

Senate Standing Committee on Economics
ANSWERS TO QUESTIONS ON NOTICE
Department of Industry, Science, Energy and Resources
Treasury Laws Amendment (Research and Development Tax Incentive) Bill 2019 [Provisions]
29 June 2020

AGENCY/DEPARTMENT: DEPARTMENT OF INDUSTRY, SCIENCE, ENERGY AND RESOURCES

TOPIC: The Carnell report

REFERENCE: Question on Notice (Hansard, 29 June 2020, Page number 45-46)

QUESTION No.: 7

Senator KIM CARR: Thank you. If you need further particulars, you can contact the office, but I think you'll find those figures will stack up. When was the Carnell report received?

Ms Mulder: The report was released in December last year.

Senator KIM CARR: It was received and released?

Ms Mulder: From the ombudsman.

Senator KIM CARR: Yes. That's right. And that was to the minister for industry?

Ms Mulder: It was on the co-administration of the program, so to the ATO and to ourselves.

Senator KIM CARR: Has there been a response by government to the report?

Ms Mulder: We've been having engagement with the ombudsman's office and, yes, we've provided a response.

Senator KIM CARR: Does that mean no?

Ms Mulder: We've been having meetings with the ombudsman's office and we've provided written responses and written additional information.

Senator KIM CARR: When do you intend to respond formally?

Ms Mulder: We have responded to the ombudsman's office.

Senator KIM CARR: Sorry?

Ms Mulder: We have responded.

Senator KIM CARR: What do you mean you have responded?

Ms Mulder: We've provided information on the recommendations and also provided updates on—

Senator KIM CARR: Where will I find that response?

Ms Mulder: It was to the ombudsman's office.

Senator KIM CARR: Has there been a public response?

Ms Mulder: Not at this stage, no.

Senator PATRICK: Can I ask that you table that response, please, on notice.

Ms Mulder: I can take it on notice, yes.

Senator PATRICK: Thank you.

Senator KIM CARR: How often would it be that a public report is responded to privately by government?

Ms Mulder: I can't answer that question.

Senator KIM CARR: Why hasn't there been a public response?

Ms Mulder: I'm happy to take that on notice.

Senator KIM CARR: Is it a matter for government or is it a matter for the department?

Ms Mulder: I'd have to take that on notice.

ANSWER

The Department of Industry, Science, Energy and Resources (the Department) and the Australian Taxation Office (ATO) provided a joint departmental response to the Australian Small Business and Family Enterprise Ombudsman (ASBFEO) in relation to its report on the R&D Tax Incentive.

This response was sent on 25 February 2020. The response is attached.



Australian Government
Department of Industry, Science,
Energy and Resources



Australian Government
Australian Taxation Office

Ms Kate Carnell AO
Australian Small Business and Family Enterprise Ombudsman
GPO Box 1791
CANBERRA ACT 2601

Dear Ms Carnell *Kate,*

We welcome your review of the Research and Development Tax Incentive (RDTI) program, published in December 2019 and apologise for the delay in responding.

As co-administrators of the RDTI, both the Department of Industry, Science, Energy & Resources (DISER) and the Australian Taxation Office (ATO) welcome your review. The Australian Small Business and Family Enterprise Ombudsman is an important voice for small business, who make up the majority of claimants.

Both DISER and the ATO are consistently working to improve the way we administer the RDTI program. We appreciate your report's acknowledgement of the reform activities our agencies have underway, which focus on creating a better customer experience whilst maintaining the integrity of the program. Many of the recommendations made in your report support the direction of our reform efforts.

Attached is a table outlining activities that relate to the recommendation themes provided in your report.

Please contact Tim Myatt in DISER on (02) 6213 6868 or Brett Challans in the ATO on (08) 7422 2382 if you have any queries.

Yours sincerely

Duncan McIntyre
Head of Division
Department of Industry, Science, Energy &
Resources

24 February 2020

Tim Dyce
Deputy Commissioner
Australian Taxation Office

24 February 2020

Department of Industry, Science, Energy & Resources and the Australian Taxation Office - Australian Small Business & Family Enterprise Ombudsman R&D Tax Incentive recommendation themes

On 12 December 2019, the Australian Small Business & Family Enterprise Ombudsman (ASBFEO) published a report that investigated the experiences of small businesses that have claimed the R&D Tax Incentive.

The report made 24 recommendations, grouped into seven themes, covering a range of administrative issues affecting the co-administrators of the program – the Department of Industry, Science, Energy and Resources (DISER), and the Australian Taxation Office (ATO). The report also included recommendations related to consultants and tax agents.

DISER and the ATO are considering all recommendations, as outlined in themes below.

Recommendation theme	Department activities
The ATO and AusIndustry administration of the RDTI should be seamlessly integrated	DISER and ATO have established a number of cross-agency groups to coordinate approaches to R&D Tax Incentive (RDTI) program reforms, service delivery, program integrity and the application of the legislation. We also participate in Research and Development Incentives Committee meetings (the subcommittee of Innovation & Science Australia (ISA) responsible for the RDTI). We also co-Chair the RDTI Roundtable and run State Reference Group meetings to engage with external stakeholders.
Clear joint ATO and AusIndustry guidance must be provided and maintained	<p>DISER and the ATO are working with stakeholders to refine our program guidance.</p> <p>We are exploring ways to work with stakeholders and companies to gain a greater understanding of how companies, in particular start-ups and small businesses, keep records. While initial consultation has commenced, further engagement will occur in the coming months. This will assist in the development of clearer guidance to companies on the types of records and other evidence we require of them.</p> <p>DISER understands there is a demand for positive examples of eligible software R&D, and is working to develop guidance with the use of a hypothetical case study that demonstrates positive and practical applications of the legislation. Consideration is also being given to revising guidance to remove all reference to the Frascati Manual to avoid confusion in the future, while finding other means of explaining and offering contemporary practical examples to businesses.</p>

Recommendation theme	Department activities
	<p>DISER's guidance is being updated to reflect case law and court judgements. A <i>Decision Impact Statement</i> will be published on the business.gov.au website to ensure there is transparency and correct understanding of the Federal Court decision on Moreton Resources Limited.</p>
<p>The approach to compliance should be Proactive</p>	<p>The ATO and DISER have a preference to undertake compliance action in a timely fashion, with prevention rather than correction wherever possible. Providing certainty to companies is our aim whilst ensuring the integrity of the program. There will be occasions where compliance action is retrospective, especially where egregious behaviour is identified.</p> <p>A company has 10 months to register an activity after the end of the income year in which their research and development was conducted. This makes the very nature of the program retrospective, in that the research and development will have been undertaken prior to registration.</p> <p>Through the implementation of the <i>Integrity Framework</i>, DISER has a renewed focus on providing more certainty, clarity, and transparency to program participants.</p> <p>The RDTI <i>Integrity Framework</i> prioritises strategies that support first time registrants and focuses on pre-registration education, advice and assessments wherever possible. Compliance and integrity resources will also be focused in these areas, in-line with the report's recommendations.</p> <p>Wherever possible, pre-registration compliance activities will be undertaken, however due to the seasonal volume of applications, this is not always possible.</p> <p>With regard the specific ASBFEO recommendation that the ISA Board should publicise Advance Findings, the Board is unable to publish individual decisions due to confidentiality and secrecy provisions in governing legislation. However, under the <i>Treasury Laws Amendment (Research and Development Tax Incentive) Bill 2019</i> introduced into the House of Representatives in December 2019, the ISA Board would be able to make General Determinations.</p> <p>General Determinations would provide companies with guidance on how the ISA Board interprets and applies the legislation, and would be binding on ISA itself and on the Taxation Commissioner.</p>
<p>The approach to compliance should be Professional</p>	<p>Program staff at DISER are aware of, and work in accordance with the RDTI Service Commitment and the APS Code of Conduct. Publishing the RDTI Service Commitment was a first step in demonstrating and communicating a different approach to working with businesses and</p>

Recommendation theme	Department activities
	<p>outlines what businesses can expect from DISER. DISER agrees that the Service Commitment should be underpinned with principles and practices that translate this into action. Work to provide this guidance to our staff is ongoing.</p> <p>The ATO has a similar commitment to our clients with the Taxpayers' Charter outlining our interactions with clients; expectations that they can have of the ATO and our expectations of our clients.</p> <p>Both agencies are committed to ensuring our staff are suitably skilled in R&D work, with the ATO undertaking targeted R&D training. DISER is committed to a nationwide and systematic training program for RDTI staff. Further training with an emphasis on customer service and engagement is planned for delivery this financial year. The range of training (including legislative training, workshops, attendance at external events and conferences, guest speakers, internal sectoral Communities of Practice) provided to staff working in the program assists staff to keep abreast of key changes and advances in industry sectors, to better assess those sectors for eligibility.</p>
The approach to compliance should be Collaborative	<p>In line with the recently released RDTI <i>Integrity Framework</i>, the department will be increasing the levels of engagement with companies, including offering to meet with companies when undertaking statutory assessments.</p> <p>Feedback from stakeholders, including companies and R&D consultants/advisers on the streamlined compliance process represented a significant contribution to the development of the recently released RDTI Integrity Framework.</p> <p>The ATO continues to engage with clients as part of our compliance activities and where appropriate, will undertake concurrent action with DISER, saving companies money and time.</p>
The approach to compliance should be Proportionate	<p>DISER supports the principle of a proportionate response in relation to the requirements for supporting evidence, taking into account the size of a business. DISER is exploring appropriate options and strategies.</p> <p>DISER is working with all companies currently undergoing compliance to come to an appropriate resolution in a timely manner. This includes discontinuing examinations when companies provide evidence that sufficiently reduces the level of risk associated with their compliance. When reviewing a company's R&D activities, previous interactions with the program are considered.</p> <p>The ATO recognises that companies do not all maintain records in the same way and their practices vary with the size of the company and the industry that the company is in.</p>

Recommendation theme	Department activities
<p>Advisors should be skilled and responsible for their advice</p>	<p>There are approximately 1,000 registered consultants participating in the program, so this does represent a challenge in terms of a consistent understanding, quality and monitoring.</p> <p>R&D consultants and tax agents will have the opportunity to participate in tax agent education sessions held across the country. DISER is investigating avenues to host eLearning sessions and webinars to assist tax agents and R&D consultants in their understanding of the program. Many opportunities are currently available for tax agents and R&D consultants to stay informed through State Reference Groups, and the R&D Tax Incentive Roundtable minutes (available on business.gov.au).</p>