

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Industry, Energy and Emissions Reduction

*Industry Research and Development Act 1986*

*Industry Research and Development Decision-making Principles 2022*

### **Purpose and Operation**

The *Industry Research and Development Decision-making Principles 2022* (the Decision-making Principles) replace the *Industry Research and Development Decision-making Principles 2011* (the 2011 Decision-making Principles), which were due to sunset on 1 April 2022. The Decision-making Principles are a legislative instrument for the purposes of section 8 of the *Legislation Act 2003*.

The Decision-making Principles set out parameters for Industry, Innovation and Science Australia (the Board) when making decisions under Part III of the *Industry Research and Development Act 1986* (the Act) for the Research and Development (R&D Tax Incentive). These decisions relate to extensions of time, findings and variations of registration.

The Decision-making Principles have been remade in substance with one minor change in response to stakeholder feedback. The limit of total further periods that may be given to do something required by the Act has been amended to 92 days rather than three months. This ensures fairness among applications requesting extensions of time, by adopting the maximum period that was available when the limit was expressed as three months.

Details of the Decision-making Principles are set out at **Attachment A**.

### **Background**

The Decision-making Principles provide transparency about the principles which the Board applies to its decision-making for R&D Tax Incentive applicants and stakeholders.

References to the Board in the Decision-making Principles includes a reference to a delegate of the Board (noting that the Board has the power to delegate powers to another person or committee under the Act). Further, words in the singular in the Decision-making Principles should be read to include the plural ('activity' can also be read as 'activities'), and words in the plural should be read to include the singular ('activities' can also be read as 'activity').

### **Authority**

This instrument is made under section 32A of the Act, which provides that the relevant Minister may make, by legislative instrument, decision-making principles that the Board must comply with when deciding whether:

- to allow a thing to be given under Part III of the Act within a further period than that specified in Part III of the Act (extensions of time);
- refusing to make a finding sought under Part III of the Act is justified (findings); and

- making a variation sought under section 27M of the Act is justified (variation of registration).

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

### **Consultation**

The Department of Industry, Science, Energy and Resources (the department) consulted with stakeholders via the R&D Tax Incentive website between 25 August 2021 and 27 September 2021. Stakeholders were requested to provide feedback on the remaking of the 2011 Decision-making Principles in substance with only minor changes to drafting. Stakeholders were generally supportive and a change was made to the limit of extensions in response to feedback.

**Details of the *Industry Research and Development Decision-making Principles 2022***

**PART 1 – Preliminary**

**Section 1.1 – Name of Principles**

This section specifies the name of the instrument as the *Industry Research and Development Decision-making Principles 2022* (the Decision-making Principles).

**Section 1.2 – Commencement**

This section provides that the Decision-making Principles commence the day after the instrument is registered on the Federal Register of Legislation.

**Section 1.3 – Authority**

This section provides that the Decision-making Principles are made under the *Industry Research and Development Act 1986* (the Act).

The Decision-making Principles commencing on the day after registration means that they will apply to some decisions about applications already made. There is no adverse retrospective effect, because the Decision-making Principles are the same in substance as the 2011 Decision-making Principles with the exception that the limit on extensions of time will be more favourable to interested persons in some cases.

**Section 1.4 – Schedules**

This section is a machinery clause which enables the Schedules to the Decision-making Principles to operate according to its terms.

**Section 1.5 – Definitions**

This section provides for definitions of terms used in the Decision-making Principles. The note to the section heading states that a number of words used in the Decision-making Principles are defined in the Act.

The Decision-making Principles define an ‘interested person’ as being:

- an applicant in relation to a matter under Part III of the Act;
- an R&D entity;
- an entity acting on behalf of an R&D entity as provided for under section 28B of the Act; or
- a research service provider.

This definition covers all persons and entities that may make an application under the R&D Tax Incentive to which the Decision-making Principles apply. The definition is unchanged from the 2011 Decision-making Principles.

A person or entity may qualify as an interested person in more than one capacity, and more than one interested person may be involved in a circumstance where the Decision-making Principles are applied. In this sense, the definition is intended to provide flexibility for entities engaging with the R&D Tax Incentive. Where there is more than one interested person and the Board is required to afford an opportunity to an interested person, it is intended that the Board would discharge the obligation by affording that opportunity to the interested person whose application has given rise to the application of the Decision-making Principles. However, the Decision-making Principles also allow for more than one interested person to exercise rights in respect of an application. For example, an R&D entity might apply to register an activity, and when requested to provide further information about the application for registration, a research service provider that conducted the activities on behalf of the R&D entity could respond on its behalf.

## **Section 1.6 – Overview of Principles**

This section sets out the structure of the Decision-making Principles. Part 2 of the Decision-making Principles applies to all decisions that may be subject to principles under section 32A of the Act. Parts 3, 4, and 5 of the Decision-making Principles apply to decisions about whether to allow extensions of time (Part 3), whether to refuse to make a finding (Part 4) and whether to make a variation to a registration (Part 5).

## **PART 2 – Principles applying to certain decisions under Part III of Act**

### **Section 2.1 – Application**

This section provides that the principles set out in Part 2 apply to decisions about whether to allow extensions of time, whether to refuse to make a finding and whether to make a variation to a registration, in accordance with paragraphs 32A(a), (b) and (c) of the Act. The principles set out in Part 2 do not apply to other decisions made by the Board in its administration of the R&D Tax Incentive.

### **Section 2.2 – Proper decision-making process**

This section sets out the decision-making process the Board must follow when making a decision in relation to the matters set out in paragraphs 32A(a), (b) and (c) of the Act.

Subsection 2.2(1) provides that the Board must give an interested person an opportunity to present their case in a manner approved by the Board. For example, the Board could require that an interested person making a submission do so in writing.

Subsection 2.2(2) provides that the Board must give proper consideration to the case before it by the matters prescribed. These matters are:

- considering the evidence and explanation provided by or for an interested person;

- taking all relevant considerations into account;
- not taking irrelevant considerations into account; and
- considering relevant precedents.

‘Relevant considerations’ are any considerations that contribute to the Board reaching a decision. For example, a doctor’s certificate that explains illness which caused the unexpected absence of key staff for a specified period at a critical time of year. Relevant considerations include past and present behaviour by the interested person. For example, if the interested person has previously refused to co-operate with the Board or unreasonably refused to provide information relevant to an application, the Board may take this into account. Relevant considerations may also include information from third parties and from previous applications for registration.

Subsection 2.2(3) provides that the Board must consider the case in good faith and without bias. This requirement does not prevent the Board from taking into account the past and present behaviour of the interested person.

### **Section 2.3 – Making the decision**

This section provides that the Board must base its decisions on the prescribed matters, which are:

- the merits of the case;
- the tested evidence in the course of the decision-making process; and
- all relevant considerations.

‘Tested evidence’ is evidence where the Board accepts its accuracy and conformity to the facts. In satisfying itself on these points, the Board is not obliged to positively ‘test’ all evidence before it is open to the Board to consider it. However, if two or more pieces of evidence are in conflict, the Board may need to investigate further to be satisfied the evidence supports a particular issue, or that it weighs the conflicting evidence appropriately. The Board may seek independent advice in relation to a case made by an interested person.

## **PART 3 – Principles applying to decisions about extensions of time**

Part 3 sets out the principles which apply to decisions about extensions of time.

### **Section 3.1 – Application**

This section sets out the decisions to which the principles in this Part apply. These decisions relate to:

- applications for registration;
- responding to a request from the Board for additional information;
- completion of forms for registration or continued registration as a research service provider; and
- applications for a review of a reviewable decision.

## **Section 3.2 – When extension of time must, or may, be given**

This section sets out when an extension of time must, or may, be given.

### *When a further period must be given*

Subsection 3.2(1) provides that the Board must allow a thing to be given by an interested person within a further period of up to 14 days if, before it is due, the interested person explains to the Board:

- why the thing cannot be given by the time specified; and
- that the thing can be given within 14 days after it is due.

This provision is intended to reduce administrative burden on both interested persons and the Board where small extensions are sought. This provision is not intended to be used on an ongoing basis. If an interested person continues to apply for extensions on an ongoing basis, the Board may take this into account when considering past behaviour for the purposes of paragraph 2.2(2)(b).

A request for a further period following the period permitted under subsection 3.2(1), or for a period longer than 14 days, is considered by the Board under subsection 3.2(2).

### *When a further period may be given*

Subsection 3.2(2) provides that the Board may allow a further period for an interested person if the act, omission or event that led to the interested person being unable to meet the relevant deadline was neither:

- the fault of the interested person; or
- within the interested person's control.

Both conditions must be met for the Board to allow a further period.

An interested person who is aware that circumstances within their control will prevent them from making a deadline, but does not act, or act sufficiently, will not be entitled to a further period. For example, the absence of an interested person's key staff due to unexpected illness for a specified period at a critical time would satisfy the conditions for a further period to be granted, while the absence of an interested person's key staff due to previously approved leave for a specified period at a critical time would not satisfy the conditions for a further period to be granted.

### *Limitation on duration of further period*

Subsection 3.2(3) provides that the Board must not allow a total of further periods in excess of 92 days. The maximum of further periods in this subsection has been changed from the 2011 Decision-making Principles from 3 months to 92 days to ensure the total time limits on further periods are consistent regardless of when an extension of time is sought. The 3 month limitation was introduced by Schedule 6, Part 4 of the *Treasury Laws Amendment (A Tax Plan for the COVID-19 Economic Recovery) Act 2020*. This amendment to the 2011 Decision-making Principles does not prevent the Minister from remaking them and amending subsection 3.2(3), in accordance with subsection 13(5) of the *Legislation Act 2003*.

Subsection 3.2(4) permits an exception to subsection 3.2(3). The Board may allow a further period in excess of 92 days where:

- there is a decision that relates to the interested person;
- that decision is relevant to the thing being given under this Part; and
- the Board has been unable to finalise the decision in a time that would allow the person to do a related thing within 92 days (inclusive) of when the thing is due.

This intention of this exception is to ensure that an interested person is not required to, for example, progress an application to register activities, before knowing the outcome of the Board's decision when making a finding that relates to those activities. Example 1.1 describes how the application of subsection 3.2(4) allows the interested person to make an informed decision on subsequent registration applications.

### **Example 1.1.**

#### **Granting extension pending Board decision**

##### *Situation*

Doppler Dynamics seeks a review of an unfavourable decision relating to a registration application lodged for the 2021-22 income year (ending in June 2022). The review (including appeals) is finalised in July 2024.

##### *Action*

During the time taken for the review, Doppler Dynamics considers applying for registration in the 2022-23 income year for activities that are subject to the review, that continue into the 2022-23 income year. This application is due to be lodged by 30 April 2024. It would not be efficient for Doppler Dynamics to lodge a registration application that may not be accepted, or may need to be varied, until Doppler Dynamics is advised of the review's outcome. Doppler Dynamics therefore applies for an extension of time to lodge its application to register activities for the 2022-23 income year.

##### *Result*

In these circumstances, it is reasonable for the Board to exercise its discretion to grant an extension of time beyond 92 days, until a reasonable time after the review's outcome is known. By doing so, the Board allows Doppler Dynamics to make an informed decision about whether to apply for registration in the 2022-23 income year based on the review's outcome.

### **Section 3.3 – Considering reason extension of time is required**

This section provides that the Board, when considering whether to allow a further period for a thing to be given under subsection 3.2(2) of the Decision-making Principles, must decide if the need for the further period has arisen because of:

- an act or omission of the Board; or
- any other reason, including:

- acts or omissions of the interested person;
- acts or omissions of another person; or
- events for which no-one is responsible.

When applying to the Board for a further period, the interested person's application must describe the act, omission or event which has created the need for the extension of time, such as the unexpected absence of key staff at a critical time of year.

In considering an application, the Board will evaluate the information provided, and the act, omission or event nominated by the interested person and reach its own conclusion about why the need for the further period has arisen. The Board may take account of any evidence that the interested person provides to support their case, in accordance with section 2.3.

### **Section 3.4 – If there is an act or omission of the Board**

This section provides that where the Board has, by act or omission, caused the interested person to require an extension of time, the Board must allow a further period. The further period must be sufficient to enable the interested person to be in the position that they would have been had the act or omission not occurred, subject to the application of the 92 day limit in subsection 3.2(3) of the Decision-making Principles. Where an act or omission by the Board requires time in excess of 92 days, the exception to the 92 day limit in subsection 3.2(4) may apply.

In granting this further period, the Board is not required to agree to the amount of time requested by the interested person. Rather, the Board must grant a further period that it considers is reasonable in the circumstances. A reasonable time would generally be enough for the interested person to place themselves in the same position they would have been in if the act or omission had not occurred.

The Board may also allow a longer further period than was requested if it is of the view that it is required by the interested person and it is justified in the circumstances.

### **Section 3.5 – If there is some other reason an extension is required**

This section provides that, if a further period is being sought for reasons other than an act or omission of the Board, the Board must take into account (in addition to any other relevant considerations):

- the amount of time, if any, that has passed between the original deadline and the time the application by the interested person requesting the further period was made; and
- The amount of time that has or will pass between the original deadline and the deadline proposed by the interested person.

An extension granted under this section because of a reason other than an act or omission of the Board is also subject to the 92 day limit in subsection 3.2(3). Where the time required is in excess of 92 days, the exception to the 92 day limit in subsection 3.2(4) may apply.



The Board will generally look more favourably on requests which are made before the relevant deadline has passed, unless the interested person can justify why a request was made after the relevant deadline.

Subsection 3.5(2) provides that the Board must be satisfied that any extension of time it allows is in proportion to the level of inability of the interested person to meet the original deadline. For example, the unexpected absence of the interested person's key staff for a month at a critical time of year will normally justify a longer extension of time compared to the unexpected absence of key staff for a week at a critical time of year. In other circumstances, the unexpected absence of key staff for a week at a critical time may have a greater impact on an interested person's ability to meet a deadline than an unexpected absence of key staff for a month during a non-critical time.

Subsection 3.5(3) sets out, for the purposes of subsection 3.5(2), that the circumstances and evidence of them are expected to be proportionate to the extension of time requested. For example, a request for a significant amount of additional time may need to be supported by evidence from a third party (such as an insurance assessment in relation to fire damage).

### **Section 3.6 – Effect of extension on findings**

This section provides that, when deciding whether to allow a thing to be given by an interested person within a further period, the Board must consider the impact that the further period may have on the ability of the Board to make a finding mentioned in subsections 355-705(1) and 355-710(1) of the *Income Tax Assessment Act 1997* (ITAA 1997) within the time specified in those sections.

This provision may cause the Board to allow a further period of a lesser duration than would have otherwise been the case, or to not permit any further period in circumstances where allowing the further period would prevent the Commissioner of Taxation (the Commissioner) from being able to amend the interested person's assessment due to the time limits the Commissioner faces to amend tax assessments.

### **PART 4 – Principles applying to decisions about findings**

Part III of the Act allows interested persons and the Commissioner to request that the Board make findings. Findings are the Board's formal decision on eligibility of activities or technology under the R&D Tax Incentive.

Findings by the Board are binding on the Commissioner when determining whether expenditure incurred in relation to the activities or technology is R&D expenditure or core technology expenditure for the purposes of Division 355 of the ITAA 1997.

Part III of the Act allows the Board to refuse to make a finding in relation to a request by or for an R&D entity. Part 4 of the Decision-making Principles sets out the reasons the Board may rely on to refuse to make such a finding.

## **Section 4.1 – Application**

Subsection 4.1(2) provides that a refusal to make a finding about whether or not:

- activities are R&D activities, or will be R&D activities when they are conducted;
- activities satisfy the conditions to be activities conducted outside Australia; and/or
- technology constitutes core technology;

can be justified only if the finding is refused in accordance with the principles in Part 4.

## **Section 4.2 – When refusal to make a finding is justified**

This section sets out the circumstances in which the Board is justified to refuse to make a finding. The Board is justified in refusing to make a finding if the:

- entity that is applying for the finding is not eligible to do so;
- Board determines that it has already made a finding, or is in the process of making a finding, about the same or substantially similar activities or technology for the R&D entity. This is intended to prevent an interested person repeatedly requesting findings about the same or similar activities or technology in the hope of receiving a favourable outcome;
- Board has previously refused to make a finding about particular activities or technology for the interested person and the person is unable to show that the Board's reason for refusing no longer applies. If the reason for the original refusal no longer applies, the Board may refuse to make a finding about the particular activities or technology if another relevant ground for refusal applies;
- finding would cover a period where the applicant is a subsidiary member of a consolidated group or multiple entry consolidated group (MEC group) of which the head company is an R&D entity. This is to give effective and efficient operation to the provisions in the Act that make the head company the correct company to apply for the finding; or
- interested person;
  - has submitted an incomplete application form;
  - has provided information that is insufficient to meet the requirements of the application form. This is intended to ensure that the Board is not required to seek further information where that information should have been provided by the interested person in the first instance, and that the person gives proper consideration to their application;
  - does not provide further information as requested by the Board within the period permitted. This provision is intended to ensure that interested persons cooperate with the Board in the making of a finding; or
  - has not paid the relevant fees (if any) associated with lodging an application.

Subsection 4.2(2) provides that the Board's refusal to make a finding about an activity under paragraphs 27F(4)(b) and 28A(1)(d) of the Act or technology under 28E(1)(c) of the Act, other than a finding about overseas activities to meet the conditions under subsection 28D(1) of the Act, is justified if the:

- Board has released public advisory material or a general determination made under section 31D of the Act about activities which are the same or substantially similar to the activities on which the Board has been asked to make a finding;
- R&D entity can reasonably rely on the relevant material, general determination or finding in relation to their own activities; and
- Board has referred the interested person to the relevant material, general determination or finding on the Board's website or otherwise provided a copy of that material, general determination or finding to the person.

It is reasonable for an R&D entity to rely on public advisory material or a general determination where the material or finding relates to a situation that is substantially similar to the R&D entity's own position.

This subsection is intended to support the efficient administration of the Board's means of educating interested persons on eligibility of activities for the R&D Tax Incentive, including public advisory material, general determinations and findings. For example, it discourages public advice from the Board leading to an influx of requests for findings seeking formal confirmation that the public advice applies to particular circumstances. This does not allow the Board to avoid responding to all such requests, and the Board should respond to requests for findings where there is genuine doubt as to whether the public advice applies or does not apply.

Subsection 4.2(3) prevents the Board from refusing to make a finding under subsection 4.2(2) where the application is for a finding about overseas activities under section 28C of the Act. This is because the R&D entity must have a positive finding under section 28C of the Act to claim tax offsets in relation to R&D expenditure made in relation to R&D activities conducted outside Australia.

### **Section 4.3 – Refusal to make an advance finding**

This section provides that the Board may refuse to make an advance finding about the nature of activities under section 28A of the Act if the circumstances in subsections 4.3(2), (3) or (4) apply. These are in addition to the circumstances set out in section 4.2.

Subsection 4.3(2) sets out the circumstances where a refusal would be justified for an application for an advance finding under paragraph 28A(1)(b) of the Act about specified supporting activities. These are that the Board is not satisfied that the:

- activity claimed to be a core R&D activity to which the specified supporting R&D activity relates would meet the definition of activity in section 355-25 of the ITAA 1997; or
- R&D entity has conducted or intends to conduct the specified core R&D activity.

The Board may examine specified core R&D activities which are outside the scope of the advance finding in order to be satisfied as to nature of the specified supporting R&D activities about which the finding will be made. The Board does not need to make a finding about the nature of the specified core R&D activities to be satisfied that a claimed or intended supporting R&D activity is not directly related to a core R&D activity.

Subsection 4.3(3) provides that the Board may refuse to make an advance finding if the Board is not satisfied that the activities for which the advance finding is sought will be conducted within the time in which the advance finding would be in force, i.e. the activities will not be conducted within the current or subsequent two income years.

Subsection 4.3(4) provides that the Board may refuse to make an advance finding where it is not satisfied that the R&D entity on whose behalf the application is made has investigated the state of the art in relation to the field relevant to the activity about which the finding is requested to be made. The interested person should include evidence of its investigations in the application for an advance finding.

#### **Section 4.4 – Refusal to make finding about activities to be conducted outside Australia**

This section provides that the Board, when deciding whether to make a finding about activities to be conducted outside Australia (overseas activities) under paragraph 28C(1)(c) of the Act, is justified to refuse to make a finding in the circumstances in paragraphs 4.4(a) and (b).

Paragraph 4.4(a) provides the Board may refuse to make a finding about overseas activities if the R&D entity does not provide evidence (which could include an independent opinion) that the activities cannot be conducted solely in Australia. In a situation where the evidence is relatively straightforward, an independent opinion will generally not be required. However, an independent opinion may be required in circumstances where it is not clear why activities cannot be conducted solely in Australia, and there is no supporting evidence that objectively establishes that this is the case.

Paragraph 4.4(b) provides the Board may also refuse to make a finding about overseas activities if the estimates provided by the R&D entity about the actual or reasonably anticipated expenditure are not, in the opinion of the Board, reasonable estimates. Reasonably anticipated expenditure for this purpose takes its ordinary meaning. That is, it incorporates expenditure that the R&D entity has a rational and objective basis to expect that it will incur (even though, given the unpredictable nature of R&D activities, it is possible that actual expenditure incurred will be more or less than what was originally estimated). The Board must be satisfied that the estimates are reasonable in order to determine whether the Australian core activities and supporting activities will entail a greater financial commitment than the overseas activities.

#### **Section 4.5 – When refusal to make finding is not justified**

This section provides that the Board cannot refuse to make a finding if an interested person is able to quickly address the reason that the Board would otherwise be justified in refusing to

make the finding. This is to ensure the efficient operation of the findings process, recognising that there will be circumstances where the Board should not refuse to make a finding even though it might be justified in doing so. For example, where an interested person has provided additional information to the Board slightly later than requested, the Board should allow the person an opportunity to provide the additional information and the finding should be made as requested.

The intention of this limitation on the Board is to prevent a process being begun – a refusal, followed by a request for review, or a formal resubmission of the finding request – when a minor administrative effort can quickly address the problem and allow the finding process to proceed.

## **PART 5 – Principles applying to decisions about variation of registration**

The Act allows an R&D entity to submit an application to register R&D activities conducted in an income year for a registration period between the end of that income year and up to 10 months after the end of that income year to claim the R&D Tax Incentive.

The Act also allows an R&D entity to apply for a variation to their registration under section 27M of the Act.

### **Section 5.1 – Application**

This section provides that the principles in Part 5 apply to a decision to vary a registrations under paragraph 27M(1)(c) of the Act, and that such variations are justified only if the registration is varied in accordance with Part 5 of the Decision-making Principles.

### **Section 5.2 – When a variation of registration may be made**

Subsection 5.2(1) provides that the Board may make a variation of an R&D entity’s registration under section 27A of the Act for an income year within the registration period (10 months after the end of that income year).

Subsection 5.2(2) provides that after the end of the registration period, the Board may only make a variation of an R&D entity’s registration if it is justified under section 5.3

Subsection 5.2(3) provides that, except for paragraph 5.3(d) of the Act, the Board must not make a variation of an R&D entity’s registration under section 27A of the Act, where the activities specified in the application are the subject of:

- a finding that is within the review period allowed under subsection 30C(3) of the Act;
- an internal review under section 30D of the Act; or
- an external review by the Administrative Appeals Tribunal under section 30E of the Act.

### **Section 5.3 – When a variation is justified**

This section provides that a variation of an R&D entity’s registration is justified if any of the prescribed circumstances apply. These are circumstances where the:

- application seeks removal of all or part of an activity from the R&D entity's registration;
- application seeks to change the times during which all or part of an activity occurred (without increasing the length of time during which an activity occurred) or reducing the length of time during which an activity occurred;
- application seeks to reclassify all or part of an activity as a core or supporting R&D activity; or
- entity applies only to make minor amendments to correct information provided in the application.

The limitation on circumstances where a variation is justified is intended to prevent a R&D entity using a variation as a mechanism to make changes to their registration and avoiding the need to apply for a further period to apply to register those activities, taking account of Part 2 of the Decision-making Principles.

Minor amendments to correct information provided on an application may be, for example, a change of address, change in the number of researchers, removal of typographical errors, or clarification of ambiguous content.

This section does not need to be considered when the variation is made within 10 months after the end of the relevant R&D entity's income year, because such a variation will be justified under subsection 5.2(1).

## **Section 5.4 – Decision not to vary**

This section provides that the Board may decide not to make a variation to an R&D entity's registration if the circumstances in paragraphs 5.4(1)(a) and (b) apply. These circumstances are that:

- the R&D entity applies for the variation after the Board commences an examination for the purposes of making a finding under section 27J of the Act; and
- the Board considers it appropriate to make the finding under section 27J of the Act before considering the application for variation.

For example, if the Board believes the R&D entity has deliberately applied to have activities registered which were never conducted, it may prefer to make a formal finding to that effect, rather than accept a variation application from the R&D entity to remove those activities from the registration.

This section does not apply if the variation only involves a minor amendment to the application.

## **Schedule 1 - Repeals**

Item 1 of the Schedule repeals the *Industry Research and Development Decision-making Principles 2011*.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

*Industry Research and Development Decision-making Principles 2022*

This Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Overview of the Legislative Instrument**

The *Industry Research and Development Decision-making Principles 2022* set out the general decision-making principles that must be complied with by the Industry, Innovation and Science Australia Board (the Board) when making decisions under Part III of the *Industry Research and Development Act 1986* (the Act). The decisions relate to extensions of time, findings and variations of registration.

### **Human rights implications**

This Instrument does not engage any of the applicable rights or freedoms.

### **Conclusion**

This Instrument is compatible with human rights as it does not raise any human rights issues.

**The Hon Angus Taylor MP**

**Minister for Industry, Energy and Emissions Reduction**