



THE AUSTRALIAN ACADEMY OF THE HUMANITIES

**Response to the Exposure Draft Legislation and Explanatory Materials for  
The New Research and Development Tax Incentive**

The Academy notes that subsection 355-35(2)(f) of the draft *Tax Laws Amendment (Research and Development) Bill 2010* renews the provisions of subsection 73B(2C)(f) of *ITAA 1936*, which detailed the previous regime's arbitrary exclusion of social science, arts and humanities research activity for the purposes of the new R&D tax incentive.

The Academy has provided a full account of its opposition to this exclusion in its submission of October 2009, which is found on the Treasury's website<sup>1</sup> as well as our own.<sup>2</sup> As the draft legislation and explanatory materials manifest no changes on the matters we addressed, our submission remains as urgent and relevant today as when we proffered it in October 2009. We would urge another read (it is only 5 pages), but, in summary: we are seeking the removal of this exclusion only, which renders ineligible by definition perfectly useful work, preventing otherwise reasonable and eligible cases for support from being made; and we absolutely endorse the application to work in these and all other fields of the full rigour of the other eligibility requirements. Overall, it is the Academy's strong and considered view that, while this exclusion persists, Government risks the introduction of bad policy and bad legislation.

It is bad policy because this sweeping exclusion fails to imagine, let alone encourage, the participation of all parts of the research sector in the innovation economy. It rules out exactly the kind of activity the entire regime is designed to support, solely on the basis of the discipline in which the work is done. It contradicts declared Government policy in innovation, industry and research, by militating against the full and proper involvement of all relevant parts of the research sector, including research-active industry, in the evolution of the Australian Innovation System.

It is bad legislation since the exclusion is either redundant or discriminatory. It is certainly the case that, other than by virtue of its exclusion under this clause, some humanities, arts and social science research and development activity would either be potentially eligible under the scheme, or it would not. If it is the contention of the Treasury that the humanities, arts and social sciences would never be otherwise eligible, then even by this assessment the clause is redundant, as the specific activity would be ruled ineligible by whichever other clause it fails to satisfy, on the basis of its inability to address the substantive requirements of the scheme.

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<sup>1</sup> [http://www.treasury.gov.au/documents/1664/PDF/Australian\\_Academy\\_of\\_the\\_Humanities.pdf](http://www.treasury.gov.au/documents/1664/PDF/Australian_Academy_of_the_Humanities.pdf)

<sup>2</sup> <http://www.humanities.org.au/resources/downloads/policy/POL2009-Subm-25.pdf>

If, on the other hand, it is Treasury's view that some humanities, arts and social science research and development could conceivably be eligible on other grounds, then the clause is discriminatory, as it alone prohibits, on no rational ground, the otherwise eligible research and development activity that the scheme is designed to support: perfectly useful and indeed desirable contributions to the national innovation effort.

Further, it is our view that the exclusion tarnishes and weakens the legislation because it is arbitrary, in both of the cases outlined above: in the first case because we contend that the notion that the humanities, arts and social sciences have nothing to contribute through the work supported by the scheme is factually incorrect, and applied unreasonably to these disciplines simply due to a lack of understanding on the part of the officials designing the scheme; and in the second case because the irrational exclusion of this work that might otherwise qualify – as opposed to analogous work in other fields – is random and lacks coherence.

Unfortunately, the draft explanatory materials do not attempt to substantiate this exclusion, so we have only been able to speculate on the reasons that the Treasury has seen fit to continue it. We are confident that officials are acting in good faith, but we are also fairly sure they are acting without the full benefit of a clear understanding of the actual and potential contribution of research in the humanities, arts and social sciences, along lines that would otherwise fall under the rubric of the scheme and satisfy its other rigorous eligibility requirements. If Treasury is unable to imagine the circumstances under which such research activity could be eligible under the other conditions of the programme, then we respectfully submit that it is gravely mistaken; moreover, we would welcome an opportunity to demonstrate this. We would hope that Treasury would welcome the opportunity to engage in discussion with those who know this domain well, at least to test any assumptions that it knows enough about work in these disciplines to rule it out wholesale.

We therefore request an urgent meeting with Treasury officials, to discuss the reasons behind our recommendation to remove 355-35(2)(f), and to demonstrate that there are ways in which the humanities, arts and social sciences can and do contribute to the innovative and economic development of industrial activity, in ways that are wholly consistent with the aims and intentions of the Tax Incentive scheme.

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5 February 2010

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