

# SUMMARY: R&D Tax Incentive Roundtable

Meeting	R&D Tax Incentive Roundtable		
Meeting Dates*	Tuesday 4 August 2020 Wednesday 5 August 2020	Start Time: 1330	End Time: 1500
Co-Chairs	Kelley Wiggins General Manager – Research and Development Tax Incentive <b>Department of Industry, Science, Energy &amp; Resources (DISER)</b> Scott Treatt Assistant Commissioner – Private Wealth <b>Australian Taxation Office (ATO)</b>	Secretariat	DISER
Attendees	<p><u>Tuesday 4 August</u>            Greg Pratt (<b>Deloitte</b>)            David Gelb (<b>KPMG</b>)            Jessica Oliver (<b>RSM Australia</b>)            Kris Gale (<b>Michael Johnson Associates</b>)            Gary Shapiro (<b>Rimon Advisory</b>)            Paul McMullan (<b>Compliance Group</b>)            Robert Krigsman (<b>Krigsman Partners</b>)            Sue Williamson (<b>Law Council of Australia</b>)            Paul McCartin (<b>The Tax Institute</b>)            Peter Komocki (<b>Medicines Australia</b>)            Dr Krsztian Baranyai (<b>Universities Australia</b>)            Cheryl Kut (<b>Group of Eight (Go8)</b>)</p> <p><u>Wednesday 5 August</u>            Jamie Munday (<b>EY</b>)            Richard Gregg (<b>PwC</b>)            Damian Smyth (<b>Swanson Reed</b>)            Donna Bagnall (<b>Chartered Accountants Australia and New Zealand</b>)            Ron Gauci (<b>Australian Information Industry Association</b>)            Rebecca Schot-Guppy (<b>FinTech Australia</b>)            Emma Westaway (<b>Boeing</b>)            Anna Schulze (<b>CSL</b>)            Nicola Purser (<b>BDO</b>)            Alix Ziebell (<b>Academy of Technological Sciences and Engineering (ATSE)</b>)</p>		
Apologies	Alex McCauley ( <b>StartupAus</b> ) Lisa Walters ( <b>Manufacturing Australia</b> )		
Guest Speakers	Wayne Calder ( <b>DISER</b> ) Brett Challans ( <b>ATO</b> )		

*\*Two roundtables were held on this occasion to invite all RADR members to compensate for March Roundtable cancellation.*

Agenda Items	Presenter(s)
<b>1. Welcome</b> 1.1. Roll-call for WebEx Dial ins 1.2. Action Items from November Roundtable 1.3. Accommodating companies during COVID	Kelley Wiggins (DISER)
<b>2. Policy Update</b> 2.1. Legislation Reforms	Wayne Calder (DISER)
<b>3. Update on State Reference Groups (SRGs)</b> 3.1. Overview of consultation feedback	Kelley Wiggins (DISER)
<b>4. R&amp;DTI Helping Business in Challenging Times</b> 4.1. Discussion of pre-meeting questionnaire	Kelley Wiggins (DISER) and Scott Treatt (ATO)
<b>5. ATO Update</b> 5.1. COVID-19 and Bushfires Responses 5.2. Update on public guidance	Scott Treatt (ATO)
<b>6. Program Updates</b> 6.1. New Integrity Framework administrative Initiatives 6.2. R&DTI reform update	(DISER)
<b>7. Any outstanding items and close</b>	Kelley Wiggins (DISER)

**Meeting Close**

Action Items from November 2019	Ownership	Due Date
Reflect on the feedback received in relation to the User Journey and update communications over time	DISER	Ongoing
Open an invitation to Treasury to attend Roundtable	DISER/ATO	March 2020
Determine co-chair arrangements for the March Roundtable	Secretariat	March 2020

## 1. Welcome, Action Items from the November 2019 Roundtable, Accommodating Companies under COVID-19

- The Chair opened the meeting, welcomed attendees and Scott Treatt from ATO as co-chair for the meeting.
- DISER acknowledged member's patience for the time passed since the last Roundtable, and the cancellation of the March 2020 Roundtable.
  - Delays have been due to recent and unfolding events (bushfires, restrictions on gatherings due to the COVID-19 pandemic, and the reallocation of DISER and ATO staff resourcing throughout the COVID-19 pandemic).
- Action items from the November Roundtable included;
  - Feedback on the User Journey and Integrity Framework.
  - Determining a co-chair for future Roundtables. Due to the online nature of this Roundtable, the ATO has been invited to co-chair, and an Industry Partner may be invited to co-chair for future Roundtables.
  - Inviting Treasury to future Roundtables. This is still an outstanding item for action.
- DISER and the ATO have been working over the past 8-months to assist companies by;
  - Extending the deadline to submit 2018-19 R&DTI applications from 30 April 2020 to 30 September 2020. This has also been applied to companies with substituted accounting periods ending up to 30 September 2019, with a 5-month extension period to lodge up to 30 December 2020.
  - Accepting provisional applications for Advance and Overseas findings until 30 June 2020, with remaining information to be provided by 30 September 2020.
  - Applying the Integrity Framework Principles to work with companies constructively in a forward facing manner
- A number of new communications products have recently been released by DISER, including;
  - A refreshed 'At a glance' brochure
  - A Podcast due to be released in the week of 10 August 2020
  - A program overview animation to be released at the end of August 2020.

## 2. Policy Update

- The Treasury Laws Amendment (Research and Development Tax Incentive) Bill 2019 introduced R&D Tax Incentive reforms into Parliament on 5 December 2019.
  - These proposed reforms take into account the recommendations of the 2019 Senate Inquiry and made two changes – delaying the start date and simplifying the R&D intensity measure.
- The Senate Inquiry was due to report on Friday 7 August 2020, however, on 4 August 2020, it was announced that this would be delayed until 24 August 2020. **Note:** The report has since been pushed back to 12 October 2020

- In pursuing the reforms, the Government will consider the outcomes of the Senate inquiry once it makes its findings known.

### **3. Update on State Reference Groups (SRGs)**

- SRGs were held in NSW, VIC, QLD, SA and WA throughout February and March 2020
- The main items for discussion at the SRGs were:
  - R&DTI facts and figures
  - The Integrity Framework
  - Federal Court Judgement on Moreton and the impact
  - Wrap up of the previous year's achievements.
- Feedback received from SRGs on items for discussion, included:
  - The application of the User Journey, Integrity Framework, and Program updates.
  - Engagement during the compliance process, and touch points throughout the User Journey
  - The retrospective application of the Moreton decision to old cases.
- The next round of SRGs are planned to be held virtually in the coming months (September and October 2020), with dates to be confirmed.
- Roundtable members also raised:
  - The Moreton Resources matter and if this was back before the AAT.
  - If DISER was able to share the number of current litigation cases, the number of active reviews, and if there are any compliance concerns DISER is aware of.
    - DISER advised that we are unable to discuss active matters, or departmental figures until published.

### **4. R&DTI Helping Businesses during Challenging Times.**

- Prior to the Roundtables, members were provided questions to prompt discussion around key issues facing the R&D sector and companies during the COVID-19 pandemic.
- The questions were:
  - *How do you see companies engaging with the program under current pandemic situation?*
  - *How are companies interacting with R&D under COVID circumstances?*
  - *What more can DISER and the ATO do to support companies through COVID-19?*
  - *Is there anything else you'd like to bring up while you have DISER/ATO here?*
- In response to the questions, members discussed key issues, including:
  - Gratitude regarding the departments' handling of challenges posed by COVID-19 and the January 2020 bushfires
    - Members commended the Department's proactive and balanced approach when engaging with registrants and gratitude of continuation of compliance activities. Lodgement concessions and transparency from regulators have been well received and considered dynamic, and accommodating to the circumstances.
    - Commended use of Data61 and subject matter expertise to determine eligibility for software claims.
      - DISER and ATO welcome this feedback, and commits to remaining cooperative, flexible and considerate of the long term implications.
  - JobKeeper payments, rates changes and their application in the R&DTI

- Ongoing uncertainty of rates, and whether retrospective application of adjusted legislation would mean the amendment of tax returns requiring companies to repay overpaid offsets.
  - JobKeeper's impact on securing team members to conduct R&D, acknowledging JobKeeper payments are not applicable to Start-ups.
    - Whether the ATO can offer absolute clarity on how JobKeeper payments are to be treated during these times.
      - ATO released a [draft Tax Determination](#) (TD 2020/D1) on how JobKeeper payments will be treated. Public feedback is due by 24 August.
- Resourcing of ATO and DISER throughout COVID-19
  - Unprecedented international interest in the R&DTI as a recovery option post COVID-19.
  - Concerns raised about the pause and delays with investigations and reviews
    - ATO and DISER are working through the current logs and welcomes direct contact for any concerns with specific applications. The ATO highlighted that resources have been redirected to Government Stimulus Package measures.
- Legal and legislative framework rigidity
  - Members questioned if there may be opportunity for examination into historical practices, and if there are any legal cases to dictate the future direction and guidance within the program
  - Issues raised regarding settlement and resolution of disputes, and limited flexibility once DISER has issued a finding.
    - ATO advised that the legislative requirements of the R&D program requires the the Commissioner to give effect to a finding made by DISER. Settlement negotiations with the ATO must be made before a decision is made by DISER. DISER offered to enter discussions early to resolve issues ahead of a finding being made.
- Criticality of the R&DTI to business continuity
  - Agents have not seen an immediate drop in conducting R&D, however a reduced flow of venture capital funding has meant a heavier reliance on the R&DTI, as investors are keen to secure R&D funding.
  - Without funding, some companies are putting projects on hold.
  - R&DTI perceived as critical to assisting companies predict how much capital they will have in the future. Securing funds the catalyst for survival for some companies, and dictate their ability to employ people, and conduct R&D.
  - Suggestions for ATO and DISER to honour claims, and introduce bi-annual payments.
  - A perceived reduction in support for refundable claims, and a significant reduction in support for non-refundable claims.
  - Companies experiencing trouble in fulfilling their obligations to research partners, has resulted in lobbying ARC to arrange flexibility in partnership projects.
  - Strong investment interest in pharmaceuticals and MedTech sectors R&D activities.
  - ICT sector have released a white paper with clear areas of recommendations, including the stimulus of our economy being reliant on manufacturing.

- The ATO and DISER welcomed these insights and committed to supporting companies undertaking eligible R&D and provide greater certainty to business where they can.

## 5. **ATO Update**

- ATO provided updates on the pandemic COVID-19 and bushfire responses, including:
  - Activities regarding advice, compliance, debt action, delivering Government stimulus package measures, and ongoing support for affected companies.
  - Details on strategies and support measures to support taxpayers and companies are available on the ATO website.
  - Re-allocation of ATO resources to work on Government stimulus packages (including JobKeeper, cashflow boost, and early access to Superannuation).
- ATO further noted that with regard to compliance work during the COVID-19 pandemic and bushfires:
  - A large amount of compliance activity has been suspended.
  - Companies who already had compliance underway were contacted to see if they wanted to proceed or not during this time.
  - Specifically for the R&DTI one of the key initiatives is the refundable offset, and therefore some compliance activities did need to continue.
  - While there is a hold on debt recovery action for some companies, they have had to continue to give effect to findings.
  - If companies are wanting to put a hold on their debt recovery action, they are to contact the ATO as soon as practicable.
- The ATO also noted:
  - The issuing of the [Draft Tax Determination: 2020 D1](#) on 27 July 2020.
    - The draft TD outlines how JobKeeper will be treated for R&D expenditure.
    - Further clarification is available on the ATO website.
  - Members raised questions about how JobKeeper payments must be treated on R&DTI lodgements.
    - ATO is conscious of needing to provide certainty to market, but will take on feedback from public consultation in finalising the determination.
  - Member noted that the private bindings uptake seems low, ATO acknowledged this, but wasn't able to provide causation other than to offer the service for certainty.
  - The ATO website is undergoing a refresh.
  - Public Guidance on Expenditure and Not At Risk and Building Exclusions is progressing, but currently delayed due to ATO resources being reallocated to deliver Government COVID-19 stimulus measures.

## 6. **R&DTI Program Updates and Administration reforms**

- Feedback has been received on the Integrity Framework, the Service Commitment and the User Journey, all of which are available on [business.gov.au](https://business.gov.au).
- The **Integrity Framework (IF)** outlines the department's strategic approach to working with companies to support that the R&D Tax Incentive is meeting its stated objectives.
- The intended outcome of the Integrity Framework is for businesses to accurately self-assess their eligibility for the R&D Tax Incentive – encouraging quality self-assessment and meeting

- eligibility requirements as well as to influence non-compliant companies to change their claiming behaviour.
- The department has been applying the principles of the Integrity Framework since the start of financial year 2019-20. At the same time, the department has an obligation to upholding the integrity of the program to ensure it is delivering value for the taxpayer and supporting R&D that has the best chance of delivering broad benefits for the Australian economy.
  - The department is committed to ensuring that customer interactions are open and transparent, and that guidance and decisions are well informed and fact-based. Most recent example being – sharing draft Internal Review reports before decision are finalised on cases.
  - DISER has been trialling the provision of providing companies with a copy of the **Draft Internal Reports** before finalising review decisions.
    - This process has received overwhelming response, and has enabled companies to offer feedback and clarify any factual errors, prior to finalisation of their decisions.
    - Members welcomed this process and questioned if there is an option to undertake this action for the initial Finding review process.
    - DISER advised that this process is being used as a trial to test the appetite for other compliance processes
  - The department undertakes a range of activities to ensure the integrity of the program, including education, guidance, reviews and legislative compliance activities.
  - The level and focus of the Department’s compliance and education activities is guided by the nature of the risks identified. This includes past and present behaviours of registrants.
  - These improvements aim to ensure that businesses have clear guidance and education to assist them understand the eligibility requirements of the program, as well as ensuring the program addresses and manages high risk to prevent jeopardising the integrity of the program.
  - Members were asked for feedback on the following questions:
    - *what advice would you provide in developing strategies to educate a broad range of participants in the program with an intent to improve integrity and program objectives?*
    - *what outputs would you expect to see in such a strategy particularly to manage the balance of guidance and integrity?*
    - *how would you see your role in relation to the delivery of these strategies?*
  - Members indicated enthusiasm to assist in the consultation of these measures.
  - Members also noted that while these processes are transitional in nature, patience with companies will be required.
  - The R&DTI will be implementing a **new online Portal for registration and Advance and Overseas Findings** from 1 July 2021.
    - User testing will be undertaken and the Portal will be available for access prior to 1 July 2021 to enable information to be populated.
      - The ability to submit registrations will only be possible post 1 July 2021.
    - The Portal will use the MyGov authentication system ensuring that interactions will be secure and only accessible by authorised users.
    - Roundtable members will be invited to attend sessions to offer input and user consultation into the Portal design in August 2020 and October 2020.
      - Members questioned if network architecture will allow for core data to be carried over from the previous year.
        - DISER advised that for the first year, there will be no pre-fill function abilities from past applications, however, moving forward beyond the first year this function will be available within the new Portal.

- **A refreshed Guide to Interpretation** will be circulated for consultation in the coming weeks.
  - The guide will feature plainer English, simpler features and an example to highlight how the legislation can be applied in a practical manner.
  - The consultation process will be communicated via the R&DTI e-bulletin.

**7. Any outstanding items and close**

- Participants requested an opportunity to provide feedback for the format and structure of future Roundtable meetings.
  - A survey will be circulated to attendees to offer feedback on the general concept of the Roundtables, format and structure noting that future Roundtables at this point will also be run virtually.
- The next Roundtable is proposed to be held in mid-November 2020.
  - The location (most likely virtual), timing and invitee list for the November 2020 Roundtable will be determined closer to the date.

Action Items	Ownership	Due Date
Extending this conversation – understanding concerns in the program from participants	DISER/ATO	Survey following Nov Roundtable
Joint podcast between ATO and DISER	DISER/ATO	March 2020
Evaluating the success of the Roundtables against their intent	DISER/ATO	Survey following Nov Roundtable
Joint guidance products from ATO and DISER	DISER/ATO	March 2021
Determine if the Department can share number of current legal cases active with ISA	DISER	Answer by Nov 2020 Roundtable
The department to confirm whether the new registration and advance/overseas finding applications that will be made available by the online portal will have version control tracking to enable users to monitor edits being made by contributors to the form.	DISER	Nov 2020

--- End of summary---