Industry Research and Development Act 1986

Act No. 89 of 1986 as amended

This compilation was prepared on 11 September 2004 taking into account amendments up to Act No. 15 of 2004

The text of any of those amendments not in force on that date is appended in the Notes section

The operation of amendments that have been incorporated may be affected by application provisions that are set out in the Notes section

Prepared by the Office of Legislative Drafting, Attorney-General’s Department, Canberra
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Notes
An Act to encourage certain research and development

Part I—Preliminary

1 Short title [see Note 1]

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 research and development activities and innovation activities.

4 Interpretation

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

*acting Chairperson* means a person acting as Chairperson under section 17.

*acting member* means a person acting as a member under section 17, and includes an acting Chairperson.

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

*approved research institute* means an approved research institute within the meaning of section 73A of the *Income Tax Assessment Act 1936*.

*Board* means the Industry Research and Development Board established by this Act.
Section 4

*Chairperson* means the Chairperson of the Board, but does not include an acting Chairperson.

*committee* means a committee appointed under section 22.

*company* means:
   (a) a body of persons; or
   (b) an association of persons;
   whether corporate or unincorporate.

*finance scheme guidelines* means guidelines made under section 39EA.

*member* means the Chairperson or another member of the Board, but does not include an acting member.

*research and development activities* means systematic investigation or experimentation activities:
   (a) that involve innovation, technology transfer into Australia or technical risk;
   (b) that are carried out in Australia; and
   (c) the object of which is new knowledge (with or without a specific practical application) or new or improved materials, products, devices, processes or services.

*researcher* means a person who, or a body, an organisation, or an institution, that, in the opinion of the Board, is capable of carrying out a project of research and development activities or innovation activities and, without limiting the foregoing, includes a Department of State, a company and an approved research institute.

*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

(ii) any other matter specified in the Ministerial directions.

(2) For the purposes of this Act:

(a) an external Territory to which this Act extends; and

(b) such areas of the sea or seabed adjacent to Australia or to an external Territory to which this Act extends as are prescribed;

shall be taken to be part of Australia.

(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.

(7) For the purposes of this Act:

(a) the Chairperson may be referred to as the Chairman or Chairwoman, as the case requires;

(b) the acting Chairperson may be referred to as the acting Chairman or the acting Chairwoman, as the case requires; and

(c) the Chairperson of a committee may be referred to as the Chairman of the committee or Chairwoman of the committee, as the case requires.

5 Extension of Act to external Territories

(1) This Act extends to all the external Territories, other than Norfolk Island.
Part I Preliminary

Section 5

(2) If, and so long as, the regulations so prescribe, this Act extends to Norfolk Island.
Part II—Administration

6 Establishment of Board

There is established by this Act a Board by the name of the Industry Research and Development Board.

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

(aa) such functions as are conferred on it by the finance scheme guidelines; and

(c) such functions as are conferred on it by any other Act; and

(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;
Part II  Administration

Section 10

(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.

(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.

6  Industry Research and Development Act 1986
11 Duties of Chairperson

(1) It is the duty of the Chairperson, or an acting Chairperson, to ensure the efficient and orderly conduct of the business of the Board, and for that purpose, the Chairperson or an acting Chairperson:

(a) shall make, or cause to be made, such inquiries into applications or into any other matter relevant to the operation of this Act as the Chairperson thinks necessary;

(b) may make, or cause to be made, to the Board such reports in relation to applications as the Chairperson thinks fit; and

(c) may determine the form of the records to be kept by the Board.

(2) In this section:

*this Act* includes finance scheme guidelines.

12 Remuneration and allowances

(1) The appointed members shall be paid:

(a) such remuneration as is determined by the Remuneration Tribunal; and

(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.

(4) In this section, a reference to a member shall be read as including a reference to an acting member.

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
   (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.

(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.

(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.

(4) An appointment of a person under subsection (1) or (3) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.
Section 18

(5) Where a person is acting as the Chairperson otherwise than because of a vacancy in the office of Chairperson and the office of Chairperson becomes vacant while the person is so acting then, subject to subsection (4), the person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the day on which the vacancy occurred expires, whichever occurs first.

(6) The Minister may:
   (a) determine the terms and conditions of appointment, including remuneration and allowances, of a person appointed to act as the Chairperson or a member; and
   (b) terminate such an appointment at any time.

(7) A person appointed to act as the Chairperson or another member may resign by writing signed by the person and delivered to the Minister.

(8) While a person is acting as the Chairperson or as another member, the person has and may exercise all the powers, and shall perform all the duties, of the Chairperson or the member, as the case may be.

(9) Anything done by or in relation to a person purporting to act under subsection (1), (2) or (3) is not invalid on the grounds that:
   (a) the occasion for the person’s appointment had not arisen;
   (b) there is a defect or irregularity in connection with the person’s appointment;
   (c) the person’s appointment had ceased to have effect; or
   (d) the occasion for the person to act had not arisen or had ceased.

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.
(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.

(8) In this section:
   (a) a reference to the Chairperson shall, if there is an acting Chairperson, be read as a reference to the acting Chairperson; and
   (b) a reference to a member shall be read as including a reference to an acting member.

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.
Section 19

(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 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

(1) 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, 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.

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, under this Act, 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

Section 20A

(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) Nothing in this section authorises the Minister to give directions to the Board in relation to a particular researcher.

(5) In this section, a reference to the Chairperson shall, if there is an acting Chairperson, be read as a reference to the acting Chairperson.

(6) In this section:

this Act includes finance scheme guidelines.

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.

(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.
Section 21

21 Delegation by Board

(1) The Board may, by resolution, either generally or as otherwise provided by the resolution, delegate to the Chairperson, another member, a committee or a member of the staff assisting the Board, all or any of its powers under this Act, other than this power of delegation.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Board.

(3) A delegation of a 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 power was delegated);
   (b) does not prevent the exercise of the power by the Board; 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 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.

(7) In this section, a reference to the Chairperson shall, if there is an acting Chairperson, be read as a reference to the acting Chairperson.

(8) In this section:

   *this Act* includes finance scheme guidelines.

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.

(1A) In addition to providing advice to the Board as mentioned in subsection (1), a committee may exercise any powers delegated to it by the Board under subsection 21(1).

(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) 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 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).

(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.
Section 22A

(7) The Board may refer to a committee for advice any matter relating to the operation of this Act.

(8) A committee shall cause minutes of its meetings to be kept.

(9) In this section:

this Act includes finance scheme guidelines.

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 powers under this Act (including, notwithstanding subsection 21(1) and paragraph 34AB(b) of the Acts Interpretation Act 1901, a power delegated to the committee by the Board).

(2) A delegation of a 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 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 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.

(5) In this section, a reference to the Chairperson of a committee is, if there is an acting Chairperson of the committee, a reference to the acting Chairperson of the committee.

(6) In this section:

this Act includes finance scheme guidelines.
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.

(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 IIIA—Functions of Board in relation to income tax concessions

39AA Object of Part

(1) The object of this Part is to complement the tax incentive provided by sections 73B, 73BA, 73I and 73Y of the *Income Tax Assessment Act 1936* by giving the Board the role to determine whether eligible companies satisfy the requirements for the incentive.

(2) The object of sections 73B, 73BA, 73I and 73Y of the *Income Tax Assessment Act 1936* is to provide a tax incentive, in the form of a deduction, to make eligible companies more internationally competitive by:

(a) encouraging the development by eligible companies of innovative products, processes and services; and

(b) increasing investment by eligible companies in defined research and development activities; and

(c) promoting the technological advancement of eligible companies through a focus on innovation or high technical risk in defined research and development activities; and

(d) encouraging the use by eligible companies of strategic research and development planning; and

(e) creating an environment that is conducive to increased commercialisation of new processes and product technologies developed by eligible companies.

The benefits of the tax incentive are targeted by being limited to particular expenditure on certain defined activities.

39A Interpretation

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

- *commercial government bodies guidelines* means guidelines made under section 39HB.

- *company* means any body corporate.
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Section 39A

*dispose of* means dispose of in any way, including by assignment or declaration of trust.

*eligible company* means a body corporate incorporated under a law of the Commonwealth or of a State or Territory.

*eligible government bodies* means:

(a) a government body within the meaning of section 73CB of the *Income Tax Assessment Act 1936*; or

(b) an associate (within the meaning of that section) of such a government body.

*finance* includes debt finance and equity finance.

*finance scheme*, in relation to research and development activities carried on, or proposed to be carried on, by or on behalf of an eligible company, means a scheme entered into or carried out by any of the parties to the scheme for the purpose, or for purposes that include the purpose:

(a) of enabling the company, or an associate of the company, to obtain finance (whether by way of renewal or otherwise) in connection with those activities; or

(b) of enabling the company, or an associate of the company, to obtain an extension of the period for which finance was obtained in connection with those activities under an earlier scheme.

*ineligible finance scheme* means a finance scheme that is taken to be an ineligible finance scheme under the finance scheme guidelines.

*register* means:

(a) in relation to an eligible company:

(i) register under section 39J; or

(ii) register jointly with any other eligible company or eligible companies under section 39P; or

(b) in relation to a research agency—register under section 39F.

*Register of Commercial Government Bodies* means the Register of Commercial Government Bodies required by section 39HA.
result, in relation to research and development activities, means a result that is capable of being exploited.

scheme means:

(a) an agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; and

(b) a scheme, plan, proposal, action, course of action or course of conduct.

(2) Subject to subsection (1), expressions used in this Part that are defined by section 73B of the Income Tax Assessment Act 1936 have in this Part, unless the contrary intention appears, the same meanings as in that section.

(3) Subject to subsections (1) and (2), expressions used in this Part that are defined by the Income Tax Assessment Act 1936 (other than section 73B) have in this Part, unless the contrary intention appears, the same meanings as in that Act.

39B Related companies

For the purposes of this Part, the question whether 2 or more companies are related to each other shall be determined in the same way as that question would be determined for the purposes of the Corporations Act 2001.

39C Exploitation otherwise than on normal commercial terms

The exploitation of a particular result of any activity shall be taken for the purposes of this Part to be an exploitation otherwise than on normal commercial terms if, in the opinion of the Board, any contract or transaction relating to that exploitation would not have been entered into, or contained terms that would not have been contained or would have been different, if the contract or transaction had been entered into by persons dealing with each other at arm’s length and from positions of comparable bargaining power.
Section 39D

39D  Exploitation otherwise than for the benefit of the Australian economy

(1) The exploitation of a particular result of an activity shall be taken for the purposes of this Part to be an exploitation otherwise than in a manner that is for the benefit of the Australian economy if, in the opinion of the Board, the profits or gains to residents of Australia accruing directly from the exploitation of a significant aspect of that result are not commensurate with the amount expended in the carrying on of that activity in Australia.

(2) In forming an opinion for the purposes of subsection (1), the Board may have regard to:
   (a) the value of the result of the activity;
   (b) the profits or gains to non-residents accruing directly from the exploitation of the result of the activity;
   (c) the amounts respectively expended in the carrying on of the activity inside and outside Australia; and
   (d) any other matters that the Board considers relevant.

39E  Adequate Australian content

(1) The Board shall, as soon as practicable (and, in any event, within 90 days) after the commencement of this Part, formulate in writing guidelines to enable eligible companies to ascertain whether proposed Australian research and development activities will be regarded as having an adequate Australian content for the purposes of this Part.

(2) The Board shall cause the guidelines to be published in the Gazette and made available on request, without charge, to any eligible company.

(3) The Board may use as the basis of the guidelines any of the following matters, but is not limited to those matters:
   (a) the proportion of the total expenditure incurred in respect of particular activities that is to be incurred by residents of Australia;
   (b) the extent to which particular activities are to be carried out in Australia;
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(c) the extent to which particular activities are to be carried out by non-residents, whether the activities are to be carried out in Australia or not;
(d) the extent to which particular activities will involve the use of imported plant or of knowhow or technology acquired outside Australia.

(4) The Board is not entitled, in relation to expenditure incurred by a company on particular activities, to give a certificate stating that it is of the opinion that those activities do not have an adequate Australian content if, at the time when the expenditure was incurred, the activities complied with the guidelines in force at that time.

(4A) The Board may, at any time, and whether or not within 90 days after the commencement of this Part, by instrument in writing, repeal, replace or amend guidelines made under subsection (1).

(5) An instrument formulating guidelines under subsection (1), or repealing, replacing or amending such guidelines, is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

39EA Finance scheme guidelines

(1) The Board must, as soon as practicable (and, in any event, within 90 days) after the commencement of this section, formulate written guidelines to enable eligible companies to ascertain whether finance schemes in relation to research and development activities carried on, or proposed to be carried on, by eligible companies will be taken to be ineligible finance schemes for the purposes of this Part.

(2) The Board must cause the finance scheme guidelines to be:
   (a) published in the Gazette; and
   (b) made available on request, without charge, to any eligible company.

(3) In making finance scheme guidelines about a particular kind of scheme, the matters to which the Board is to have regard include, but are not limited to:

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Section 39EB

(a) the manner in which the scheme was entered into or carried out; and
(b) the form and substance of the scheme; and
(c) matters relating to the research and development activities to which the scheme relates; and
(d) the likelihood that section 73CB of the Income Tax Assessment Act 1936 will apply to expenditure incurred in connection with the research and development activities to which the scheme relates.

(4) The finance scheme guidelines may confer functions and powers on the Board.

(5) The first finance scheme guidelines may be expressed to apply to schemes entered into or carried out before the commencement of this section.

(5A) The Board may, at any time, and whether or not within 90 days after the commencement of this section, by writing, repeal, replace or amend guidelines made under subsection (1).

(6) An instrument formulating finance scheme guidelines, or repealing, replacing or amending such guidelines, is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

39EB Guidelines concerning overseas research and development activities

(1) The Board must, as soon as practicable (and, in any event, within 90 days) after the commencement of this section, formulate written guidelines setting out the criteria to be met by eligible companies wishing to obtain a provisional certificate under section 39ED in relation to overseas research and development activities proposed to be carried on by them as part of projects of research and development activities.

(2) The Board must cause the guidelines to be:

(a) published in the Gazette; and
(b) made available on request, without charge, to any eligible company.
(3) The criteria to be set out in the guidelines must include the following criteria:

(a) it must be shown that the proposed overseas research and development activities cannot be carried out in Australia or the external Territories;

(b) it must be shown that the results of the overseas research and development activities will be exploited by the eligible company concerned for the benefit of the Australian economy;

(c) it must be shown that the expenditure:
   (i) that is proposed to be incurred by the eligible company in respect of the overseas research and development activities; and
   (ii) in respect of which the company proposes to claim a deduction under section 73B, 73BA, 73BH or 73Y, or a tax offset under section 73I, of the Income Tax Assessment Act 1936;

    will not exceed 10% of the total expenditure that the company has incurred or proposes to incur on the project of research and development activities.

(3A) The Board may, at any time, and whether or not within 90 days after the commencement of this Part, by writing, repeal, replace or amend guidelines made under subsection (1).

(4) An instrument formulating guidelines under subsection (1), or repealing, replacing or amending such guidelines, is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

39EC Applications for provisional certificates

(1) An eligible company that proposes to incur expenditure in carrying on overseas research and development activities in respect of which it proposes to claim a deduction under section 73B, 73BA, 73BH or 73Y, or a tax offset under section 73I, of the Income Tax Assessment Act 1936 may apply to the Board for a provisional certificate in respect of the activities.

(2) The application must:

   (a) be in writing; and
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(b) describe the project to which the proposed activities relate; and

(c) describe the proposed activities; and

(d) state the respective amounts of expenditure proposed to be incurred by the company on the project that relate to:

(i) Australian research and development activities; and

(ii) overseas research and development activities; and

(iii) if the company proposes to claim a deduction under section 73B, 73BA, 73BH or 73Y, or a tax offset under section 73I, of the *Income Tax Assessment Act 1936* in respect of part only of the expenditure on overseas research and development activities—the amount of that part of the expenditure; and

(e) be accompanied by any other information that the Board reasonably requires.

39ED Board’s decision on application for provisional certificate

(1) After considering an application under section 39EC, the Board must decide to:

(a) grant the application; or

(b) refuse the application.

(2) If the Board has not made a decision under subsection (1) before whichever time (the *eligible time*) is the later of the following times:

(a) the end of the period (the *original 90-day period*) of 90 days after the day on which the application was received by the Board;

(b) if the Board, by written notice given to the applicant within the original 90-day period, requests the applicant to give further information about the application—the end of the period of 90 days after the Board receives the further information;

then, at the eligible time, the Board is taken (except for the purpose of subsection (3)) to have made a decision under subsection (1) to refuse the application.

(3) If the Board makes a decision under subsection (1), the Board must give written notice of the decision to the applicant.
(4) A notice under subsection (3) relating to a refusal must set out the reasons for the refusal.

(5) The Board must not grant the application unless the Board is satisfied that the applicant meets the criteria set out in the guidelines formulated under section 39EB.

(6) If the Board grants the application, it must give to the applicant a provisional certificate in respect of the activities to which the application relates.

(6A) A provisional certificate granted pursuant to an application made after the commencement of this subsection has effect, and is taken always to have had effect, as if it had been given to the applicant on the day on which the application was made.

(7) A decision under subsection (1) is not invalid merely because it is made after the eligible time unless, before the decision is made, the applicant makes a request to the Board under subsection 39S(2).

Note: Subsection 39S(2) deals with requests to the Board to reconsider decisions.

39EE Matters to be contained in provisional certificate

(1) A provisional certificate given to an eligible company under section 39ED must:
   (a) describe the overseas research and development activities to which the certificate relates; and
   (b) contain a description of the project of research and development activities to which those overseas research and development activities relate; and
   (c) state the amount of proposed expenditure on overseas research and development activities in respect of which the company proposes to claim a deduction under section 73B, 73BA, 73BH or 73Y, or a tax offset under section 73I, of the Income Tax Assessment Act 1936; and
   (d) contain any other matters that the Board considers relevant.

(2) After a provisional certificate is given to a company under section 39ED, the company may apply in writing to the Board for the certificate to be amended so as to vary either or both of the following:
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(a) the description of the overseas research and development activities;

(b) the amount of the proposed expenditure on overseas research and development activities in respect of which the company proposes to claim a deduction under section 73B, 73BA, 73BH or 73Y, or a tax offset under section 73I, of the Income Tax Assessment Act 1936.

(3) If:

(a) such an application is made; and

(b) the provisional certificate is produced to the Board; and

(c) the Board is satisfied that it is appropriate to amend the certificate having regard to the criteria set out in the guidelines formulated under subsection 39EB(1);

the Board may amend the certificate accordingly and return the amended certificate to the company.

39EF Board’s power to amend or revoke provisional certificate on its own initiative

(1) The Board may, on its own initiative, amend or revoke a provisional certificate given to an eligible company under section 39ED as provided in this section.

Note: For the Board’s power to amend the provisional certificate on application by the company, see subsections 39EE(2) and (3).

(2) If the Board is satisfied that the expenditure (the claimed overseas expenditure):

(a) on the overseas research and development activities to which the certificate relates; and

(b) in respect of which the company has claimed a deduction under section 73B, 73BA, 73BH or 73Y, or a tax offset under section 73I, of the Income Tax Assessment Act 1936;

exceeds 10% of the total expenditure (the total project expenditure) incurred by the company on the project of research and development activities, the Board may, in writing, determine that the provisional certificate is amended, as specified in the determination, so that it does not cover so much of the overseas research and development activities as resulted in the claimed...
overseas expenditure exceeding 10% of the total project expenditure.

(3) If the Board makes a determination under subsection (2), the provisional certificate has effect, and is taken always to have had effect, as if it had originally been given as amended in accordance with the determination.

(4) The Board may, in writing, revoke the certificate if the Board is satisfied that the total expenditure incurred by the company on the project of research and development activities consisted solely of expenditure on overseas research and development activities.

(5) If the Board revokes the provisional certificate under subsection (4), the provisional certificate is taken never to have been given.

(6) If the Board decides to make a determination under subsection (2) amending the provisional certificate, or to revoke the provisional certificate under subsection (4), the Board must give notice in writing to the company setting out the decision and the reasons for the decision.

39F Registration of Australian research agencies

(1) Any body of persons, whether corporate or unincorporate, may make an application to the Board in writing, in accordance with a form approved by the Board, for registration as an Australian research agency for the purpose of performing a particular class of Australian research and development activities on behalf of registered eligible companies.

(2) The Board shall, in consultation with the Commissioner, as soon as practicable (and, in any event, within 90 days) after the commencement of this Part, formulate in writing criteria to be met by bodies wishing to be registered under this section and shall cause the criteria so formulated to be made available to any person upon request, without charge, and to be published in the Gazette and in such other manner as the Board considers appropriate.

(3) Where a body purported before the commencement of this Part to make an application to the Board for registration as an Australian research agency, the application shall be taken to have been as
valid as it would have been if this section has been in force when the application was made.

(4) Subject to subsection (9), where an application has been made in accordance with subsection (1) and the Board is satisfied that the applicant meets the criteria, the Board shall register the applicant as an Australian research agency in respect of such class of Australian research and development activities as the Board considers the applicant is qualified to perform and shall give to the applicant notice in writing of the result of the application.

(5) The registration of an Australian research agency shall be taken to have had effect on and from:
(a) if the body concerned was, on 30 June 1988, an approved Australian research institute—1 July 1988; or
(b) otherwise—the date on which the application for registration was received by the Board.

(6) Subject to subsections (7) and (9), the Board may, on application made by a registered Australian research agency in writing, in accordance with a form approved by the Board, vary the class of Australian research and development activities in respect of which the agency is registered and shall give to the agency notice in writing of the result of the application.

(7) The Board shall not vary the class of Australian research and development activities in respect of which an Australian research agency is registered so as to include additional activities unless the Board is satisfied that the agency is qualified to perform those additional activities.

(8) The date of effect of such a variation is the date on which the variation is made to the register of Australian research agencies.

(9) Where the Board considers that it will be necessary for the purpose of dealing with an application under this section to make inquiries as to the applicant’s qualifications to perform particular Australian research and development activities, the Board may, before dealing with the application, by notice in writing given to the applicant, require the applicant to pay such amount (not exceeding $1,000 or such higher amount as is prescribed) as the Board determines in or towards meeting the cost of the inquiries.
(10) If the Board:
    (a) refuses an application to register a body as an Australian research agency; or
    (b) refuses an application to register a body as an Australian research agency in respect of, or to vary the registration of a body that is a registered Australian research agency so as to include, particular Australian research and development activities;

the notice to the applicant stating the result of the application shall also state the reasons for the refusal.

(10A) The Board may, in consultation with the Commissioner at any time and whether or not within 90 days after the commencement of this Part, by writing, repeal, replace or amend criteria made under subsection (2).

(11) An instrument formulating criteria under subsection (2), or repealing, replacing or amending such criteria, is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

39FA Notices about continuing registration of Australian research agencies

(1) The Board may give a body of persons, whether corporate or unincorporate, that is registered under section 39F as an Australian research agency a notice:
    (a) asking the body if it wishes to continue to be registered under that section; and
    (b) attaching a form to be completed by the body and returned to the Board if the body does wish to continue to be registered.

(2) The Board must not give the body a notice under subsection (1) within 12 months of when it last gave the body such a notice.

(3) If the body does not complete and return the form within 30 days, or such longer period as the Board allows, of the body being given the notice, the registration of the body is cancelled, by force of this subsection, at the end of that period.
Section 39G

39G Cancellation of registration of research agencies

(1) The Board shall determine the grounds on which the registration of a research agency may be cancelled and shall cause the grounds so determined to be made available to any person upon request, without charge, and to be published in the Gazette and in such other manner as the Board considers appropriate.

(2) The grounds to be determined under subsection (1) shall include the failure of a research agency to meet a criterion formulated under subsection 39F(2).

(3) Where the Board is of the opinion that a ground may exist for cancelling the registration of a research agency, the Board shall:
   (a) give notice in writing to the research agency stating that it is of that opinion and specifying particulars of the ground concerned; and
   (b) invite the research agency to make a written submission to the Board in relation to the matter within 90 days.

(4) If, after the end of that period or the receipt of a submission by the research agency, whichever first happens, and, if such a submission is received, after having regard to the matters raised in the submission, the Board is satisfied that the ground has been established, the Board may cancel the registration of the research agency.

(5) If the Board cancels the registration of a research agency, the Board shall give notice in writing to the agency stating the reasons for the cancellation.

(6) Except as provided by subsections (3) and (4), the Board may not cancel the registration of a research agency.

Note: The registration of a research agency may also be cancelled by force of subsection 39FA(3).

39H Board to publicise particulars of registered research agencies

The Board shall:
   (a) cause the register of research agencies to be made available for inspection at any reasonable time by any person on request; and
(b) cause to be published in each report of the Board under section 46 a list of the names of registered research agencies as at the end of the year to which the report relates and the classes of activities in respect of which those agencies are respectively registered.

39HA Register of Commercial Government Bodies

[Register to be kept by Board]

(1) The Board must keep a register, to be known as the Register of Commercial Government Bodies, listing such eligible government bodies as are required to be on the register because of this Part.

[Register to be open for inspection]

(2) The Board must cause the Register of Commercial Government Bodies to be made available for inspection at any reasonable time by any person on request.

39HB Commercial government bodies guidelines

[Board to make guidelines setting out criteria for entry on Register]

(1) The Board must, as soon as practicable (and, in any event, within 90 days) after the commencement of this section, formulate written guidelines (commercial government bodies guidelines) setting out criteria to be met by eligible government bodies wishing to be entered on the Register of Commercial Government Bodies.

[Guidelines to be published etc.]

(2) The Board must cause the commercial government bodies guidelines to be:
   (a) published in the Gazette; and
   (b) made available, without charge, to any interested person.
(3) In making commercial government bodies guidelines about a particular kind of eligible government body, the matters to which the Board is to have regard include, but are not limited to:

(a) the commercial environment in which the eligible government body operates; and

(b) whether there is a framework for the oversight of the operations, and the monitoring of the performance, of the eligible government body and, if so, the nature of that framework; and

(c) the extent to which the eligible government body is:
   (i) bound by regulatory laws of the Commonwealth, the States and the Territories; and
   (ii) subject to taxation and charges under the laws of the Commonwealth, the States and the Territories; and

(d) the extent of private sector equity investment (whether direct or indirect through one or more interposed companies, partnerships or trusts) in the eligible government body; and

(e) if the eligible government body is established by or under a law of the Commonwealth, a State or a Territory—the policies of the Commonwealth, the State or the Territory, as the case requires, regarding the issue of the extent to which the eligible government body should be treated as a fully commercial entity.

(4) The commercial government bodies guidelines must set out a criterion to the effect that an eligible government body will not be entered on the Register of Commercial Government Bodies with effect on a particular day if on that day the body is or will be an exempt entity within the meaning of the Income Tax Assessment Act 1997.
Section 39HC

[Board may repeal, replace or amend guidelines]

(4A) The Board may, at any time and whether or not within 90 days after the commencement of this section, by writing, repeal, replace or amend guidelines made under this section.

[Guidelines to be disallowable]

(5) An instrument formulating commercial government bodies guidelines, or repealing, replacing or amending such guidelines, is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

39HC Applications for entry on the Register of Commercial Government Bodies

(1) An eligible government body may apply to the Board to be entered on the Register of Commercial Government Bodies.

(2) The application must be:
   (a) in writing; and
   (b) in a form approved by the Board; and
   (c) accompanied by such information as the Board requires.

39HD Board’s decision on application for entry on Register of Commercial Government Bodies

[Board’s decision on application]

(1) After considering an application under section 39HC, the Board must decide to:
   (a) grant the application; or
   (b) refuse the application.

[Board deemed to have refused application if no decision made within 90 days]

(2) If the Board has not made a decision under subsection (1) before whichever time (eligible time) is the later of the following times:
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(a) the end of the period (original 90-day period) of 90 days after the day on which the application was received by the Board;

(b) if the Board, by written notice given to the applicant within the original 90-day period, requests the applicant to give further information about the application—the end of the period of 90 days after the Board receives the further information;

then, at the eligible time, the Board is taken to have made a decision under subsection (1) to refuse the application.

(3) If the Board makes a decision under subsection (1) before the eligible time, the Board must give written notice of the decision to the applicant.

(4) A notice under subsection (3) relating to a refusal must set out the reasons for the refusal.

(5) If the Board decides to grant the application, the entry of the eligible government body takes effect on:

(a) the day on which the decision is made; or

(b) if the applicant requests—such earlier date as the Board specifies.

(6) The Board may specify a date under paragraph (5)(b) that is earlier than the commencement of this section.

(7) If the Board specifies such an earlier date, this Part and section 73CB of the Income Tax Assessment Act 1936 have effect as if the Register of Commercial Government Bodies had been in existence on that date.
Section 39HE

39HE  Grant of application for entry on Register of Commercial Government Bodies

The Board must not grant an application under section 39HC unless the Board is satisfied that the applicant meets the criteria set out in the commercial government bodies guidelines.

39HF  Removal from Register of Commercial Government Bodies

[Removal of body which does not meet criteria set out in guidelines]

(1) The Board must remove an eligible government body from the Register of Commercial Government Bodies if the Board is satisfied that the body does not meet the criteria set out in the commercial government bodies guidelines.

[Notification of proposed removal]

(2) The Board must not remove an eligible government body from the Register of Commercial Government Bodies unless the Board has:
   (a) given a written notice to the body:
       (i) stating that the Board is considering removing the body from the Register of Commercial Government Bodies; and
       (ii) giving the reasons for considering the removal of the body; and
   (b) invited the body to make a written submission to the Board:
       (i) within 60 days of receiving the notice; and
       (ii) about the proposed removal; and
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(c) if such a submission is made within that period—had regard to the matters raised in the submission.

[When removal takes effect]

(3) If the Board decides to remove the body from the Register of Commercial Government Bodies, the removal takes effect on the day on which the notice mentioned in paragraph (2)(a) was given to the body.

[Notification of removal]

(4) If the Board decides to remove the body from the Register of Commercial Government Bodies, the Board must give written notice of the removal to the body.

39HG  Applications for advance registration of eligible companies

(1) An eligible company may, during a year of income, apply to the Board for advance registration, in relation to its proposed research and development activities, in respect of all or any of the following years of income:
   (a) the first-mentioned year of income;
   (b) the next 2 years of income.

(2) The application must:
   (a) specify the name of the company; and
   (b) specify the year or years of income in respect of which advance registration is sought; and
   (c) describe the project to which its proposed research and development activities relate; and
   (d) specify and describe the activities; and
   (e) specify the expenditure proposed to be incurred by the company in relation to the activities during the year or years of income; and
   (f) specify when the activities will be undertaken.

(3) The application must:
   (a) be in a form approved by the Board; and
   (b) be accompanied by the appropriate fee (if any) prescribed under section 48A.

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39HH Advance registration of eligible companies

(1) Subject to section 39HI, if:
   (a) an eligible company applies to the Board for advance registration in accordance with section 39HG; and
   (b) the company provides to the Board such information in relation to its proposed research and development activities as the Board reasonably requires;

the Board must grant advance registration to the company, in relation to the activities, in respect of the year or years of income to which the application relates.

(2) If the Board refuses to register a company in respect of a year or years of income, the Board must give notice in writing to the company stating the reasons for the refusal.

Note: Advance registration does not remove the need to be registered under section 39J or 39P in order to claim a deduction under section 73B, 73BA, 73BH or 73Y, or a tax offset under section 73I, of the Income Tax Assessment Act 1936 for expenditure in relation to research and development activities.

39HI Grounds for refusal of advance registration

(1) It is a ground on which the Board is entitled to refuse advance registration of an eligible company, in relation to particular research and development activities in respect of a year or years of income, that the activities are not research and development activities.

(2) Subject to subsection (3), the regulations may specify other grounds on which the Board is entitled to refuse advance registration of a company in respect of any year of income or in respect of a particular year or years of income.

(3) The regulations may not specify a ground unless it relates to a matter the determination of which under this Part is a function of the Board.

39J Registration of eligible companies

(1) Subject to section 39K, if:
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(a) an eligible company applies to the Board for registration in relation to its research and development activities in respect of a year of income; and

(aa) the application is in accordance with section 39JD; and

(b) the company provides to the Board such information in relation to its research and development activities as the Board reasonably requires;

the Board shall register the company, in relation to those research and development activities, in respect of that year of income.

(1A) Subject to sections 39JA, 39JB, 39JC, 39JE and 39JF, the Board cannot register a company under this section, in relation to the company’s research and development activities, in respect of a year of income:

(a) if the year is the 1992-93 year of income or an earlier year of income—after 2.30 pm Australian Eastern Standard Time on 6 December 1995; or

(b) if the year is the 1993-94 or 1994-95 year of income—unless the application for registration is made before 7 June 1996; or

(c) if the year is the 1995-96 year of income or a later year of income that ends before the commencement of paragraph (d)—unless the application for registration is made after the end of the year of income but within 6 months after the end of that year; or

(d) if the year of income ends on or after the commencement of this paragraph—unless the application for registration is made after the end of the year of income but within 10 months after the end of that year.

(2) An application by, or a registration of, a company under subsection (1) may relate to a year of income that ended before the commencement of this Part.

(3) Notwithstanding subsection (1), the Board may refuse to register a company in relation to a year of income unless the application is made after the end of that year of income.

(4) The registration of a company in respect of a year of income is not invalid merely because a ground existed on which the Board was entitled to refuse to register the company in respect of that year of income.
Section 39JA

(5) The registration of a company in respect of a year of income is irrevocable.

(5A) The Board may alter the registration of a company in respect of a year of income if:

(a) the alteration will correct a mistake in the registration; and
(b) the mistake occurred because the application for registration contained an error in the information required to be specified, or included, in the application under paragraph 39JD(1)(a), (d) or (e); and
(c) the Board determines that it is appropriate for the alteration to be made.

(5B) If the Board alters the registration of a company in respect of a year of income under subsection (5A), the registration has effect, and is taken always to have had effect, as if it had originally been made as altered.

(6) If the Board refuses to register a company in respect of a year of income, the Board shall give notice in writing to the company stating the reasons for the refusal.

39JA Registration: eligible companies with a registration history

(1) For the purposes of this section, an eligible company is taken to have a registration history only if:

(a) the company has been registered under section 39J in respect of at least 2 years of income during the period starting at the beginning of the 1985-86 year of income and ending at the end of the 1992-93 year of income; and
(b) the company was so registered before the end of 12 months after the end of the 1992-93 year of income.

(2) If an eligible company has a registration history, paragraph 39J(1A)(a) does not apply in relation to the company in respect of a year of income that occurred after the second year of income during the period mentioned in paragraph (1)(a), in respect of which the company was registered before the beginning of the 1993-94 year of income.

(3) The Board cannot register under section 39J an eligible company that has a registration history in respect of a year of income that
Section 39JB

occurred after the second year of income during the period mentioned in paragraph (1)(a), in respect of which the company was registered before the beginning of the 1993-94 year of income, unless the application for registration is made before 1 July 1997.

39JB Registration: eligible companies with a claim history

(1) For the purposes of this section, an eligible company is taken to have a claim history only if:

(a) the company has claimed a deduction under section 73B of the Income Tax Assessment Act 1936 (otherwise than by way of an application for an amendment of its assessment) in respect of the 1992-93 year of income, or an earlier year of income; and

(b) the company was not registered under section 39J in respect of that year of income; and

(c) an assessment of the amount of the company’s taxable income for that year of income was made before 7 December 1995.

(2) If an eligible company has a claim history, paragraph 39J(1A)(a) does not apply in relation to the company in respect of the year of income to which the deduction mentioned in paragraph (1)(a) related.

(3) The Board cannot register under section 39J an eligible company that has a claim history in respect of the year of income mentioned in subsection (2) unless the application for registration is made before 1 July 1997.

39JC Registration: eligible companies with a tax loss history

(1) For the purposes of this section, an eligible company is taken to have a tax loss history only if:

(a) the company makes an application for registration under section 39J in respect of the 1992-93 year of income, or an earlier year of income; and

(b) the company had no taxable income in that year of income, nor in every subsequent year of income that ended before 7 December 1995.
(2) If an eligible company has a tax loss history, paragraph 39J(1A)(a) does not apply in relation to the eligible company in respect of the year of income that is the subject of the application mentioned in paragraph (1)(a).

(3) The Board cannot register under section 39J an eligible company that has a tax loss history in respect of the year of income mentioned in subsection (2) unless the application for registration is made before 1 July 1997.

39JD Applications under section 39J

(1) An application to the Board for registration under section 39J in respect of a year of income must:
   (a) specify the name of the eligible company; and
   (b) contain the information required by the application form in respect of the research and development activities in relation to which registration is sought; and
   (ba) contain a declaration, by an officer of the company who is authorised by the company to make the declaration, stating that the company has, while carrying on the activities, maintained records that substantiate the company’s carrying on of the activities; and
   (c) specify the expenditure incurred by the company in relation to the activities during the year of income; and
   (d) specify which (if any) of the activities have been the subject of advance registration in respect of that year; and
   (e) include such other information as is specified in the regulations.

Note: Requirements in the application form or the regulations for the provision of information in respect of an application may be different for different situations.

(2) The application must:
   (a) be in a form approved by the Board; and
   (b) be accompanied by the appropriate fee (if any) prescribed under section 48A.

(3) The company may amend its application at any time before the period under paragraph 39J(1A)(b) or (c) (as the case may be) for making the application ends.
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Section 39JE

(4) In this section:

*application form* means the appropriate form approved by the Board under subsection (2).

39JE Application for extension of time if application otherwise subject to a 6 month limit

(1A) This section applies to a year of income of an eligible company that is:

(a) the 1995-96 year of income of the company; or
(b) a later year of income of the company that ends before the commencement of paragraph 39J(1A)(d).

(1) The Board may, on a request made under this section by an eligible company, extend the period for making an application for registration under section 39J in respect of a year of income of the company to which this section applies.

(2) The Board must not grant a request made in respect of a year of income that occurs after the 1995-96 year of income if it has granted a request under this section in respect of the immediately preceding year of income.

(3) A request must:

(a) be in writing; and
(b) set out the reasons why the company cannot make an application for registration under section 39J within 6 months after the end of the year of income to which it relates; and
(c) be received by the Board within that period of 6 months.

(4) If the Board grants a request in respect of a year of income under this section, the company may make an application under section 39J in respect of that year of income within 9 months after the end of that year.

(5) If a request in respect of a year of income is granted on, or as a result of, a review under section 39S or 39T, the company may make an application under section 39J in respect of that year of income within whichever of the following periods ends last:

(a) 9 months after the end of that year;
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Section 39JF

(b) 3 months after the day the decision on the review is made.

39JF  Registration if application for registration made after expiry of period for making application

(1) The Board may register an eligible company under section 39J in respect of a year of income, despite the fact that the application for registration was not made within the period for making the application, if the Board considers that the application was made after the end of the period due to exceptional circumstances.

(2) If the Board proposes to refuse to register the company on the ground that the application was not made within the period for making the application, the Board must give written notice to the applicant advising the applicant of:

(a) the proposed refusal; and
(b) the right to lodge a statement and supporting evidence under subsection (3).

(3) Within 30 days of the Board giving notice to the applicant, the applicant may lodge with the Board a written statement that:

(a) asks the Board to register the company despite the fact that the application was not made within the period for making the application; and
(b) sets out reasons why the application was not made within the period for making the application.

If the applicant lodges a statement in accordance with this subsection, the applicant may also lodge evidence to support the statement within that 30 day period.

(4) The Board must wait until the end of that 30 day period before deciding whether to register the company under section 39J, as mentioned in subsection (1), despite the lateness of the application. When making that decision, the Board must take into account any statement and evidence lodged by the applicant under subsection (3).

39K  Grounds for refusal to register eligible companies

(1) Subject to subsection (1A), it is a ground on which the Board is entitled to refuse to register an eligible company, in relation to
Section 39KA

particular research and development activities in respect of a year of income, that the activities are not research and development activities.

(1A) If advance registration has been granted to an eligible company, in relation to particular research and development activities in respect of a year of income, the Board must not refuse to register the company in relation to those activities in respect of that year on the ground that they are not research and development activities.

(2) Subject to subsection (3), the regulations may specify other grounds on which the Board is entitled to refuse to register a company in respect of any year of income or in respect of a particular year of income or years of income.

(3) The regulations may not specify a ground unless it relates to a matter the determination of which under this Part is a function of the Board.

(4) The Board need not, before registering a company, satisfy itself that no grounds exist for refusing the registration.

39KA Guidelines concerning plans for research and development activities

(1) The Board must, as soon as practicable (and, in any event, within 90 days) after the commencement of this section, formulate written guidelines setting out the requirements for plans for the purposes of subsection 73B(2BA) of the Income Tax Assessment Act 1936.

(1A) In formulating the guidelines, the Board must ensure that, having regard to the size and complexity of the activities that are to be carried out in accordance with the plans, the guidelines will not impose undue burdens on eligible companies that are small.

(2) The Board must cause the guidelines to be:
   (a) published in the Gazette; and
   (b) made available on request without charge, to any eligible company.

(3) The requirements may cover the following matters:
   (a) who is to make the plans;
(b) who is to approve the plans;
(c) when the plans are to be made;
(d) what the plans are to contain;
(e) how the plans can be amended;
(f) any other matter.

(4) The Board may, at any time, and whether or not within 90 days after the commencement of this section, by writing, repeal, replace or amend guidelines made under subsection (1).

(5) An instrument formulating guidelines under subsection (1), or repealing, replacing or amending such guidelines, is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

39L. Certificate as to research and development activities

(1) The Board may, and shall if requested in writing by the Commissioner to do so, give to the Commissioner a certificate stating whether particular activities that have been or are being carried on by or on behalf of a person were or are research and development activities.

(2) If the Board issues a certificate to the effect that particular activities were not or are not research and development activities, the Board must give notice in writing to the person concerned stating the reasons for issuing the certificate.

39LAA Certificate as to overseas research and development activities

(1) The Board may, and must if requested in writing by the Commissioner to do so, give to the Commissioner a certificate stating whether particular activities that have been or are being carried on by or on behalf of an eligible company in respect of a project are the overseas research and development activities described in the provisional certificate given to the company.

(2) If the Board gives a certificate under subsection (1), the Board must give to the company concerned:
   (a) a copy of the certificate; and
Section 39LA

(b) if the Board decided that particular activities were not the overseas research and development activities described in the provisional certificate—a statement of the reasons for its decision.

39LA Certificate as to core technology

(1) The Board may, and must if requested in writing by the Commissioner to do so, give to the Commissioner a certificate stating whether particular technology that an eligible company has acquired, or has acquired the right to use, for the purposes of particular research and development activities that have been or are being carried on by or on behalf of the company was core technology in relation to those activities.

(2) If the Board issues a certificate to the effect that particular technology was not core technology, the Board must give notice in writing to the eligible company concerned stating the reasons for issuing the certificate.

39M Certificate as to exploitation of results, or Australian content, of activities

(1) Where:

(a) expenditure has been incurred by a company registered under section 39J or 39P:

(i) on particular research and development activities; or

(ii) in the acquisition or construction of plant, an asset or a building, or an extension, alteration or improvement to a building, for use in particular research and development activities; and

(b) the Board is of the opinion that:

(i) any of the results of those research and development activities have been exploited otherwise than:

(A) on normal commercial terms; or

(B) in a manner that is for the benefit of the Australian economy; or

(ii) those research and development activities do not have an adequate Australian content; or
Section 39MA

(iii) it would have been reasonable to expect there to have been some exploitation, after the commencement of this subparagraph, of the results of those research and development activities but no such exploitation has occurred;

the Board may, subject to subsection 39E(4), give a certificate in writing to the Commissioner:

(c) stating that it is of that opinion;

(d) specifying the research and development activities concerned; and

(e) giving the reasons for its opinion.

(2) The Board shall not give a certificate under this section in relation to a company unless the Board has:

(a) given notice in writing to the company stating that it is considering giving the certificate, specifying the activities to which the certificate would relate and informing the company of the reasons why it is considering giving the certificate;

(b) invited the company to make a written submission to the Board in relation to the matter within 90 days; and

(c) if such a submission is made within that period, had regard to the matters raised in the submission.

39MA Certificate about ineligible finance schemes

(1) If:

(a) expenditure has been incurred in connection with particular research and development activities by a company registered under section 39J or 39P; and

(b) the Board is of the opinion that there was or is an ineligible finance scheme in relation to those research and development activities;

the Board may give a written certificate to the Commissioner:

(c) stating that it is of that opinion; and

(d) specifying the research and development activities concerned; and

(e) giving the reasons for its opinion.
Section 39N

(2) The Board must not give a certificate under this section in relation to a company unless the Board has:

(a) given a written notice to the company:

(i) stating that the Board is considering giving the certificate; and

(ii) specifying the activities to which the certificate would relate; and

(iii) informing the company of the reasons why it is considering giving the certificate; and

(b) invited the company to make a written submission to the Board in relation to the matter within 90 days; and

(c) if such a submission is made within that period—had regard to the matters raised in the submission.

39N Certificate of non-compliance

(1) Where:

(a) the Board requests a registered company to give to the Board particular information relating to activities carried on by or on behalf of the company, being information needed by the Board for the purpose of performing any of its functions, or the exercise of any of the powers, under this Part; and

(b) the company does not give the information within a reasonable period;

the Board may, by notice in writing to the company, require the company to give the information to the Board within 30 days after the notice is received by the company.

(2) If such a notice is given and the company fails to comply with the notice, the Board may give a certificate to the Commissioner stating that the company has failed to comply with a notice under this section in respect of the activities concerned.

(3) A notice under subsection (1) shall:

(a) state that, if the company fails to comply with the notice within the period specified in the notice, the Board may give a certificate under subsection (2) in respect of the activities to which the notice relates; and

(b) set out the terms of subsections 73B(33A), 73BF(4) and 73BM(4) of the *Income Tax Assessment Act 1936*.
Section 39P

39P Joint registration

(1A) This section has effect subject to section 39PA.

(1) A person may apply to the Board on behalf of 2 or more eligible companies for the joint registration of those eligible companies in respect of a year of income or years of income in relation to a proposed project or proposed projects comprising or including research and development activities.

(2) The application shall:
   (a) specify the companies concerned;
   (b) contain such particulars of the project, or each project, as the Board requires;
   (c) specify the total amount of the expenditure expected to be incurred by the companies in the year of income or years of income in respect of the research and development activities comprised or included in the project or projects;
   (d) specify, in respect of each company in relation to the research and development activities comprised or included in the project or each project, the amount of expenditure expected to be incurred in the year of income or each year of income in each of the following classes of expenditure:
      (i) research and development expenditure other than contract expenditure;
      (ii) plant expenditure; and
   (e) set out proposals for the exploitation of any results of the research and development activities.

(3) If the Board is of the opinion in relation to the project, or in relation to a particular one or more of those projects, that:
   (a) the activities in respect of which the expenditure is proposed to be incurred are research and development activities;
   (b) at least one of the companies is not related to any of the others;
   (c) the total amount of the expenditure expected to be incurred as mentioned in paragraph (2)(c) will exceed $500,000;
   (d) if there was or is a finance scheme in relation to the research and development activities—the finance scheme is not an ineligible finance scheme;
Section 39P

(f) the results of the research and development activities will be exploited:
   (i) on normal commercial terms; and
   (ii) in a manner that is for the benefit of the Australian economy;

(g) the research and development activities will have an adequate Australian content; and

(h) there are no grounds under section 39K on which the Board would be entitled to refuse to register either or any of the companies in respect of the year of income or any of the years of income under section 39J if the companies had made separate applications for registration;

the Board may register the companies jointly in respect of the year of income or the years of income in relation to that project or in relation to that particular one or more of those projects, as the case requires.

(3A) If the Board refuses to register the companies jointly in relation to the project or projects specified in the application, the Board must give notice in writing to the companies stating the reasons for the refusal.

(4) If, after registering companies jointly under subsection (3) in respect of a year of income or years of income, the Board becomes of the opinion that:
   (a) the whole or any part of the money paid by the companies has not been or is not being expended in respect of research and development activities;
   (b) any of the results of the research and development activities have not been, or will not be, exploited as mentioned in paragraph (3)(f);
   (c) the research and development activities do not, or will not, have an adequate Australian content; or
(d) either or any of the companies has, before the completion of the project or projects in respect of which money paid by the company has been expended, disposed of to another person all or any of the company’s rights in respect of the exploitation of any of the results of the relevant research and development activities, or an interest (whether legal or equitable) in all or any of those rights; the Board may give to the Commissioner a certificate stating that it is of that opinion.

(5) The Board shall not give a certificate under this section that affects a company or companies unless the Board has:

(a) given notice in writing to the company or each company stating that the Board is considering giving the certificate and informing the company of its reasons for so considering;

(b) given to the company or each company a reasonable opportunity to make a written submission in relation to the matter; and

(c) if such a submission is made within a reasonable time, had regard to the matters raised in the submission.

39PA Limitation of Board’s power to register companies jointly

(1) Subject to this section, the Board must not, after the commencement of this section, register eligible companies jointly.

(2) If, before 5 pm, by legal time in the Australian Capital Territory, on 23 July 1996 (the commencement time) a favourable advance approval opinion was given in respect of 2 or more eligible companies in relation to a proposed project comprising or including research and development activities, subsection (1) does not prohibit the Board, upon an application made under subsection 39P(1) not later than the end of 12 months after that time, from registering the companies jointly in relation to the project in respect of the year of income or years of income specified in the application.

(3) If:

(a) before the commencement time, an application was made under section 39P to register 2 or more eligible companies
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jointly in relation to a proposed project in respect of a year of income or years of income; and

(b) by the commencement time, the Board had not, in respect of the application, registered or refused to register the companies jointly;

subsection (1) does not prohibit the Board, in respect of the application, from registering the companies jointly.

(4) If, before the commencement time, the Board refused under section 39P to register 2 or more eligible companies jointly in relation to a proposed project in respect of a year of income or years of income:

(a) where the Administrative Appeals Tribunal decided, on a review of a decision of the Board confirming the refusal, that the companies should be registered jointly in relation to the proposed project in respect of the year of income or one of the years of income but the registration to give effect to the decision had not been effected before that time—subsection (1) does not prohibit the companies from being registered jointly to give effect to the Tribunal’s decision; and

(b) subsection (1) does not:

(i) prohibit the Board after that time from reconsidering its decision under section 39S or prohibit the Administrative Appeals Tribunal after that time from reviewing a decision of the Board confirming the refusal; and

(ii) where the Board on the reconsideration, or the Tribunal on the review, decides that the companies should be registered jointly in relation to the proposed project in respect of the year of income or one or more of the years of income—prohibit the companies from being so registered jointly.

(5) In this section:

favourable advance approval opinion, in relation to 2 or more eligible companies in respect of a proposed project, means an informal written opinion given by the Board, otherwise than in connection with a decision by the Board under the finance scheme guidelines, that:

(a) the proposed project would comprise or include research and development activities; and
(b) a proposed finance scheme in relation to those activities
would not be taken to be an ineligible finance scheme for the
purposes of this Part.

39PB  Extension of joint registration to complete project

(1) If 2 or more companies are registered jointly in relation to a project
in respect of a year of income or years of income, a person may,
before the end of that year of income or of the later or latest of
those years of income, as the case may be, and not later than
30 June 2000, apply to the Board on behalf of the companies for an
extension of the registration to include a later year of income or
later years of income in which the companies propose to incur
research and development expenditure or interest expenditure in
respect of research and development activities comprised or
included in the project.

(2) The application must:
   (a) be in writing in accordance with a form approved by the
       Board; and
   (b) contain such particulars of the extension as are necessary to
       enable the Board to make a decision.

(3) Subject to subsection (4), if the Board is satisfied that an extension
of the registration is necessary to enable the companies to complete
the project, the Board may grant the extension for a year of income
or years of income not later than the 2004-05 year of income.

(4) The Board must not grant the extension unless the Board is
satisfied that, if the extension were granted:
   (a) the companies would not incur expenditure in relation to
       research and development activities other than those
       comprised or included in the particulars of the project as
       stated in the application for the registration under subsection
       39P(2); and
   (b) the companies would not incur any core technology
       expenditure in relation to research and development activities
       other than core technology expenditure identified in the
       application for registration under subsection 39P(2); and
Section 39PB

(c) the companies would exploit any results of the research and development activities as mentioned in paragraph 39P(3)(f); and

(d) the total amount of the expenditure expected to be incurred by the companies in respect of the research and development activities comprised or included in the project in the years of income in respect of which the companies would be jointly registered (including the year of income or years of income covered by the extension) would not exceed the total amount of the expenditure that was expected to be incurred by the companies in respect of those activities as specified in the application for the registration in accordance with paragraph 39P(2)(c).

(5) If the Board refuses to grant the extension, the Board must give written notice to the companies stating the reasons for the refusal.

(6) If, after granting the extension, the Board becomes of the opinion that:

(a) the companies have incurred expenditure in relation to research and development activities other than those comprised or included in the particulars of the project as stated in the application for the registration under subsection 39P(2); or

(b) the companies have incurred core technology expenditure in relation to research and development activities other than core technology expenditure identified in the application for registration under subsection 39P(2); or

(c) the total amount of the expenditure incurred by the companies in respect of the research and development activities comprised or included in the project in the years of income in respect of which the companies are jointly registered (the *actual expenditure in relation to research and development activities*) has exceeded the total amount of the expenditure that was expected to be incurred by the companies in respect of those activities as specified in the application for the registration in accordance with paragraph 39P(2)(c) (the *expected expenditure in relation to research and development activities*);

the Board must give the Commissioner a certificate stating that it is of that opinion and stating the day on which, in its opinion, the
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expenditure in relation to research and development activities referred to in paragraph (a) or (b) was incurred or the actual expenditure in relation to research and development activities referred to in paragraph (c) exceeded the expected expenditure in relation to research and development activities referred to in that paragraph, as the case may be.

(7) The Board must not give a certificate under subsection (6) that affects a company or companies unless the Board has:

(a) given written notice to the company or each company stating that the Board is considering giving the certificate and telling the company of its reasons for so considering; and

(b) given the company or each company a reasonable opportunity to make a written submission in relation to the matter; and

(c) if such a submission is made within a reasonable time—had regard to the matters raised in the submission.

39Q  Copies of certificate to be given to persons affected

Where the Board gives to the Commissioner a certificate under this Part that affects a person, the Board shall at the same time serve a copy of the certificate on the person.

39R  Service of notices etc.

A notice or other document that is required to be given to or served on a person under this Part may be given or served by sending to the person, by telegraph, telex, facsimile service or other similar means of communication, a message to the effect of the notice or other document.

39S  Internal review of decisions

(1) This section applies to a decision of the Board under section 39ED, subsection 39EE(3), subsection 39EF(2) or (4), subsection 39F(4), (6), (7) or (9), section 39FA, 39HH, 39J, 39JE, 39L, 39LAA or 39LA, subsection 39P(3) or 39PB(3).

Note: A decision of the Board whether to register a company as mentioned in subsection 39JF(1) is a decision of the Board under section 39J to which this section applies.
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(1A) This section also applies to a decision of the Board under the finance scheme guidelines.

(2) A person who is affected by a decision of the Board may, if dissatisfied with the decision, by notice given to the Board:
   (a) within the period of 21 days after receiving notice of the decision; or
   (b) within such further period as the Board allows; request the Board to reconsider the decision.

(3) The request must set out the reasons for making the request.

(4) Upon receipt of the request, the Board must reconsider the decision and may, subject to subsection (5), confirm or revoke the decision or vary the decision in such manner as the Board thinks fit.

(5) If the Board does not confirm, revoke or vary a decision before the end of the period of 60 days after the day on which the Board received the request under subsection (2) to reconsider the decision, the Board is taken (except for the purpose of subsection (6)), at the end of that period, to have confirmed the decision under subsection (4).

(6) Where the Board confirms, revokes or varies a decision, the Board must, by notice served on the applicant, inform the applicant of the result of the reconsideration of the decision, and the reasons for confirming, varying or revoking the decision, as the case may be.

(7) Where the Board gives a notice to an applicant under subsection (6) informing the applicant that a decision has been revoked or varied, the Board must advise the Commissioner of particulars of the notice.

(8) The confirmation, revocation or variation under subsection (4) of a decision is not invalid merely because it is done after the end of the period referred to in subsection (5) unless, before it is done, the applicant makes an application to the Administrative Appeals Tribunal under section 39T for review of the decision.
39T  Review of decisions by Administrative Appeals Tribunal

(1) Applications may be made to the Administrative Appeals Tribunal for review of decisions of the Board:
(a) that have been confirmed or varied under subsection 39S(4); or
(b) under subsection 39G(4), section 39HD, 39HF, 39M or 39MA or subsection 39N(2), 39P(4) or 39PB(6).

(2) Where a decision is taken, under subsection 39S(5), to be confirmed, section 29 of the Administrative Appeals Tribunal Act 1975 applies as if the prescribed time for making application for review of the decision were the period commencing on the day on which the decision is taken to be confirmed and ending on the 28th day after that day.

(3) Where a request is made under subsection 39S(2) in respect of a decision, section 41 of the Administrative Appeals Tribunal Act 1975 applies as if the making of the request were the making of an application to the Administrative Appeals Tribunal for review of that decision.

(4) The hearing of a proceeding relating to a decision covered by subsection (1) must take place in private and the Administrative Appeals Tribunal may, by order:
(a) give directions as to the persons who may be present; and
(b) give directions of a kind referred to in paragraph 35(2)(b) or (c) of the Administrative Appeals Tribunal Act 1975.

39U  Statements to accompany notification of decisions

(1) Where the Board makes a decision to which section 39S applies and gives to a person whose interests are affected by the decision notice in writing of the decision, that notice must include a statement to the effect that:
(a) the person may, if dissatisfied with the decision, seek a reconsideration of the decision by the Board in accordance with subsection 39S(2); and
(b) the person may, subject to the Administrative Appeals Tribunal Act 1975, if dissatisfied with a decision made by the Board upon that reconsideration confirming or varying the
Part IIIA  Functions of Board in relation to income tax concessions

Section 39V

first-mentioned decision, make application to the Administrative Appeals Tribunal for review of the decision so confirmed or varied.

(2) Where the Board confirms or varies a decision under subsection 39S(4) and gives to a person notice in writing of the confirmation or variation of the decision, that notice must include a statement to the effect that the person may, subject to the Administrative Appeals Tribunal Act 1975, if dissatisfied with the decision so confirmed or varied, make application to the Administrative Appeals Tribunal for review of the decision.

(3) Where the Board makes a decision under subsection 39G(4), section 39HD, 39HF, 39M or 39MA or subsection 39N(2) or 39P(4) and gives to a person whose interests are affected by the decision notice in writing of the decision, that notice must:

(a) in all cases—including a statement to the effect that, subject to the Administrative Appeals Tribunal Act 1975, application may be made to the Administrative Appeals Tribunal, by or on behalf of any person whose interests are affected by the decision, for review of the decision; and

(b) except where subsection 28(4) of that Act applies—including a statement to the effect that a request may be made under section 28 of that Act by or on behalf of such a person for a statement setting out the findings on material questions of fact, referring to the evidence or the material on which those findings were based and giving the reasons for the decision.

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

39V Tax consequences of variation or revocation of reviewable decisions

(1) For the purposes of the Income Tax Assessment Act 1936, where a decision of the Board under this Part is revoked or set aside in accordance with section 39S of this Act or section 43 of the Administrative Appeals Tribunal Act 1975, the decision is taken to have never been made.

(2) Subject to subsection (1), for the purposes of the Income Tax Assessment Act 1936, where a decision of the Board under this Part

60  Industry Research and Development Act 1986
Section 39V

is varied in accordance with section 39S of this Act or section 43 of the *Administrative Appeals Tribunal Act 1975*, the decision is taken to have been originally made as varied.

(3) Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment at any time for the purpose of giving effect to this section.
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 activities 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 during the year in achieving the object of this Act; 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 research and development 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 financial year for registration of eligible companies under section 39J that specified an intention to choose a tax offset under section 73I of the *Income Tax Assessment Act 1936*; and

(ii) the total amounts of the offsets involved; and must include an analysis of the tax offset scheme, including the tax offset thresholds, for that 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

(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.
(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) The Board, a committee, a member or an acting member of the Board, a member of a committee or a member of the staff assisting the Board or assisting a committee shall not, except for the purposes of this Act, of the *Census and Statistics Act 1905*, of the *Income Tax Assessment Act 1936* or of the *Industrial Research and Development Incentives Act 1976* or unless required or permitted by law to do so, supply information to a person if the supplying of the information would constitute a breach of confidence.

(2) Subsection (1) does not apply to the supply of 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 to the Department; or

(c) an officer of the Department designated in writing by the Secretary to the Department as being an officer who is to receive information under this Act.

(3) In this section:

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

### 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 etc. under Part IIIA

(1) The regulations may prescribe fees for making applications or requests to the Board under Part IIIA.

(2) The amount of a fee must not be such as to amount to taxation.
Part VI—Amendments of Industrial Research and Development Incentives Act 1976

Sections 49–53

Note:
The amendments made by this Part are incorporated in the compilation on SCALEplus.

For access to the wording of the amendments made by this Part, see Act No. 89, 1986.
Notes to the *Industry Research and Development Act 1986*

**Note 1**

The *Industry Research and Development Act 1986* as shown in this compilation comprises Act No. 89, 1986 amended as indicated in the Tables below.

For application, saving or transitional provisions made by the *Corporations (Repeals, Consequentials and Transitionals) Act 2001*, see Act No. 55, 2001.

All relevant information pertaining to application, saving or transitional provisions prior to 19 December 1996 is not included in this compilation. For subsequent information see Table A.

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| Taxation Laws Amendment Act (No. 3) 1996                 | 78, 1996        | 19 Dec 1996    | Schedule 4 (items 58–75): Royal Assent (c) | Sch. 4 (item 69) [see Table A] |
Schedule 1 (items 13, 14): 6 Dec 1995 (d)  
Schedule 1 (items 21–23): 15 June 1991 (d)  
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| Tax Law Improvement Act (No. 1) 1998                     | 46, 1998        | 22 June 1998   | Schedule 2 (items 548, 549): (l) | Sch. 2 (item 549): [see Table A] |
| Industry Research and Development Amendment Act 1999     | 15, 1999        | 9 Apr 1999     | 9 Apr 1999          | Ss. 4, 5 [see Table A] |
| Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000 | 137, 2000      | 24 Nov 2000    | Ss. 1–3 and Schedule 1 (items 1, 4, 6, 7, 9–11, 32): Royal Assent  
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Notes to the Industry Research and Development Act 1986

Act Notes

(a) The Industry Research and Development Act 1986 was amended by sections 91–112 only of the Taxation Laws Amendment Act (No. 5) 1992, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(b) The Industry Research and Development Act 1986 was amended by Schedule 4 (item 94) only of the Statute Law Revision Act 1996, subsection 2(1) of which provides as follows:

(1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.

(c) The Industry Research and Development Act 1986 was amended by Schedule 4 (items 58–75) only of the Taxation Laws Amendment Act (No. 3) 1996, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(d) 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.

(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.

(e) 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.

(f) 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.

(g) The Industry Research and Development Act 1986 was amended by Schedule 1 (items 544 and 545) only of the Public Employment (Consequential and Transitional) Amendment Act 1999, subsections 2(1) and (2) of which provide as follows:

(1) In this Act, commencing time means the time when the Public Service Act 1999 commences.

(2) Subject to this section, this Act commences at the commencing time.

(h) The Industry Research and Development Act 1986 was amended by Schedule 3 (item 276) only of the Corporations (Repeals, Consequentials and Transitionals) Act 2001, subsection 2(3) of which provides as follows:

(3) Subject to subsections (4) to (10), Schedule 3 commences, or is taken to have commenced, at the same time as the Corporations Act 2001.
Notes to the *Industry Research and Development Act 1986*

(i) The *Industry Research and Development Act 1986* was amended by Schedule 1 (item 2, 2A and 7) and Schedule 2 (items 45–50 and 85–91) only of the *Taxation Laws Amendment (Research and Development) Act 2001*, section 2 of which provides as follows:

1. Subject to this section, this Act commences on the day on which it receives the Royal Assent.
2. Division 1 of Part 3 of Schedule 2 is taken to have commenced at 12 pm, by legal time in the Australian Capital Territory, on 29 January 2001.
3. Division 2 of Part 3 of Schedule 2 commences, or is taken to have commenced, immediately after the commencement of Schedule 1 to the *New Business Tax System (Capital Allowances) Act 2001*.

(j) Subsection 2(1) (item 61) of the *Taxation Laws Amendment Act (No. 2) 2002*, provides as follows:

1. Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

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**Part V**

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### Table A

**Application, saving or transitional provisions**

*Taxation Laws Amendment Act (No. 3) 1996 (No. 78, 1996)*

### Schedule 4

**Part 2—Amendment of the Industry Research and Development Act 1986**

#### 69 Transitional

(1) Subject to subitem (2), if, at or after 5 pm, by legal time in the Australian Capital Territory, on 23 July 1996 and before the commencement of section 39PA of the *Industry Research and Development Act 1986*, the Industry Research and Development Board registered companies jointly, the registration is taken not to have been effected.

(2) Subitem (1) does not apply to a registration if the Board would not, because of subsection 39PA(2), (3) or (4) of the *Industry Research and Development Act 1986*, be prohibited from effecting the registration after the commencement of section 39PA of that Act.

*Tax Law Improvement Act (No. 1) 1998 (No. 46, 1998)*

### Schedule 2

**Part 4—Consequential amendment of other Acts**

#### 549 Application

Section 4 of this Act does not apply to the amendment made by item 548.
4 Treatment of certain applications lodged with the Australian Taxation Office

(1) This section applies only to applications made under section 39J of the Industry Research and Development Act 1986 by the following companies:

(a) Aussie Diamond Products Pty. Limited (ACN 051 488 656);
(b) Creative Objects Pty. Ltd. (ACN 065 617 781);
(c) Cutler Brands Pty Ltd (ACN 050 166 160);
(d) Futureweld Pty. Ltd. (ACN 053 762 744);
(e) Learning Curve Pty. Limited (ACN 008 658 624);
(f) NSJA Investments Pty Limited (ACN 007 288 637) (previously known as Strategos Pty. Ltd.).

(2) If, before the commencement of this section:

(a) an application was lodged with the Australian Taxation Office before the end of the period for making the application; and
(b) the application was received by the Board after the end of the period for making the application; and
(c) the company was refused registration under section 39J merely because the application was not made within the period for making the application;

the Board must take the application to have been made within the period for making the application and reconsider the application for registration under section 39J as soon as possible after the commencement of this section.

(3) If, before the commencement of this section:

(a) an application was lodged with the Australian Taxation Office before the end of the period for making the application; and
(b) the application was received by the Board after the end of the period for making the application; and
(c) the Board decided to register the company under section 39J;
the validity of the registration is not affected, and is taken never to have been affected, by the fact that the application was not made within the period for making the application.

(4) If, before the commencement of this section:
   (a) an application was lodged with the Australian Taxation Office before the end of the period for making the application; and
   (b) the application was received by the Board after the end of the period for making the application; and
   (c) the Board did not register, or refuse to register, the company under section 39J;

the Board must take the application to have been made within the period for making the application and consider the application for registration under section 39J as soon as possible after the commencement of this section.

(5) In this section:

   application includes a copy of an application.

   Board means the Industry Research and Development Board.

5 Effect of amendments relating to members of the Industry Research and Development Board and its committees

The amendments made by items 1, 2, 3, 4 and 5 of Schedule 1 do not affect the validity of, or the period of, an appointment of a person as a member of the Industry Research and Development Board, or as a member of a committee of that Board, that was in force immediately before the commencement of this section.
Schedule 2

418 Transitional—pre-commencement offences

(1) Despite the amendment or repeal of a provision by this Schedule, that provision continues to apply, after the commencement of this item, in relation to:

(a) an offence committed before the commencement of this item; or

(b) proceedings for an offence alleged to have been committed before the commencement of this item; or

(c) any matter connected with, or arising out of, such proceedings;

as if the amendment or repeal had not been made.

(2) Subitem (1) does not limit the operation of section 8 of the Acts Interpretation Act 1901.

419 Transitional—pre-commencement notices

If:

(a) a provision in force immediately before the commencement of this item required that a notice set out the effect of one or more other provisions; and

(b) any or all of those other provisions are repealed by this Schedule; and

(c) the first-mentioned provision is amended by this Schedule;

the amendment of the first-mentioned provision by this Schedule does not affect the validity of such a notice that was given before the commencement of this item.
Table A

Taxation Laws Amendment (Research and Development) Act 2001
(No. 170, 2001)

Schedule 1

2B Application

The amendment made by this Part applies to reports in relation to the financial year commencing on 1 July 2001 and all later financial years.

Industry Research and Development Amendment Act 2004 (No. 15, 2004)

Schedule 1

25 Saving provision

Despite the repeal of subsection 19(2) of the Industry Research and Development Act 1986, that subsection continues to apply in relation to:

(a) any direction given by the Minister under that section before the date of commencement of Schedule 1 to this Act; and

(b) any revocation of such a direction made on or after that date;

as if the subsection had not been repealed.

28 Transitional provisions

(1) Despite the amendments of the Industry Research and Development Act 1986 made by this Act:

(a) Ministerial directions in force immediately before the commencing day under section 19 of that Act in relation to a program of funding for research and development are taken to continue in force on and after that day for the purpose of facilitating the transitional arrangements set out in subitems (3) to (6); but

(b) a person or body may not make an application after that day in respect of a research and development proposal under such a program.

(2) Nothing in subitem (1) implies that:

(a) the Minister may not give directions, on or after the commencing day, under section 18A of the Industry Research and Development Act 1986
Notes to the  *Industry Research and Development Act 1986*

### Table A

*Research and Development Act 1986*, in relation to a program of funding for research and development that is substantially similar to the program for which directions had been given under section 19 of that Act; or

(b) a person or body may not make an application after that day in respect of a research and development proposal under such a substantially similar program.

(3) If:  
(a) before the commencing day, a person or body has made an application under the *Industry Research and Development Act 1986* for the expenditure of Commonwealth money in respect of a research and development proposal; and

(b) that proposal is a proposal for research and development to be funded under a program to which Ministerial directions in force immediately before that day under section 19 of that Act apply;

then:

(c) that application may be considered and dealt with by the Industry Research and Development Board on and after that day, and

(d) any agreement in relation to the provision of Commonwealth money for that proposal may be entered into by or on behalf of the Board on and after that day;

as if the amendments made by this Schedule had not been made.

(4) If:

(a) before the commencing day, the Board had entered into:

(i) an agreement under section 33 of the *Industry Research and Development Act 1986* as in force at that time; or

(ii) an agreement under the *Industry Research and Development Act 1986* in relation to a research and development program to which Ministerial directions in force immediately before that day under section 19 of the *Industry Research and Development Act 1986* apply; and

(b) immediately before the commencing day, any obligation under that agreement is still required to be met;
that agreement continues in force, according to its terms, on and after that day, as if the amendments made by this Schedule had not been made.

(5) The Industry Research and Development Board may from time to time, on or after the commencing day, for the purpose of determining whether obligations required to be met under an agreement referred to in subitem (3) or (4) are in fact being met, exercise any powers that had been conferred on the Board by or under the Industry Research and Development Act 1986 or by the agreement as if the amendments made by this Schedule had not been made.

(6) Despite the amendments of the Industry Research and Development Act 1986 made by this Schedule, a prosecution may be instituted, on or after the commencing day, in respect of an offence concerning:

(a) an application made before that day for:

(i) the expenditure of Commonwealth money under a program to which Ministerial directions in force immediately before that day under section 19 of that Act apply; or

(ii) an advance in respect of money that may be paid under such a program; or

(b) if any agreement is entered into before, on or after that day in relation to such an application—any act or omission, or the provision of or failure to provide any information, in relation to the research and development to which the agreement relates;

as if those amendments had not been made.

(7) In this item:

commencing day means the date of commencement of Schedule 1 to this Act.