

Industry Research and Development Regulations 2022

I, General the Honourable David Hurley AC DSC (Retd), Governor‑General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 17 March 2022

David Hurley

Governor‑General

By His Excellency’s Command

Angus Taylor

Minister for Industry, Energy and Emissions Reduction

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Part 1—Preliminary

1.01 Name

This instrument is the *Industry Research and Development Regulations 2022*.

1.02 Commencement

(1) Each provision of this instrument 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 | | |
| --- | --- | --- |
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. The whole of this instrument | The day after this instrument is registered. | 22 March 2022 |

Note: This table relates only to the provisions of this instrument as originally made.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

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

1.03 Authority

This instrument is made under the *Industry Research and Development Act 1986*.

1.04 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

1.05 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

(a) Board;

(b) core R&D activities;

(c) R&D activities;

(d) R&D entity;

(e) supporting R&D activities.

In this instrument:

***ABN*** has the same meaning as in section 41 of the *A New Tax System (Australian Business Number) Act 1999*.

***ACN*** has the same meaning as in section 9 of the *Corporations Act 2001*.

***Act*** means the *Industry Research and Development Act 1986*.

***ARBN*** has the same meaning as in section 9 of the *Corporations Act 2001*.

***Australian core activities*** has the meaning given by subsection 28D(2) of the Act.

***cooperative research centre*** means a cooperative research centre under the CRC program.

***CRC program*** has the meaning given by subsection 995‑1(1) of the ITAA 1997.

***government research organisation*** has the meaning given by subsection 3.01(9).

***ITAA 1997*** means the *Income Tax Assessment Act 1997*.

***research service provider (levy collecting)*** means a research service provider that meets the criteria in subsections 3.01(2), (3) and (7).

1.06 Research field

For the purposes of the definition of ***research field*** in subsection 4(1) of the Act, a field of research classification mentioned in the *Australian and New Zealand Standard Research Classification (ANZSRC) 2020*, as it exists at the time this instrument commences, is specified.

Note: The *Australian and New Zealand Standard Research Classification (ANZSRC) 2020* could in 2022 be viewed on the Australian Bureau of Statistics’ website (https://www.abs.gov.au/).

Part 2—Matters to be set out in certificates for findings

2.01 Certificate for finding about application for registration and certificate for finding about registration

For the purposes of paragraphs 27C(2)(d) and 27K(2)(e) of the Act, a certificate for a finding about an R&D entity’s application for registration, and a certificate for a finding about an R&D entity’s registration, must set out the following matters:

(a) the name of the R&D entity;

(b) the ABN, ACN or ARBN of the R&D entity;

(c) if the R&D entity is the head company of a consolidated group or MEC group—details of the subsidiary member of the consolidated group or MEC group that conducted the activity, or had services provided in relation to the activity, to which the finding relates;

(d) if the Board specifies in a finding the times to which the finding relates—those times;

(e) if the Board finds that all or part of an activity is a supporting R&D activity—the activity or activities that, in the Board’s opinion, the supporting R&D activity is conducted in relation to.

2.02 Certificate for advance finding

For the purposes of paragraph 28F(3)(e) of the Act, a certificate for a finding under subsection 28A(1) of the Act must set out the following matters:

(a) the name of the R&D entity to which the finding relates;

(b) the ABN, ACN or ARBN of the R&D entity;

(c) if the R&D entity is the head company of a consolidated group or MEC group—details of the subsidiary member of the consolidated group or MEC group that:

(i) conducted, is conducting, or will conduct, the activity to which the finding relates; or

(ii) had, is having, or will have, services provided in relation to the activity to which the finding relates;

(d) if the Board specifies in the finding the times to which the finding relates—those times;

(e) if the Board finds that all or part of an activity is a supporting R&D activity—the activity or activities that, in the Board’s opinion, the supporting R&D activity relates to;

(f) the income years for which the finding binds the Commissioner under section 355‑705 of the ITAA 1997.

2.03 Certificate for finding about activities to be conducted outside Australia

For the purposes of paragraph 28F(3)(e) of the Act, a certificate for a finding about an activity under subsection 28C(1) of the Act must set out the following matters:

(a) a reference to the certificate for the finding (if any) about the activity mentioned in subsection 28D(1) of the Act;

(b) separately for each of the conditions in subsections 28D(2), (4) and (5) of the Act—the Board’s finding for whether the condition is met, and the reasons for that finding;

(c) if the Board finds that the activity has a significant scientific link to one or more Australian core activities—one of the following times:

(i) if the Board specifies in a finding about the Australian core activities the times to which that finding relates—those times;

(ii) otherwise—the times that the Board is satisfied the Australian core activities were, or are being, conducted.

2.04 Certificate for finding about whether technology is core technology

For the purposes of paragraph 28F(3)(e) of the Act, a certificate for a finding about whether technology is core technology under subsection 28E(1) of the Act must set out the following matters:

(a) the name of the R&D entity to which the finding relates;

(b) the ABN, ACN or ARBN of the R&D entity;

(c) if the R&D entity is the head company of a consolidated group or MEC group—details of the subsidiary member of the consolidated group or MEC group that is using, or will use, the technology.

Part 3—Research service providers

3.01 Criteria for registration of research service provider

(1) For the purposes of subsection 29A(2) of the Act, this section specifies the criteria that the Board must be satisfied an entity meets to be registered as a research service provider.

(2) The entity must:

(a) be able to provide services in the research fields for which the entity has applied to be registered; and

(b) if the entity will subcontract the provision of any part of the services to another entity—be able to:

(i) manage the subcontracting of those services; and

(ii) understand and explain, to the R&D entity to which those services are being provided, the results of the services provided by the subcontractor; and

(c) show an intention to provide the services to bodies corporate that are not related bodies corporate (within the meaning given by section 50 of the *Corporations Act 2001*) of the entity.

(3) If the entity charges fees or other charges for providing services in the research fields for which the entity has applied to be registered:

(a) the fees and charges must be based on ordinary commercial terms; or

(b) the fees and charges:

(i) must not be subsidised by government resources; and

(ii) must not be inflated to exploit the tax incentive for R&D activities.

(4) If the entity is not an entity mentioned in subsection (6) or (7), the entity must:

(a) have access to facilities in Australia:

(i) that are appropriate to the research fields for which the entity has applied to be registered; and

(ii) that are suitable for researchers to carry out work in those fields; and

(b) meet the requirement, or be able in the near future to meet the requirement, of subsection (5).

Example: An entity is able to meet the requirement of subsection (5) in the near future if, after the resignation of one of the entity’s 5 full‑time researchers, the entity immediately undertakes a recruitment process to fill the researcher position.

(5) For the purposes of paragraph (4)(b), the requirement is that the entity employs in Australia at least:

(a) one full‑time researcher who has:

(i) a degree in science or technology from an Australian university; or

(ii) qualifications from an overseas tertiary education institution that are recognised in Australia as being equivalent to a degree mentioned in subparagraph (i); and

(b) 4 researchers who are full‑time, or full‑time equivalent, employees, and who each have:

(i) a degree in science or technology from an Australian university; or

(ii) qualifications from an overseas tertiary education institution that are recognised in Australia as being equivalent to a degree mentioned in subparagraph (i); or

(iii) at least 5 years of relevant research experience in a single scientific or technological field that relates to one or more of the research fields for which the entity has applied to be registered.

Publicly controlled

(6) If the entity is owned and controlled by an Australian tertiary education institution or a government research organisation (the ***controlling institution***):

(a) the controlling institution must be a research service provider; and

(b) the entity must have access in Australia to the research and development facilities and research personnel of the controlling institution that will allow the entity to provide services in relation to R&D activities in the research fields for which the entity has applied to be registered.

Levy collecting

(7) If the entity collects levies from R&D entities within an industry (the ***contributors***) to fund the provision of services in relation to R&D activities, and does so under a contract or memorandum of understanding with a Commonwealth, State or Territory government, the entity must have arrangements for:

(a) making available to the contributors the results of the services provided that were funded by the levies; and

(b) reporting to the contributors:

(i) about how much of the levies was used for providing services in relation to R&D activities and how much was not; and

(ii) for the levies used for providing services in relation to R&D activities—a ratio for working out how the levies are to be apportioned between core R&D activities and supporting R&D activities.

(8) For the purposes of subparagraph (7)(b)(ii), the ratio must be based on a reasonable estimate of how the levies are to be apportioned by the R&D entities between core R&D activities and supporting R&D activities.

(9) In this instrument:

***government research organisation*** means a Commonwealth, State or Territory government research organisation and includes the following:

(a) Australian Institute of Marine Science;

(b) Australian Nuclear Science and Technology Organisation;

(c) Commonwealth Scientific and Industrial Research Organisation.

3.02 Conditions of registration of research service provider

(1) For the purposes of subsection 29A(3) of the Act, the registration of an entity as a research service provider is subject to the conditions specified in subsections (2) and (3) of this section.

Note: If the entity breaches a condition, the Board may, under subsection 29H(1) of the Act, revoke the entity’s registration as a research service provider.

(2) The following conditions are specified for all research service providers:

(a) in providing services to R&D entities under contractual arrangements, the research service provider acts in the best interests of each R&D entity;

(b) the services provided by the research service provider are controlled by the R&D entity, or R&D entities, to which the services are provided;

(c) the research service provider maintains, to the extent required under contractual or other arrangements between the research service provider and an R&D entity:

(i) the confidentiality of the services it provides to the R&D entity in relation to R&D activities; and

(ii) the security of information given to the research service provider by the R&D entity;

(d) the research service provider has a management structure that is appropriate for the research service provider to manage the provision of services in relation to R&D activities on a day‑to‑day basis (such as a committee that manages the provision of the service);

(e) the research service provider keeps separate financial records for services provided in relation to each R&D activity;

(f) the research service provider ensures that each R&D entity to which the research service provider provides services in relation to R&D activities owns, or has a right to use, all results of those services, including the results of any services provided by a subcontractor of the research service provider in relation to the R&D activities;

(g) the research service provider maintains records of services provided in relation to R&D activities for each R&D entity, including records of any fees or charges paid by, or charged to, the R&D entity and a copy of the contract to provide the services, and makes those records available on request by the Board;

(h) the research service provider gives the Board an annual report in relation to the services the research service provider provided in relation to R&D activities during the period covered by the annual report, and the annual report is in a form approved by the Board;

(i) the research service provider subcontracts the provision of services only if:

(i) the research service provider is providing part of the services; and

(ii) the research service provider is not able to provide the remainder of the services;

(j) if the research service provider provides services outside Australia in relation to R&D activities for an R&D entity—the research service provider tells the R&D entity and the Board about the services provided outside Australia before the end of the income year of the R&D entity in which the service was provided.

Note: If expenditure on an activity conducted outside Australia is to be claimed as a tax offset under Division 355 of the ITAA 1997, the activity must be covered by a finding under paragraph 28C(1)(a) of the Act.

(3) It is also a condition that, for any financial year in which the entity is a research service provider (levy collecting), the research service provider gives the Board:

(a) details of the services in relation to R&D activities the research service provider provided in the financial year; and

(b) a written report about how much of the levies collected by the research service provider in the financial year was used for providing services in relation to R&D activities, and how much was not; and

(c) the details mentioned in paragraph (a) and the report mentioned in paragraph (b) within:

(i) 10 months after the end of the financial year; or

(ii) a further period allowed by the Board; and

(d) any further information requested by the Board in relation to the services provided during the financial year by the research service provider.

Part 4—Applications and requests for further information

Division 4.1—Application for advance finding

4.01 Entities to make application for advance finding on behalf of R&D entity

For the purposes of paragraph 28B(1)(a) of the Act, the following entities may make an application for a finding under subsection 28A(1) of the Act on behalf of an R&D entity:

(a) a research service provider who will provide, is providing or has provided services in relation to the activity to which the application relates;

(b) a cooperative research centre;

(c) an entity that is a partner in relation to a cooperative research centre.

Division 4.2—Approved forms

Subdivision 4.2.1—Approved forms for certain applications

4.02 Approved forms for applications generally

(1) This section applies to a form for:

(a) an application under section 27D of the Act to register an R&D entity for activities under section 27A of the Act; or

(b) an application under section 27G of the Act for a finding about an R&D entity’s registration under section 27J of the Act; or

(c) an application under section 28G of the Act for a finding under section 28A of the Act (advance findings about the nature of activities); or

(d) an application under subsection 28G(1) of the Act for a finding about an activity under section 28C of the Act (findings about activities to be conducted outside Australia); or

(e) an application under subsection 28G(1) of the Act for a finding about technology under section 28E of the Act.

(2) For the purposes of subsection 32(3) of the Act, a form mentioned in subsection (1) of this section must require the production of the following information or material:

(a) the name of the R&D entity making the application and any relevant information that will identify the entity (such as an ABN, ACN or ARBN);

(b) which requirement the entity meets under section 355‑35 of the ITAA 1997 for the entity to be an R&D entity, including a statement that the entity is not an exempt entity;

(c) the aggregated turnover (within the meaning given by section 328‑115 of the ITAA 1997) of the R&D entity for the income year to which the application relates;

(d) a declaration by an individual, acting with the express or implied authorisation of the R&D entity, that the information in the application is true and correct at the time of making the application.

(3) For the purposes of subsection 32(3) of the Act, a form mentioned in subsection (1) of this section must require the production of the information or material specified in subsection (4) of this section if the R&D entity making the application:

(a) is the head company of a consolidated group or MEC group; and

(b) did not itself conduct the activity to which the application relates.

(4) The following information or material is specified for the purposes of subsection (3):

(a) the name of the subsidiary member of the consolidated group or MEC group that:

(i) conducted, or will conduct, the activity; or

(ii) had, or will have, services provided in relation to the activity; or

(iii) used, or will use, particular technology in relation to the activity;

(b) the ABN, ACN or ARBN of the subsidiary member mentioned in paragraph (a);

(c) a statement that the R&D entity is the head company of the consolidated group or MEC group.

4.03 Approved form for application to register activities

(1) For the purposes of subsection 32(3) of the Act, a form for an application under section 27D of the Act to register an R&D entity for activities under section 27A of the Act for an income year must require the production of the following information or material:

(a) a reference to any findings about the activities under section 28A of the Act (advance findings about the nature of activities);

(b) a reference to any findings about the activities under section 28C of the Act (findings about activities to be conducted outside Australia);

(c) if a service was provided in relation to an activity by a research service provider or a cooperative research centre:

(i) the name of the research service provider or cooperative research centre; and

(ii) details of the service provided by the research service provider or cooperative research centre;

(d) a declaration by an individual, acting with the express or implied authorisation of the R&D entity, that the entity maintained records, while the activities were conducted, that substantiate the conducting of the activities;

(e) the total expenditure by the R&D entity in the income year on the activities.

Note: Section 31 of the Act provides that a registration of an R&D entity for an activity under section 27A of the Act has no effect while the R&D entity is a subsidiary member of a consolidated group or MEC group of which the head company is an R&D entity.

(2) For the purposes of subsection 32(3) of the Act, a form mentioned in subsection (1) of this section must require the production of the information or material specified in subsection (3) of this section if the application relates to activities in relation to which a service was provided by a research service provider (levy collecting) to the R&D entity.

(3) The following information or material is specified for the purposes of subsection (2):

(a) how much of the levies paid to the research service provider (levy collecting) by the R&D entity was used for providing services in relation to the activities;

(b) using the ratio reported to the R&D entity under subparagraph 3.01(7)(b)(ii)—an apportionment of those levies between core R&D activities and supporting R&D activities.

(4) For the purposes of subsection 32(3) of the Act, a form mentioned in subsection (1) of this section must require the production of the following information or material in relation to any activities to which subsection (2) of this section does not apply:

(a) for each activity for which the R&D entity is applying for registration:

(i) whether, in the R&D entity’s opinion, the activity is a core R&D activity or a supporting R&D activity; and

(ii) when the activity was conducted during the income year;

(b) for each activity that, in the R&D entity’s opinion, is a supporting R&D activity:

(i) the core R&D activities that, in the R&D entity’s opinion, the supporting R&D activity is conducted in relation to; and

(ii) each income year for which the core R&D activities were registered or are proposed to be registered; and

(iii) which requirement, in the R&D entity’s opinion, the activity meets under section 355‑30 of the ITAA 1997 for the activity to be a supporting R&D activity;

(c) a reasonable estimate of how the total expenditure was apportioned between the following:

(i) activities that are, in the opinion of the R&D entity, core R&D activities;

(ii) activities that are, in the opinion of the R&D entity, supporting R&D activities;

(d) a brief description of the activities, and a brief description of the new knowledge that the activities are intended to generate.

4.04 Approved form for application for an advance finding

For the purposes of subsection 32(3) of the Act, a form for an application under section 28G of the Act for a finding under section 28A of the Act must require the production of the following information or material:

(a) for an application under subsection 28G(2) of the Act:

(i) the names of the R&D entities taken to have applied for the identical findings; and

(ii) if the entity making the application is an entity mentioned in section 4.01, evidence that the entity is acting with the written consent of the R&D entities;

(b) for each activity for which an application for a finding is made:

(i) whether, in the opinion of the entity conducting the activity, the activity is a core R&D activity or a supporting R&D activity; and

(ii) why the entity considers the activity meets the definition of ***core R&D activities*** in section 355‑25 of the ITAA 1997, or the definition of ***supporting R&D activities*** in section 355‑30 of the ITAA 1997; and

(iii) if the activity was, or is being, conducted in the income year of the R&D entity during which the application is made—when the activity was, or is being, conducted during the income year; and

(iv) if the activity is yet to be conducted—evidence from which it is reasonable to conclude that the activity is expected to be conducted in the income year of the R&D entity in which the application is made or in either of the next 2 income years;

(c) for each activity for which an application for a finding is made that, in the opinion of the entity conducting the activity, is a supporting R&D activity:

(i) the core R&D activities that, in the entity’s opinion, the supporting R&D activity relates to; and

(ii) when the core R&D activities were conducted or will be conducted; and

(iii) which requirement, in the entity’s opinion, the activity meets under section 355‑30 of the ITAA 1997 for the activity to be a supporting R&D activity;

(d) a detailed description of each activity for which an application for a finding is made, and a detailed description of the new knowledge that each activity is intended to generate;

(e) the total actual and reasonably anticipated expenditure by the R&D entity on each activity for which an application for a finding is made;

(f) for each activity for which an application for a finding is made that, in the opinion of the entity conducting the activity, is a supporting R&D activity in relation to specified core R&D activities that are not registered—the total actual and reasonably anticipated expenditure by the R&D entity on the unregistered core R&D activities.

4.05 Approved form for application for finding about activities to be conducted outside Australia

For the purposes of subsection 32(3) of the Act, a form for an application under subsection 28G(1) of the Act for a finding about an activity (the ***overseas activity***) under section 28C of the Act must require the production of the following information or material:

(a) for each overseas activity:

(i) whether, in the R&D entity’s opinion, the activity is a core R&D activity or a supporting R&D activity; and

(ii) why the R&D entity considers the activity meets the definition of ***core R&D activities*** in section 355‑25 of the ITAA 1997, or the definition of ***supporting R&D activities*** in section 355‑30 of the ITAA 1997; and

(iii) if the activity was, or is being, conducted in the income year in which the application is made—when the activity was, or is being, conducted during the income year;

(b) for each overseas activity that, in the R&D entity’s opinion, is a supporting R&D activity:

(i) the core R&D activities that, in the R&D entity’s opinion, the supporting R&D activity relates to; and

(ii) when the core R&D activities were conducted or will be conducted; and

(iii) which requirement, in the R&D entity’s opinion, the activity meets under section 355‑30 of the ITAA 1997 for the activity to be a supporting R&D activity;

(c) an explanation, with supporting evidence or an independent opinion, of why the overseas activity cannot be conducted solely in Australia;

(d) in relation to the Australian core activities to which the overseas activity has a significant scientific link:

(i) a description of the Australian core activities; or

(ii) if the Australian core activities have been registered under section 27A of the Act for the R&D entity—identification of the registered activities;

(e) an explanation of why the Australian core activities cannot be completed without the overseas activity being conducted;

(f) the total actual and reasonably anticipated expenditure by any entityon:

(i) the overseas activity; and

(ii) any other overseas activities that have a significant scientific link to the Australian core activities mentioned in paragraph (d);

(g) the total actual and reasonably anticipated expenditure by any entity on:

(i) the Australian core activities mentioned in paragraph (d); and

(ii) any supporting R&D activities conducted in Australia that support the Australian core activities.

Subdivision 4.2.2—Approved form for request for further information

4.06 Approved form for request for further information—production of information must be reasonable or necessary

For the purposes of subsection 32(3) of the Act, a form for information, or kinds of information, to be given under section 27E, 27H, 28H or 29C of the Act (the ***relevant section***) can only require the production of information that is reasonable or necessary for the Board to make a decision about an application or registration to which the relevant section relates.

Subdivision 4.2.3—Other approved forms

4.07 Other approved forms

(1) For the purposes of subsection 32(3) of the Act, a form for one of the following applications or requests must require the production of the applicant’s name and any relevant information that will identify the applicant (such as an ABN, ACN or ARBN):

(a) an application under section 27M of the Act to vary an R&D entity’s registration;

(b) a request under section 27N of the Act to revoke an R&D entity’s registration;

(c) an application under section 29B of the Act to register a research service provider;

(d) an application under section 29F of the Act to vary a research service provider’s registration;

(e) a request under section 29H of the Act to revoke a research service provider’s registration;

(f) an application under section 30C of the Act for review of a reviewable decision.

(2) For the purposes of subsection 32(3) of the Act, a form to be completed by a research service provider under section 29E of the Act must require the production of the name of the research service provider and any relevant information that will identify the research service provider (such as an ABN, ACN or ARBN).

Part 5—Application and transitional provisions

5.01 Definition of research field

Despite the repeal of the *Industry Research and Development Regulations 2011*, regulation 1.04 of that instrument continues to apply, for the purposes of the definition of ***research field*** in subsection 4(1) of the Act, in relation to the registration of research service providers for financial years ending on or before 30 June 2022, as if the repeal had not happened.

5.02 Criteria for registration of research service providers

Despite the repeal of the *Industry Research and Development Regulations 2011*, regulation 3.01 of that instrument continues to apply, in relation to an application for registration as a research service provider for a financial year ending on or before 30 June 2022, as if the repeal had not happened.

5.03 Conditions of registration of research service providers

Section 3.02 of this instrument applies to an entity that is registered as a research service provider, or continues to be registered as a research service provider, under section 29A of the Act before or after the commencement of this instrument.

Schedule 1—Repeals

Industry Research and Development Regulations 2011

1 The whole of the instrument

Repeal the instrument.