



National Health and Medical Research Council Amendment Bill 2006

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National Health and Medical Research Council Amendment Bill 2006

Date introduced: 29 March 2006

House: Senate

Portfolio: Health and Ageing

Commencement: See table below reproduced from the Bill.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedule 1, Parts 1 and 2	The later of: (a) the day after this Act receives the Royal Assent; and (b) 1 July 2006.	
3. Schedule 1, Part 3	The latest of: (a) the day after this Act receives the Royal Assent; and (b) 1 July 2006; and (c) immediately after the commencement of item 34 of Schedule 1 to the <i>Financial Framework Legislation Amendment Act (No. 1) 2006</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (c) does not occur.	
4. Schedule 1, Part 4	The later of: (a) the day after this Act receives the Royal Assent; and (b) 1 July 2006.	

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

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Purpose

This Bill amends the *National Health and Medical Research Council Act 1992* (the Act) to introduce new governance arrangements and to clarify accountability and reporting functions for the National Health and Medical Research Council (the NHMRC).

Among other changes, the Bill establishes the NHMRC as an independent statutory agency.

Background

Basis of policy commitment

The NHMRC is the national agency responsible for the allocation of research funding and the development of both overall research strategy and advice on particular areas of health (including health ethics).

The functions and governance structures of the NHMRC come from the statutory obligations conferred by the Act. Currently, the NHMRC is established as a statutory body corporate and its staff are officers of the Department of Health and Ageing (DoHA) made available to the Council via an arrangement under subsection 45(2) of the Act. The NHMRC has an annual research budget of around \$400 million and is governed by a council of 29 members elected for terms of three years.

The changes in the Bill represent the Government's response to governance concerns raised in two recent reviews:

- *Governance of the National Health and Medical Research Council* (Australian National Audit Office (ANAO), February 2004), and
- *Sustaining the Virtuous Cycle For a Healthy, Competitive Australia: Investment Review of Health and Medical Research* (Investment Review of Health and Medical Research Committee, December 2004).

The ANAO review examined the NHMRC's governance and administrative systems. It made a number of recommendations for improving these systems, including that the NHMRC assess the appropriateness of existing governance arrangements.¹ The Investment Review of Health and Medical Research (also known as the 'Grant Review') examined progress in health and medical research (HMR) since the Wills Review (1999) and evaluated the organisational capacity of the NHMRC.²

The Grant Review endorsed the thrust of the Wills Review (essentially that a partnership between government, research and industry could deliver significant benefits to the Australian community) but also highlighted continuing deficiencies in the governance of

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the NHMRC, including conflicting lines of responsibility, delays and difficulties in decision-making and an unwieldy council. It recommended that, among other things, the NHMRC become an independent agency governed by a Board of 10-12 members that reports directly to the Minister for Health and Ageing. Recommendations were also made in relation to realignment of NHMRC structures and processes.

The Government responded to the concerns raised in the above reviews in September 2005 with the announcement that from 1 July 2006 the NHMRC would become a fully independent statutory body within the Health and Ageing portfolio.³ This Bill implements this change. It also proposes changes aimed at streamlining NHMRC accountability and reporting structures, though without altering the roles and functions of the Council, the Principal Committees and working committees. The Bill does, however, propose to reduce the membership of the Council to 19 members.

The Government regards these changes as being consistent with the recommendations of the ANAO and Grant Reviews and also the principles of good governance adopted by the Government in 2003 as a result of the *Review of the corporate governance of statutory authorities and office holders* (also known as the 'Uhrig review').⁴ However, it should be noted that the governance model proposed in the Bill diverges from that proposed in the Grant Review in that it does not include a Board.

Position of significant interest groups/press commentary

There has been very little public commentary to date on the proposed changes in this Bill. Nevertheless, the changes have been strongly criticised by Dr Martin Van Der Weyden, editor of the Medical Journal of Australia, on the grounds that they concentrate power in the hands of the Minister.⁵ While Dr Van Der Weyden notes that the proposed arrangements are 'undoubtedly an improvement' on the current arrangements ('there is a clearer delineation of responsibility, and accountability in management, advice and strategic development'), he argues that the changes should be 'vigorously opposed' because

[they] will potentially place the NHMRC under the complete control of the Minister and, indirectly, his political or departmental advisors. Under these circumstances, only a very strong CEO, a person with considerable power and influence, would be able to take the NHMRC and its agenda forward, and people of this calibre are hard to find.⁶

In place of the Government's model proposed in this Bill, Dr Van Der Weyden has suggested a model more directly consistent with that proposed in the Grant Review. Under the governance structure proposed by Dr Van Der Weyden, the Executive Management Committee in the Government model would be replaced by a statutory board 'operating in classical corporate governance mode, with the CEO responsible to the Chair and the Board, and the CEO corporately responsible to the Minister'.⁷

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In relation to the issue of whether the NHMRC should be governed by a Board, it could be argued that the model proposed in this Bill is more consistent with the Uhrig review recommendations than those of the Grant Review. Uhrig recommended that statutory authorities should be managed *either* by a CEO *or* by a board structure depending upon the governance characteristics of the authority involved:

- the *Financial Management and Accountability Act 1997* should be applied to statutory authorities where it is appropriate they be legally and financially part of the Commonwealth and do not need to own assets. This includes Budget-funded authorities. Uhrig recommended that these organisations should be governed by a CEO.
- the *Commonwealth Authorities and Companies Act 1997* should be applied to statutory authorities where it is appropriate that they be legally and financially separate from the Commonwealth. Uhrig recommended that these organisations should be governed by a board.⁸

In general, according to Uhrig, agencies that exclusively manage Commonwealth appropriations should be represented and governed by a CEO. A board structure is favoured if there is a strong commercial focus to the organisation, or if the agency is intergovernmental. The Government has decided that the NHMRC belongs to the former category but it is unclear how it reached this decision. Given the particular character of the NHMRC (for example, its role in the allocation of research funding), there may be grounds to argue that it could equally fit within the category of agencies that Uhrig suggested should be governed by a board.

ALP/Australian Democrat/Greens/Family First policy position/commitments

At this stage, neither the ALP, the Australian Democrats, Australian Greens or Family First has expressed a view on the proposed changes.

Financial implications

According to the Explanatory Memorandum, the financial impact of this Bill is as follows:

- minor transitional costs are required in order to establish the NHMRC as a statutory agency (approximately \$0.3 million in 2005-06);

Change to NHMRC Departmental Expenses

2005-06 (\$m)	2006-07 (\$m)	2007-08 (\$m)	2008-09 (\$m)
+0.3	0.0	0.0	0.0

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- ongoing costs of the NHMRC, as a separate entity, are to be appropriated separately from within the Department's existing budget allocations; and
- minor ongoing resources will be provided to the Department to support integrated policy advice on health issues that are addressed by the NHMRC (for example: human cloning, stem cell research, severe acute respiratory syndrome (SARS) and avian flu virus).

Change to Department of Health and Ageing Departmental Expenses

2005-06 (\$m)	2006-07 (\$m)	2007-08 (\$m)	2008-09 (\$m)
+0.4	+0.5	+0.5	+0.5

Main provisions

Schedule 1—Amendments

Item 1 amends subsection 3(2) by replacing the word 'Council' with the word 'NHMRC', thereby reflecting the new structure of the agency (where NHMRC refers to the CEO, the Council, committees and staff of the NHMRC).

Items 2 to 30 amends the section providing for definitions of words in the Act (section 4) by deleting words and terms no longer used in the Act and inserting definitions for new terms in the Act.

Item 31 repeals the part of the Act that establishes the Council as a statutory body corporate and related provisions (Part 2) and replaces it with a new Part 2 that establishes the NHMRC and details those matters that the Minister may refer to the NHMRC and the matters on which the Minister may give directions to the NHMRC.

Items 32 and 33 establish the role, functions and guidelines related to the actions of the CEO.

Items 34 to 51 replace references to 'Council' with references to 'the CEO'.

Item 52 repeals the existing Part of the Act providing for the functions of the Council (Part 4) and replaces it with a new Part setting out the new functions of the Council.

Items 53 to 68 make various amendments related to the role and functions of Principal Committees of the NHMRC (Embryo Licensing Committee, Research Committee, Australian Health Ethics Committee, Working Committees).

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Item 69 provides for appointments, terms and conditions for the CEO, Chair of Council and Principal Committees, the members of Council, Principal Committees and Working Committees (Part 5); and arrangements relating to staff, consultants and other work matters (Part 6).

Items 70 to 74 make amendments to the Medical Research Endowment Fund.

Items 75 to 86 make various amendments intended to bring the wording of the Act in line with the new structure given effect by the Bill.

Items 87 to 93 make various amendments related to the Commissioner of Complaints.

Items 94 to 99 make various amendments related to the treatment of confidential information in order to reflect the changes brought about by the Bill.

Item 100 repeals provisions protecting the NHMRC from civil actions because such protection will no longer be necessary when the NHMRC becomes legally part of the Commonwealth following passage of this Bill.

Items 101 to 103 make amendments related to delegation of powers or functions by the Minister and CEO.

Items 104 to 107 make minor amendments to the arrangements for annual reports by the NHMRC.

Item 108 repeals the tax exemption for the NHMRC because the exemption will no longer be relevant when the NHMRC becomes legally part of the Commonwealth following passage of this Bill.

Item 109 repeals the transitional arrangements put in place when the NHMRC legislation was introduced in 1992.

Items 110 to 122 make minor amendments to the following Acts to reflect the changes made by this Bill: *Australian Institute of Health and Welfare Act 1987*, *Food standards Australia New Zealand Act 1991*, *Freedom of Information Act 1982*, *National Health Act 1953*, *Privacy Act 1988*, *Research Involving Human Embryos Act 2002*, *Therapeutic Goods Act 1989*.

Item 123 makes a minor amendment to the wording of the Act to reflect the changed NHMRC structure brought about by this Bill.

Items 124 to 143 establish transitional provisions to cover the period between the passage of the Bill and commencement of the changes made by this Bill.

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Concluding comments

The Government argues that this Bill addresses governance concerns raised in recent reports both on the operation of the NHMRC and other statutory agencies. It further argues that ‘the Bill will not affect the level of funding the Government has allocated for health and medical research, but provides for a more effective, efficient, accountable and responsive agency’.⁹ The Bill has attracted very little public commentary from either the media or the Opposition and minor parties and is, in this respect, uncontroversial.

Nevertheless, it is important to note that the model of governance proposed in the Bill does not include a statutory board. This is contrary to the specific recommendation of the Grant Review, which argued that the NHMRC should be governed by a Board of 10-12 members that reports directly to the Minister for Health and Ageing. The Government would argue that the ‘governance by CEO’ model it has decided upon reflects the general approach suggested in the Uhrig Review. However, one commentator has argued that this model potentially places too much power in the hands of the Minister and that the ‘governance by board’ model would be more consistent with the independent focus expected of a body such as the NHMRC (given its particular functions in driving the national research agenda and providing independent advice on health and medical matters).¹⁰

Endnotes

1. *Governance of the National Health and Medical Research Council*, Audit Report No. 29, 2003-04, Australian National Audit Office, February 2004, at <http://www.anao.gov.au/WebSite.nsf/Publications/43951F0CEE2A6186CA256E3F0013CD33>, accessed 9 May 2006.
2. *Sustaining the Virtuous Cycle For a Healthy, Competitive Australia: Investment Review of Health and Medical Research*, Investment Review of Health and Medical Research Committee, December 2004, p. 3, at [http://www.health.gov.au/internet/wcms/publishing.nsf/Content/health-hsid-investreview/\\$FILE/Executive_Summary.pdf](http://www.health.gov.au/internet/wcms/publishing.nsf/Content/health-hsid-investreview/$FILE/Executive_Summary.pdf), accessed 9 May 2006
3. Hon. Tony Abbott, Minister for Health and Ageing, *New governance arrangements for NHMRC next year*, media release, 7 September 2006.
4. Senator, Hon. Nick Minchin, Minister for Finance and Administration, ‘National Health and Medical Research Council Amendment Bill 2006—Second Reading Speech’, Senate, *Debates*, 29 March 2006, p. 1.
5. Martin Van Der Weyden, ‘Government reform of the NHMRC needs a rethink’, *Australian Medicine*, 17:19, 17 October 2006, p. 17; Martin Van Der Weyden, ‘Modernising the National Health and Medical Research Council’, *Medical Journal of Australia*, 183:7, 3 October 2005, pp. 340–2.

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6. Martin Van Der Weyden, 'Modernising the National Health and Medical Research Council', op. cit., p. 342.
7. *ibid.*
8. Senator, Hon. Nick Minchin, Minister for Finance and Administration, 'Australian Government Response to Uhrig Report', media release, 12 August 2004.
9. Senator, Hon. Nick Minchin, Minister for Finance and Administration, 'National Health and Medical Research Council Amendment Bill 2006—Second Reading Speech', op. cit., p.3.
10. Martin Van Der Weyden, 'Government reform of the NHMRC needs a rethink', op. cit., p.1.

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