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11 January 2024

Committee Secretary
Senate Education and Employment Committees
PO Box 6100
Parliament House
CANBERRA ACT 2600
Via email eec.sen@aph.gov.au

Dear Chair

Senate Education and Employment Legislative Committee inquiry into the Australian Research Council Amendment (Review Response) Bill 2023.

INTRODUCTION

Thank you for the opportunity to provide a submission in response to the Senate Education and Employment Legislative Committee inquiry into the *Australian Research Council Amendment (Review Response) Bill 2023* (the Bill).

The University of Technology Sydney (UTS) is supportive of the Bill, considering it broadly consistent with the recommendations of the Sheil Report (also known as the *Trusting Australia's Ability: Review of the Australian Research Council Act 2001*) and the government's full acceptance of the recommendations of that review. However, we retain a series of concerns that in our view compel a closer examination by the Committee.

Additionally, UTS is a member of the Australian Technology Network (ATN) of universities and is supportive of the recommendations made by the ATN, notably its submission of 3 November 2023 to the Australian Department of Education.

RECOMMENDATIONS

For the convenience of the Committee, UTS summarises below our recommendations in relation to the Bill:

- That the role of the CEO in relation to the Board be made explicit.
- A review of the Board within 12 months to ensure that its number and composition are appropriate and that the Board is functioning efficiently and effectively.
- That the approval pathway for the ARC funding rules mirror that of other government funding programs or consider exempting (section 44 of the *Legislation Act 2003*) the funding rules as not subject to disallowance.
- That clause 49(2)(f) be removed given its problematic nature and noting existing annual assurance statements, or if more time permits then further consultation on what is required to satisfy concerns that this aspect of the funding agreement is attempting to address.

RATIONALE FOR RECOMMENDATIONS

For the convenience of the Committee, UTS's feedback is arranged to mirror the structure of the Bill.

Australian Research Council Board and CEO (Schedule 2)

Firstly, it is not clear whether the CEO is to be a member of the Board (ex-officio or otherwise) and to what extent the CEO directly participates in the activities of the Board as the responsible and accountable officer. It is important that this is clarified. Accordingly, UTS recommends that the role of the CEO in relation to the Board be made explicit.

Secondly, the number and composition of the board is critical to ensuring there are the appropriate capabilities and expertise for reviewing the broad cross section of research proposals. UTS welcomes the return to a skills-based Board capable of performing the Objects of the Bill.

At present, the proposed number of the Board is suitable for the remit of the ARC. However, given the newness of the Board within the ARC governance structure, UTS recommends a review within 12 months to ensure the Board is functioning efficiently and effectively.

Regarding composition, UTS supports the other specified requirements for one member to be an Indigenous person and one member who can represent rural, regional, and remote Australia. In addition, UTS suggests that the Board composition reflect the gender equity and diversity of the higher education research community.

Additionally, while it would not be practical or appropriate for every research discipline to be represented in the context of having expertise in one or more fields of research, it may be appropriate to provide more framing in relation to the expertise and experience expected of Board members. Unfortunately, there is an unconscious bias to default to the binary paradigm of STEM versus HASS when filling Board positions, but this approach inadequately reflects the endeavours of the whole Australian research community. In other words, there is an opportunity here to transcend the binary paradigm by consciously seeking qualities in Board candidates that are reflective of the collaborative and transdisciplinary reality of the research community and the undertaking of research.

For example, the following expertise could be considered:

- International research funding approval experience (to ensure that there is appropriate awareness at the Board level of international directions in research and research funding);
- Ethics of research;
- Translation of research; and
- Demonstrated experience in driving collaboration and having a transdisciplinary approach to research.

For comparison, the Committee may wish to consider the number and composition of the National Health and Medical Research Council (NHMRC). The NHMRC has a much broader composition due to its role in public health and draws upon a wide range of research disciplines, including expertise in the health needs of Aboriginal persons and Torres Strait Islanders, consumer issues and business. This combination of general and specific disciplines is therefore appropriately reflective of the research profile of the health and medical research community.

Finally, a notable difference between the ARC and NHMRC is that the board of NHMRC is tasked with providing advice to the CEO, being less prescriptive than that of the ARC Board which may choose to give written directions to its CEO.

Funding of research (Schedule 3)

UTS strongly supports the modernisation of the funding arrangements and the recognition of the ARC's independence with respect to funding decisions. However, there are two areas that concern UTS and warrant a closer examination before the Bill is placed before Parliament – the process for seeking approval of funding rules (clause 59(3)) and the addition of a new requirement under funding agreements for independent auditor statements (clause 49(2)(f)).

Funding Rules

At present, clause 59(3) of the Bill states:

'Rules (including revised rules) prepared by the Board and approved by the Minister are a *legislative instrument* made by the Minister on the day on which the rules are approved.' (emphasis added)

and the Explanatory Memorandum (paragraph 92) notes that:

'The rules made under this provision will be subject to Parliamentary scrutiny as part of the normal *disallowance* processes specified in the *Legislation Act 2003*, and the regulations made for the purposes of paragraph 44(2)(b) of that Act will be updated to reflect this.' (emphasis added)

UTS is concerned that this approval pathway will unduly burden the work of Parliament while also risking exposure to the political interference that the Bill is intended to avoid (Media statement: The Hon. Jason Clare MP, Minister for Education, 29 November 2023). In practical terms, if the Funding Rules are subject to disallowable motions, then the potential unintended consequence is the slowdown of the National Competitive Grants Program (Discovery and Linkage Programs), incorporating 12 funding schemes. Funding Schemes cannot be released, and applications cannot be made or assessed unless the Funding Rules are approved for each grant funding opportunity.

It is notable that not all legislative instruments are subject to disallowance (section 36 of the *Legislation Act 2003*), with some only requiring tabling in Parliament. For example, the funding rules made in relation to Cooperative Research Centres (CRC) are made by the administering Department of Industry, Science and Resources with proposals reviewed by a CRC subcommittee of the Industry Innovation and Science Australia Board under the *Industry Research and Development Act 1986* (managed by the Department). The Act itself is silent on the approval of funding rules or projects, i.e. there are no obligations for tabling in Parliament as legislative instruments (disallowable or otherwise) of any documentation. The Department of Industry administers many other funding programs which are also not tabled in Parliament. Another example is the NHMRC's Medical Research Endowment Account. Grant guidelines are approved by the Minister upon recommendation by the Department of Finance.

It is noteworthy that all Commonwealth funding is subject to the Commonwealth Grants Rules and Guidelines. As the Committee is aware, these include grants related decision-making and reporting requirements, in addition to the legislative requirements that apply where a Minister approves proposed expenditure. Specifically, these establish seven key principles of grants administration, emphasise the importance of timeliness, partnership with stakeholders, rigour, accountability, and transparency, but do not require that any grant guidelines are tabled before Parliament.

For consistency, UTS recommends that the approval pathway for the ARC funding rules, mirror that of other government funding programs or consider exempting (section 44 of the *Legislation Act 2003*) the funding rules, as not subject to disallowance. In other words, tabled in Parliament but not subject to disallowance. In UTS's view, this would allow ongoing Parliamentary scrutiny of grant awards while not exposing the government of the day to the politicisation of the process.

Funding Agreements

UTS welcomes the clarity provided by the Bill regarding funding agreements (clause 49). However, UTS questions the inclusion of clause 49(2)(f) which states all funding agreements must:

“include terms or conditions relating to the organisation giving the CEO regular independent auditor statements relating to the organisation’s compliance with some or all of the terms and conditions set out in the agreement”.

‘Independent auditor statements’ is not defined or explained in the Bill or the Explanatory Memorandum. Nor does it appear in the Sheil Report. As this appears to be a new requirement, careful consultation with the sector is called for to ensure that the scope is appropriate and well understood. At present, the term is insufficiently defined, open-ended and risks introducing uncertainty into funding agreements. It is also worth noting that universities are already required to provide annual assurance statements via declaration of each university’s Deputy Vice-Chancellor (Research), which we would suggest are sufficient measures of assurance.

UTS strongly recommends removal of clause 49(2)(f) given its problematic nature and noting existing annual assurance statements, or if more time permits then further consultation on what is required to satisfy concerns that this aspect of the funding agreement is attempting to address.

Conclusion

UTS appreciates the opportunity to contribute feedback and would welcome an invitation to appear before the Committee. Please do not hesitate to contact Professor Kate McGrath, Deputy Vice-Chancellor (Research) (Kathryn.McGrath@uts.edu.au) should you wish to discuss this submission further.

Yours sincerely,

Professor Kate McGrath
Deputy Vice-Chancellor & Vice-President (Research)