

RESTATING AND CENTRALISING THE SPECIAL CONDITIONS FOR TAX CONCESSION ENTITIES

Submission by Research Australia

April 2014

ABOUT RESEARCH AUSTRALIA

Research Australia is an alliance of 160 members and supporters advocating for health and medical research in Australia. Research Australia's activities are funded by its members, donors and supporters from leading research organisations, academic institutions, philanthropy, community special interest groups, peak industry bodies, biotechnology and pharmaceutical companies, small businesses and corporate Australia. It reflects the views of its diverse membership and represents the interests of the broader community.

Research Australia's mission is to make health and medical research a higher priority for the nation. We have four goals that support this mission:

- A society that is well informed and values the benefits of health and medical research.
- Greater investment in health and medical research from all sources.
- Ensure Australia captures the benefits of health and medical research.
- Promote Australia's global position in health and medical research.

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TABLE OF CONTENTS

Introduction	4
Summary of recommendations	5
Section 30-18 (2): minor or incidental activities outside Australia.....	6
Endorsement under section 30-80: possible loss of other tax concessions	7
Section 30-80: item 9.1.3	7
Requirement that an organisation is engaged solely in research	7
Research into the causes, prevention or cure of disease in human beings.....	8
Requirement that an organisation undertakes its research in collaboration with other institutions or authorities outside Australia	8
Research Australia’s proposals in respect of section 30-80	9
Funding overseas research without collaboration- rare diseases.....	10
Conclusion	11
Appendix 1: describing health and medical research	12

RESTATING AND CENTRALISING THE SPECIAL CONDITIONS FOR TAX CONCESSION ENTITIES

SUBMISSION BY RESEARCH AUSTRALIA

INTRODUCTION

Research Australia welcomes the opportunity to make a submission in response to the Exposure Draft of the *Tax and Superannuation Laws Amendment (2104 Measures No. 3) Bill 2014: in Australia special conditions* (the 'Bill').

Research Australia has followed the development of this law closely over the last couple of years. We note the special provision that has been made in the exposure draft of the Bill to facilitate international collaboration in health and medical research, and are pleased that the arguments as to why this is in the national interest have been accepted. While the new item 9.1.3 in subsection 30-80 is a welcome development, we believe that there are further changes and improvements that are required if the provision is to work as intended.

Summary of recommendations

1. Research Australia recommends that clearer guidance about the percentage of total expenditure that would be considered to be 'minor' be provided in a note to section 30-18, including nominating a percentage of expenditure.
2. Research Australia requests that clearer guidance about how 'incidental' applies to overseas research activities be provided as a note to section 30-18 or in the Explanatory Memorandum.
3. Research Australia is comfortable with a large volume of international collaboration in health and medical research falling under the definition of 'minor', but requests an explicit acknowledgment, perhaps in the Explanatory Memorandum, that 'minor' can involve millions of dollars of activity.
4. Research Australia submits that the tax concessions currently available to health and medical research organisations must be available under the endorsement provided under item 9.1.3 of section 30-80.
5. Research Australia proposes that Item 9.1.3 of section 30-80 be amended to:
 - replace 'solely engaged' with 'principally engaged';
 - provide a more inclusive definition of health and medical research;
 - require that the organisation operates principally in Australia; and
 - remove the requirement for international collaboration.
6. If the proposal to provide a more inclusive definition of health and medical research is not accepted, as an alternative a note to the section 30-80 should be included, making it clear that the term is to be interpreted widely (so as to include areas such as basic research, research that promotes health, and research into the more efficient and effective delivery of healthcare).
7. If the proposal to remove the requirement for international collaboration is not accepted, the category of eligible international collaborators should be expanded to include commercial entities.
8. Research Australia submits that special consideration must be given to allowing tax deductible donations to be made to not for profit overseas research organisations to fund research into rare diseases.

SECTION 30-18 (2): MINOR OR INCIDENTAL ACTIVITIES OUTSIDE AUSTRALIA

Section 30-18 (2) provides that a fund, authority or institution is not required to operate solely in Australia and to pursue its purposes solely in Australia if the activities outside Australia are 'minor' or 'incidental', when considered with reference to its operations and pursuit of purposes in Australia.

While at first glance the minor or incidental exemption would appear to cover most of the international activities of the charities undertaking or funding health and medical research, there is some uncertainty as to the meaning of 'minor' and 'incidental'.

The Explanatory Memorandum does not really provide a suitable example or guidance as to the application of 'minor' to the conduct of health and medical research.

1. Research Australia recommends that clearer guidance about the percentage of total expenditure that would be considered to be 'minor' be provided in a note to the section 30-18, including nominating a percentage of expenditure.

'Incidental' generally has several meanings- either 'minor' or 'unintended' or 'pertaining to (something more important)'. As minor is included separately in section 18(2) the intended meaning appears to be the latter two meanings. As participation in an international collaboration is a deliberate action, it is unlikely that the 'unintended' sense of 'incidental' will apply to international collaboration. It is possible that the overseas activity could be 'pertaining to' a broader domestic research activity, and that this activity could be more than minor.

2. Research Australia requests that clearer guidance about how 'incidental' applies to overseas research activities be provided as a note to section 30-18 or in the Explanatory Memorandum.

It is likely that a large number of organisations conducting or funding health and medical research will seek to rely on section 18(2). Universities, for example, conduct approximately 40% of all Australian health and medical research and are regular and prolific international collaborators. While within the context of a university's entire activities its international collaboration on health and medical research is likely to be minor, the annual value of international collaboration on health and medical research by Australian universities is likely to be tens of millions of dollars (and the value of all universities' total overseas activities will be significantly higher).

3. Research Australia is comfortable with a large volume of international collaboration in health and medical research falling under the definition of 'minor', but requests an explicit acknowledgment, perhaps in the Explanatory Memorandum, that 'minor' can involve millions of dollars of activity.

ENDORSEMENT UNDER SECTION 30-80: POSSIBLE LOSS OF OTHER TAX CONCESSIONS

Existing medical research organisations that could potentially be endorsed under section 30-80, Item 9.1.3 are currently endorsed under items 1.1.4 or 1.1.5 of section 30-20, or under item 1.1.6 as a registered health promotion charity.

Under their current endorsement, many health and medical research organisations enjoy a range of tax concessions, including in relation to Fringe Benefits Tax. If some of these organisations are to be endorsed in the future under item 9.1.3 of section 30-80, it is imperative that they continue to be entitled to the same level of tax concessions they currently enjoy.

4. Research Australia submits that the tax concessions currently available to health and medical research organisations must be available under the endorsement provided under item 9.1.3 of section 30-80.

SECTION 30-80: ITEM 9.1.3

The proposed text of item 9.1.3 is reproduced below for ease of reference.

9.1.3	<p>an authority or institution that:</p> <p>(a) is engaged solely in research into the causes, prevention or cure of disease in human beings; and</p> <p>(b) undertakes its research in collaboration with other institutions or authorities outside Australia</p>	none
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The intention is that a health and medical research organisation undertaking research activities overseas which are more than minor or incidental could be endorsed under this item as a deductible gift recipient. Research Australia is supportive of this intention but has several concerns about the provision in its current form.

Requirement that an organisation is engaged solely in research

Item 9.1.3 applies to ‘authorities or institutions that are engaged **solely** in research into...’ and appears to be based on the existing item 1.1.5 of section 30-20 of the Income Tax Assessment Act 1997.

Some of the organisations that are engaged in international collaboration in respect of health and medical research also undertake some related but distinct activities such as: health promotion; engaging students and the broader community in science; and the provision of clinical services to indigenous, remote or other disadvantaged communities. Even where these activities are provided in Australia and even if they are not funded by donations, the organisations that undertake these activities would fail to meet the criterion of the proposed item 9.1.3 a) of engaging solely in research.

In relation to their current activities, many of these organisations are currently endorsed not under Items 1.1.4 or 1.1.5 of section 30-20, but under item 1.1.6, as registered health promotion charities. This broader definition covers these activities in addition to undertaking research.

There is no benefit in forcing these organisations to cease undertaking their other activities in order to be able to retain their tax deductible status.

Research into the causes, prevention or cure of disease in human beings

As noted above, many health and medical research organisations are endorsed as registered health promotion charities. The emphasis in item 9.1.3 on ‘disease’ as opposed to ‘health’ has caused concerns that this may not be broad enough to capture all elements of health and medical research. For example, some basic research is devoted specifically to developing greater knowledge of human biology and physiology without an immediate focus on a particular disease. There is also an increasing emphasis on research into the social determinants of health.

Health economics, health services research and public health are all disciplines within health and medical research which are connected in varying degrees to ‘disease’. In the case of health services research in particular the emphasis is on improving the safety, effectiveness and efficiency of healthcare delivery. Clearly such research is in the national interest, and can play a key role in curbing the growth of health care expenditure, but it is not clear that it falls within the definition employed in Item 9.1.3 (a).

Research Australia accepts that health and medical research is not easily defined, but is of the view that the current definition based around disease may be too narrow to capture the full range of health and medical research. (Research Australia’s description of health and medical research is provided at Appendix 1).

Requirement that an organisation undertakes its research in collaboration with other institutions or authorities outside Australia

There are two issues with the requirement that an organisation ‘undertakes its research in collaboration with other institutions or authorities outside Australia.’

The first is that it appears to require that all of the organisation’s research be undertaken in collaboration with other institutions or authorities outside Australia. On a strict interpretation, it would appear that an Australian research organisation that undertook some research in Australia on its own and undertook some research in collaboration with an international partner would not meet this criterion.

The second issue is the requirement that the international collaborator is an ‘institution or authority’. Many Australian health and medical research organisations enter into research collaborations with commercial entities in Australia and overseas. This is a common and well established pathway to the translation of research generated by not for profit research organisations. It enables the research to be utilised in a manner that improves health through the creation of new drugs, therapies, diagnostics and medical devices, and generates revenue to support the research organisation’s ongoing research. Commercial partners such as pharmaceutical companies do not appear to fall within the meaning of ‘institution or authority’. Collaboration by a research organisation with a commercial entity would prevent the organisation from meeting the requirements of item 9.1.3(b).

Research Australia's proposals in respect of section 30-80

Research Australia makes the following recommendations and proposals in relation to the Exposure Draft of the *Tax and Superannuation Laws Amendment (2104 Measures No. 3) Bill 2014: in Australia special conditions*.

Item 9.1.3 of section 30-80 in its current form has the effect not only of restricting how donations can be used but also the whole of an organisation's activities. This is unreasonable in the context of health and medical research where donations are an important but relatively minor source of funding for organisations with DGR status that conduct health and medical research.

The obligation that the organisation should solely undertake research should be removed, as should the obligation to undertake overseas research in collaboration.

Research Australia proposes that tax deductible donations should be allowed to be made to organisations for the purpose of undertaking health and medical research if the organisation is principally engaged in health and medical research, is established in Australia and operates principally in Australia.

5. Research Australia proposes that Item 9.1.3 of section 30-80 be amended to:

- replace 'solely engaged' with 'principally engaged';
- provide a more inclusive definition of health and medical research;
- require that the organisation operates principally in Australia; and
- remove the requirement for international collaboration.

The use of 'principally engaged' and a more inclusive definition of health and medical research better recognise the range of activities undertaken today by health and medical research organisations. Replacing the requirement for international collaboration with a requirement that the organisation operates principally in Australia will better ensure that the research undertaken by the organisation is undertaken in the national interest and prevent charities being established in Australia to raise funds for overseas research that has an insufficient connection to Australia.

6. If the proposal to provide a more inclusive definition of health and medical research is not accepted, as an alternative a note to section 30-80 should be included, making it clear that the term is to be interpreted widely (so as to include areas such as basic research, research that promotes health, and research into the more efficient and effective delivery of healthcare).

7. If the proposal to remove the requirement for international collaboration is not accepted, the category of eligible international collaborators should be expanded to include commercial entities.

FUNDING OVERSEAS RESEARCH WITHOUT COLLABORATION- RARE DISEASES

There are approximately 8000 rare diseases. While individually these diseases may affect less than 5 people in 10,000, together these diseases affect many thousands of Australians, and millions of people worldwide.¹ A disproportionate number of rare diseases have childhood onset, and are chronic and debilitating. There is a strong nexus between the diagnosis and treatment of a rare disease and research into its cause and cure, because the only diagnostic tools and therapies that are available are often still in development. Research in any particular rare disease tends to be centred around the work of one or a few individuals. Research funding is typically difficult to secure because, in contrast to their collective morbidity and mortality, individually these diseases do not pose a significant burden of disease on the community. As a consequence, funding research into these diseases often falls to those who are affected by the disease- the individual (often a child) who has the disease and that person's family and friends.

There are some Australian researchers who are conducting world leading research into particular rare diseases. The work of Professors Sue Fletcher and Steve Wilton of the Western Australian Neuroscience Research Institute on spinal muscular atrophy and Duchene's Muscular Dystrophy is an example. They won the WA Mitsubishi Innovator of the Year award in 2012, and in 2013 their work was recognised with the Australian Museum Eureka Award for Translational Research. Their research has attracted funding from Australia and around the world including from overseas groups formed specifically to raise funds for research into these diseases. Having demonstrated proof-of-concept in two of the most common and serious neuromuscular disorders, their work is now being applied to many other rare diseases.

Equally there are many rare diseases where the only research that is being undertaken is in a country other than Australia. This research is supported by small fundraising groups from around the world, including Australia; typically parents, family and friends of children suffering with these diseases who are motivated to fund research into therapies and diagnosis. This research may be at an early stage, or it may be so advanced that it provides an opportunity for Australians to participate in clinical trials of potential therapies.

These Australian fundraising groups will be denied tax deductibility for donations under the current Bill if the research they fund is undertaken outside Australia, even where no-one one in Australia is undertaking research into that disease. Research Australia does not believe that denying DGR status to these groups is in the national interest. Notwithstanding that the research funds will be expended outside Australia, the research has the potential to benefit Australian sufferers of these diseases and it helps to promote international collaboration in the research effort, which is also in Australia's interest. Allowing these funds to move internationally to fund the best available research in the world is the most effective way of addressing these diseases. Giving the patients, their family and friends the opportunity to contribute to finding a cure for a disease that is having a devastating effect on them is important not only to funding the research but to helping them deal with the impact of the disease through doing something positive to combat it.

Health and medical research is a global endeavour, and Australia benefits from health and medical research that is undertaken overseas. While in the vast majority of cases donations that are raised in Australia will be used to fund research in Australia there are circumstances in which it is more appropriate for those funds to be expended on research undertaken overseas.

8. Research Australia submits that special consideration must be given to allowing tax deductible donations to be made to not for profit overseas research organisations to fund research into rare diseases.

¹ <http://www.rarevoices.org.au/page/15/what-is-a-rare-disease>

CONCLUSION

Research Australia recognises the important contribution that donations make to health and medical research, and seeks to foster the relationship between researchers and the broader community.

We also recognise the value of tax deductibility of donations to health and medical research and acknowledge that the Commonwealth has an obligation to ensure that these tax deduction are used in a manner that furthers the national interest.

Health and medical research is a global endeavour and we all benefit from the international exchange of research, ideas and personnel, and from cooperation between researchers. Research Australia believes that active participation in this global exchange is fundamentally in Australia's interest and that support for this research is an appropriate use of donations made by Australians.

The proposals we have made in this submission for additions to the Explanatory Memorandum and for amendments to the proposed item 9.1.3 of section 30-80 are intended to balance the need to ensure that tax deductible donations are used in the national interest with the need to ensure that Australian health and medical research is not unnecessarily restricted, or subjected to unnecessary regulation and red tape.

Research Australia appreciates the opportunity to make this submission and is willing to provide further information and/or discuss any aspect of this submission further.

Appendix 1: describing health and medical research

Health and medical research is research that **aims to improve the health and well being of people**. It draws on our knowledge of the human body and the world around us to find ways to cure and prevent disease; reduce injury and disability; improve the delivery of health services; and help us to lead longer healthier lives.

Health and medical research embraces **a range of different disciplines** including biology, physiology, pharmacology, chemistry, engineering, biotechnology, epidemiology, medicine, psychology, nursing, allied health, population studies, IT, mathematics, economics and health services research.

It is concerned with basic discoveries about how our bodies (and minds) function and how they respond to disease; the development of new drugs, procedures and therapies; influencing behaviour to improve health; and making our health services more effective and efficient.

Research occurs in our universities and hospitals, medical research institutes and companies, as well as in the community. The researchers include scientists, medical specialists, nurses, GPs, allied health professionals and many other occupations. Some are full time researchers and others undertake research as a part of their job.

Australia is **the home of world leading research**, and our researchers collaborate with researchers from across the world. Our research seeks not only to address the health problems faced by Australians, it also contributes to global research as well as assisting our neighbours in the Asia Pacific region.

Australian health and medical research is supported by Commonwealth and State governments, companies and the not for profit sector. Australians can and do support health and medical research by **making donations** and **participating in clinical trials** to test the effectiveness of new drugs and therapies. Increasingly patient groups are becoming involved in all stages of the research process, from the board room to the clinic.

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