



# **Australian Research Council Amendment Act 2006**

**No. 87, 2006**

**An Act to amend the *Australian Research Council  
Act 2001*, and for related purposes**

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## **An Act to amend the *Australian Research Council Act 2001*, and for related purposes**

[Assented to 30 June 2006]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Australian Research Council Amendment Act 2006*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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.	30 June 2006
2. Schedule 1	The later of: (a) the day after this Act receives the Royal Assent; and (b) 1 July 2006.	1 July 2006
3. Schedule 2	The day after this Act receives the Royal Assent.	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.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

## 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Structure of the Australian Research Council**

### **Part 1—Main amendments**

#### ***Australian Research Council Act 2001***

##### **1 Paragraph 3(a)**

Repeal the paragraph, substitute:

- (a) to establish a body for the following purposes:
  - (i) the making of high quality recommendations to the Minister in relation to which research programs should receive financial assistance under Division 1 of Part 7;
  - (ii) the administration of the regimes of financial assistance provided for in Divisions 1 and 2 of Part 7;
  - (iii) the provision of high quality advice to the Minister about matters related to research; and

##### **2 Section 4**

Repeal the section, substitute:

##### **4 Definitions**

In this Act:

***Account*** means the ARC Research Endowment Account established by section 62.

***ARC*** means the Australian Research Council established by section 5.

***CEO*** means the Chief Executive Officer of the ARC referred to in section 33A.

***designated committee*** has the meaning given by subsection 30(1).

***interest*** means any direct or indirect, pecuniary or non-pecuniary interest.

***research program*** means:

- (a) a program of research; or
- (b) a program that supports the conduct of a program of research.

*staff of the ARC* means the staff referred to in section 41.

### **3 Parts 2, 3 and 4**

Repeal the Parts, substitute:

## **Part 2—Australian Research Council**

### **5 Establishment of the ARC**

- (1) The Australian Research Council is established by this section.
- (2) The ARC consists of:
  - (a) the CEO; and
  - (b) the designated committees; and
  - (c) the staff of the ARC.

### **6 Function of the ARC**

The function of the ARC (other than the CEO) is to assist the CEO in the performance of his or her functions.

## **Part 4—Designated committees**

### **30 Minister may establish designated committees**

- (1) The Minister may establish a committee or committees (*designated committees*) to assist in carrying out the functions of the CEO.
- (2) The Minister may dissolve a designated committee at any time.

### **31 Functions of a designated committee**

- (1) A designated committee has the functions determined in writing by the Minister.
- (2) In performing its functions, the committee must comply with any directions given to the committee by the Minister.



*Instruments not legislative instruments*

- (3) An instrument under this section is not a legislative instrument.

**32 Appointment of designated committee members**

- (1) A designated committee consists of the members appointed by the Minister.
- (2) 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.
- (3) The Minister may designate a member of a designated committee as the Chair of the committee.

**33 Terms and conditions of designated committee members**

- (1) A member of a designated committee holds office for the period determined by the Minister.
- (2) A member of a designated committee holds office on the terms and conditions (in relation to matters not otherwise covered by this Act) determined by the Minister.
- (3) A designated committee member may resign by giving the Minister a written resignation.
- (4) The Minister may at any time terminate the appointment of a designated committee member.

**4 Part 5 (heading)**

Repeal the heading, substitute:

**Part 5—Chief Executive Officer and staff of the  
ARC**

**5 Before section 34**

Insert:

## **Subdivision A—Establishment and functions**

### **33A Establishment of the CEO**

There is to be a Chief Executive Officer of the ARC.

### **33B Functions of the CEO**

The CEO has the following functions:

- (a) to make recommendations to the Minister under section 52 in relation to which proposals should be approved as deserving financial assistance under Division 1 of Part 7;
- (b) to administer the regimes of financial assistance provided for in Divisions 1 and 2 of Part 7;
- (c) to provide advice to the Minister on research matters;
- (d) any other functions conferred on the CEO by this or any other Act.

### **33C Minister may direct CEO about performance of CEO's functions**

- (1) The Minister may, in writing, direct the CEO about the performance of the CEO's functions.
- (2) The Minister must not direct the CEO:
  - (a) to recommend that a particular proposal should, or should not, be approved as deserving financial assistance under Division 1 of Part 7; or
  - (b) in relation to the CEO's performance of functions, or exercise of powers, under the *Financial Management and Accountability Act 1997* or as an Agency Head under the *Public Service Act 1999*.
- (3) Particulars of any directions given by the Minister under subsection (1) in a financial year must be:
  - (a) tabled in each House of the Parliament within 15 sitting days of that House after the direction is given; and
  - (b) included in the annual report for the ARC for the financial year.

Note: For more information about the ARC's annual report, see section 46.

- (4) The CEO must comply with a direction under subsection (1).

*Directions are not legislative instruments*

- (5) A direction under subsection (1) is not a legislative instrument.

## **Subdivision B—Appointment, terms and conditions**

### **6 Section 34**

Repeal the section, substitute:

### **34 Appointment of the CEO**

- (1) The CEO is to be appointed by the Minister by written instrument for the period specified in the instrument. That period must not exceed 5 years.
- (2) The Minister must not appoint a person as CEO unless the Minister has considered the person's record in research and management.

### **7 Subsection 38(3)**

Omit "Subject to subsection (4), the", substitute "The".

### **8 Subsections 38(4) and (5)**

Repeal the subsections.

### **9 Section 39**

Repeal the section, substitute:

### **39 Disclosure of interests**

*Disclosure on appointment*

- (1) Before starting to hold office, the CEO must give to the Minister a written statement of any interest the CEO has that may relate to the functions of the CEO.

*Disclosures during term of appointment*

- (2) If the CEO has, or acquires, an interest that could conflict with the proper performance of his or her functions, he or she must disclose the nature of the interest to the Minister.

- (3) The disclosure must be made as soon as possible after the relevant facts come to the CEO's knowledge.

## **10 Division 2 of Part 5 (heading)**

Repeal the heading, substitute:

## **Division 2—Staff of the ARC**

### **11 Subsection 41(1)**

Omit "required to assist the ARC in the performance of its functions", substitute "of the ARC".

### **12 Subsection 42(1)**

Omit "Board", substitute "CEO".

Note: The heading to section 42 is altered by omitting "**Board**" and substituting "**CEO**".

### **13 Paragraph 42(4)(a)**

Omit "ARC in performing its", substitute "CEO in performing his or her".

### **14 Paragraph 42(4)(b)**

Omit "ARC's performance of its", substitute "CEO's performance of his or her".

### **15 Paragraph 42(4)(c)**

Omit "Board", substitute "CEO".

### **16 Subsection 43(1)**

Omit "Board" (first occurring), substitute "CEO".

### **17 Paragraph 43(1)(b)**

Omit "Board" (wherever occurring), substitute "CEO".

### **18 Subsections 43(2) and 44(1)**

Omit "Board" (wherever occurring), substitute "CEO".

### **19 Section 45**

Omit "ARC's performance of its", substitute "CEO's performance of his or her".

Note: The heading to section 45 is altered by omitting “**ARC’s**” and substituting “**CEO’s**”.

**20 At the end of section 45**

Add:

Note: For more information about the ARC’s annual report, see section 46.

**21 Subsection 46(1)**

Omit “Board” (first occurring), substitute “CEO”.

**22 Paragraph 46(1)(b)**

Omit “Board”, substitute “CEO”.

**23 Subsection 46(1) (note)**

Omit “subsections 6(4), 7(3), 10(2) and 11(2),”, substitute “subsection 33C(3)”.

**24 Section 47 (definition of *approved funding rules*)**

Omit “Board”, substitute “CEO”.

**25 Subsection 52(1)**

Omit “ARC” (first occurring), substitute “CEO”.

Note: The heading to section 52 is altered by omitting “**ARC**” and substituting “**CEO**”.

**26 Paragraph 52(1)(b)**

Omit “ARC”, substitute “CEO”.

**27 Subsection 52(2)**

Repeal the subsection.

**28 Subsections 52(3) and (4)**

Omit “ARC”, substitute “CEO”.

**29 Subsection 52(4) (note)**

Omit “ARC” (wherever occurring), substitute “CEO”.

**30 Subsection 53(1)**

Omit “ARC”, substitute “CEO”.

**31 Subsection 59(1)**

Omit “Board”, substitute “CEO”.

Note: The heading to section 59 is altered by omitting “**Board to make**” and substituting “**CEO to prepare**”.

**32 Paragraph 59(2)(e)**

Omit “Board”, substitute “CEO”.

**33 Subsection 59(2)**

Omit “ARC”, substitute “CEO”.

**34 Subsection 59(5)**

Omit “Board”, substitute “CEO”.

**35 Subsection 60(1)**

Omit “Board” (first occurring), substitute “CEO”.

**36 Paragraph 60(1)(b)**

Omit “Board” (wherever occurring), substitute “CEO”.

**37 Subsection 60(2)**

Omit “Board” (wherever occurring), substitute “CEO”.

**38 At the end of section 60**

Add:

*Approved rules are legislative instruments*

- (4) A set of rules made by the Minister on the day on which it is approved is a legislative instrument.

Note: The rules are not subject to disallowance: see subsection 44(2) of the *Legislative Instruments Act 2003*.

**39 Subsection 61(1)**

Omit “Board” (wherever occurring), substitute “CEO”.

**40 Subsection 64(1)**

Omit “ARC”, substitute “CEO”.

**41 Section 65**

Omit “ARC”, substitute “CEO”.

#### **42 Subsection 66(2)**

Repeal the subsection, substitute:

- (2) The CEO may, in writing, delegate all or any of the CEO’s powers or functions (including powers or functions delegated to the CEO by the Minister) to a member of the staff of the ARC who:
  - (a) is an SES employee or acting SES employee; or
  - (b) holds, or is acting in, an Executive Level 2, or equivalent, position.
- (3) A delegate must exercise a power delegated by the Minister or the CEO in accordance with any directions of the Minister or the CEO, as the case requires.

Note: The heading to section 66 is replaced by the heading “**Delegation**”.

## Part 2—Transitional provisions

### Division 1—Preliminary

#### 43 Definitions

- (1) In this Part:

*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

*amend* includes repeal and remake.

*Board* has the same meaning as in the old law.

*commencement time* means the time when this Part commences.

*instrument*:

- (a) includes:

- (i) a contract, deed, undertaking or agreement; and
- (ii) a notice, authority, order or instruction; and
- (iii) an instrument made under an Act or regulations; and
- (iv) regulations; but

- (b) does not include an Act.

*just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

*new law* means the *Australian Research Council Act 2001* as in force immediately after the commencement time.

*old ARC* means the Australian Research Council established by the old law.

*old law* means the *Australian Research Council Act 2001* as in force immediately before the commencement time.

- (2) Subject to subitem (1), an expression used in this Part that is also used in the new law has the same meaning in this Part as it has in the new law.

### Division 2—Reference to, and things done by or in relation to, old ARC

#### 44 References in instruments



*References to old ARC taken to be references to CEO*

- (1) If:
- (a) an instrument is in force immediately before the commencement time; and
  - (b) the instrument contains a reference to the old ARC;
- the instrument has effect from the commencement time as if the reference to the old ARC were a reference to the CEO.

*Minister and regulations may provide otherwise*

- (2) The Minister may, by writing, determine that subitem (1):
- (a) does not apply in relation to a specified reference; or
  - (b) applies as if the reference in that subitem to the CEO were a reference to the Commonwealth.

A determination under this subitem has effect accordingly.

- (3) The regulations may provide that an instrument containing a reference specified in a determination under paragraph (2)(a) has effect from the commencement time as if the reference were a reference to a specified person or body other than the Commonwealth or the CEO.

*Determinations are not legislative instruments*

- (4) A determination under subitem (2) is not a legislative instrument.

## **45 Operation of laws**

*Things done by old ARC or Board taken to be done by CEO*

- (1) Subject to Division 3, if, before the commencement time, a thing was done by, or in relation to, the old ARC or the Board, then, for the purposes of the operation of any law of the Commonwealth after the commencement time, the thing is taken to have been done by, or in relation to, the CEO.
- (2) For the purposes of subitem (1), a thing done before the commencement time under a provision that is amended by this Schedule has effect from that time as if it were done under that provision as amended. However, this is not taken to change the time at which the thing was actually done.

*Minister and regulations may provide otherwise*

- (3) The Minister may, by writing, determine that subitem (1):
- (a) does not apply in relation to a specified thing done by, or in relation to, the old ARC or the Board; or
  - (b) applies as if the reference in that subitem to the CEO were a reference to the Commonwealth.

A determination under this subitem has effect accordingly.

- (4) The regulations may provide for a thing specified in a determination under paragraph (3)(a) to be taken to have been done by, or in relation to, a specified person or body other than the Commonwealth or the CEO.

*Meaning of **doing***

- (5) To avoid doubt, for the purposes of this item, **doing** a thing includes making an instrument.

*Determinations are not legislative instruments*

- (6) A determination under subitem (3) is not a legislative instrument.

**46 Continued effect of certain instruments made under the old law**

- (1) The amendment of the *Australian Research Council Act 2001* by this Schedule does not affect the continuity of the following instruments as in force immediately before the commencement time:
- (a) a notice under paragraph 42(4)(c) of that Act;
  - (b) a strategic plan under Division 1 of Part 6 of that Act;
  - (c) a recommendation under subsection 52(1) of that Act;
  - (d) approved funding rules under Division 1 of Part 7 of that Act.
- (2) A direction under subsection 66(2) of the old law in force immediately before the commencement time continues to have effect from that time as if it were a direction under subsection 66(3) of the new law.

**Division 3—CEO and designated committees**

**47 CEO**

*Appointment, terms and conditions*

- (1) The person holding office as CEO under section 34 of the old law immediately before the commencement time:
- (a) is taken to have been duly appointed by the Minister under subsection 34(1) of the new law for the balance of the term of appointment under subsection 34(2) of the old law; and
  - (b) is taken to have been so appointed on the same terms and conditions as applied to the person immediately before the commencement time.

*Directions*

- (2) A direction:
- (a) under subsection 7(1) of the old law given to the Board about the performance of the ARC's functions; and
  - (b) in force immediately before the commencement time;
- continues to have effect from the commencement time as if it were a direction under subsection 33C(1) of the new law given to the CEO about the performance of the CEO's functions.

**48 Designated committees**

*Designated committees continue in existence*

- (1) A designated committee:
- (a) established under section 30 of the old law; and
  - (b) in existence immediately before the commencement time;
- continues in existence, from the commencement time, as if it were established under section 30 of the new law.

*Members*

- (2) A person holding office as a member of a designated committee under subsection 32(1) of the old law immediately before the commencement time:
- (a) is taken to have been duly appointed by the Minister under subsection 32(1) of the new law for the balance of the term of appointment under subsection 33(1) of the old law; and
  - (b) is taken to have been so appointed on the same terms and conditions as applied to the person immediately before the commencement time.

*Chairs*

- (3) The person designated as the Chair of a designated committee immediately before the commencement time is taken to have been so designated, on the commencement time, under subsection 32(3) of the new law.

**Division 4—Miscellaneous**

**49 Compensation for acquisition of property**

- (1) If the operation of this Part would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

**50 Delegation by Minister**

- (1) The Minister may, by writing, delegate all or any of his or her powers and functions under this Part to the CEO.
- (2) In exercising or performing powers or functions under a delegation under subitem (1), the CEO must comply with any directions of the Minister.
- (3) A power or function delegated to the CEO under subitem (1) must not be sub-delegated under subsection 66(2) of the new law.

**51 Regulations**

- (1) The Governor-General may make regulations prescribing matters:
- (a) required or permitted by this Part to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Part.
- (2) In particular, regulations may be made prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by this Schedule.

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## **Schedule 2—Funding of research**

### ***Australian Research Council Act 2001***

#### **1 At the end of subsection 48(2)**

Add:

; (e) the financial year starting on 1 July 2008.

#### **2 Paragraphs 49(f), (g) and (h)**

Repeal the paragraphs, substitute:

(f) for the financial year starting on 1 July 2005—\$546,151,000;  
and

(g) for the financial year starting on 1 July 2006—\$560,569,000;  
and

(h) for the financial year starting on 1 July 2007—\$550,583,000;  
and

(i) for the financial year starting on 1 July 2008—\$552,945,000.

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*[Minister's second reading speech made in—  
House of Representatives on 30 March 2006  
Senate on 15 June 2006]*

(29/06)

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