



Australian Research Council Amendment Bill 2006

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This replaces the 11 May 2006 version of this Digest which contained an error in respect of item 1 of Schedule 1.

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Australian Research Council Amendment Bill 2006

Date introduced: 30 March 2006

House: House of Representatives

Portfolio: Education, Science and Training

Commencement: Sections 1 to 3 commence on Royal Assent. The provisions dealing with the governance structure (Schedule 1) commence on the later of Royal Assent or 1 July 2006. The provisions covering the funding of research (Schedule 2) commence on the day after Royal Assent.

Purpose

The main purpose of the Bill is to amend the governance structure of the Australian Research Council in line with the broad recommendations of the 2003 [Review of the Corporate Governance of Statutory Authorities and Office Holders](#) (the Uhrig Report).

Background

The Australian Research Council

The Australian Research Council (ARC) was originally created through the *Employment, Education and Training Act 1988*, but subsequently became an independent statutory body under the *Australian Research Council Act 2001* (the ARC Act). The ARC is currently governed by a [board](#).

Under the section 6 of the ARC Act, ARC functions include providing recommendations to the Science Minister for funding under grants programs administered by it and more generally providing any advice on research matters requested by the Minister.¹ The various research grants programs are provided under the Federal Government's [Backing Australia's Ability](#) initiative, a ten-year program running from 2001-2011. Details of the ARC's National Competitive Grants Program (NCGP) can be accessed at http://www.arc.gov.au/grant_programs/default.htm.

The Uhrig Report

On 15 July 2005, Education Minister Brendan Nelson [announced](#) the intention to abolish the ARC Board, with the ARC to be headed by a Chief Executive Office, Professor Peter Høj.² According to the Minister, the decision was informed by the recommendations of the Uhrig Report.

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The Uhrig Report recommended two templates be applied to ensure good governance of statutory authorities: agencies should either be managed by a Chief Executive Officer (CEO) or by a board structure. Both templates detail measures for ensuring the boundaries of responsibilities are better understood and the relationship between Australian government authorities, Ministers and portfolio departments are made clear.

The report recommended that the selection of the management template and financial frameworks to be applied should be based on the governance characteristics of a statutory authority:

- The *Financial Management and Accountability Act 1997* should be applied to statutory authorities where it is appropriate that 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.

In general, agencies which 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 Australian National Audit Office report

On 4 May 2006, the Australian National Audit Office (ANAO) released its report [*The Australian Research Council's Management of Research Grants*](#).³ The overall audit conclusion was:⁴

37. The audit identified that ARC was meeting the requirements of the ARC Act in administering grants for basic and applied research. However, shortcomings in ARC's administrative processes meant that ARC was not in a position to determine and inform the government about whether all grants met their objectives, that funds were used as intended, and that ARC goals were being fully met. While ARC had a strong focus on selecting the best applications, it had few systematic processes to enable effective or timely post-award management of grants.

38. ARC had established governance and organisational structures that supported the National Competitive Grants Program (NCGP), ARC's vehicle for administering grants. Overall, the ARC had developed a workable decentralised model with universities for administering grants on ARC's behalf. Funding Agreements were in place and ARC's monthly payments to universities were accurate and timely. However, ARC had few systematic processes to monitor progress and final reporting

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of projects. As a result, ARC could not fully account that grants were used as intended, or assess the extent that ARC's output and outcome were being met.

39. ARC has a substantial peer-review process in place, with a strong focus on research merit and national benefit. This enables ARC to select and fund high calibre research.

40. ANAO has made nine recommendations and a number of suggestions to strengthen ARC's management of grants, with particular emphasis on improving the effectiveness, transparency and accountability of ARC's grants administration. These recommendations are particularly important in light of changes to ARC's governance announced by the then Minister following the Uhrig Review.

In particular reference to the Uhrig Report and the ARC, the ANAO report stated:⁵

2.22 The Uhrig Review emphasised the primary role that departments and portfolio secretaries have in providing advice and support to their Ministers. The Government endorsed the report's governance principles.

Departments are the primary source of public sector advice to Ministers and are best placed to support Ministers in the Governance of the statutory authorities. In this respect they are akin to an advisory function within a parent company in providing advice to the CEO about activities of the company's subsidiaries.

2.23 ARC is an integral component of broader government initiatives, particularly in the areas of national research priorities and development of a new research quality framework. To ensure a well-coordinated and complementary approach to implementing Government policies and programs, it is important for ARC and DEST to develop and maintain clear links through formal as well as informal arrangements.

2.24 ANAO found that while ARC sits within the Education, Science and Training portfolio, ARC had little documentation describing formal arrangements between ARC and DEST for key administrative processes, such as clearing of key documents or exchanging information and data. ANAO also noted that, as a result of the then Minister's impending retirement of the Board, the DEST Secretary would no longer link ARC and DEST through her Board membership. This raised a risk that advice and information from DEST on issues such as strategic planning would be diminished.

2.25 ANAO found sufficient business risks in the current process to recommend that ARC and DEST formalise their consultative and reporting activities, to ensure regular and ongoing information exchange between ARC and DEST on common policy areas such as national research policy, and on broader significant administrative matters. This could be through a Memorandum of Understanding or other similar means.

Recommendation No.1 - 2.26 Consistent with the Government's expectation following the *Review of the Corporate Governance of Statutory Authorities and Office Holders* and to ensure regular and ongoing information exchange and

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reporting, ANAO recommends that ARC and DEST develop a Memorandum of Understanding or similar arrangement.

ARC's response: Agreed.

DEST's response: Agreed.

DEST agrees with Recommendation 1 and notes the importance of requiring a Memorandum of Understanding between DEST and the ARC.

This is consistent with the Government's expectation following the *Review of the Corporate Governance of Statutory Authorities and Office Holders* and will ensure regular and ongoing information exchange and reporting between the two agencies.

DEST enjoys a good working relationship with the ARC and will work with the ARC to ensure that the Memorandum of Understanding formalises consultative and reporting activities on national research policy matters.

Commentary on the proposed changes to the governance structure

In response to the Government's intention to retire the ARC Board by early 2006, the Australian Vice-Chancellors' Committee stressed the need for peer review in any new ARC legislation and concern about its operation without a board.⁶ The National Tertiary Education Union has expressed similar sentiments, believing that the board is a source of strategic advice on research funding and a buffer to the political whims of the day.⁷ In a [submission](#) to the Senate Employment, Workplace Relations and Education Committee [inquiry](#) into the Bill, the Federation of Australian Scientific and Technological Societies (FASTS) commented:⁸

FASTS believes the disestablishment of the ARC Board does not, in and of itself, undermine the capacity of the ARC to carry out its functions although we note that the proposed changes to the Act will mean the integrity of the relations between the Minister and the CEO of the ARC will be of critical importance. FASTS argues the Government is entitled to publicly state its expectations, provide broad direction, approve funding rules and criteria, set funding caps on programs and accept or not accept advice. In turn, the ARC is entitled to determine and manage operational issues as to how it develops and provides advice on funding decisions and other matters related to research consistent with the scope specified by the Government. FASTS believes there are weaknesses in the legislation with implications for how the ARC carries out its functions of making high quality funding recommendations and providing advice to the Minister on matters relating to research.

Accordingly, FASTS recommends the legislation be amended to:

- ensure the integrity of the selection of members of committees, notably the College of Experts, that play a role in the peer or expert review process leading to recommendations for funding;

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- confirm the ARC has the power to initiate inquiries into matters relating to research of its own volition, and
- provide the Minister greater flexibility to delegate powers.

However, other sectors note that the current research grants system may need an overhaul in order to foster a more efficient grant application process, given that significant resources are expended by the majority of unsuccessful grant applicants. As well, it may help make the selection process more open and accountable. Such issues were explored in the ANAO report discussed above.

In reference to the College of Experts comment in the FASTS submission quoted above, the Minister committed, in the second reading speech for the Bill, to retaining this group in its current role.⁹ The Minister has also said that she intends to form another committee:¹⁰

The CEO will receive input on research matters directly from an advisory committee which I will create under the new provisions of the act. The committee will have a broad membership and will focus on providing strategic advice about the ARC's operations. The committee will not look at individual grant applications.

Financial implications

The Explanatory Memorandum comments:¹¹

The Bill increases the overall appropriation by \$572.250 million due to the indexation of existing grant funding and the extension of the funding cap to include the last year of the 2005-06 forward estimates period (2008-09). This increase was announced as part of the Government's 10-year commitment to Science and Innovation as announced in *Backing Australia's Ability: Building our Future through Science and Innovation* in May 2004.

Although not directly related to the Bill, in the 2006-07 Federal Budget, the ARC received a government allocation of \$14,922,000 just up from \$14,846,000 in the previous year. Average staffing levels were set to rise from 70 to 75 persons. The total administered appropriations rose significantly from \$546,151,000 to a budgeted \$570,302,000. This is a rise of 4.4 percent. The ARC had no new measures, but was subject to a budgetary adjustment due to a change in accounting policies on grants and liabilities.

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Main provisions

Schedule 1 – Structure of the Australian Research Council

The objects of the Act are contained in existing paragraphs 3(a) and 3(b). **Item 1** reorders the objects contained in paragraph 3(a). Specifically the existing object in subparagraph 3(a)(i) ('to establish a body...that will provide the Minister with high quality advice about matters related to research') now becomes subparagraph 3(a)(iii). Overall, however, the objects of the Act remain the same.¹²

Item 3 inserts **new Parts 2 and 4** into the Act to replace existing Parts 2, 3 and 4.¹³

New Part 2 specifies that the ARC will consist of the CEO, ARC staff and 'designated committees'. There will no longer be a board. The existing functions of the ARC in Part 2 – which include provision on advice on research matters requested by the Minister – now become functions of the ARC CEO and have been transferred to **new Part 5**.

New Part 4 deals with designated committees. The major changes of the current provisions dealing with committees is that these committees are, at least in a formal sense, more directly under the control of the Minister. Currently, the committees are established, and members are appointed, by the ARC board with the approval of the Minister. Under **new Part 4**, the establishment and membership is directed by the Minister, although presumably the Minister is advised by the ARC CEO in such matters. **New subsection 32(2)** does specify that 'the Minister must, in appointing members to a designated committee, try to ensure that the composition of the committee reflects the diversity of the interests in the matter or matters that the committee will be dealing with.'

New Part 5 deals with the position of the CEO. As mentioned above, the current functions of the ARC are transferred to become the functions of the CEO under **new section 33B**. **New section 33C** sets out the Minister's ability to direct the CEO in their performance of these functions. The limitation of the director power is the same as the existing in section 7 – that is, the Minister cannot direct that a *particular* grant proposal should, or should not, be approved as deserving financial assistance'. **Note that under section 51 of the Act it is the Minister, rather than the ARC, that makes a final decision on whether a grant proposal is to receive funding. This will not change under the Bill.** Any **new section 33C** directions must be tabled with 15 sitting days after it is given, as is the situation under the current Act.

Currently the CEO is appointed by the Minister after considering the ARC board's advice. This advice will no longer be available under the Bill. However, the provision that the Minister must 'consider' the candidates 'record in research and management' is retained in **new section 34**. The CEO may delegate his or her powers or functions, including those that have delegated to them by the Minister, to an ARC staff member down to the rank of Executive Level 2: **new section 66(2)**.

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Schedule 2 – Funding of Research

Existing section 49 of the Act sets out the annual cap on ARC grants funding for future years. **Item 2** repeals paragraphs 49(f), (g) and (h) and substitutes **new paragraphs 49(f), (g), (h) and (i)** which set out the funding caps for the financial years starting 1 July 2005 up to 1 July 2008. The cap for the 2006-07 financial year has been reduced by about \$15 million and the cap for 2007-08 has been reduced by about \$5 million. **New paragraph 49 (i)** adds an additional year of funding – the 2008-2009 financial year. That year has a cap of \$552.945 million.

Endnotes

1. Assessment of grant applications is actually done by the ARC's 'College of Experts' who then make appropriate recommendations to the ARC Board, see: http://www.arc.gov.au/about_arc/expert.htm.
2. 'Enhancing Governance Arrangements – Australian Research Council' *Media Release* 15 September 2005.
3. Audit Report No. 38 2005–06.
4. *ibid.*, p. 21.
5. *ibid.*, pp. 42–43.
6. 'Research grants board to go' *The Age* 19 July 2005 p. 1.
7. 'Minister's ARC grip stays tight' *The Australian* 5 April 2006 p. 24.
8. P. 1.
9. Hon. Julie Bishop, House of Representatives *Debates* 30 March 2006 p. 7.
10. *ibid.*
11. Explanatory Memorandum, p. 1.
12. Note that the 11 May 2006 version of this Digest was factually incorrect in its comments on **item 1** and therefore have been replaced by the current wording.
13. Existing Part 3 deals with the ARC Board.

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