



Australian Centre for International Agricultural Research Amendment Bill 2007

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Australian Centre for International Agricultural Research Amendment Bill 2007

Date introduced: 10 May 2007

House: House of Representatives

Portfolio: Foreign Affairs

Commencement: 1 July 2007

Purpose

The purpose of the Bill is to amend the *Australian Centre for International Agricultural Research Act 1982* (the ACIAR Act) – which establishes the Australian Centre for International Agricultural Research (ACIAR) and is the legislative basis for regulating its administration. The key amendments contained in the Bill are:

- the abolition of a Board of Management of the Centre along with the office of Director.
- the establishment of a seven-member expert Commission for International Agricultural Research (the Commission).
- amendment of the ACIAR Act so as to avoid duplication in the membership of the proposed Commission and the current Policy Advisory Council.
- creation of a new position of Chief Executive Officer (in place of the current Director) who will be directly accountable to the Minister for administrative and financial purposes under the *Financial Management and Accountability Act 1997*.
- removal of body-corporate status from ACIAR.¹

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 Australian Centre for International Agricultural Research.

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The Uhrig Review

As part of its 2001 election platform, the Coalition Government signalled its intention to examine the efficacy of the 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 options for the Government to improve the performance and get the best from statutory authorities, their office holders and their accountability frameworks’.² 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.³

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.⁴ 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’.⁵

Uhrig 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.⁶

Responses to the Uhrig Review

For a summary of the responses and debate that followed the release of the review, please refer to Dr. Richard Grant, ‘[The Uhrig Review and the future of statutory authorities](#)’, *Research Note*, no. 50, Parliamentary Library, 2004–05.

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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).

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 (sections 44–46, 49 and 51), as well as allowing the Minister to give guidelines to the CEO (section 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 (sections 15–16), and to ensure that the authority's activities comply with government policies (section 28). A board structure is favoured if there is a strong commercial focus to the organisation, or if the agency is intergovernmental.

As at 15 May 2007, there were 94 FMA Act agencies and 99 CAC Act agencies.⁷ 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.⁸ The Minister for Finance and Administration has assumed a coordinating role in these reviews.⁹ Thus, a number of similar Acts have been passed by Parliament incorporating Uhrig Review recommendations.

Australian Centre for International Agricultural Research (ACIAR)

ACIAR was established to play a special role as part of the Australian Government's development cooperation programs. ACIAR's mandate is to encourage, commission and support research for the purpose of identifying or finding solutions to agricultural problems facing developing countries. The research projects funded by ACIAR are formulated within a framework reflecting 'the priorities of Australia's aid program and national research strengths, together with the agricultural research and development priorities of partner countries'.¹⁰

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Financial implications

The Explanatory Memorandum states that there is no financial impact.

Main provisions

Definitions

It is proposed that the Board of Management of the Centre along with the office of Director be abolished and replaced by a Commission for International Agricultural Research and a new position of CEO. **Items 2–8** repeal some definitions and insert others so as to reflect these revised governance arrangements incorporating an executive management structure.

Removal of ACIAR's status as a body corporate

The governance review of ACIAR concluded that, as a budget-funded prescribed agency under the FMA Act, which does not need to own assets in its own right, ACIAR no longer needed body corporate status. **Item 9** repeals the subsections establishing the status of ACIAR as a body corporate and replaces them with a proposed subsection 2 which states that the Centre will be composed of a CEO and the staff of the Centre referred to in section 30 of the Act.

The new office and role of CEO

Item 10 inserts a **new section 4A** which establishes the statutory office of CEO. **Items 11–14 and 16** are consequential amendments designed to reflect the fact that the functions currently performed by the Centre will be vested in the CEO as part of the new governance arrangements.

Power of the Minister to give directions to the CEO

Item 15 proposes a **new section 5A** which permits the Minister to give the CEO written directions ‘with respect to the performance of the CEO’s functions under this Act (including in relation to the appropriate strategic direction the CEO should take in performing his or her functions)’.

The Explanatory Memorandum states that this amendment is similar to the terms upon which the Minister is able to give directions to the Board under the current Act. However, it is noteworthy that **under the existing Act, such direction by the Minister to the Board contains a couple of checks** which seem to be absent in the amendment proposed by item 15.

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Under **section 16** of the **current Act**, in giving a direction such as that proposed by item 15, the Minister is required to have regard to any relevant advice that he may have received from the Policy Advisory Council under section 18.¹¹ Furthermore, the annual report of the Centre shall set out all directions given by the Minister under this section. **These checks on ministerial power have not been added to the proposed section 5A.**

The Commission for International Agricultural Research

The Commission and the Commissioners

Item 17 repeals Part III of the current Act—which established the Board of Management of the Centre—and replaces it with new provisions for the **establishment of a Commission for International Agricultural Research**. The Explanatory Memorandum states that these amendments are designed to give effect to the executive management model proposed by the Uhrig Review. However, the Commission is to retain a capacity for collective decision-making and the provision of expert advice to the Minister on particular aspects of the Centre's operations.

Division 1, proposed section 8: the Commission will consist of a Chair and six other Commissioners.

Division 1, proposed section 9: specifies the functions of the Commission. These functions are: the provision of expert advice in relation to the formulation and funding of specific programs, the setting of priorities, and any other matter relating to the Act as requested by the Minister. The explicit articulation and separation of roles between the Commission and the CEO is deliberately designed to reflect the new governance and accountability arrangements.

Division 2, proposed section 10: the Commissioner is to be appointed by the Governor-General and enjoy a period of office of not more than three years. A person cannot be appointed as both a Commissioner and a member of the Policy Advisory Council.

Division 2, proposed section 11: Commissioners will hold office on a part-time basis.

Division 2, proposed section 14: Acting Commissioners may be appointed by the Minister in certain circumstances.

Division 2, proposed section 16: A Commissioner may resign his or her appointment by giving the Governor-General notice in writing.

Termination of appointment of a Commissioner

Division 2, proposed section 16A: A Commissioner's appointment *may* be terminated by the Governor-General for misbehaviour or physical or mental incapacity.

A Commissioner's appointment *must* be terminated by the Governor-General if:

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- the Commissioner becomes bankrupt; or
- the Commissioner applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
- the Commissioner compounds with his or her creditors; or
- the Commissioner makes an assignment of his or her remuneration for the benefit of his or her creditors; or
- the Commissioner is absent, except on leave of absence, from three consecutive meetings of the Commission; or
- the Commissioner fails, without reasonable excuse to comply with the requirement that he or she disclose personal interests (see **proposed section 16B**).

Disclosure of interests by the Commissioner

Division 2, proposed section 16B: Proposed subsection (1) mandates that a Commissioner must ‘**give written notice to the Minister** of any direct or indirect pecuniary interest that the Commissioner has or acquires and that conflicts or could conflict with the proper performance of the Commissioner’s functions’.

Proposed subsection (2) mandates that ‘a Commissioner who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Commission **must disclose** the nature of the **interest to a meeting of the Commission**’. This disclosure must be made as soon as possible after the relevant facts have come to the Commissioner’s knowledge and must be recorded in the minutes of the meeting. The Commissioner must not be present or take part in any deliberation by the Commission on any such matter.

Meetings of the Commission

The proposed provisions under **Division 3** establish the arrangements regarding meetings of the Commission. These requirements are similar to those currently in force for meetings of the Board.

Delegation by Commission

Proposed Part III, Division 4, section 16J allows the Commission, by resolution, to delegate all or any of its functions or powers under the Act to a Commissioner. Explicit checks and balances are provided in relation to this delegation.

Directions by the Minister

Proposed Part III, Division 5, section 16K enables the Minister to give written directions to the Commission in regards to the performance of the Commission’s functions under the Act. In doing so, the Minister is required to have regard to any relevant advice that he or

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she may have received from the Policy Advisory Council under **section 18**. The minister is obliged to give a copy of the written direction to the CEO. The Explanatory Memorandum states that this arrangement is designed to enable the Minister to direct the Commission to perform its functions under the Act in a particular way. No further clarification of this point is provided.

The CEO

Item 25 repeals **Part V** of the ACIAR Act—which established the **office of Director**—and substitutes it with a **new Part V**, which establishes the statutory **office of CEO**, in keeping with an executive management structure.

Proposed section 24 deals with the appointment of the CEO. The CEO is to be appointed by the Governor-General and holds office for a specified period which must not exceed seven years. The Explanatory Memorandum makes it clear that the operation of this section is not meant to limit the operation of the *Acts Interpretation Act 1901*, which provides that the power to appoint includes the power to re-appoint.¹²

Proposed subsection 24(3) provides that a **CEO may be appointed as both the CEO and a Commissioner** (including the Chair). The Explanatory Memorandum states that ‘it is intended that the CEO will be a member of the Commission, thereby ensuring consistency in advice to the Minister’.¹³ It is even envisaged that the Chair of the Commission may also be appointed as the CEO.

Proposed section 25 provides that the CEO will hold office on a full-time basis. Where the CEO is also a Commissioner, the position of Commissioner will be held on a part-time basis.

The appointment of the CEO may be terminated on almost the same conditions as the appointment of a Commissioner (**proposed section 29C**). Possible additional reasons for termination are that the CEO:

- is absent, except on leave of absence, for 14 consecutive days or 28 days in 12 months; or
- engages, except with the Minister’s approval, in paid employment outside the duties of his or her office; or
- fails, without reasonable excuse, to comply with the requirement that he or she disclose personal interests (**see proposed section 29D**).

Proposed section 29D mandates that the CEO must ‘**give written notice to the Minister** of any direct or indirect pecuniary interest that the CEO has or acquires and that conflicts or could conflict with the proper performance of the CEO’s functions’.

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Proposed section 29E is designed to clarify that the CEO is not subject to direction by the Commission in regard to the CEO's performance of functions or exercise of powers under the FMA Act or the *Public Service Act 1999*, in relation to ACIAR.

Item 41 provides that the Minister may, by writing, delegate to any person all or any of the Minister's functions or powers under this Act.

Concluding comments

As already noted, this Bill is one of series introduced by the government designed to make relevant and appropriate reforms in response to observations and conclusions made by the Uhrig Report. It also responds to a recent assessment of the ACIAR. The specific amendments are designed to improve and strengthen the governance arrangements of the ACIAR.

Endnotes

1. Hon. Greg Hunt, MP, Parliamentary Secretary to the Minister for Foreign Affairs, 'Second reading speech: Australian Centre for International Agricultural Research Amendment Bill 2007', House of Representatives, *Debates*, 10 May 2007, p. 6.
2. Senator the Hon. N. Minchin, [Australian Government Response to Uhrig Report](#), media release, 12 August 2004.
3. J. A. Uhrig, AC, *Review of the Corporate Governance of Statutory Authorities and Office Holders*, Canberra, June 2003, p. 15.
4. Senator the Hon. N. Minchin, op. cit.
5. Uhrig, op. cit., p. 79.
6. *ibid.*, p. 12, point 6.
7. Department of Finance and Administration, 'Chart of 94 Agencies under the Financial Management and Accountability Act 1997 (FMA Act), Chart of 99 bodies under the Commonwealth Authorities and Companies Act 1997 (CAC Act)', http://www.finance.gov.au/Publications/docs/FMA_CACFlipchart.pdf, accessed on 22 May 2007.
8. 'More than 160 Australian Government Agencies are being assessed against the Uhrig Report principles and templates'. Sussan 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, p. 10.
9. *ibid.*

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10. Australian Centre for International Agricultural Research, 'About us', <http://www.aciar.gov.au/web.nsf/doc/acia-5kj3ex>, accessed on 18 May 2007.
11. Section 18 defines the functions of the Policy Advisory Council.
12. Explanatory Memorandum, p. 9.
13. *ibid.*

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