

1996

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Industry Research and Development Amendment Bill 1996

No. , 1996

(Industry, Science and Tourism)

**A Bill for an Act to amend the *Industry Research
and Development Act 1986* and the *Income Tax
Assessment Act 1936*, and for related purposes**

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1 **A Bill for an Act to amend the *Industry Research***
2 ***and Development Act 1986* and the *Income Tax***
3 ***Assessment Act 1936*, and for related purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act may be cited as the *Industry Research and Development*
7 *Amendment Act 1996*.

8 **2 Commencement**

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

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

4 (3) Item 13 of Schedule 1 is taken to have commenced at 2.30 pm
5 Australian Eastern Standard Time on 6 December 1995.

6 (4) Items 20, 21 and 22 are taken to have commenced on 15 June
7 1991, immediately after the commencement of section 17 of the
8 *Industry, Technology and Commerce Legislation Amendment Act*
9 *1991*.

10 3 Schedule(s)

11 Subject to section 2, each Act that is specified in a Schedule to this
12 Act is amended or repealed as set out in the applicable items in the
13 Schedule concerned, and any other item in a Schedule to this Act
14 has effect according to its terms.

1
2 **Schedule 1—Amendment of the Industry**
3 **Research and Development Act 1986**

4 **1 Subsection 39ED(2)**

5 After “taken”, insert “(except for the purpose of subsection (3))”.

6 **2 Subsection 39ED(3)**

7 Omit “before the eligible time”.

8 **3 At the end of section 39ED**

9 Add:

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

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

15 **4 After section 39HF**

16 Insert:

17 **39HG Applications for advance registration of eligible companies**

- 18 (1) An eligible company may, during a year of income, apply to the
19 Board for advance registration, in relation to its proposed research
20 and development activities, in respect of all or any of the following
21 years of income:

- 22 (a) the first-mentioned year of income;
23 (b) the next 2 years of income.

- 24 (2) The application must:

- 25 (a) specify the name of the company; and
26 (b) specify the year or years of income in respect of which
27 advance registration is sought; and
28 (c) describe the project to which its proposed research and
29 development activities relate; and
30 (d) specify and describe the activities; and

1 (e) specify the expenditure proposed to be incurred by the
2 company in relation to the activities during the year or years
3 of income; and

4 (f) specify when the activities will be undertaken.

5 (3) The application must:

6 (a) be in a form approved by the Board; and

7 (b) be accompanied by the appropriate fee (if any) prescribed
8 under section 48A.

9 **39HH Advance registration of eligible companies**

10 (1) Subject to section 39HI, if:

11 (a) an eligible company applies to the Board for advance
12 registration in accordance with section 39HG; and

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

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

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

22 Note: Advance registration does not remove the need to be registered under
23 section 39J or 39P in order to claim a deduction under section 73B of
24 the *Income Tax Assessment Act 1936* for expenditure in relation to
25 research and development activities.

26 **39HI Grounds for refusal of advance registration**

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

32 (2) Subject to subsection (3), the regulations may specify other
33 grounds on which the Board is entitled to refuse advance

1 registration of a company in respect of any year of income or in
2 respect of a particular year or years of income.

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

6 **5 Subsection 39J(1)**

7 Omit “Where”, substitute “Subject to section 39K, if”.

8 **6 Paragraph 39J(1)(a)**

9 After “registration”, insert “in relation to its research and development
10 activities”.

11 **7 At the end of paragraph 39J(1)(a)**

12 Add “and”.

13 **8 After paragraph 39J(1)(a)**

14 Insert:

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

16 **9 Paragraph 39J(1)(b)**

17 Omit “, or proposed research and development activities,”.

18 **10 Paragraph 39J(1)(b)**

19 Omit “and” (last occurring).

20 **11 Paragraph 39J(1)(c)**

21 Repeal the paragraph.

22 **12 Subsection 39J(1)**

23 Omit “in relation to” (last occurring), substitute “, in relation to those
24 research and development activities, in respect of”.

25 **13 After subsection 39J(1)**

26 Insert:

1 (1A) The Board cannot register a company under this section, in relation
2 to the company's research and development activities, in respect of
3 a year of income:

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

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

10 (c) if the year is the 1995-96 year of income or a later year of
11 income—unless the application for registration is made after
12 the end of the year of income but within 6 months after the
13 end of that year.

14 **14 After section 39J**

15 Insert:

16 **39JA Applications under section 39J**

17 (1) An application to the Board for registration under section 39J in
18 respect of a year of income must:

19 (a) specify the name of the eligible company; and

20 (b) specify and describe the research and development activities
21 in relation to which registration is sought; and

22 (c) specify the expenditure incurred by the company in relation
23 to the activities during the year of income; and

24 (d) specify which (if any) of the activities have been the subject
25 of advance registration in respect of that year; and

26 (e) include such other information as is specified in the
27 regulations.

28 (2) The application must:

29 (a) be in a form approved by the Board; and

30 (b) be accompanied by the appropriate fee (if any) prescribed
31 under section 48A.

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

1 **15 Subsection 39K(1)**

2 Repeal the subsection, substitute:

- 3 (1) Subject to subsection (1A), it is a ground on which the Board is
4 entitled to refuse to register an eligible company, in relation to
5 particular research and development activities in respect of a year
6 of income, that the activities are not research and development
7 activities.

8 **16 After subsection 39K(1)**

9 Insert:

- 10 (1A) If advance registration has been granted to an eligible company, in
11 relation to particular research and development activities in respect
12 of a year of income, the Board must not refuse to register the
13 company in relation to those activities in respect of that year on the
14 ground that they are not research and development activities.

15 **17 At the end of section 39K**

16 Add:

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

19 **18 Paragraph 39P(3)(h)**

20 After "grounds", insert "under section 39K".

21 **19 Subsection 39S(1)**

22 After "section" (last occurring), insert "39HH,".

23 **20 Subsection 39S(5)**

24 After "taken", insert "(except for the purpose of subsection (6))".

25 **21 Subsection 39S(6)**

26 Omit "before the end of the period referred to in subsection (5)".

27 **22 At the end of section 39S**

28 Add:

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

6 **23 After section 48**

7 Insert:

8 **48A Fees for making applications etc. under Part IIIA**

- 9 (1) The regulations may prescribe fees for making applications or
10 requests to the Board under Part IIIA.
11 (2) The amount of a fee must not be such as to amount to taxation.

1
2 **Schedule 2—Amendment of the Income Tax**
3 **Assessment Act 1936**

4 **1 Paragraph 73B(10)(a)**

5 After “year of income”, insert “and in relation to those activities”.

6 **2 Application**

7 The amendment made by this Schedule applies in relation to a
8 registration, under section 39J of the *Industry Research and*
9 *Development Act 1986*, in respect of which an application was made
10 under that Act on or after the day on which this Schedule commences.







