Commonwealth of Australia

Industry Research and Development Act 1986

R&D Start Program Directions No 3 of 2002

I, Ian Elgin Macfarlane, Minister for Industry, Tourism and Resources, acting under subsections 19 (1) and 20 (1) of the *Industry Research and Development Act 1986*, give the following directions to the Industry Research and Development Board.

Dated 28 November 2002

SIGNED: Ian Macfarlane

Minister for Industry, Tourism and Resources

PART 1 — PRELIMINARY

Name of directions

1. These directions are the *R&D Start Program Directions No 3 of 2002.*

Commencement

2. These directions commence on the day on which the directions are published in the Gazette.

Object of these directions

3. **(1)** The object of this instrument is to give directions to the Industry Research and Development Board in relation to a function to be performed by the Board relating to the object of the *Industry Research and Development Act 1986* and to certain policies and practices to be followed by the Board in the performance of that function.

(2) That function is an additional function of the Board.

(3) The policies and practices to be followed by the Board in the performance of the additional function are intended to include the provision of a competitive basis for granting:

(a) financial assistance for research and development projects;

(b) concessional loans for the commercialisation of technological innovation; and

(c) assistance under COMET for commercialisation of emerging technologies.

Interpretation

4. (1) In these directions, unless the contrary intention applies:

accept means admit for assessment in accordance with these directions and acceptance has a corresponding meaning.

agreement means an agreement mentioned in clause 18.

applicant includes a party to a joint application, but in relation to a Start Graduate application, does not include a research institution.

application means an application for financial assistance or a loan.

COMET (see ***R&D Start Program***).

COMET Guidelines means:

(a) guidelines made by the Board under subclause 7(3) of these directions, or

(b) if no guidelines have been made under subclause 7(3) of these directions - the guidelines made by the Board under subclause 7(3) of the *R&D Start Program Directions No 1 of 2000.*

Concessional Loans (see ***R&D Start Program***).

Core Start (see ***R&D Start Program***).

eligible expenditure means expenditure that is eligible expenditure under a guideline or determination of the Board under clause 20.

financial assistance means a payment under the R&D Start Program that:

(a) is not a loan; and

(b) is not made for the purposes of COMET.

GST has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999.*

joint application means a single application made by more than 1 applicant.

loan means a Concessional Loans payment.

non tax-exempt company means a company, except a company to which Division 50 of the *Income Tax Assessment Act 1997* applies, that is incorporated in Australia.

program funding or program funds means the funding made available by the Commonwealth of Australia for the R&D Start program in any given financial year, being the funding specified in the Portfolio Budget Statement (as varied by any Portfolio Additional Estimates Statement or by the Minister) for that year.

R&D Start Program means the merit-based program designed to assist Australian industry to undertake research and development (R&D) and commercialisation comprising the following component programs:

(a) **Start Grants**

Start Grants means the research and development program comprising the following subprograms:

(i) **Core Start**

Core Start means the program of financial assistance for research and development projects of non tax-exempt companies with turnovers of less than $50,000,000 in each relevant year;

(ii) **Start Plus**

Start Plus means the program of financial assistance for research and development projects of non-tax exempt companies with turnovers of $50,000,000 or more in 1, or more than 1, relevant year; and

(iii) **Start Premium**

Start Premium means the program of financial assistance:

(A) for high merit research and development projects of non tax-exempt companies; and

(B) that is repayable to the Commonwealth;

(b) **Start Graduate**

Start Graduate means that program of financial assistance for research and development related projects undertaken through the engagement of a graduate by non tax-exempt companies with turnovers of less than $50,000,000 in each relevant year;

(c) **Concessional Loans**

Concessional Loans means the program of concessional loans for the commercialisation of technological innovation; and

(d) **COMET**

COMET means the Commercialising Emerging Technologies program established to provide support to enable COMET clients to maximise their potential for innovation and the commercialisation of innovative products, services and processes.

relevant year, for an applicant, means:

(a) if the applicant has been incorporated for each of the 3 years preceding the year of income in which the application is made — each of those years; or

(b) if the applicant has been incorporated for fewer than 3 years of income preceding the year of income in which the application is made — each of those years in which the applicant was incorporated.

revoked directions means the directions revoked by clause 33, by the *R&D Start Program Directions No 1 of 2002*, by the *R&D Start Program Directions No 1 of 2000* or by the *R&D Start Program Directions No 1 of 1998.*

research institution includes:

(a) the Commonwealth Scientific and Industrial Research Organisation; and

(b) a tertiary educational research institution; and

(c) an institution that is recognised as a Cooperative Research Centre; and

(d) a medical or veterinary research institution; and

(e) a body that, in the opinion of the Board:

(i) conducts research and development as its primary activity; and

(ii) is primarily funded by the Commonwealth, or a State or Territory, and conducts substantial research.

Start Graduate (see ***R&D Start Program***).

Start Grants (see ***R&D Start Program***).

Start Plus (see ***R&D Start Program***).

Start Premium (see ***R&D Start Program***).

year of income, of a company, means the period of 12 months to which the income tax returns of the company relate.

(2) For these directions, whether 2 or more bodies corporate are related to each other is determined in the same way as under the *Corporations Act 2001*.

(3) In these directions, ***may*** is permissive and not mandatory.

Board to have regard to certain policy objectives

5. The Board must have regard to the following policy objectives in giving effect to these directions:

(a) to increase the number of projects involving research and development activities with a high commercial potential that are undertaken by companies;

(b) to foster greater commercialisation of the outcomes of those projects;

(c) to foster collaborative research and development activities in industry and between industry and research institutions;

(d) to encourage successful innovation in small companies by supporting commercialisation of internationally competitive products, processes and services;

(e) to increase the level of research and development activity in Australia that is commercialised in a manner that will benefit the Australian economy; and

(f) to increase the level of research and development activity conducted that provides national benefit.

When applications to be considered

6. The Board must deal with an application as soon as practicable after it is received by the Board.

PART 2 — ADDITIONAL FUNCTION OF BOARD

Additional function

7. **(1)** A function of the Board is to administer the R&D Start Program.

(2) The Board must administer the component programs of the R&D Start Program, by:

(a) considering applications and selecting applicants for financial assistance, loans and COMET;

(b) entering into agreements, on behalf of the Commonwealth, with applicants whose applications for financial assistance, loans or COMET are granted;

(c) authorising payments for financial assistance, loans and COMET to be made by the Commonwealth to those applicants;

(d) monitoring and evaluating projects for which financial assistance or loans or assistance under COMET are provided; and

(e) administering COMET in accordance with the COMET guidelines.

(3) The Board may make written guidelines for COMET setting out:

(a) the eligibility criteria for applicants;

(b) the kinds of assistance available;

(c) how the Board will process applications;

(d) the terms on which assistance will be provided;

(e) the application fee, if any, to be paid by applicants;

(f) the date from which the guidelines take effect; and

(g) any other matters the Board considers appropriate in relation to the administration of that program.

PART 3 — REFUSAL OF CERTAIN APPLICATIONS FOR COMET

8. The Board may refuse a particular application under COMET if the Board considers that:

(a) the applicant is registered under section 39P or the Act;

(b) the applicant, if it is a body corporate, is related to a company that is registered under section 39P of the Act;

(c) the application relates to a product, service or process that involves intellectual property developed under a project in relation to which a company is registered under section 39P of the Act; or

(d) the application otherwise relates to or is connected with a project in relation to which a company is registered under section 39P of the Act.

PART 4 — ELIGIBILITY FOR FINANCIAL ASSISTANCE

Eligible applications — financial assistance

9. **(1)** Subject to subclauses (2) to (4), the Board must accept an application for financial assistance if the Board is satisfied that:

(a) the applicant meets the requirements of clause 10; and

(b) the project to which the application relates meets the requirements of clause 11 that apply to the project.

(2) The Board may refuse an application for financial assistance that the Board reasonably considers is the same, or substantially the same, as another application for financial assistance:

(a) that was not accepted by the Board; or

(b) that was accepted by the Board, but related to a project for which the financial assistance (including financial assistance under the R&D Start Program as conducted under the revoked directions) was not granted.

(3) The Board may refuse an application for financial assistance if the applicant has already made a number of applications:

(a) that exceeds 1; and

(b) in relation to which the Board has not decided whether to grant the financial assistance.

(4) The Board may refuse a particular application for financial assistance in relation to a project if the Board considers that:

(a) the applicant is, or is related to a body corporate that is, registered under section 39P of the Act;

(b) the project involves intellectual property developed under a project in relation to which a company is registered under section 39P of the Act; or

(c) the project otherwise relates to or is connected with a project in relation to which a company is registered under section 39P of the Act.

Applicant requirements

10. **(1)** If an application for financial assistance:

(a) is not a joint application — the applicant must be a non tax-exempt company; and

(b) is a joint application — at least 1 party to the application must be a non tax-exempt company.

(2) The Board must not grant an application for Core Start financial assistance or Start Graduate financial assistance unless the combined turnover of the applicant, and of each body corporate (if any) related to the applicant at the time the Board receives that application, is less than $50,000,000 for each relevant year.

(3) The Board must not grant an application for Start Plus financial assistance unless the combined turnover of the applicant, and of each body corporate (if any) related to the applicant at the time the Board receives that application, is $50,000,000 or more for 1, or more than 1, relevant year.

(4) The Board must not grant an application for Start Premium financial assistance for a project unless:

(a) the application accompanies an application for Core Start or Start Plus financial assistance for the project;

(b) Core Start or Start Plus financial assistance is provided for the project;

(c) the agreement between the Board and the applicant mentioned in clause 18 provides for repayment of the Start Premium financial assistance for the project in accordance with subclause (5); and

(d) the maximum available Core Start or Start Plus financial assistance for the project has been granted.

(5) The agreement must provide that:

(a) if the applicant is a joint applicant — each party to the application agrees to repay to the Commonwealth any amount of the Start Premium financial assistance provided to that party for the project; and

(b) in any other case — the applicant agrees to repay to the Commonwealth any amount of the Start Premium financial assistance provided for the project.

(6) The Board must not grant an application for financial assistance for part of the cost of a project unless the Board considers that the applicant is able to fund so much of the cost of the project that is not met by the financial assistance.

(7) The Board must not grant an application for financial assistance to an applicant who is named by the Affirmative Action Agency as an organisation that has not complied with the *Affirmative Action (Equal Opportunity for Women) Act 1986.*

Project requirements

11. **(1)** A project to which an application for financial assistance, except an application for Start Graduate financial assistance, relates:

(a) must aim to produce a clearly identified product, process or service;

(b) must involve research and development activities; and

(c) may involve related product development and related market research.

(2) A project to which an application for Start Graduate financial assistance relates must:

(a) involve a graduate working for the applicant in research and development related activities; and

(b) be intended, and likely, to form or strengthen links between the applicant and a research institution.

PART 5 — ELIGIBILITY FOR LOANS

Eligible applicants and projects — loans

12. **(1)** Subject to subclauses (2) to (5), the Board must accept a loan application in relation to a project if the Board considers that:

(a) the total number of employees of the applicant and each body corporate related to the applicant is less than 100;

(b) the applicant is unable to obtain sufficient funding for the project from financial institutions; and

(c) the project involves early commercialisation of technological innovation of goods, systems or services and is limited to:

(i) product/process design;

(ii) trial production runs, including tooling up;

(iii) compliance with regulatory requirements and other standards;

(iv) protection of intellectual property;

(v) trial and demonstration activities;

(vi) product documentation; and

(vii) related market research.

(2) The Board must refuse a loan application in relation to a project unless the Board is satisfied that:

(a) if the application is not granted, the project will not proceed satisfactorily;

(b) the applicant is able to fund so much of the cost of the project that is not met by the loan; and

(c) the results of the project will be exploited in a manner which is to the benefit of the Australian economy.

(3) The Board may refuse an application for a loan that the Board reasonably considers is the same, or substantially the same, as another application for a loan:

(a) that was not accepted by the Board; or

(b) that was accepted by the Board, but related to a project for which the loan (including a loan under the R&D Start Program as conducted under the revoked directions) was not granted.

(4) The Board may refuse an application for a loan if the applicant has already made a number of applications:

(a) that exceeds 1; and

(b) in relation to which the Board has not decided whether to grant the loan.

(5) The Board may refuse a particular application for a loan in relation to a project if the Board considers that:

(a) the applicant is, or is related to a body corporate that is, registered under section 39P of the Act;

(b) the project involves intellectual property developed under a project in relation to which a company is registered under section 39P of the Act; or

(c) the project otherwise relates to or is connected with a project in relation to which a company is registered under section 39P of the Act.

PART 6 — MERIT CRITERIA

Assessment of applications for financial assistance and loans

13. **(1)** If the Board accepts an application, it must assess and determine the relative merit of the application:

(a) in the case of an application for financial assistance — by comparing the merit of the application under clause 14 with the merit of other eligible applications; and

(b) for an application for a loan — by comparing the merit of the application under clause 15 with the merit of other eligible applications.

Merit criteria — financial assistance

14. **(1)** The merit of applications for Core Start or Start Plus financial assistance is assessed under the following criteria:

(a) the management capability of applicants;

(b) the level of commercial potential of projects and applicants' capacities to exploit that potential;

(c) the level of relevant technical capability and resources of applicants and the technical soundness of projects to which applications relate;

(d) the extent to which projects would benefit Australia, including Australian industry and the wider community; and

(e) whether projects would proceed satisfactorily without the financial assistance.

(2) The merit of applications for Start Premium financial assistance is assessed under the following criteria:

(a) whether applications meet the criteria set out in subclause (1) to a high degree; and

(b) the period and manner in which financial assistance is proposed to be repaid by applicants.

(3) The merit of applications for Start Graduate financial assistance is assessed under the following criteria:

(a) the management capability of applicants;

(b) the extent to which projects to which applications relate would improve applicants' performance through the adoption of appropriate technology or methodology;

(c) the extent to which projects form or strengthen appropriate links between applicants and research institutions; and

(d) whether projects would proceed satisfactorily without financial assistance.

Merit criteria — loans

15. **(1)** The merit of applications for loans for projects is primarily assessed under the following criteria:

(a) the management capability of applicants;

(b) the demand, growth and size of markets for products, processes or services to which the projects relate;

(c) the competitiveness and dynamism of the markets;

(d) the technical and production synergies of projects; and

(e) the national benefits of the projects.

(2) The merit of applications for loans for projects is also assessed under the following other criteria:

(a) the expertise of the personnel to be involved in the projects;

(b) the technical risk involved in projects;

(c) the uniqueness or superiority of the products, processes or services to which the projects relate; and

(d) the prices envisaged for the products, processes or services.

PART 7 — GRANT OF FINANCIAL ASSISTANCE AND LOANS

Grant of financial assistance and loans

16. Subject to clause 17, after assessing an application in accordance with Part 6, the Board may, grant the application for financial assistance, or for a loan, for a project to which the application relates.

17. The Board must not grant an application for financial assistance or loan if the Board reasonably considers, following an assessment of:

(a) commitments of program funds in the current financial year;

(b) commitments in future years;

(c) program funds currently available; and

(d) indicative targets for approvals throughout the current financial year;

that the application for financial assistance or loan is not of sufficient relative merit to be accommodated within the program in the financial years to which the application relates.

Board to enter agreements

18. The Board must enter into an agreement with an applicant whose application is granted before financial assistance or a loan is provided to the applicant.

What agreements must contain

19. **An agreement**:

(a) must not be inconsistent with a law of the Commonwealth, a State or Territory or these directions;

(b) must specify the amount of the financial assistance or loan for the project to which the application relates and the timing and method of delivery of the assistance or loan;

(c) must require the applicant to conduct the project to which the application relates;

(d) must require the applicant to keep records relating to the conduct and management of the project;

(e) must provide for inspection by or for the Board of the premises where the project is undertaken and of the records mentioned in paragraph (d);

(f) must require the applicant to report to the Board on the conduct and management of the project;

(g) in the case of an agreement relating to Start Premium financial assistance or a loan:

(i) must provide for repayment of the financial assistance or loan; and

(ii) may provide that interest on the balance of financial assistance to be repaid is charged in accordance with clause 27; and

(iii) must provide that interest on the balance of a loan to be repaid is charged in accordance with clause 28;

(h) must provide for variation and termination of the agreement;

(i) in the case of an agreement relating to Start Graduate financial assistance, may provide for part of the financial assistance to be paid direct to the research institution;

(j) must require the applicant to comply with its obligations, if any, under the *Affirmative Action (Equal Opportunity for Women) Act 1986*; and

(k) may include other matters.

PART 8 — ELIGIBLE EXPENDITURE

Eligible expenditure

20. (1) This clause applies to projects for which financial assistance or a loan is granted.

(2) The Board may make guidelines setting out what kinds of expenditure are eligible expenditure.

(3) The Board may determine in writing that expenditure for a project that is incurred after the application for the financial assistance or loan for the project is received by the Board is eligible expenditure.

Authorisation of payment of financial assistance

21. The Board may authorise payments under the R&D Start Program to be made for eligible expenditure in:

(a) the financial year commencing on 1 July 2001; and

(b) each following financial year for which the R&D Start Program receives an appropriation.

Maximum financial assistance and loan based on eligible expenditure

22. **(1)** The total amount of financial assistance for a project must not exceed:

(a) in the case of Start Graduate or Core Start financial assistance - the aggregate of 50% of the eligible expenditure for the project, and any further amount payable to the applicant to reimburse the applicant for GST payable by the applicant on supplies made to the

Commonwealth under the grant agreement (such further amount not to exceed the amount of GST paid by the applicant);

(b) in the case of Start Plus financial assistance - the aggregate of 20% of the eligible expenditure for the project, and any further amount payable to the applicant to reimburse the applicant for GST payable by the applicant on supplies made to the Commonwealth under the grant agreement (such further amount not to exceed the amount of GST paid by the applicant); and

(c) in the case of Start Premium financial assistance - the aggregate of 56.25% of the eligible expenditure for the project, and any further amount payable to the applicant to reimburse the applicant for GST payable by the applicant on supplies made to the Commonwealth under the grant agreement (such further amount not to exceed the amount of GST paid by the applicant); provided that the maximum percentage of eligible expenditure that Start Premium financial assistance may fund when provided with Core Start financial assistance shall be 6.25% and the maximum percentage of eligible expenditure that Start Premium financial assistance may fund when provided with Start Plus financial assistance shall be 36.25%.

(2) The total loan amount for a project must not exceed 50% of the eligible expenditure for the project.

PART 9 — OTHER REQUIREMENTS IN RELATION TO FINANCIAL ASSISTANCE AND LOANS

Minimum Start Premium financial assistance

23. The amount of Start Premium financial assistance for a project must be at least $60,000.

Maximum Start Graduate financial assistance

24. The amount of Start Graduate financial assistance for a project must not exceed $100,000.

Maximum financial assistance and loans for projects and linked projects

25. **(1)** Financial assistance and loans provided after 18 December 1996 for a single project, or the total financial assistance and loans provided after that date for a number of linked projects, (including any financial assistance and loans provided under the R&D Start Program as conducted under the revoked directions) must not exceed $15,000,000.

(2) In determining the maximum amount of financial assistance for a project, or a number of linked projects, the Board must disregard an amount of financial assistance or a loan for the project that has been repaid to the Commonwealth.

Time limits on Projects receiving financial assistance and loans

26. **(1)** Except in the case of Start Graduate financial assistance, the period of a project for which financial assistance may be provided shall not be more than 3 years.

(2) The period of a project for which Start Graduate financial assistance may be provided shall not be more than 2 years.

(3) However, except in the case Start Graduate financial assistance, the Board may extend the period within which a project which receives financial assistance must be completed to a maximum of 5 years if the Board reasonably considers that the objectives of the project would be advanced significantly by the extension.

(4) For the purposes of subclauses (1), (2) and (3), the Board may determine that the period of a project excludes any time during which work on the project has been suspended if:

(a) the total time excluded:

(i) would not be longer than the total time during which work on the project has been suspended continuously for at least 30 days; and

(ii) would not be longer than 1 year, and

(b) the determination would significantly advance the objectives of the project.

(5) A loan must be fully paid by the Board within 3 years of the day on which the agreement for the loan was made (the ***issue date of the agreement***).

Interest charged on Start Premium financial assistance

27. The maximum interest rate which will be applicable to the balance of repayable Start Premium financial assistance will be 1.5 times the indexed rate set out in Table F5 (Indicator Lending Rates) published monthly in the Reserve Bank of Australia Bulletin or in a similar commercial borrowing rate index current at the time when the agreement for the Start Premium financial assistance was entered into.

Interest charged on loans

28. **(1)** This clause applies subject to clause 29.

(2) A loan must be repaid, and interest on the loan must be paid, to the Commonwealth within 6 years of the day on which the agreement for the loan was made.

(3) Interest on the balance of a loan:

(a) must be charged at the rate of 40% of the Commonwealth Bank Loan Index Rate, or such other rate as the Board may decide;

(b) is fixed for the term of the loan; and

(c) accrues daily from the end of 36 months after the date of the agreement.

(4) Unless repaid sooner, loan repayments must be made in 6 equal instalments in accordance with subclauses (5), (6) and (7).

(5) The first repayment must be made no later than 42 months after the date of the agreement.

(6) The second repayment must be made no later than 6 months after the day on which the first repayment was due to be made.

(7) Succeeding repayments must be made no later than at 6 monthly intervals after the day on which the second repayment was due to be made.

(8) Interest payments must be made at the same time as the loan repayments to which they relate.

Board may make other arrangements for loan repayments etc

29. The Board may make provisions for the repayment of a loan, and payment of the interest for the loan, that are not the same as the provisions of clause 28.

Board may pursue waiver of certain repayments and payments

30. The Board may waive repayment of the amount, or part of the amount, of Start Premium financial assistance, or of interest in relation to that financial assistance, for a project if the Board reasonably considers that it would be appropriate to do so, after taking into account the financial or other benefits gained, or likely to be gained, as a result of the project by the person, or persons, to whom the assistance was provided.

PART 10 — MONITORING AND EVALUATING PROJECTS

Monitoring and evaluating

31. The Board must:

(a) ensure that projects under the R&D Start Program are monitored to obtain relevant information for evaluation; and

(b) at the request of the Minister, facilitate and cooperate with independent evaluation of the R&D Start Program.

PART 11 — VARIATION OF DECISIONS

Power to vary decisions

32. **(1)** The Board may, on the request of an applicant, vary a decision described in subclause (4) as if the directions under which the decision was made continue to apply as in force at the time of the decision.

(2) The Board must not vary a decision unless the variation would:

(a) significantly advance the objectives of the project;

(b) be consistent with the policy objectives set out in clause 5 and any relevant policies of the Board; and

(c) be appropriate in all the circumstances.

(3) The varied decision is taken to have had effect from the time the Board decides to vary the decision unless the Board determines otherwise.

(4) This clause applies to a decision of the Board to grant financial assistance, a loan or any other payment under these directions or any of the revoked directions.

PART 12 — REVOCATION OF EARLIER DIRECTIONS

Revocation of directions

33. Subject to clause 35, the *R&D Start Program Directions No. 1 of 2002* are revoked.

34. Subject to clause 36, the *R&D Start Program Directions No. 2 of* 2002 are revoked.

PART 13 — TRANSITIONAL PROVISIONS

Transitional provision — certain grants of financial assistance and loans

35. The *R&D Start Program Directions No. 1 of 2000* and *R&D Start Program Directions No. 1 of 2002*, as in force before the commencement of these directions, continue to apply in relation to financial assistance, a loan or any other payment provided under any of the revoked directions.

36. The Board is deemed to have refused any application for financial assistance or loan that it had received but had not granted before the commencement of the *R&D Start Program Directions No. 2 of 2002*.