

## **UPDATE RE SENATE HEARING RE R&D TAX INCENTIVE BILL, JUNE 2020**

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The Senate Economics Legislation Committee met on Monday 29 June 2020 to review the “Treasury Laws Amendment (Research and Development Tax Incentive) Bill 2019” (RDTI Bill).

The reporting date for the inquiry is expected to be 7 August 2020, and we will update members when this is released and the next steps are identified.

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### **MEMBERS OF THE COMMITTEE THAT ATTENDED THE HEARING:**

Hon Slade Brockman (Liberal, WA), Hon Kim Carr (ALP, VIC), Hon Susan McDonald (Nationals, QLD), Hon Rex Patrick (Centre Alliance, SA), Hon Louise Pratt (ALP, WA) & Hon Jess Walsh (ALP, VIC).

### **ORGANISATIONS (2-4 PEOPLE FROM EACH) INVITED TO PRESENT**

Ai Group  
Australian Information Industry Association  
Australian Investment Council  
Lighting Council Australia  
Manufacturing Australia  
Medicines Australia  
ResMed Australia  
Science & Technology Australia

### **AUSTRALIAN GOVERNMENT DEPARTMENTS REPRESENTED AT HEARING**

Industry, Science, Energy & Resources  
Australian Taxation Office  
Department of Treasury

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### **BIOMELBOURNE NETWORK’S SUBMISSION**

The submission from BioMelbourne Network (see this [LINK](#)) was part of a Joint Submission from the Association of Australian Medical Research Institutes (AAMRI), Life Science Queensland, Medical Technology Association of Australia, Medicines Australia & Research Australia. The Economics Legislation Committee has these documents.

### **HANSARD TRANSCRIPT**

The Hansard transcript confirms that those invited to attend addressed the primary concerns we had raised, and thus represented our range of members. The full transcript can be found at [HANSARD](#) . Some excerpts follow.

## INTENSITY MEASURE

- This was repeatedly raised as a concern by companies that are manufacturing in Australia.
- **Brett Sandercock, CFO ResMed:** *"We ask the government to make it easier for all businesses to choose Australia for each additional dollar invested in R&D, especially as Australia is competing against other countries that have generous incentives and innovative talent. We need to do better than the proposed R&D law."*

*Australia needs to help the advanced manufacturing and R&D sectors thrive, not give more incentives for companies that manufacture offshore. Finally, we note no other country in which we undertake R&D has an intensity measure built into their R&D incentive program."*

- **Tennant Reed, Principal National Adviser, Public Policy, Ai Group:** *"We have consistently said that we don't support some of the mooted changes, including the stepping of the rate of incentive on an intensity basis. We think that those changes will be, on net, quite destructive to the overall objectives for which the incentive was properly put in place."*

*In addition: "But the big element here—certainly the one with the largest fiscal implications—is the intensity stepping of the threshold, and that is one that we have consistently argued doesn't have a very strong case for it. Even on the basis of seeking to sharpen the incentives for more R&D and more intense R&D to be conducted, it doesn't operate well to achieve that. In fact, we think, as I believe the previous organisation (AIIA) submitted, that it would be a disincentive to R&D in this country."*

In addition, he provided Ai Group's support for capping the refundability of the tax offset at \$4M per annum. He did not describe a carve-out for our sector.

## RETROSPECTIVITY

A key concern repeatedly raised by Hon Kim Carr was the impact of retrospectivity.

- **Elizabeth de Somer, CEO, Medicines Australia:** *"... one of our concerns is that the retrospective nature of it makes it impossible for businesses to plan their research and development activities with the R&D tax incentive in mind, which is a further disincentive."*
- **Yasser El-Ansary, CEO, Australian Investment Council:** described that their core focus in the context of RDTI is early-stage, fast-growth businesses in digital & biotech life sciences arena. In relation to retrospectivity he commented: *"It would be a fundamental mistake for the parliament to support the introduction of retrospective legislation, knowing the significant harm that it can cause to businesses that have already made long-term investment decisions on the basis of tax laws that existed at the time."*

## SAVINGS FROM CHANGES TO BE REDEPLOYED

- **Misha Schubert, CEO, Science Technology Australia** said that the savings of \$1.8Bn over 4 years should be redeployed to ensure R&D organisations work with SMEs. In addition, a collaboration premium should be introduced to encourage more Australian businesses "to tap into the brains trust in our universities and publicly funded research institutions, such as the CSIRO."

## COMPLEXITY OF PROPOSED R&DTI

- **Simon Bush, GM, Australian Information Industry Association**, described how the pandemic is creating uncertainty and an overall reduction in investment in R&D, "*creeping in a degree of sovereign risk.*"

In relation to the proposed RDTI, "*...this scheme is so complex—creating the different thresholds, creating the different intensity levels. There are partners in the big four accounting firms where their whole job is—and there's a whole career out there—just dedicated to this bill, and providing advice to SMEs. It's really hard for SMEs to navigate and plan. Particularly if 50 per cent of claimants are from the software sector and AusIndustry keeps tightening the eligibility rules around it, it makes it harder to plan and invest when you don't know whether you're going to qualify when you put your claim in.*"

## LACK OF CONSULTATION WITH COMPANIES

Senator Kim Carr, having asked most organisations at the Hearing, noted that there was a lack of consultation by Government with companies making use of the RDTI.

**Wayne Calder, Department of Industry, Science, Energy & Resources, Business Environment section**, confirmed this:

- "*There was no formal consultation on the draft legislation that is before the parliament at the moment, but we did have the benefit of all the consultations we had done up until that point and also the submissions to the Senate inquiry itself.*"  
*"There was a recalibration of the intensity test. It moved from a four-tier to a three-tier intensity model."* It was noted that this was not done in consultation with the industry.
- **Senator Louise Pratt:** "*Finally, given the fact that there's a large cut embedded in this and that it's contributed to a lot of uncertainty in the space, how could you say, in the context of the COVID pandemic and recovery, that this bill is pushing in the right direction for manufacturing and research and development in Australia?*"  
**Calder's response:** "*The focus is really on ensuring that the support given for R&D activities in Australia is not support for companies doing what they would normally have done. There is always a commercial incentive for companies to undertake research and development activity, to make better products, to get to market more quickly and to capitalise on their opportunities.*"  
**Senator Rex Patrick:** "*Not if they can do it in another jurisdiction much more easily. You've got that completely wrong, actually. Sorry, Senator Pratt.*"  
**Senator Louise Pratt:** "*I think you're right. I'm done.*"

Senator Patrick referred several times to the need for "sticky IP," for penalties for IP "going offshore" and placing restrictions on how IP is traded overseas. Simon Bush noted a preference for putting incentives in place to retain IP here.