



Primary Industries and Energy Research and Development Amendment Bill 2007

Juli Tomaras
Law and Bills Digest Section

Contents

Purpose.....	2
Background.....	2
Basis of policy commitment.....	2
The Uhrig Review	3
The Commonwealth financial framework.....	3
Rural Research and Development Corporations and Companies.....	4
Financial implications.....	5
Main provisions	5
Composition of Boards and Councils—Removal of appointment of government director/member.....	5
R&D plan consultation.....	5
Disclosure of interests of board members.....	5
Additional functions and reporting for R&D Corporations and Councils – strengthening accountability and transparency.....	6
Selection Committees.....	6
Improving the selection criteria of board members	6
Concluding comments	7
Endnotes.....	7

Primary Industries and Energy Research and Development Amendment Bill 2007

Date introduced: 1 March 2007

House: House of Representatives

Portfolio: Agriculture, Fisheries and Forestry

Commencement: Date of receiving the Royal Assent

Purpose

The *Primary Industries and Energy Research and Development Act 1989* (PIERD Act) provides for the establishment of rural Research and Development Corporations (RDCs) and is the legislative basis for regulating their funding and administration. The Bill makes a small number of important amendments, designed to deliver an enhancement in the governance of the 8 statutory rural Research and Development Corporations (RDCs).¹ The key amendments contained in the Bill are:

- discontinuing the appointment of an Australian Government Director to each RDC Board.
- providing for the expansion in the skill set for RDC Board selection so as to include expertise in public administration.
- providing for an improvement in Board expertise, experience and management arrangements.²

Background

Basis of policy commitment

The amendments in the Bill respond to the relevant findings of the [Review of the Corporate Governance of Statutory Authorities and Office Holders](#) (the Uhrig Review) conducted by Mr John Uhrig AC in 2003. They also follow an internal review by the Department of Agriculture, Fisheries and Forestry of the PIERD Act's operational and reporting requirements. The aims of the internal review were to:

- ascertain the appropriate and optimal balance between the Minister's role, effective communications and accountability and the role of the RDC boards.
- consider the interactions of the PIERD Act with the *Commonwealth Authorities and Companies Act 1997* (the CAC Act), having specific regard to accountability and management obligations imposed by the CAC Act.³

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

One of the key conclusions of the Minister's assessment was that the Board template (recommended by the Uhrig review) should be retained for each of the RDCs.

The Uhrig Review

As part of its 2001 election platform, the Coalition Government signalled its intention to examine the efficacy of governance arrangements of statutory authorities and office holders.

In November 2002 the Government announced a review of the governance practices of statutory authorities and office holders, with special focus on those agencies which impact on the business community. The Prime Minister, the Hon. John Howard, appointed Mr John Uhrig, AC, to head the review. The objective of the review was to examine and evaluate governance arrangements and practices and 'provide policy options for Government to get the best from statutory authorities and office holders and their accountability frameworks'.⁴ In doing so, the Government noted the impact that the performance of statutory authorities and office holders has on business and the overall health of the Australian economy. In particular, the review was to focus on the areas where businesses have the right to expect the highest levels of efficiency, fairness and transparency in their dealings with government.

A key task was to develop a broad template of governance principles that, subject to consideration by government, might be extended to all statutory authorities and office holders. As part of the process of developing a broad template, the review was asked to consider the governance structures of a number of statutory authorities and office holders with critical relationships with business and to consider best practice corporate governance structures in both the public and private sectors.⁵

The Report recommended that two templates should apply 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 is made clear.⁶ However, as Uhrig explained, the purpose of the template is 'to serve as a reference point' for the development of governance arrangements and so it is 'expressed as an ideal'.⁷

Uhrig recommended that the selection of the management template and financial frameworks⁸ to be applied should be based on the governance characteristics of a statutory authority.

The Commonwealth financial framework

Nearly all government bodies fall under the *Financial Management and Accountability Act 1997* (the FMA Act) or the *Commonwealth Authorities and Companies Act 1997* (the CAC Act).

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

The FMA Act focuses primarily on the obligations and responsibilities of Chief Executives and the way officials handle public money, public property and other resources of the Commonwealth. The FMA Act applies to budget-funded authorities managed by a CEO, and establishes various management and reporting responsibilities for the CEO (s. 44–46, 49 and 51), as well as allowing the Minister to give guidelines to the CEO (s. 64). Furthermore, the FMA Act provides an accountability framework for CEOs to manage agency resources.

The CAC Act, on the other hand, requires directors and officers to exercise their powers and duties in the best interests of the body and for a proper purpose. Directors' duties apply to help ensure that prudent decisions are made on the resources that, as a matter of law, the body holds in its own right. The CAC Act applies to authorities that are corporate entities managed by a board. It requires the head of the board to report to the responsible Minister (s. 15–16), and to ensure that the authority's activities comply with government policies (s. 28). A board structure is favoured if there is a strong commercial focus to the organisation, or if the agency is intergovernmental.

As at 31 January 2007, there were 94 FMA Act agencies and 99 CAC Act agencies.⁹ The Department of Finance and Administration publication [*Governance Arrangements for Australian Government Bodies*](#) (August 2005) provides further explanation on the FMA Act and CAC Act and a comparison between the two pieces of legislation.

On the basis of the findings of the Uhrig Review, Ministers and their Departments have been undertaking an assessment of their portfolio agencies against the governance templates.¹⁰ The Minister for Finance and Administration has assumed a coordinating role in these reviews.¹¹ Thus, a number of similar Acts have been passed by Parliament incorporating Uhrig Review recommendations.

Rural Research and Development Corporations and Companies

In the mid-1980s the then Minister for Primary Industries and Energy, John Kerin, identified the need for reforms to rural 'research and development' (R&D). These reforms were put into legislation which provided for the establishment of 14 Rural Research and Development Corporations (RDCs). The RDCs represent a unique partnership between the Commonwealth Government and industry that generates widespread benefits for the Australian economy. The reforms that took place in the 1980s were the basis for the current governance arrangements.

The significance of agricultural, forestry, food and fisheries products to the Australian economy is most usefully gauged by reference to more than one measure. One useful indicator, however, is its contribution to Australian exports, which is estimated to represent around 19 per cent of Australian exports of goods and services.

The role that RDCs have the capacity to play is therefore vital.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Research and development corporations (RDCs) and companies are rural research funding agencies that invest in rural R&D in the aim of achieving better productivity and the delivery of high quality products which underpins the competitiveness and profitability of Australia's agricultural, fish and forestry industries. R&D and innovation also support sustainability of primary production and the natural resource base.¹²

Financial implications

The Explanatory Memorandum states that there is no financial impact on the Commonwealth.

Main provisions

Composition of Boards and Councils—Removal of appointment of government director/member

One of the main objects of the Bill is to discontinue the appointment of a government director to each RDC Board and Council. Amendments made under the following items accordingly delete the various references to **government director** and/or **government member: (items 1–6, 8, 10, 13–17, and 20–22).**

Item 9 is consequential, permitting the number of directors, as determined by the Minister, to remain an odd number.

R&D plan consultation

Section 24 of the PIERD Act deals with the requirements for consultation that must be followed prior to preparing or varying an R&D plan. **Item 11** requires the RDC to also consult with the Minister in preparing or varying a research and development plan.

Disclosure of interests of board members

Section 84 of the current PIERD Act states that:

The Executive Director must give written notice to the Chairperson of all direct or indirect pecuniary interests that the Executive Director has or acquires in any business or in any body corporate carrying on any business.

Item 18 repeals section 84 so as to eliminate a possible inconsistency with the CAC Act, and leave no room for doubt that ‘all directors on RDC boards, including the Executive Director, are subject to the notification regime for material personal interest in the CAC Act’.¹³

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Additional functions and reporting for R&D Corporations and Councils – strengthening accountability and transparency

Items 7, 12, 19 and 23 add a new requirement for R&D Boards and Councils to report on the impact their research activities have had on the relevant primary industry (or class of industries).

Selection Committees

Selection Committees perform an obvious and important role in nominating appropriate persons as directors of R&D Corporations, predominantly—Commonwealth-funded R&D Corporations or R&D Councils. **Items 24–28** make an explicit direction about the desirability of establishing Selection Committees whose composition reflects a diversity of expertise, experience and gender. In each case, the Minister or Presiding Member is to point out to constituent organisations ‘the desirability of reflecting a diversity of expertise, experience and gender among the nominees’ for Selection Committees.

Item 29 requires Selection Committees to specify how their nominations will ensure that an R&D Corporation or R&D Council collectively possesses experience in board affairs, in addition to the existing requirement for an appropriate balance of expertise.

Improving the selection criteria of board members

The Uhrig Review found that the performance of boards of statutory authorities was reduced by—among other factors—insufficient diversity¹⁴ among, and limitations in the skills and experience of board directors. Uhrig drew attention to the significance of and necessity for having board members with ‘appropriate characteristics, attributes and experience that would benefit the board’.¹⁵ **Items 30–32** contain amendments which respond to this recommendation by Uhrig and the findings of the internal agency review, including the addition of expertise in public administration to the list of qualifications for nomination to a Board or Council.

Item 34 – Inclusion of additional item in Annual Reports of Selection Committees

As a further measure to secure greater accountability, this item inserts a provision after subsection 14(1) requiring that the reports of a Selection Committee for a financial year also include an assessment of the processes undertaken by each Selection Committee to identify the widest possible field of available candidates for nomination for appointment to the Corporation.

Item 33 – Transitional provisions for items 23-31

Notwithstanding the amendments made to Part 4 of the PIERD Act, this item permits transition provisions to apply to items 23-31. This means that the provisions which operated immediately before the commencement of this item, will continue to apply in

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

relation to a written notice given by the Minister before the commencement under section 123(1) or (2) – as if these amendments had not been made.

Concluding comments

As already noted, this Bill is one of series introduced by the government to make what it considers to be relevant and appropriate reforms in response to the Uhrig Review and corresponding internal agency reviews. However, it is unclear as to whether these reforms will, in and of themselves, guarantee the desired outcomes.

Endnotes

1. Six of these RDCs cover the cotton; fisheries; forest and wood products; grains; grape and wine; and sugar industries. There is also a Rural Industries RDC (covering smaller and emerging industries), and the Land and Water Resources RDC.
2. Explanatory Memorandum, p. 2.
3. *ibid*
4. Senator the Hon. N. Minchin, Australian Government Response to Uhrig Report, Media Release, 12 August 2004.
5. J. A. Uhrig, AC, Review of Corporate Governance of Statutory Authorities and Office Holders, June 2003, p. 1.
6. Senator the Hon. N. Minchin, Australian Government Response to Uhrig Report, Media Release, 12 August 2004.
7. Uhrig, *op. cit.*, p. 83.
8. *ibid*, p. 12, point 6.
9. Department of Finance and Administration, Chart of FMA Act and CAC Act agencies, http://www.finance.gov.au/Publications/docs/FMA_CACFlipchart.pdf, accessed on 1 May 2007.
10. 'More than 160 Australian Government Agencies are being assessed against the Uhrig Report principles and templates'. Susan Ley, MP, Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry, 'Second Reading Speech: Primary Industries and Energy Research and Development Amendment Bill 2007', House of Representatives, *Debates*, 1 March 2007.
11. *ibid*
12. <http://www.daff.gov.au/content/output.cfm?ObjectID=D2C48F86-BA1A-11A1-A2200060B0A03880> > Accessed 10 April 2007.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

13. Explanatory Memorandum, p. 4.
14. It has been noted that board diversity may avoid the development of ‘group think’ phenomenon by offering the prospect of a variety of differing perspectives which act as error-correcting mechanisms in decision making. Edwards, M & Clough, R, ‘Corporate Governance and Performance’, Corporate Governance ARC projects, Issues Series, Paper No.1, University of Canberra, Canberra, January 2005.
15. Uhrig Report, op. cit., p. 82.

© Copyright Commonwealth of Australia 2007

Except to the extent of the uses permitted under the *Copyright Act 1968*, no part of this publication may be reproduced or transmitted in any form or by any means including information storage and retrieval systems, without the prior written consent of the Department of Parliamentary Services, other than by senators and members of the Australian Parliament in the course of their official duties.

This brief has been prepared to support the work of the Australian Parliament using information available at the time of production. The views expressed do not reflect an official position of the Parliamentary Library, nor do they constitute professional legal opinion.

Members, Senators and Parliamentary staff can obtain further information from the Parliamentary Library on (02) 6277 2404.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.