

1995

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

INDUSTRY RESEARCH AND DEVELOPMENT AMENDMENT BILL 1995

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Industry,
Science and Technology, Senator the Hon. Peter Cook)

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE
SENATE TO THE BILL AS INTRODUCED

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INDUSTRY RESEARCH AND DEVELOPMENT AMENDMENT BILL 1995

OUTLINE

The Industry Research and Development Amendment Bill 1995, which amends the *Industry Research and Development Act 1986* (the Act), has two purposes. The first is to extend the sunset clause in paragraphs 28(2)(a) and 31(2)(a) from 31 December 1995 to 30 June 1996. The second is to rectify the failure to table in Parliament disallowable instruments made under four sections of the Act within 15 sitting days on Gazettal.

The sunset clause amendment addresses the fact that the Industry Research and Development Board cannot enter into new grant agreements after 31 December 1995. The 1995-96 Budget initiatives for the Industry, Science and Technology portfolio included a commitment that the programs would be extended to 30 June 1996 to allow the Government sufficient time to respond to the Industry Commission Inquiry into Research and Development. This is an extension of time only, and is not accompanied by an increase in appropriation.

The second set of amendments addresses the fact that disallowable instruments addressing four key areas of the 150% tax concession were not tabled in Parliament. The *Acts Interpretation Act 1901* states that, unless disallowable instruments are laid before both Houses of Parliament within 15 sitting days of Gazettal, the instruments cease to exist. The Bill corrects this failure to table before Parliament by validating both the guidelines and decisions made on the basis of those guidelines.

The disallowable instruments in question are:

- guidelines to enable eligible companies to ascertain whether proposed research and development activities will be regarded as having Adequate Australian Content, as described in section 39E of the Act;
- guidelines to enable eligible companies to ascertain whether Finance Schemes in relation to research and development activities will be taken to be ineligible Finance Schemes, as described in section 39EA of the Act;
- criteria to be met by bodies wishing to be registered as Registered Research Agencies, as described in section 39F of the Act; and
- guidelines setting out criteria to be met by eligible government bodies wishing to be entered on the Register of Commercial Government Bodies, as described in section 39HB of the Act.

FINANCIAL IMPACT STATEMENT

There will be no financial impact arising from this Bill.

NOTES ON CLAUSES

Clause 1 - Short Title

1. This clause provides that the Act may be cited as the *Industry Research and Development Amendment Act 1995*.

Clause 2 - Commencement

Subclause 2(1)

2. This subclause is self-explanatory.

Subclauses 2(2) to 2(4)

3. Any amendment to sections 39E, 39EA, 39EB, 39F and 39HB of the Principal Act is taken to commence from the date of commencement of those sections.

Clause 3 - Schedule

4. Amendments to the Principal Act are set out in the Schedule.

Clause 4 - Validation of certain guidelines and criteria

Subclause 4(1)

5. Subclause 4(1) identifies the guidelines and criteria to which clause 4 will apply. Guidelines addressing Adequate Australian Content, Finances Schemes and Commercial Government Bodies, and criteria addressing Registered Research Agencies, are identified.

Subclause 4(2)

6. Those guidelines and criteria which were made by the IR&D Board prior to the commencement of this clause, but which were not tabled in Parliament as required by the *Acts Interpretation Act 1901*, are made valid. This validity extends from the time the guidelines or criteria were made by the IR&D Board until such time as they are, or were, repealed, replaced or amended by subsequent guidelines or criteria.

Subclause 4(3)

7. The validation also applies to guidelines and criteria that were made as amendments to the initial guidelines or criteria which were not tabled in Parliament, and themselves were not tabled in Parliament. This affects two sets of amending criteria addressing Registered Research Agencies.

Subclause 4(4)

8. Any decision made by the IR&D Board in line with guidelines or criteria affected by subclauses 4(2) and 4(3) are made valid. This validity, however, only extends as far as the guidelines or criteria have been taken into account in making a decision. Should a decision have some other aspect which renders it invalid, then that decision will remain invalid on the basis of that other aspect.

Subclause 4(5)

9. Any act or thing done by a person in relation to guidelines or criteria validated by subclauses 4(2) or 4(3), or decisions validated by subclause 4(4), is made valid. As with subclause 4(4), however, this validity only extends as far as the guidelines or criteria have been taken into account in doing the act or thing.

10. For example, this subclause affects actions taken by the Commissioner for Taxation on the basis of decisions made valid by subclause 4(4).

Subclause 4(6)

11. Validation of disallowable instruments under subclauses 4(2) and 4(3) does not interfere with the power of either House of Parliament to disallow instruments that are currently before Parliament, or any instruments that may be laid before Parliament in the future. It also does not validate any guidelines or criteria which have been disallowed by Parliament.

Subclause 4(7)

12. This subclause removes ambiguity about what is meant by “making” or “doing” for the purposes of this amending legislation. As the guidelines and criteria had lapsed, there may be a question as to whether a decision or action could have been properly made or done. This subclause operates to clarify this issue and provide certainty about the status of those decisions or actions.

13. This also applies to secondary actions or things which were considered valid at the time of making because the invalidity of the guidelines or criteria was not known, such as actions by the Commissioner for Taxation in response to certificates issued by the IR&D Board.

14. This subclause also makes it explicit that a reference to a decision of the IR&D Board extends to a decision made by any of the committees of the IR&D Board established under the Principal Act.

Clause 5 - Saving of rights of action for adverse decisions or acts etc

15. This clause makes clear the fact that the passage of this Bill, and the validation of certain decisions, acts or things, will not affect any right of action a person may have in respect of any previous invalidity.

SCHEDULE**Items 1 and 2**

16. The 1995 - 1996 Budget initiatives for the Industry, Science and Technology portfolio included a commitment that the grant programs under the *Industry Research and Development Act 1986* would be extended to 30 June 1996 to allow the Government sufficient time to respond to the Industry Commission Inquiry into Research and Development. This is an extension of time only and is not accompanied by an increase in appropriation.

Item 3 to 8 inclusive, 10 to 13 inclusive

17. These Items make it explicit in the Principal Act that guidelines or criteria made in accordance with that Act can be repealed, replaced or amended. This applies whether or not the 90 day period for initially making the guidelines or criteria has passed. Any instruments made repealing, replacing or amending guidelines will be disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*, and accordingly will be subject to Parliamentary scrutiny.

Item 9

18. This Item provides for "a Australian" to be omitted, wherever occurring, and for "an Australian" to be submitted in its place.





