 93, 2011
<b>Division 3</b>	
<b>Subdivision A</b>	
s. 28 .....	am. No. 66, 1991; No. 58, 1994; No. 84, 1995
	rep. No. 15, 2004
	ad. No. 93, 2011
<b>Subdivision B</b>	
s. 28A .....	ad. No. 93, 2011
s. 28B .....	ad. No. 93, 2011
	am. No. 126, 2015

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
<b>Subdivision C</b>	
s 28C .....	ad. No. 93, 2011
s 28D .....	ad. No. 93, 2011
	am No 62, 2015; No 33, 2016
<b>Subdivision D</b>	
s. 28E.....	ad. No. 93, 2011
<b>Subdivision E</b>	
ss. 28F–28H.....	ad. No. 93, 2011
Div. 3A of Part III .....	ad. No. 66, 1991
	rep. No. 15, 2004
<b>Division 4</b>	
<b>Subdivision A</b>	
s. 29 .....	rep. No. 15, 2004
	ad. No. 93, 2011
<b>Subdivision B</b>	
s. 29A .....	ad. No. 93, 2011
<b>Subdivision C</b>	
ss. 29B–29D .....	ad. No. 93, 2011
<b>Subdivision D</b>	
ss. 29E–29H .....	ad. No. 93, 2011
<b>Subdivision E</b>	
s. 29J.....	ad. No. 93, 2011
<b>Division 5</b>	
s. 30 .....	rep. No. 15, 2004
	ad. No. 93, 2011
s 30A .....	ad. No. 93, 2011
s 30B .....	ad No 93, 2011
s 30C .....	ad. No 93, 2011
s 30D .....	ad No 93, 2011
s 30E.....	ad No 93, 2011
	am No 60, 2015

## Endnote 4—Amendment history

Provision affected	How affected
<b>Division 6</b>	
s. 31 .....	am. No. 66, 1991; No. 58, 1994; No. 84, 1995 rep. No. 15, 2004 ad. No. 93, 2011
ss. 31A, 31B .....	ad. No. 93, 2011
<b>Division 7</b>	
s. 32 .....	rep. No. 15, 2004 ad. No. 93, 2011 am No 126, 2015
ss. 32A–32C .....	ad. No. 93, 2011
ss. 33, 34 .....	rep. No. 15, 2004
s. 34A .....	ad. No. 66, 1991 am. No. 78, 1996 rep. No. 15, 2004
s. 34B .....	ad. No. 66, 1991 rep. No. 15, 2004
ss. 35–37 .....	rep. No. 15, 2004
s. 38 .....	am. No. 66, 1991 rep. No. 15, 2004
s. 39 .....	rep. No. 15, 2004
Part IIIA .....	ad. No. 59, 1988 rep. No. 93, 2011
s. 39AA .....	ad. No. 170, 2001 am. No. 164, 2007 rep. No. 93, 2011
s. 39A .....	ad. No. 59, 1988 am. No. 224, 1992 rep. No. 93, 2011
s. 39B .....	ad. No. 59, 1988 am. No. 15, 1999; No. 55, 2001 rep. No. 93, 2011

## Endnotes

### Endnote 4—Amendment history

Provision affected	How affected
s. 39C .....	ad. No. 59, 1988 rep. No. 93, 2011
s. 39D .....	ad. No. 59, 1988 rs. No. 164, 2007 rep. No. 93, 2011
s. 39E.....	ad. No. 59, 1988 am. No. 181, 1994; No. 84, 1995 rep. No. 93, 2011
s. 39EA.....	ad. No. 224, 1992 am. No. 84, 1995 rep. No. 93, 2011
s. 39EB.....	ad. No. 181, 1994 am. No. 84, 1995; No. 170, 2001; No. 164, 2007 rep. No. 93, 2011
s. 39EC .....	ad. No. 181, 1994 am. No. 170, 2001; No. 164, 2007 rep. No. 93, 2011
s. 39ED.....	ad. No. 181, 1994 am. No. 82, 1996; No. 15, 1999 rep. No. 93, 2011
s. 39EE .....	ad. No. 181, 1994 am. No. 170, 2001; No. 164, 2007 rep. No. 93, 2011
s. 39EF .....	ad. No. 15, 1999 am. No. 170, 2001; No. 164, 2007 rep. No. 93, 2011
s. 39F.....	ad. No. 59, 1988 am. No. 66, 1991; No. 181, 1994; No. 84, 1995; No. 164, 2007 rep. No. 93, 2011
s. 39FA.....	ad. No. 15, 1999 rep. No. 93, 2011

## Endnote 4—Amendment history

Provision affected	How affected
s. 39G .....	ad. No. 59, 1988 rep. No. 93, 2011
Note to s. 39G(6) .....	ad. No. 15, 1999 rep. No. 93, 2011
s. 39H .....	ad. No. 59, 1988 rep. No. 93, 2011
s. 39HA .....	ad. No. 224, 1992 rep. No. 93, 2011
s. 39HB .....	ad. No. 224, 1992 am. No. 84, 1995; No. 46, 1998 rep. No. 93, 2011
s. 39HC .....	ad. No. 224, 1992 rep. No. 93, 2011
s. 39HD .....	ad. No. 224, 1992 am. No. 41, 1998 rep. No. 93, 2011
ss. 39HE, 39HF .....	ad. No. 224, 1992 rep. No. 93, 2011
ss. 39HG, 39HH .....	ad. No. 82, 1996 am. No. 164, 2007 rep. No. 93, 2011
Note to s. 39HH .....	am. No. 170, 2001; No. 164, 2007 rep. No. 93, 2011
s. 39HI .....	ad. No. 82, 1996 rep. No. 93, 2011
s. 39J .....	ad. No. 59, 1988 am. No. 82, 1996; No. 15, 1999; No. 164, 2007 rep. No. 93, 2011
ss. 39JA–39JC .....	ad. No. 82, 1996 rep. No. 93, 2011
s. 39JD .....	ad. No. 82, 1996

## Endnotes

### Endnote 4—Amendment history

Provision affected	How affected
	am. No. 15, 1999; No. 164, 2007
	rep. No. 93, 2011
Note to s. 39JD(1)	ad. No. 15, 1999
Renumbered Note 1 .....	No. 164, 2007
Note 1 to s. 39JD(1).....	rep. No. 93, 2011
Note 2 to s. 39JD(1).....	ad. No. 164, 2007
	rep. No. 93, 2011
Heading to s. 39JE.....	am. No. 15, 1999
	rep. No. 93, 2011
s. 39JE .....	ad. No. 82, 1996
	am. No. 15, 1999
	rep. No. 93, 2011
s. 39JF .....	ad. No. 15, 1999
	rep. No. 93, 2011
s. 39K .....	ad. No. 59, 1988
	am. No. 82, 1996; No. 164, 2007
	rep. No. 93, 2011
s. 39KA .....	ad. No. 170, 2001
	rep. No. 93, 2011
s. 39L.....	ad. No. 59, 1988
	am. No. 167, 1989; No. 66, 1991; No. 164, 2007
	rep. No. 93, 2011
ss. 39LAAA, 39LAAB .....	ad. No. 164, 2007
	rep. No. 93, 2011
s. 39LAA .....	ad. No. 181, 1994
	rep. No. 93, 2011
s. 39LA.....	ad. No. 35, 1990
	am. No. 66, 1991
	rep. No. 93, 2011
s. 39M.....	ad. No. 59, 1988
	am. No. 15, 1999; No. 170, 2001; No. 164, 2007

## Endnote 4—Amendment history

Provision affected	How affected
	rep. No. 93, 2011
s. 39MA.....	ad. No. 224, 1992
	rep. No. 93, 2011
s. 39N.....	ad. No. 59, 1988
	am. No. 170, 2001; No. 164, 2007
	rep. No. 93, 2011
s. 39P.....	ad. No. 59, 1988
	am. No. 35, 1990; No. 66, 1991; No. 224, 1992; No. 181, 1994; Nos. 78 and 82, 1996
	rep. No. 93, 2011
ss. 39PA, 39PB.....	ad. No. 78, 1996
	rep. No. 93, 2011
ss. 39Q, 39R.....	ad. No. 59, 1988
	am. No. 66, 1991
	rep. No. 93, 2011
s. 39S.....	ad. No. 66, 1991
	am. No. 224, 1992; No. 181, 1994; Nos. 78 and 82, 1996; No. 15, 1999; No. 164, 2007
	rep. No. 93, 2011
Note to s. 39S(1).....	ad. No. 15, 1999
	rep. No. 93, 2011
s. 39T.....	ad. No. 66, 1991
	am. No. 224, 1992; No. 78, 1996
	rep. No. 93, 2011
s. 39U.....	ad. No. 66, 1991
	am. No. 224, 1992
	rep. No. 93, 2011
s. 39V.....	ad. No. 66, 1991
	rep. No. 93, 2011
Part IV.....	rep. No. 15, 2004
ss. 40, 41.....	rep. No. 15, 2004

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
s. 42 .....	am. No. 66, 1991; No. 78, 1996 rep. No. 15, 2004
s. 43 .....	rep. No. 15, 2004
<b>Part V</b>	
s. 44 .....	am. No. 137, 2000; No. 15, 2004
s. 46 .....	am. No. 66, 1991; No. 78, 1996; No. 170, 2001; No. 15, 2004; No. 164, 2007; No. 93, 2011
s. 47 .....	am. No. 59, 1988; No. 15, 1999; No. 164, 2007; No. 8, 2010; Nos. 5 and 93, 2011
s. 48A .....	ad. No. 82, 1996 rs. No. 93, 2011
Pt VI .....	rep No 103, 2013
ss. 49–53 .....	rep No 103, 2013