2019

The Parliament of the Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Treasury Laws Amendment (Research and Development Tax Incentive) Bill 2019

No. , 2019

(Treasury)

A Bill for an Act to amend the law in relation to taxation, and for related purposes
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A Bill for an Act to amend the law in relation to taxation, and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act is the Treasury Laws Amendment (Research and Development Tax Incentive) Act 2019.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.
Commencement information

<table>
<thead>
<tr>
<th>Provisions</th>
<th>Commencement</th>
<th>Date/Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The whole of this Act</td>
<td>The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.</td>
<td></td>
</tr>
</tbody>
</table>

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Note: The provisions of the Industry Research and Development Decision making Principles 2011 amended or inserted by this Act, and any other provisions of that instrument, may be amended or repealed by an instrument made under section 32A of the Industry Research and Development Act 1986 (see subsection 13(5) of the Legislation Act 2003).
Schedule 1—Better targeting the R&D Tax Incentive

Income Tax Assessment Act 1997

1 Subsection 63-10(1) (at the end of the cell at table item 35, column headed “Tax offset”)

Add “or is a tax offset to which subparagraph 67-30(1A)(a)(ii) applies”.

2 Subsection 67-30(1)

Omit “if all or part of the amount of the tax offset is worked out using the percentage in item 1 of the table in subsection 355-100(1)”,

substitute “if the amount of the tax offset is worked out in accordance with item 1 of the table in subsection 355-100(1) (disregarding subsection 355-100(3))”.

3 Subsection 67-30(1) (notes)

Repeal the notes, substitute:

Note: Otherwise, the tax offset will be a non-refundable tax offset (see item 35 of the table in subsection 63-10(1)).

4 After subsection 67-30(1)

Insert:

(1A) Despite subsection (1), if, disregarding the part (the clinical trial component) mentioned in subsection (1B) of the *tax offset (the original offset), the amount of the tax offset exceeds $4 million, this Act applies as if:

(a) the *R&D entity were entitled under section 355-100 to:

(i) a tax offset equal to the sum of the clinical trial component and $4 million; and

(ii) another tax offset equal to the difference between the original offset and the tax offset mentioned in subparagraph (i); and

(b) the tax offset mentioned in subparagraph (a)(ii) were not subject to the refundable tax offset rules.

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(1B) The part is such amount of the *tax offset as is attributable to
amounts mentioned in subsection 355-100(1) that relate to *R&D
activities that are registered under paragraph 27A(1)(c) of the
Industry Research and Development Act 1986 as activities that
formed part of a clinical trial conducted during the income year.

(1C) A clinical trial is a planned study of the safety or efficacy in
humans of an intervention (including a medicine, vaccine,
treatment, diagnostic procedure or medical device) with the aim of
achieving at least one of the following:
(a) the discovery, or verification, of clinical, pharmacological or
pharmacodynamic effects;
(b) the identification of adverse reactions or adverse effects;
(c) the study of absorption, distribution, metabolism or
excretion.

5 Subsection 355-100(1) (heading)
Repeal the heading, substitute:
If notional deductions are between $20,000 and $150 million

6 Subsection 355-100(1) (cell at table item 1, column headed
“The percentage is:”)
Repeal the cell, substitute:
the R&D entity’s *corporate tax rate for
the income year, plus 13.5 percentage
points

7 Subsection 355-100(1) (table items 2 and 3, column headed
“The percentage is:”)
Omit “38.5%”, substitute “the R&D entity’s *corporate tax rate for the
income year”.

8 Subsection 355-100(1) (note)
Repeal the note, substitute:
Note 1: The tax offset will generally be a refundable tax offset if item 1 of the
table applies (see section 67-30). However, if the amount of the tax
offset (disregarding any clinical trial component) exceeds $4 million,
Better targeting the R&D Tax Incentive  Schedule 1

part of the tax offset will not be refundable (see subsections 67-30(1A) and (1B)).

Note 2: The tax offset is increased under subsection (1A) of this section if item 2 or 3 of the table applies.

9 After subsection 355-100(1)

Insert:

R&D premium

(1A) If item 2 or 3 of the table in subsection (1) applies to the "R&D entity, the amount of the "tax offset for the income year is increased by the sum of the amounts (if any) worked out for each item of the following table for that entity:

<table>
<thead>
<tr>
<th>Item</th>
<th>Work out the part of the total amount mentioned in subsection 355-100(1) that:</th>
<th>Multiply that part by this percentage:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>exceeds nil but does not exceed 4% of the &quot;R&amp;D entity’s total expenses for the income year worked out under section 355-115</td>
<td>4.5%</td>
</tr>
<tr>
<td>2</td>
<td>exceeds 4% but does not exceed 9% of the &quot;R&amp;D entity’s total expenses for the income year worked out under section 355-115</td>
<td>8.5%</td>
</tr>
<tr>
<td>3</td>
<td>exceeds 9% of the &quot;R&amp;D entity’s total expenses for the income year worked out under section 355-115</td>
<td>12.5%</td>
</tr>
</tbody>
</table>

10 Subsection 355-100(2)

Omit “However, if the total of those amounts is less than $20,000, the "R&D entity is instead entitled to a "tax offset for the income year equal to that percentage of”, substitute “However, if the total amount mentioned in subsection (1) is less than $20,000, the "R&D entity is instead entitled to a "tax offset for the income year, worked out in accordance with subsections (1) and (1A), as if that amount were instead”.

No. , 2019  Treasury Laws Amendment (Research and Development Tax Incentive)  Bill 2019
Schedule 1 Better targeting the R&D Tax Incentive

11 Subsection 355-100(3)  
Repeal the subsection (including the note), substitute:

    If notional deductions exceed $150 million

(3) Despite subsections (1) and (1A), if the total amount mentioned in subsection (1) exceeds $150 million, the R&D entity is instead entitled to a tax offset for the income year equal to the sum of:

(a) the amount worked out in accordance with those subsections as if that amount were $150 million; and

(b) the product of the excess and the R&D entity’s corporate tax rate for the income year.

12 At the end of Subdivision 355-C  
Add:

355-115 Working out an R&D entity’s total expenses

(1) For the purposes of subsection 355-100(1A), an R&D entity’s total expenses for an income year is the sum of the amounts covered by subsection (2).

(2) The following amounts are covered by this subsection:

(a) the R&D entity’s total expenses for the income year worked out in accordance with:
    (i) the accounting principles; or
    (ii) if accounting principles do not apply in relation to the R&D entity—commercially accepted principles relating to accounting;

(b) any amount the R&D entity can deduct for the income year as mentioned in subsection 355-100(1), to the extent the amount is not covered by paragraph (a) for the income year.

Amounts counted once only

(3) For the purposes of subsection (2):

(a) disregard an amount to which paragraph (2)(a) otherwise applies if paragraph (2)(b) has previously applied in relation to the amount; and

Treasury Laws Amendment (Research and Development Tax Incentive) No. , 2019  
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(b) disregard an amount to which paragraph (2)(b) otherwise applies if paragraph (2)(a) has previously applied in relation to the amount.

13 Section 355-750
Repeal the section.

14 Subsection 995-1(1)
Insert:

clinical trial has the meaning given by subsection 67-30(1C).

Tax Laws Amendment (Research and Development) Act 2015

15 Subsection 2(1) (table item 3)
Repeal the item.

16 Part 2 of Schedule 1
Repeal the Part.

17 Application of amendments
The amendments made by this Schedule apply in relation to assessments for income years commencing on or after 1 July 2019.
Schedule 2—Enhancing the integrity of the R&D Tax Incentive

Part 1—Schemes to reduce income tax

Income Tax Assessment Act 1936

1 Subsection 177A(1)

Insert:

non-refundable R&D tax offset means a tax offset allowed under Division 355 of the Income Tax Assessment Act 1997, other than a refundable R&D tax offset.

refundable R&D tax offset means a tax offset allowed under Division 355 of the Income Tax Assessment Act 1997 that is subject to the refundable tax offset rules under section 67-30 of that Act.

2 After paragraph 177C(1)(bc)

Insert:

or (bd) a refundable R&D tax offset, or a non-refundable R&D tax offset, being allowable to the taxpayer in relation to a year of income where the whole or a part of the offset would not have been allowable, or might reasonably be expected not to have been allowable, to the taxpayer in relation to that year of income if the scheme had not been entered into or carried out;

3 At the end of subsection 177C(1)

Add:

; and (h) in a case to which paragraph (bd) applies—the amount of the whole of the offset or of the part of the offset, as the case may be, referred to in that paragraph.

4 At the end of subsection 177C(2)

Add:
Enhancing the integrity of the R&D Tax Incentive  **Schedule 2**  
Schemes to reduce income tax  **Part 1**

; or (f) a refundable R&D tax offset, or a non-refundable R&D tax offset, being allowable to the taxpayer in relation to a year of income the whole or a part of which offset would not have been, or might reasonably be expected not to have been, allowable to the taxpayer in relation to that year of income if the scheme had not been entered into or carried out, where:

(i) the allowance of the offset to the taxpayer is attributable to the making of a declaration, agreement, election, selection or choice, the giving of a notice or the exercise of an option by any person, being a declaration, agreement, election, selection, choice, notice or option expressly provided for by this Act; and

(ii) the scheme was not entered into or carried out by any person for the purpose of creating any circumstance or state of affairs the existence of which is necessary to enable the declaration, agreement, election, selection, choice, notice or option to be made, given or exercised, as the case may be.

5 **Subsection 177C(3)**

Omit “or (e)(i)”, substitute “, (e)(i) or (f)(i)”.

6 **After paragraph 177C(3)(cb)**

Insert:

or (cc) the allowance of a refundable R&D tax offset, or a non-refundable R&D tax offset, to a taxpayer;

7 **At the end of subsection 177C(3)**

Add:

; or (i) the refundable R&D tax offset, or non-refundable R&D tax offset, would not have been allowable.

8 **At the end of subsection 177CB(1)**

Add:

; (f) the whole or a part of a refundable R&D tax offset, or of a non-refundable tax offset, not being allowable to the taxpayer.
Schedule 2  Enhancing the integrity of the R&D Tax Incentive

Part 1  Schemes to reduce income tax

9  After paragraph 177F(1)(e)

Insert:

   or (f) in the case of a tax benefit that is referable to:

   (i) a refundable R&D tax offset; or
   (ii) a non-refundable R&D tax offset; or
   (iii) a part of a refundable R&D tax offset; or
   (iv) a part of a non-refundable R&D tax offset;

being allowable to the taxpayer in relation to a year of
income—determine that the whole or a part of the offset, or
the part of the offset, as the case may be, is not to be
allowable to the taxpayer in relation to that year of income;

10  After paragraph 177F(3)(f)

Insert:

   or (g) if, in the opinion of the Commissioner:

   (i) an amount would have been allowed, or would be
       allowable, to the relevant taxpayer as a refundable R&D
       tax offset, or a non-refundable R&D tax offset, in
       relation to a year of income if the scheme had not been
       entered into or carried out, being an amount that was not
       allowed or would not, apart from this subsection, be
       allowable, as the case may be, as a refundable R&D tax
       offset, or a non-refundable R&D tax offset, as the case
       may be, to the relevant taxpayer in relation to that year
       of income; and

   (ii) it is fair and reasonable that the amount, or a part of the
        amount, should be allowable as a refundable R&D tax
        offset, or a non-refundable R&D tax offset, as the case
        may be, to the relevant taxpayer;

        determine that that amount or that part, as the case may be,
        should have been allowed or is allowable, as the case may be,
        as a refundable R&D tax offset, or a non-refundable R&D tax
        offset, as the case may be, to the relevant taxpayer in relation
        to that year of income;
Part 2—R&D clawback and catch up amounts

Income Tax Assessment Act 1997

11 Section 4-25

Repeal the section, substitute:

4-25 Special provisions for working out your basic income tax liability

Subsection 392-35(3) may increase your basic income tax liability beyond the liability worked out simply by applying the income tax rates to your taxable income.

Note: Subsection 392-35(3) increases some primary producers’ tax liability by requiring them to pay extra income tax on their averaging components worked out under Subdivision 392-C.

12 Subsection 9-5(1) (table item 4A)

Repeal the item.

13 Section 10-5 (table item headed “R&D”)

Omit:

feedstock adjustment .................................................. 355-465

substitute:

recoupments and feedstock adjustments ......................... 355-450

14 Section 20-5 (table item 10)

Repeal the item, substitute:

An R&D entity:

• receives, or becomes entitled to receive, a recoupment from government relating to R&D activities; or
• can deduct, under Division 355, expenditure on goods, materials or energy used during R&D activities to produce marketable products or

Subdivision 355-G
Schedule 2 Enhancing the integrity of the R&D Tax Incentive
Part 2 R&D clawback and catch up amounts

products applied to the R&D entity’s own use;
and the entity is entitled under Division 355 to a tax offset relating to those R&D activities.
An amount is included in its assessable income.

15 Subsection 40-292(1)

Omit “Note”, substitute “Note 1”.

16 At the end of subsection 40-292(1)

Add:

Note 2: To the extent that any amount is included in your assessable income under section 40-285 in relation to R&D activities, you may have an additional amount included in your assessable income (see section 355-447).

Note 3: To the extent any amount that you are entitled to as a deduction under section 40-285 relates to R&D activities, you may have an additional amount you can deduct (see section 355-466).

17 Subsections 40-292(3) to (5)

Repeal the subsections.

18 Subsection 40-293(1)

Omit “Note”, substitute “Note 1”.

19 At the end of subsection 40-293(1)

Add:

Note 2: To the extent any amount that is included in the R&D partnership’s assessable income under section 40-285 relates to R&D activities, a partner may have an additional amount included in the partner’s assessable income (see section 355-449).

Note 3: To the extent any amount that the R&D partnership is entitled to as a deduction under section 40-285 relates to R&D activities, a partner may have an additional amount the partner can deduct (see section 355-468).

20 Subsection 40-293(3)

Repeal the subsection.
21 Paragraphs 355-100(1)(c) and (f)
   Repeal the paragraphs.

22 Section 355-105
   Before “An amount”, insert “(1)”.

23 At the end of section 355-105
   Add:
   (2) Subsection (1) does not apply to amounts that the *R&D entity can
deduct under the following:
      (a) subsection 355-315(2);
      (b) subsection 355-475(1);
      (c) subsection 355-525(2).

24 Subdivision 355-E (heading)
   After “Notional deductions”, insert “etc.”.

25 Section 355-300
   Omit “notionally deduct” (second occurring), substitute “actually
deduct”.

26 Subsection 355-315(2) (heading)
   Repeal the heading.

27 At the end of subsection 355-315(2)
   Add:
   Note 1: A deduction under this subsection is not a notional deduction (see
   subsection 355-105(2)).
   Note 2: A deduction under this subsection results in a catch up amount for the
   R&D entity (see section 355-465).

28 Subsection 355-315(3)
   Repeal the subsection, substitute:
   (3) If an amount would be included in the *R&D entity’s assessable
income for the event year under subsection 40-285(1) for the asset
and the event if Division 40 applied as described in
Schedule 2  Enhancing the integrity of the R&D Tax Incentive
Part 2  R&D clawback and catch up amounts

paragraph (1)(e), that amount is included in the R&D entity’s
assessable income for the event year.

Note: Some or all of the amount included in the R&D entity’s assessable
income may result in a clawback amount for the R&D entity (see
section 355-446).

29 Subdivisions 355-G and 355-H

Repeal the Subdivisions, substitute:

Subdivision 355-G—Clawback of R&D recoupments, feedstock
adjustments and balancing adjustments

Guide to Subdivision 355-G

355-430 What this Subdivision is about

An amount is included in an R&D entity’s assessable income if:

(a) the R&D entity receives a recoupment from government
    of expenditure on R&D activities for which it has
    obtained tax offsets under this Division; or
(b) the R&D entity can deduct under this Division
    expenditure on goods, materials or energy used during
    R&D activities to produce marketable products or
    products applied to the R&D entity’s own use; or
(c) a balancing adjustment event happens for an asset held
    by the R&D entity (or an R&D partnership in which the
    R&D entity is a partner) for which tax offsets have been
    obtained under this Division and for which an amount is
    otherwise included in the R&D entity’s (or R&D
    partnership’s) assessable income.

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355-449 Balancing adjustments for R&D partnership assets partially used for R&D activities
355-450 Amount to be included in assessable income

Operative provisions

355-435 When this Subdivision applies

This Subdivision applies to an "R&D entity for an income year (the present year) if:

(a) the R&D entity has an amount (a clawback amount) under section 355-440, 355-445, 355-446, 355-447, 355-448 or 355-449 for the present year; and

(b) the R&D entity has received, or is entitled to receive, a "tax offset under section 355-100 for one or more income years (each an offset year) in relation to that clawback amount.

355-440 R&D recoupments

(1) The "R&D entity has an amount under this section if:

(a) the entity, or another entity mentioned in subsection (5), receives or becomes entitled to receive a "recoupment from either of the following (otherwise than under the "CRC program):

(i) an "Australian government agency;

(ii) an STB (within the meaning of Division 1AB of Part III of the Income Tax Assessment Act 1936); and

(b) the recoupment is received, or the entitlement to receive the recoupment arises, during the present year; and

(c) either:

(i) the recoupment is of expenditure incurred on or in relation to certain activities; or

(ii) the recoupment requires expenditure (the project expenditure) to have been incurred, or to be incurred, on certain activities.

Note: Paragraph (c) includes expenditure incurred in purchasing a tangible depreciating asset to be used when conducting R&D activities.
Schedule 2  Enhancing the integrity of the R&D Tax Incentive
Part 2  R&D clawback and catch up amounts

(2) The amount is equal to the sum of:
   (a) so much of the expenditure referred to in subsection (1) that
       is deducted under this Division; and
   (b) for each asset (if any) for which expenditure referred to in
       subsection (1) is included in the asset’s "cost”—each amount
       (if any) equal to the asset’s decline in value that is deducted
       under this Division;

that is taken into account in working out *tax offsets under
section 355-100 obtained by the *R&D entity for one or more
income years.

Note: Paragraphs (a) and (b) of this subsection refer to amounts notionally
 deducted under this Division (see section 355-105).

Amount is reduced by any repayments of the recoupment

(3) For the purposes of subsection (2), reduce the expenditure referred
 to in subparagraph (1)(c)(i) by any repayments of the *recoupment
during an income year.

Cap on extra income tax if recoupment relates to a project

(4) Despite subsection (2), if the *recoupment is covered by
   subparagraph (1)(c)(ii), the amount mentioned in subsection (2) for
   the present year cannot exceed the amount worked out using the
   following formula:

\[
\text{Net amount of the recoupment} \times \frac{\text{R&D expenditure}}{\text{Project expenditure}}
\]

where:

*net amount of the recoupment* means the total amount of the
*recoupment, less any repayments of the recoupment during an
income year.

*R&D expenditure* means the amount mentioned in subsection (2),
disregarding subsection (3).

Related entities

(5) The other entities for the purposes of paragraph (1)(a) are as
follows:

(a) an entity "connected with the "R&D entity;  
(b) an "affiliate of the R&D entity or an entity of which the R&D entity is an affiliate.

355-445 Feedstock adjustments

(1) The "R&D entity has an amount under this section if:  
(a) it incurs expenditure in one or more income years in  
acquiring or producing goods, or materials, (the feedstock inputs) transformed or processed during "R&D activities in  
producing one or more tangible products (the feedstock outputs); and  
(b) it obtains under section 355-100 "tax offsets for one or more income years (each an offset year) for deductions under this Division:  
(i) for the expenditure; or  
(ii) for expenditure it incurs on any energy input directly into the transformation or processing; or  
(iii) for the decline in value of assets used in acquiring or producing the feedstock inputs; and  
(c) during the present year, a feedstock output, or a transformed feedstock output, (the marketable product), is:  
(i) "supplied by the R&D entity to another entity; or  
(ii) applied by the R&D entity to the R&D entity’s own use, other than use for the purpose of transforming that product for supply.

(2) The amount is equal to the lesser of:  
(a) the "feedstock revenue for the feedstock output; and  
(b) so much of the total of the amounts deducted as described in paragraph (1)(b) as is reasonably attributable to the production of the feedstock output.

(3) Subsection (2) does not apply to the feedstock output if:  
(a) it becomes, or is transformed into, a feedstock input; or  
(b) that subsection already applies to the feedstock output because of the application of paragraph (1)(c) to:  
(i) an earlier time during the present year; or  
(ii) an earlier income year.
(4) The *feedstock revenue* for the feedstock output, is worked out using the following formula:

\[
\text{Market value of the marketable product} \times \frac{\text{Cost of producing the feedstock output}}{\text{Cost of producing the marketable product}}
\]

where:

*market value of the marketable product* means the marketable product’s market value at the time it is:

(a) *supplied by the *R&D entity to the other entity; or

(b) first applied by the R&D entity to the R&D entity’s own use, other than use for the purpose of transforming that product for supply.

(5) This section applies to a *supply or use of the marketable product* by:

(a) an entity *connected with the *R&D entity; or

(b) an *affiliate of the R&D entity or an entity of which the R&D entity is an affiliate;

as if it were by the R&D entity.

### 355-446 Balancing adjustments for assets only used for R&D activities

(1) The *R&D entity* has an amount under this section if:

(a) a *balancing adjustment event* happens in the present year for an asset *held by the R&D entity; and

(b) the R&D entity cannot deduct, for the asset for an income year, an amount under section 40-25 as that section applies apart from:

(i) this Division; and

(ii) former section 73BC of the *Income Tax Assessment Act 1936*; and

(c) the R&D entity is entitled under section 355-100 to *tax offsets* for one or more income years for deductions under section 355-305 for the asset; and

(d) the R&D entity is registered under section 27A of the *Industry Research and Development Act 1986* for one or more *R&D activities* for the present year; and

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(e) an amount (the *section 40-285 amount*) is included in the
R&D entity’s assessable income for the present year under
subsection 355-315(3) for the asset and the balancing
adjustment event.

Note 1: This section applies in a modified way if the entity also has deductions
for the asset under former section 73BA or 73BH of the *Income Tax
Assessment Act 1936* (see section 355-320 of the *Income Tax
(Transitional Provisions) Act 1997*).

Note 2: *Section 40-292 applies if the entity can deduct an amount under
section 40-25, as that section applies apart from this Division and
former section 73BC of the *Income Tax Assessment Act 1936*.

(2) The amount is so much of an amount equal to the section 40-285
amount as does not exceed the difference between:

(a) the asset’s *cost*; and

(b) the asset’s *adjustable value*, worked out under Division 40
as if that Division applied with the changes described in
section 355-310.

355-447 Balancing adjustments for assets partially used for R&D
activities

(1) The *R&D entity has an amount under this section if:

(a) a *balancing adjustment event happens in the present year for
an asset *held by the R&D entity and for which:

(i) the R&D entity can deduct, for an income year, an
amount under section 40-25, as that section applies
apart from Division 355 and former section 73BC of the
*Income Tax Assessment Act 1936*; or

(ii) the R&D entity could have deducted, for an income
year, an amount as described in subparagraph (i) if the
R&D entity had used the asset; and

(b) the R&D entity is entitled under section 355-100 to *tax
offsets for one or more income years for deductions (the
R&D deductions) under section 355-305 for the asset; and

(c) an amount (the *section 40-285 amount*) is included in the
R&D entity’s assessable income for the asset under
section 40-285 (after applying subsection 40-292(2)) for the
present year.
Schedule 2  Enhancing the integrity of the R&D Tax Incentive
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Note: This section applies in a modified way if you have deductions for the asset under former section 73BA or 73BH of the Income Tax Assessment Act 1936 (see section 40-292 of the Income Tax (Transitional Provisions) Act 1997).

(2) The amount is worked out as follows:

\[
\frac{\text{Total R&D deductions}}{\text{Total decline in value}} \times \text{Adjusted section 40-285 amount}
\]

where:

**adjusted section 40-285 amount** means so much of an amount equal to the section 40-285 amount as does not exceed the total decline in value.

**total decline in value** means the cost of the asset less its adjustable value.

355-448 Balancing adjustments for R&D partnership assets only used for R&D activities

(1) The R&D entity (the partner) has an amount under this section if:

(a) the partner is a partner in an R&D partnership; and

(b) a balancing adjustment event happens in the present year for an asset held by the R&D partnership; and

(c) the R&D partnership cannot deduct, for the asset for an income year, an amount under section 40-25, as that section applies apart from:

(i) this Division; and

(ii) former section 73BC of the Income Tax Assessment Act 1936; and

(d) the partner is entitled under section 355-100 to tax offsets for one or more income years for deductions under section 355-520 for the asset; and

(e) the partner is registered under section 27A of the Industry Research and Development Act 1986 for one or more R&D activities for the present year; and

(f) an amount (the section 40-285 amount) would, as mentioned in subsection 355-525(3), be included in the R&D
partnership’s assessable income for the present year for the
asset and the balancing adjustment event.

Note 1: This section applies in a modified way if the partner has deductions
for the asset under former section 73BA or 73BH of the Income Tax
Assessment Act 1936 (see section 355-325 of the Income Tax

Note 2: Section 40-293 applies if the R&D partnership can deduct an amount
under section 40-25, as that section applies apart from this Division
and former section 73BC of the Income Tax Assessment Act 1936.

(2) The amount is the partner’s proportion of the amount that is so
much of an amount equal to the section 40-285 amount as does not
exceed the difference between:

(a) the asset’s *cost; and

(b) the asset’s *adjustable value, worked out under Division 40
as if that Division applied with the changes described in
section 355-310.

355-449 Balancing adjustments for R&D partnership assets
partially used for R&D activities

(1) The *R&D entity (the *partner) has an amount under this section if:

(a) the partner is a partner in an *R&D partnership; and

(b) a *balancing adjustment event happens in the present year for
a *depreciating asset *held by the R&D partnership and for
which:

(i) the R&D partnership can deduct, for an income year, an
amount under section 40-25, as that section applies
apart from Division 355 and former section 73BC of the
Income Tax Assessment Act 1936; or

(ii) the R&D partnership could have deducted, for an
income year, an amount as described in subparagraph (i)
if it had used the asset; and

(c) one or more partners (including the partner) in the R&D
partnership are entitled under section 355-100 to *tax offsets
for one or more income years for deductions under
section 355-520 for the asset; and

(d) an amount (the *section 40-285 amount) is included in the
R&D partnership’s assessable income for the asset under

Schedule 2  Enhancing the integrity of the R&D Tax Incentive

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section 40-285 (after applying subsection 40-293(2)) for the present year.

(2) The amount is the partner’s proportion of the amount worked out as follows:

\[
\frac{\text{Total R&D deductions}}{\text{Total decline in value}} \times \text{Adjusted section 40-285 amount}
\]

where:

- **adjusted section 40-285 amount** means so much of an amount equal to the section 40-285 amount as does not exceed the total decline in value.

- **total decline in value** means the "cost of the asset less its *adjustable value."

- **total R&D deductions** means the sum of each partner’s deductions mentioned in paragraph (1)(c) of this section.

355-450 Amount to be included in assessable income

(1) The "R&D entity must include, in the entity’s assessable income for the present year, the sum of the following amounts for each offset year relating to the clawback amount:

\[
\text{Starting offset} - \text{Adjusted offset} - \frac{\text{Deduction amount}}{\text{R&D entity’s corporate tax rate for the present year}}
\]

where:

- **adjusted offset** means the "tax offset the R&D entity would have received under section 355-100 for the offset year if the total amount mentioned in subsection 355-100(1) for that tax offset were reduced by the portion of the clawback amount that is attributable to the offset year.

- **deduction amount** means the portion of the clawback amount that is attributable to the offset year, multiplied by the R&D entity’s corporate tax rate for the offset year.
Enhancing the integrity of the R&D Tax Incentive  **Schedule 2**  
R&D clawback and catch up amounts  **Part 2**

**starting offset** means the amount of the 'tax offset the R&D entity has received, or is entitled to receive, under section 355-100 for the offset year.

(2) However, if this section, or section 355-475, has previously applied (whether in the present year or an earlier income year) in relation to another clawback amount, or catch up amount, the 'R&D entity has that relates to the offset year, subsection (1) of this section applies as if:

(a) the starting offset were the 'tax offset the R&D entity would have received under section 355-100 for the offset year if the total amount mentioned in subsection 355-100(1) were:

(i) decreased by the sum of the portions of any such other clawback amounts that are attributable to the offset year; and

(ii) increased by the sum of the portions of any such other catch up amounts that are attributable to the offset year; and

(b) the reference to the “total amount” in the definition of adjusted offset were a reference to that amount as so adjusted.

**Subdivision 355-H—Catch up deductions for balancing adjustment events for assets used for R&D activities**

**Guide to Subdivision 355-H**

**355-455  What this Subdivision is about**

An R&D entity can deduct an amount under this Subdivision if:

(a) a balancing adjustment event happens for an asset held by the R&D entity (or an R&D partnership in which the R&D entity is a partner); and

(b) tax offsets have been obtained under this Division for deductions for the asset; and

(c) the R&D entity (or the R&D partnership) can otherwise deduct an amount for the asset and the balancing adjustment event.
Schedule 2  Enhancing the integrity of the R&D Tax Incentive
Part 2  R&D clawback and catch up amounts

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Operative provisions

355-460  When this Subdivision applies

This Subdivision applies to an "R&D entity for an income year (the present year) if:

(a) the R&D entity has an amount (a catch up amount) under section 355-465, 355-466, 355-467 or 355-468 for an asset for the present year; and

(b) the R&D entity has received, or is entitled to receive, a "tax offset under section 355-100 for one or more income years (each an offset year) in relation to the asset.

355-465  Assets only used for R&D activities

(1) The "R&D entity has an amount under this section if:

(a) a "balancing adjustment event happens in the present year for an asset "held by the R&D entity; and

(b) the R&D entity cannot deduct, for the asset for an income year, an amount under section 40-25 as that section applies apart from:

(i) this Division; and

(ii) former section 73BC of the Income Tax Assessment Act 1936; and

(c) the R&D entity is entitled under section 355-100 to "tax offsets for one or more income years for deductions under section 355-305 for the asset; and

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24  Treasury Laws Amendment (Research and Development Tax Incentive)  No. 1, 2019

Bill 2019
(d) the R&D entity is registered under section 27A of the

*Industry Research and Development Act 1986* for one or

more R&D activities for the present year; and

(e) the R&D entity can deduct, for the present year, an amount

under subsection 355-315(2) for the asset and the balancing

adjustment event.

Note 1: This section applies in a modified way if the entity also has deductions

for the asset under former section 73BA or 73BH of the *Income Tax

Assessment Act 1936* (see section 355-320 of the *Income Tax

(Transitional Provisions) Act 1997*).

Note 2: Section 40-292 applies if the entity can deduct an amount under

section 40-25, as that section applies apart from this Division and

former section 73BC of the *Income Tax Assessment Act 1936*.

(2) The amount is an amount equal to the amount mentioned in

paragraph (1)(e).

355-466 Assets partially used for R&D activities

(1) The "R&D entity has an amount under this section if:

(a) a "balancing adjustment event happens in the present year for

an asset "held by the R&D entity for which:

(i) the R&D entity can deduct, for an income year, an

amount under section 40-25, as that section applies

apart from Division 355 and former section 73BC of the

*Income Tax Assessment Act 1936*; or

(ii) the R&D entity could have deducted, for an income

year, an amount as described in subparagraph (i) if the

R&D entity had used the asset; and

(b) the R&D entity is entitled under section 355-100 to "tax

offsets for one or more income years for deductions (the

*R&D deductions*) under section 355-305 for the asset; and

(c) the R&D entity can deduct an amount (the *section 40-285

amount*) for the asset under section 40-285 (after applying

subsection 40-292(2)) for the present year.

Note: This section applies in a modified way if you have deductions for the

asset under former section 73BA or 73BH of the *Income Tax

Assessment Act 1936* (see section 40-292 of the *Income Tax

(Transitional Provisions) Act 1997*).
Schedule 2  Enhancing the integrity of the R&D Tax Incentive

Part 2  R&D clawback and catch up amounts

Total R&D deductions × Section 40-285 amount

where:

total decline in value means the "cost of the asset less its "adjustable value.

355-467  R&D partnership assets only used for R&D activities

1) The "R&D entity (the partner) has an amount under this section if:

(a) the partner is a partner in an "R&D partnership; and

(b) a "balancing adjustment event happens in the present year for an asset "held by the "R&D partnership; and

(c) the R&D partnership cannot deduct, for the asset for an income year, an amount under section 40-25, as that section applies apart from:

(i) this Division; and

(ii) former section 73BC of the Income Tax Assessment Act 1936; and

(e) the partner is entitled under section 355-100 to "tax offsets for one or more income years for deductions under section 355-520 for the asset; and

(d) the partner is registered under section 27A of the Industry Research and Development Act 1986 for one or more "R&D activities for the present year; and

(e) the partner can deduct an amount under subsection 355-525(2) for the present year for the asset and the balancing adjustment event.

2) The amount is an amount equal to the amount mentioned in paragraph (1)(e).

355-468  R&D partnership assets partially used for R&D activities

1) The "R&D entity (the partner) has an amount under this section if:

(a) the partner is a partner in an "R&D partnership; and
(b) a "balancing adjustment event happens in the present year for a "depreciating asset "held by the R&D partnership and for which:

(i) the R&D partnership can deduct, for an income year, an amount under section 40-25, as that section applies apart from Division 355 and former section 73BC of the

Income Tax Assessment Act 1936; or

(ii) the R&D partnership could have deducted, for an income year, an amount as described in subparagraph (i) if it had used the asset; and

(c) one or more partners (including the partner) in the R&D partnership are entitled under section 355-100 to "tax offsets for one or more income years for deductions under section 355-520 for the asset; and

(d) the R&D partnership can deduct an amount (the section 40-285 amount) for the asset under section 40-285 (after applying subsection 40-293(2)) for the present year.

Note: This section applies in a modified way if the partners have deductions for the asset under former section 73BA or 73BH of the Income Tax Assessment Act 1936 (see section 40-293 of the Income Tax (Transitional Provisions) Act 1997).

(2) The amount is the partner’s proportion of the amount worked out as follows:

\[
\text{Total R&D deductions} \times \frac{\text{Total R&D deductions}}{\text{Total decline in value}} \times \text{Section 40-285 amount}
\]

where:

- total decline in value means the "cost of the asset less its "adjustable value.

- total R&D deductions means the sum of each partner’s deductions mentioned in paragraph (1)(c) of this section.

355-475 Amount that can be deducted

(1) The "R&D entity can deduct, for the present year, the sum of the following amounts for each offset year relating to the catch up amount: 

\[
\text{No. , 2019} \quad \text{Treasury Laws Amendment (Research and Development Tax Incentive) Bill 2019}
\]
Adjusted offset – Starting offset – Deduction amount
R&D entity’s *corporate tax rate for the present year

where:

adjusted offset means the *tax offset the R&D entity would have
received under section 355-100 for the offset year if the total
amount mentioned in subsection 355-100(1) for that tax offset
were increased by the portion of the catch up amount that is
attributable to the offset year.

deduction amount means the portion of the catch up amount that is
attributable to the offset year, multiplied by the R&D entity’s
*corporate tax rate for the offset year.

starting offset means the amount of the *tax offset the R&D entity
has received, or is entitled to receive, under section 355-100 for the
offset year.

Note: A deduction under this subsection is not a notional deduction: see
subsection 355-105(2).

(2) However, if this section, or section 355-450, has previously applied
(whether in the present year or an earlier income year) in relation
to another catch up amount, or clawback amount, the *R&D entity
has that relates to the offset year, subsection (1) of this section
applies as if:

(a) the starting offset were the *tax offset the R&D entity would
have received under section 355-100 for the offset year if the
total amount mentioned in subsection 355-100(1) were:

(i) increased by the sum of the portions of any such other
catch up amounts that are attributable to the offset year; and

(ii) decreased by the sum of the portions of any such other
clawback amounts that are attributable to the offset
year; and

(b) the reference to the “total amount” in the definition of
adjusted offset were a reference to that amount as so
adjusted.
30 Subsection 355-525(2) (heading)
   Repeal the heading.

31 At the end of subsection 355-525(2)
   Add:

   Note 1: A deduction under this subsection is not a notional deduction (see subsection 355-105(2)).

   Note 2: A deduction under this subsection will result in a catch up amount for the partner (see section 355-467).

32 Subsections 355-525(3) to (7)
   Repeal the subsections, substitute:

   (3) If an amount would be included in the “R&D partnership’s assessable income for the event year under subsection 40-285(1) for the asset and the event if Division 40 applied as described in paragraph (1)(e), the partner’s proportion of that amount is included in the partner’s assessable income for the event year.

   Note: Some or all of the amount included in the partner’s assessable income may result in a clawback amount for the partner (see section 355-448).

33 Section 355-530
   Omit “For the purposes of sections 40-292 (balancing adjustments for decline in value) and”, substitute “For the purposes of section”.

34 Subsection 355-715(2)
   Omit “, 355-315, 355-520 or 355-525”, substitute “or 355-520”.

35 Subsection 355-715(2) (note 2)
   Repeal the note, substitute:

   Note 2: Section 355-305 is about the decline in value of R&D assets and section 355-520 is about the decline in value of R&D partnership assets.

36 Section 355-720
   Repeal the section.
37 Subsection 360-40(2)
Repeal the subsection, substitute:

(2) For the purposes of paragraph (1)(c), disregard any of the following:
   (a) an Accelerating Commercialisation Grant under the program
       administered by the Commonwealth known as the
       Entrepreneurs’ Programme;
   (b) an amount required to be included in the company’s
       assessable income under subsection 355-450(1).

38 Subsection 995-1(1) (definition of feedstock revenue)
Omit “section 355-470”, substitute “subsection 355-445(4)”.

Income Tax Rates Act 1986
39 Subsection 12(7)
Omit “sections 12A and 12B” (wherever occurring), substitute
“section 12A”.

40 Sections 12B and 31
Repeal the sections.

41 Subsection 40-292(3) (formula)
Repeal the formula (not including the definitions), substitute:

Adjusted section
40-285 amount \times \left( \frac{\text{Old law}}{1.25 \text{ rate}} \right) \quad \text{deductions} \quad \times \frac{1}{4}

Total decline
in value

42 After subsection 40-292(3)
Insert:
Application of Division 355

(3A) In applying Division 355 of the new Act in relation to the asset for the income year, the R&D entity is taken to have:

(a) if the section 40-285 amount is an amount included in the R&D entity’s assessable income—a clawback amount under section 355-447 of the new Act for the income year; or

(b) if the section 40-285 amount is a deduction—a catch up amount under section 355-466 of the new Act for the income year;

equal to the following amount:

$$\text{Adjusted section 40-285 amount} \times \frac{\text{Sum of new law deductions}}{\text{Total decline in value}}$$

where:

adjusted section 40-285 amount means:

(a) if the section 40-285 amount is a deduction—the amount of the deduction; or

(b) if the section 40-285 amount is an amount included in the R&D entity’s assessable income—so much of the section 40-285 amount as does not exceed the total decline in value.

total decline in value means the cost of the asset less its adjustable value.

43 Subsection 40-293(3) (formula)

Repeal the formula (not including the definitions), substitute:

$$\text{Adjusted section 40-285 amount} \times \left( \frac{\text{Old law 1.25 rate deductions}}{\text{Total decline in value}} \right) \times \frac{1}{4}$$

44 After subsection 40-293(3)

Insert:
Schedule 2  Enhancing the integrity of the R&D Tax Incentive
Part 2    R&D clawback and catch up amounts

Application of Division 355

(3A) In applying Division 355 of the new Act in relation to the asset for
the income year, an R&D entity (the partner) that is a partner in
the R&D partnership and is entitled to one or more new law
deductions for one or more income years for the asset, is taken to
have:

(a) if the section 40-285 amount is an amount included in the
R&D partnership’s assessable income—a clawback amount;
or

(b) if the section 40-285 amount is a deduction—a catch up
amount under section 355-468 of the new Act for the income
year;

equal to the partner’s proportion of the following amount:

\[
\text{Adjusted section 40-285 amount} \times \frac{\text{Sum of new law deductions}}{\text{Total decline in value}}
\]

where:

adjusted section 40-285 amount means:

(a) if the section 40-285 amount is a deduction—the amount of
the deduction; or

(b) if the section 40-285 amount is an amount included in the
R&D partnership’s assessable income—so much of the
section 40-285 amount as does not exceed the total decline in
value.

sum of new law deductions means the sum of each partner’s new
law deductions mentioned in paragraph (2)(b) of this section.

total decline in value means the cost of the asset less its adjustable
value.

45 Subsection 355-320(1) (note 1)
Omit “(the new law deductions)”.

46 Subsection 355-320(3) (heading)
Repeal the heading, substitute:
Enhancing the integrity of the R&D Tax Incentive  Schedule 2
R&D clawback and catch up amounts  Part 2

Deduction

47 Subsection 355-320(3) (note)
Repeal the note.

48 Subsection 355-320(4) (formula)
Repeal the formula (not including the definitions), substitute:

\[
\text{Adjusted section } 40-285 \text{ amount} \times \left( \frac{\text{Old law } 1.25 \text{ rate deductions}}{\text{Total decline in value}} \right) \times \frac{1}{4}
\]

49 After subsection 355-320(4)
Insert:

Application of Division 355

(4A) In applying Division 355 of the new Act in relation to the asset for the income year, if the R&D entity is entitled under section 355-100 of the new Act to tax offsets for one or more income years for deductions (the new law deductions) under section 355-305 for the asset, the R&D entity is taken to have

(a) if an amount is taken to be included in the R&D entity’s assessable income for the event year as mentioned in subsection (4) of this section—a clawback amount under section 355-446 of the new Act for the income year equal to the amount mentioned in subsection (4B) of this section; or

(b) if the R&D entity is taken to be able to deduct an amount as mentioned in subsection (3) of this section—a catch up amount under section 355-465 of the new Act for the income year equal to the amount of that deduction.

(4B) The amount is the following:
Schedule 2  Enhancing the integrity of the R&D Tax Incentive

Part 2  R&D clawback and catch up amounts

Adjusted section 40-285 amount \times \frac{\text{Sum of new law deductions}}{\text{Total decline in value}}

where:

adjusted section 40-285 amount means so much of the section 40-285 amount as does not exceed the total decline in value.

total decline in value means the asset’s cost, less its adjustable value, worked out under Division 40 of the new Act as it applies as described in subsection (2) of this section.

50 Subsection 355-325(1) (note 1)
Omit “(the new law deductions)”.

51 Subsection 355-325(3) (heading)
Repeal the heading, substitute:

Deduction

52 Subsection 355-325(3) (note)
Repeal the note.

53 Subsection 355-325(4)
Repeal the formula (not including the definitions), substitute:

\text{Adjusted section 40-285 amount} \times \left( \frac{\text{Old law 1.25 rate deductions}}{\text{Total decline in value}} \right) \times \frac{1}{4}

54 Subsections 355-325(4A) to (4D)
Repeal the subsections, substitute:
Application of Division 355

(4A) In applying Division 355 of the new Act in relation to the asset for
the income year, if one or more partners (including the partner) in
the R&D partnership is entitled under section 355-100 of the new
Act to tax offsets for one or more income years for deductions
under section 355-520 of that Act for the asset, the partner is taken
to have:

(a) if an amount is taken to be included in the R&D entity’s
    assessable income for the event year as mentioned in
    subsection (4) of this section—a clawback amount under
    section 355-448 of the new Act for the income year equal to
    the amount mentioned in subsection (4B) of this section; or

(b) if the partner is taken to be able to deduct an amount as
    mentioned in subsection (3) of this section—a catch up
    amount under section 355-467 of the new Act for the income
    year equal to the amount of that deduction.

(4B) The amount is an amount equal to the partner’s proportion of the
following:

\[
\text{Adjusted section } 40-285 \text{ amount} \times \frac{\text{Sum of new law deductions}}{\text{Total decline in value}}
\]

where:

adjusted section 40-285 amount means so much of the
section 40-285 amount as does not exceed the total decline in
value.

sum of new law deductions means the sum of each partner’s
deductions under section 355-520 of the new Act mentioned in
subsection (4A) of this section.

total decline in value means the asset’s cost, less its adjustable
value, worked out under Division 40 of the new Act as it applies as
described in subsection (2) of this section.

55 Section 355-720
Repeal the section.
Part 3—Application of amendments

56 Application of amendments

(1) The amendments made by Part 1 of this Schedule apply on or after 1 July 2019 in connection with a scheme, whether or not the scheme was entered into, or was commenced to be carried out, before that day.

(2) Despite subitem (1), the amendments made by Part 1 of this Schedule do not apply in relation to tax benefits that a taxpayer derives before that day.

(3) The amendments made by Part 2 of this Schedule apply in relation to assessments for income years commencing on or after 1 July 2019.
Schedule 3—Improving the administration of the R&D Tax Incentive

Part 1—Reporting of information about research and development tax offset

Taxation Administration Act 1953

1 At the end of Part IA
Add:

3H Reporting of information about research and development tax offset

(1) This section applies to an R&D entity in relation to an income year if, according to information the entity gave the Commissioner, the entity is entitled under Division 355 of the Income Tax Assessment Act 1997 to a tax offset for amounts it can deduct under that Division for the income year.

(2) The Commissioner must, as soon as practicable after the second 30 June after the financial year corresponding to the income year, make publicly available the information mentioned in subsection (3).

(3) The information is as follows:

(a) the entity’s name;

(b) the entity’s ABN or, if the first information the entity gave the Commissioner indicating the entity’s entitlement to the tax offset does not include the entity’s ABN but does include the entity’s ACN (within the meaning of the Corporations Act 2001), the entity’s ACN;

(c) if, according to the first information the entity gave the Commissioner indicating the entity’s entitlement to the tax offset, the total described in paragraph (4)(a) exceeds the total described in paragraph (4)(b)—the excess.

(4) For the purposes of paragraph (3)(c), the totals are as follows:
(a) the total of what the entity can deduct for the income year as described in subsection (1) of this section;  
(b) the total of the amounts the entity has under section 355-445 of the Income Tax Assessment Act 1997 for the income year.

(5) Subsection (6) applies if:
(a) the entity gives the Commissioner a notice in writing that the information mentioned in paragraph (3)(c) contains an error;  
and
(b) the notice contains information that corrects the error.

(6) The Commissioner may at any time make the information mentioned in paragraph (5)(b) publicly available, in accordance with subsection (2), in order to correct the error.

(7) To avoid doubt, if the Commissioner considers that information made publicly available under subsection (2) fails to reflect all of the information required to be made publicly available under that subsection, the Commissioner may at any time make publicly available other information in order to remedy the failure.

(8) An expression used in this section and in the Income Tax Assessment Act 1997 has the same meaning in this section as in that Act.

2 Subsection 355-50(1) in Schedule 1 (note 2)
Omit “and 3E”, substitute “, 3E and 3H”.

3 Application
Section 3H of the Taxation Administration Act 1953 applies to income years that start on or after 1 July 2019.
Part 2—Findings about clinical trials and determinations about performance of Board’s functions

Industry Research and Development Act 1986

4 Subsection 4(1)
Insert:

clinical trial has the same meaning as in the Income Tax Assessment Act 1997.

5 At the end of section 26A
Add:

- The Board may make general determinations about how it will exercise its powers, and perform its functions and duties, under this Part. The Board must act in accordance with such a determination.

6 Subsection 27A(1)
Omit “either or both”, substitute “one or more”.

7 After paragraph 27A(1)(b)
Insert:

; (c) one or more specified activities, for which the entity is or is to be registered under another paragraph of this subsection, as activities that formed part of a clinical trial conducted during the income year.

8 After paragraph 27B(1)(d)
Insert:

; (e) that all or part of an activity mentioned in the application formed part of a clinical trial conducted during the income year;
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(f) that all or part of an activity mentioned in the application did
not form part of a clinical trial conducted during the income
year.

9 Subsection 27B(1) (note 2)

Repeal the note, substitute:

Note 2: The Board could make a finding under paragraph 27B(1)(b) if, for
example, the Board has insufficient information to make a finding
under paragraph 27B(1)(a). Similarly, the Board could:
(a) make a finding under paragraph 27B(1)(d) if it has insufficient
information to make a finding under paragraph 27B(1)(c); or
(b) make a finding under paragraph 27B(1)(f) if it has insufficient
information to make a finding under paragraph 27B(1)(e).

10 Subsection 27E(2) (note 3)

Omit “or (d)”, substitute “, (d) or (f)”.

11 Subsection 27H(2) (note 3)

Omit “or (d)”, substitute “, (d) or (f)”.

12 After paragraph 27J(1)(d)

Insert:
; (e) that all or part of a registered activity formed part of a
clinical trial conducted during the registration year;
(f) that all or part of a registered activity did not form part of a
clinical trial conducted during the registration year.

13 Subsection 27J(1) (note 2)

Repeal the note, substitute:

Note 2: The Board could make a finding under paragraph 27J(1)(b) if, for
example, the Board has insufficient information to make a finding
under paragraph 27J(1)(a). Similarly, the Board could:
(a) make a finding under paragraph 27J(1)(d) if it has insufficient
information to make a finding under paragraph 27J(1)(c); or
(b) make a finding under paragraph 27J(1)(f) if it has insufficient
information to make a finding under paragraph 27J(1)(e).

14 Section 28

Omit “an R&D activity.”, substitute “an R&D activity or forms part of a
clinical trial.”.
15 After paragraph 28A(1)(c)

Insert:

(ca) find that all or part of the activity forms part of a clinical trial;

(cb) find that all or part of the activity does not form part of a clinical trial;

16 After Division 6 of Part III

Insert:

Division 6A—Determinations about Board’s powers, functions and duties under this Part

31C Simplified outline

- The Board may make general determinations about the circumstances or way in which it will exercise its powers, or perform its functions or duties, under this Part.

- The Board must act in accordance with such a determination.

- A determination cannot override the decision-making principles.

31D Board may make a determination about its powers, functions and duties

(1) On its own initiative, the Board may, by notifiable instrument, make a determination about the circumstances or way in which the Board will exercise any of its powers, or perform any of its functions or duties, under this Part (except this Division).

(2) The determination must not relate to the exercise of powers, or the performance of functions or duties, in a particular case or in relation to a particular entity.
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(3) The Board must exercise its powers, and perform its functions and duties, under this Part (except section 30D and this Division) in accordance with the determination.

Note: Section 30D is about the Board reviewing a reviewable decision.

(4) The determination has no effect to the extent of any inconsistency with this Act, the regulations or the decision-making principles.

Note: The Board must revoke or amend the determination to remove any inconsistency: see section 31E.

31E When Board must amend or revoke a determination

(1) This section applies to a determination made under section 31D if:

(a) as a result of reviewing under section 30D a reviewable decision that was made in accordance with the determination because of section 31D, the Board is satisfied that the determination is incorrect; or

(b) the determination is inconsistent with:

(i) a decision of a court; or

(ii) a decision of the Administrative Appeals Tribunal on review of an internal review decision relating to a reviewable decision that was made in accordance with the determination because of section 31D; or

(iii) this Act, the regulations or the decision-making principles.

(2) The Board must, by notifiable instrument, revoke the determination or amend it so it is no longer incorrect or inconsistent.

(3) This section does not limit the application of subsection 33(3) of the Acts Interpretation Act 1901 in relation to the power to make a determination under section 31D of this Act.

Note: Subsection 33(3) of the Acts Interpretation Act 1901 provides that a power to make an instrument includes the power to revoke or vary the instrument.

17 Application

The amendments made by this Part apply in relation to the exercise of powers, and the performance of functions and duties, by the Board after the commencement of this Part.
Part 3—Delegation by Board and committees

Industry Research and Development Act 1986

18  Paragraph 21(1)(e)

Omit “who is an SES employee, or acting SES employee”.

19  Subsection 22A(1)

Omit “who is an SES employee, or acting SES employee,”.
Part 4—Extensions of time

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20 At the end of section 3.2

Add:

(3) However, the total of further periods allowed under this Part for a particular thing to be given by an interested person must not exceed 3 months. This subsection has effect despite section 3.4.

(4) Subsection (3) does not apply if the thing to be given deals with a matter that corresponds to the subject of a decision that:
   (a) relates to the interested person; and
   (b) has not been finalised;
but is not the subject of that decision.

Example: Subsection (3) does not apply to an application to register activities of an R&D entity under section 27A of the Act for an income year if:
   (a) the entity has previously applied for registration, or for variation of the entity’s registration, for corresponding activities for an earlier income year; and
   (b) a decision on the previous application either has not been made or is subject to review under Division 5 of Part III of the Act.