

The R&D Tax Incentive is jointly administered by:



Australian Government
Department of Industry,
Science and Resources

AusIndustry



Australian Government
Australian Taxation Office

www.business.gov.au/RDTI
www.ato.gov.au/RDTI

R&D Tax Incentive State Reference Groups

September 2022

Agenda

Time	Item	Speaker
11.00am	1. Welcome 1.1. Roll-call of attendees 1.2. Acknowledgement of country 1.3. House keeping	Facilitator
11.05am	2. AusIndustry Insights 2.1. Customer portal 2.2. Registrations update 2.3. Data insights 2.4. Compliance trends 2.5. Customer survey 2.6. RSP Working Group	Keelie Williams, Manager, Business Support Joanne Taylor, Acting Manager, Registrations Keelie Williams, Manager, Business Support Tom Gilbert, Manager, National Assessments Malcolm Jones, Acting Manager, Business R&D Policy Leanne Alvos, Manager, Governance and Engagement
11.35am	3. ATO Insights	Brett Challans, Senior Director, Innovation Taxes, ATO
11.55am	4. Litigation Insights	Anna George, Acting Manager, Administrative Review
12.25pm	5. Advance and Overseas Findings	Tom Gilbert, Manager, National Assessments Malcolm Jones, Acting Manager, Business R&D Policy
12.55pm	6. Other business and close	Facilitator

1. Welcome

The meeting commenced with an Acknowledgement of Country and welcome to attendees.

The group was advised that attendance was slightly larger than usual as sessions were combined due to the public holiday for the national day of mourning for Queen Elizabeth II.

AusIndustry advised of multiple staffing changes since the last State Reference Group (SRG) meetings, including a new General Manager of the R&DTI branch, Tara Oliver.

2. AusIndustry Insights

2.1 Customer Portal (Keelie Williams)

- The registration deadline on 3 May 2022 for companies with an income year that ended on 30 June 2021 was a peak lodgement date and the first to occur since introducing the customer portal on 5 July 2021. The portal handled the increased demand well.
- Recent system updates included the following:
 - Transitioning to the Australian Government Digital Identity System to verify users, providing additional privacy and security assurances. The login button to the portal now displays 'Continue with Digital Identity' replacing the previous 'Login with myGovID' button. Currently myGovID is the only service available however this update paves the way for future alternatives. Further information can be found at <https://www.digitalidentity.gov.au/>.
 - Australian and New Zealand Standard Research Classification (ANZSRC) codes were updated to the 2020 definitions. Further information on ANZSRC definitions is available on the [ABS website](#).
 - The registered Research Service Provider and Cooperative Research Centre list was updated in the portal on 31 August 2022.
- No major updates are planned for the rest of 2022.
- AusIndustry received several inquiries relating to loss of portal access which occurs when authorisations are not extended by the R&D entity. Companies should review the authorisations they have set up for third parties well before their submission deadlines.
- Applications in the portal will be pre-filled when:
 - the relevant draft is created after a previous application has been submitted through the portal
 - the projects/activities have an end date in, or after, the income period being registered.

2.2 Registrations Update (Joanne Taylor)

31 October Deadline

- The deadline to submit registrations for R&D entities with an income year that ended in December 2021 is Monday 31 October 2022 (being 10 months after the end of the financial year in which the R&D activities are undertaken). As setting up a portal account can take a lot longer than expected, this process should be started well in advance of the deadline.

Registrations of Research Service Providers (RSPs)

- All RSP registration applications received by 30 June 2021 have been processed with 174 organisations registering for the 2022-23 year.
- This year, RSPs employed the updated ANZSRC codes. This required applicants to undertake an additional process to transition from the old codes to the current codes.

- The RSP register for the 2022-23 income year will be updated on business.gov.au to reflect the 2020 ANZSRC codes.

Clinical Trials Determination

- 50 companies have employed the Clinical Trials Determination to register their R&D activities since it came into effect in April 2022. The determination has significantly reduced the complexity of assessing relevant applications and, in turn, substantially reduced our registration processing times.
- AusIndustry is analysing opportunities for future determinations and welcome all suggestions by emailing: rdti.engagement@industry.gov.au.

2.3 Data Insights (Keelie Williams)

- During the 2019-20 income year, there were 12,401 registrations and a total R&D expenditure of \$12.6 billion. Registrations and R&D expenditure have not changed significantly over the past few years.
- SMEs with a turnover of less than \$20 million comprised the majority of registrations (88%) and accounted for slightly less than half (49%) of R&D expenditure. Large companies with turnover greater than \$20 million comprised 12% of registrations and 51% of R&D expenditure.
- ICT registrations constituted 45% of all R&D Registrations and 37% of R&D Expenditure in 2019-20.

2.4 Compliance Trends (Tom Gilbert)

- The introduction of the new portal application form has enabled AusIndustry to better identify companies who need support to apply the program's legislative requirements. The requirement to distil information in the portal fields assists AusIndustry to provide tailored education and advice and better target risk reviews and examination activities.
- The requirement for an 'unknown outcome' under the definition for eligibility is not receiving equal focus by applicants. Applicants need to be clear on why the outcome of their activities cannot be predicted on the basis of current expertise and professional knowledge and ensure they keep records to demonstrate the steps they undertook to establish this.
- AusIndustry continues to observe that the majority of registrants are either "getting it right", or "trying to get it right", and will continue to implement guidance-based engagement model during early compliance interactions.

2.5 Customer survey (Malcolm Jones)

- AusIndustry commissioned a customer survey to seek user feedback on the program's accessibility, client understanding of requirements and perceived program benefits. The survey was sent to all 2020-21 program registrants and received approximately 1,000 responses (with a high proportion of responses from SMEs.)
- The customer survey forms part of a larger program of work to assess the impact of the program.
- Overall, the survey indicates there is widespread appreciation of the importance of the R&D Tax Incentive in supporting Australian organisations and industries. The benefits relate to both individual organisations and the positive impact on innovation within Australia more broadly. An identified key benefit is that the incentive can be accessed by anyone in any field of R&D which has promoted the opportunity for R&D to industries where this is traditionally less of a focus.

2.6 Research Service Provider (RSP) Working Group (Leanne Alvos)

- AusIndustry is eager to increase company engagement with RSPs to enable or enhance their R&D.

- In June 2022, members of the R&DTI Roundtable were invited to take part in a RSP Working Group to share their insights and experiences regarding RSPs. Participants represented universities, industry bodies, companies and tax agents and suggested opportunities to build awareness of RSPs and encourage research collaborations in general.
- SRG participants offered the following insights on company engagement with RSPs:
 - University timeframes may not align with commercial requirements
 - There are few RSPs in the ICT space
 - It can be unclear which services are provided by particular RSPs
 - SMEs may avoid collaboration as they perceive outsourcing activities to an RSP will be too expensive
 - R&D entities and RSPs can have a different approach to manufacturability

3. ATO Update (Brett Challans)

- There has been a change at the ATO of the Assistant Commissioner with responsibility of the R&DTI program. Kelly Canavan has replaced Jade Hawkins.
- New legislative requirements have commenced for companies with income years commencing on or after July 2021. Initial teething issues identified have been resolved and the R&D schedule instructions have been updated.
- ATO R&D web content is being updated with improved search functions, layout and enhanced guidance on:
 - record keeping
 - the nexus between registered R&D activities and R&D expenditure
 - feedstock and clawback
- The ATO has noted incorrect claims for ‘payments to associates’ with particular reference to loans being created and incorrectly being claimed as being paid instead of payment being made whether through physical payment or constructive payment through pre-existing commitments.
- Overhead expenditure continues to be an issue of concern where companies are either not correctly apportioning their expenditure or are simply picking up their expenses from their profit and loss, claiming the whole amount as an overhead. Companies are encouraged to take care with overhead claims and using the most appropriate apportionment method.
- The ATO engages with companies regarding payments to associates and apportionment of overhead expenditure and encourages them and their advisers to seek advice if there is any doubt before lodgement in order to ensure their claims are correct.
- The ATO can be contacted at innovationtax@ato.gov.au to assist companies, consulting firms and industry groups with queries.

4. Litigation Insights (Anna George)

- Industry Innovation and Science Australia’s (IISA) litigation strategy, is to assist the Administrative Appeals Tribunal (the Tribunal) to reach the correct and preferable decision on the facts before it as consistent with the principles of administrative law.
- The Tribunal considers new evidence supplied by both parties and is not limited to the materials used by IISA for the internal review decision. The Tribunal is not bound by the rules of evidence.
- There is no obligation for IISA to defend the initial or review decision. Should the IISA come to a view that there are grounds to reverse a decision under review in whole or in part, it will act quickly to reach agreement with the applicant to resolve the matter.

- IISA does not have the opportunity to make commercial settlement decisions. No consideration will be given to resolution in favour of an applicant unless on statutory grounds. Consequently, settlement agreements:
 - can only be made based on the eligibility of the claimed or registered activities.
 - are primarily made as the result of the provision of new evidence by an applicant.
- While the IISA considers the Tribunal decisions when forming policy positions, these decisions are not precedential as they are always based on the specific facts of a case and are not necessarily applicable to the program more broadly. Tribunal decisions are also reviewed in light of internal policy and operations to build best practice administration.
- R&D entities are encouraged to actively engage with IISA when involved in compliance activities. Early engagement can often lead to narrowing the issues in dispute and help to ascertain what records may be required to establish eligibility.
- As evidence and record-keeping are key to the process, it is essential that all registrants keep contemporaneous records and evidence to support their claims. In the absence of any evidence, IISA may find it difficult to determine eligibility.

5. Advance and Overseas Findings

5.1 Shorter Findings Initiative (Tom Gilbert)

- Advance and Overseas Findings (AOF) aim to provide certainty of eligibility prior to application and are mandatory for activities conducted overseas.
- AusIndustry is improving the administration of these findings in response to feedback that we received from stakeholders and recommendations made following reviews of the program by the Australian National Audit Office (ANAO) and Board of Taxation (BoT). Key areas of focus include:
 - new processes to target and close information gaps to enable assessment decisions
 - revised assessment processes to create higher efficiencies
 - surge resourcing to help process applications in peak lodgement periods
 - enhanced tracking and monitoring of case age
- AOF examination timeframes have decreased over the last 3 years, with the average completion time from application lodgement to decision improving by around 30% (from 181 days in 2020-21 to 111 days in 2021-22).
- AusIndustry is actively working to shorten timeframes to 90 days, however companies seeking extensions of time for responses may extend decision timeframes.
- Advance Findings provide certainty from the regulators as the decision is binding. These findings can often be used to support fundraising or investment decisions, which is especially useful if significant expenditure is involved.
- There are no penalties derived from a negative finding because an advance finding is not an audit. This process is in fact viewed as a positive compliance behaviour in light of the program's integrity framework as it shows the entity is taking steps to ensure they meet the eligibility requirements.
- Advance Findings last for three years, so they provide flexibility in registering and claiming R&D activities.

6.2 Discussion on Use and Value of Advance Findings (Malcolm Jones)

- Key points on the use and value of Advance Findings include:
 - Previously long processing times were a barrier to use of Advance Findings.
 - The financial cost of completing the R&D activities needs to justify the time required to complete the advance finding process.

- When completing an Early Stage Investment Company submission and raising venture capital, an advance finding is often important.
- Advance Findings can provide certainty when claimants aren't clear on eligibility. Increased guidance also assists to increase confidence.
- The reduced processing times this year have been noted by many attendees and have encouraged greater use of the Advance Finding process.
- It would be beneficial if the content from the Advance Finding application could automatically transfer to the application for registration.
- Advance Findings can help to attract talent in cases where equity is being offered, as this gives the claimant's research credibility.
- Although an Advance Finding can provide a level of certainty around activities, R&D does not always go to plan and activities may change over time.

End of Summary

Appendix A

R&D Tax Incentive Program Update – September 2022

This update provides information on various elements of program administration.
You are welcome to comment on the information or ask questions during the meeting.

1. Departmental changes
2. Advance and overseas findings
3. Program guidance
 - Information sessions
 - Guide to interpretation video
 - Website updates
4. Determinations
5. Registrations updates
 - Customer portal
 - Application insights
 - Registration and claims data

Departmental changes

Some changes have occurred in the department as a result of the change of government following the election in May 2022. The department is now the Department of Industry, Science and Resources (DISR) with the Hon Ed Husic MP sworn in as Minister for Industry and Science on 1 June 2022. More recently, Meghan Quinn PSM was appointed as the new Secretary of DISR. Her five-year appointment commenced on 22 August 2022. These changes have not impacted the R&DTI's legislative framework or administration.

Advance and overseas findings

Current demand for overseas findings remains high and is returning to pre-COVID-19 levels. Most overseas finding applications are lodged in the last week of June. This peak means many applicants may wait longer for a finding outcome compared to applications lodged at other times of the year.

Demand for advance findings is low and represents less than 10% of all advance and overseas finding applications submitted in the 2021/22 financial year.

Assessment timelines

Advance and overseas findings assessment timelines have improved over the last year. In 2021-22, the median time to complete advance and overseas findings reduced to 111 days compared to 181 days in 2020-21. This 30% improvement in completion times will be enhanced further by refined assessment and customer engagement processes along with surge capacity provided by an external delivery partner, Proximity Advisory Services.

Applicants for advance and overseas findings can also help to streamline the assessment of their application by attaching relevant samples of evidence to their applications.

Feedback request

AusIndustry is seeking to better understand the low rate of advanced finding applications given the frequent demand for certainty made by program users. Your comments can be shared during the forum or sent to rdti.engagement@industry.gov.au.

Program guidance

Information sessions

Online information sessions are regularly offered to explain program requirements and assist companies to self-assess their R&D activities. A new webinar is now available to provide guidance on requirements for both activities and related expenditure, together with information on how and when to apply, and advice on record-keeping. The webinar is jointly delivered by AusIndustry and the ATO and directed to entities that are new to the program.

The first session on 20 July proved popular with 180 participants, of which a third had never previously applied for the R&DTI. Additional sessions are scheduled for [Tuesday, 18th October](#) and [Wednesday, 23rd November](#). All information sessions are listed on business.gov.au/rdti.

Guide to interpretation video

A video version of the *Guide to Interpretation* is now available at business.gov.au/rdti in conjunction with downloadable versions in written format. This video covers the same content with some helpful tips on record keeping and common errors.

Website updates

You can keep up with major changes to R&DTI website content at business.gov.au/rdti by visiting this page: [latest updates to the R&D Tax Incentive content](#). We recommend that you regularly check this page to ensure any content you reference on your website is up to date.

Determinations

Industry Research and Development (Clinical Trials) Determination 2022

The [Industry Research and Development \(Clinical Trials\) Determination 2022](#) came into effect on 1 April 2022 under the title *Industry Research and Development (clinical trials, Phase 0, I, II, III, pre-market pilot stage, pre-market pivotal stage, for an unapproved therapeutic good) Determination 2022*. This determination offers certainty that phase 0, I, II, III, pre-market pilot stage and/or pre-market pivotal stage clinical trials for unapproved therapeutic goods are 'core R&D activities'.

The determination has received a very positive response from companies and stakeholders as it decreases the application time for certain clinical trials and enhances the ability to engage in cutting-edge R&D with certainty that the activities meet eligibility requirements. Similarly, reduced complexity has streamlined assessments and reduced processing times for program administrators. In one instance, a company that relied on the clinical trials determination for 35 core R&D activities was processed in only fifteen minutes.

The release of the determination was accompanied by [guidance on how to apply the determination](#) to assist companies when registering for the program and/or applying for an Advance or Overseas Finding. The business.gov.au/rdti website provides the primary reference point for up to date information and guidance.

AusIndustry is working to develop future determinations. R&DTI determinations made by AusIndustry differ from ATO determinations. The latter are binding on the Commissioner of Taxation, while R&DTI determinations are binding on the Industry Innovation Science Australia Board and its delegates.

Feedback on the clinical determination and suggestions for new determinations can be forwarded to rdti.engagement@industry.gov.au.

Registrations update

Customer portal

3 May registration deadline

The registration deadline on 3 May 2022 for companies with an income year that ended on 30 June 2021 was a peak lodgement date and the first to occur since the introduction of the customer portal on 5 July 2021. The portal handled the increased demand as anticipated. On-going monitoring ensures the portal is meeting customer demands.

Over 13,000 applications have been submitted and processed through the customer portal since it was launched.

System updates

On 29 June 2022 minor updates were made to the customer portal enabling the following changes:

- *Incorporation of the newly introduced 'Digital Identity' as part of the login process.* Digital Identity is a government service which currently includes myGovID as the only identity verification service but paves the way for alternatives in the future. Further information about Digital Identity can be found at <https://www.digitalidentity.gov.au/>.
- *Transition to the 2020 Australian and New Zealand Standard Research Classification (ANZSRC) codes.* The portal now uses the update ANZSRC classification codes which have changed from the 2008 version. This change now aligns the portal with updated provisions of the [Industry Research and Development Regulations 2022](#). Further information on ANZSRC definitions is available on the [ABS website](#), including resources to help you classify your activities under the correct fields of research definition.

No major changes are planned for the customer portal for the remainder of 2022. There will be a minor release later in the year to update the list of registered Research Service Providers and Cooperative Research Centres. Should additional portal updates be required in 2022, this will be notified on the portal help and support webpage.

Portal access authorisations

Companies should be reminded to review and update the authorisations they have set up in both the customer portal and the ATO's Relationship Authorisation Manager to ensure they are current. This includes authorisations to extend access to third parties, and removing it when no longer required.

Application insights

There are several common mistakes made by applicants that can cause a delay in their registration. One of the main issues is companies missing the lodgement deadline because insufficient time is allowed for portal access. Setting up a portal account for the first time can take longer than expected and several companies have to then apply for an extension of time in order to submit an application. It is important to note that extension of time requests can only be made via the Portal.

Delays to registration are also caused by:

- *Applications submitted with incorrect entity details.* This is particularly important when tax structures change that require an update to the entity that should be applying on behalf of a group.
- *Applications submitted with the wrong financial year.* When a company incorrectly nominates their income period, such as choosing 30 June balance date instead of 31 December, the application must be withdrawn and resubmitted for the correct financial year.
- *Incorrect primary R&D contact details.* The primary contact must be a company representative with their correct email address and not the email for a tax agent or R&D consultant. Contact details for advisors are accommodated elsewhere in the registration form. Correct entry of the primary R&D contact field is important for our registration workflows.
- *Missing RSP information.* Applicants that use a registered Research Service Provider (RSP) for some or all of their R&D activities should also include the details of the RSP in the relevant field.

Registration and claims data

R&DTI registration data provided below as the most recent dataset for the 2020/2021 period. This dataset is incomplete for the period as applications can be submitted up to 15 months after the end of the Australian standard financial year. As such this data is indicative only and will change when the full dataset is available.

Table 1: Overall registrations

R&D TAX INCENTIVE PROGRAM REGISTRATIONS	
Number of Registrations	12,288
R&D Expenditure (billion)	\$13.16

Table 2: Comparison of registrations and expenditure by organisation size

REGISTRATIONS/EXPENDITURE	SMES	LARGE COMPANIES
Number of Registrations	10,788	1,500
R&D Expenditure (billion)	\$6.87	\$6.29

Table 3: Overall claims for the full 2020/21 financial year (ATO)

CLAIMS/EXPENDITURE	REFUNDABLE	NON-REFUNDABLE
Number of Claims	11,639	1,488
Offset paid or applied (billion)	\$2.7	\$2.2

For tables 4 to 11, 'E,G,W&WS' denotes Electricity, Gas, Water & Waste Services.

Table 4: Comparison by sector – Australia-wide

	SERVICES	MANUFACTURING	AGRICULTURE	MINING	E,G,W & WS*
Number of Registrations	7,601	3,492	507	410	278
R&D Expenditure (million)	\$7,142	\$3,933	\$534	\$1,216	\$338

Table 5: Comparison by sector – NSW

	SERVICES	MANUFACTURING	AGRICULTURE	MINING	E,G,W & WS*
Number of Registrations	3,012	1,068	111	91	51
R&D Expenditure (million)	\$3,315	\$1,550	\$93	\$179	\$116

Table 6: Comparison by sector – VIC

	SERVICES	MANUFACTURING	AGRICULTURE	MINING	E,G,W & WS*
Number of Registrations	2,258	1,052	106	56	30
R&D Expenditure (million)	\$2,281	\$1,248	\$88	\$91	\$206

Table 7: Comparison by sector – QLD

	SERVICES	MANUFACTURING	AGRICULTURE	MINING	E,G,W & WS*
Number of Registrations	1,191	731	123	89	46
R&D Expenditure (million)	\$732	\$619	\$97	\$158	\$29

Table 8: Comparison by sector – WA

	SERVICES	MANUFACTURING	AGRICULTURE	MINING	E,G,W & WS*
Number of Registrations	624	361	212	76	61
R&D Expenditure (million)	\$451	\$268	\$676	\$68	\$27

Table 9: Comparison by sector – SA & NT**

	SERVICES	MANUFACTURING	AGRICULTURE	MINING	E,G,W & WS*
Number of Registrations	324	224	50	21	18
R&D Expenditure (million)	\$235	\$182	\$58	\$56	\$6

Table 10: Comparison by sector – ACT

	SERVICES	MANUFACTURING	AGRICULTURE, MINING** AND E,G,W & WS*
Number of Registrations	143	20	10
R&D Expenditure (million)	\$103	\$38	\$6

Table 11: Comparison by sector – TAS

	SERVICES	MANUFACTURING	AGRICULTURE	MINING** AND E,G,W & WS*
Number of Registrations	49	36	36	8
R&D Expenditure (million)	\$27	\$130	\$26	\$5

* Electricity, Gas, Water & Waste Services

** Combined for confidentiality reasons.

Note: Where the count of registrations for a metric is less than 5, or expenditure is below AU\$1 million, this information is not presented.

Comparison of registrations by States and Territories

