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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Australian Research Council
Amendment Bill 2006**

No. , 2006

(Education, Science and Training)

***A Bill for an Act to amend the *Australian Research
Council Act 2001*, and for related purposes***

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1 **A Bill for an Act to amend the *Australian Research***
2 ***Council Act 2001, and for related purposes***

3 The Parliament of Australia enacts:

4 **1 Short title**

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

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

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

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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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(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.

7

3 Schedule(s)

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

1
2 **Schedule 1—Structure of the Australian**
3 **Research Council**

4 **Part 1—Main amendments**

5 *Australian Research Council Act 2001*

6 **1 Paragraph 3(a)**

7 Repeal the paragraph, substitute:

8 (a) to establish a body for the following purposes:

- 9 (i) the making of high quality recommendations to the
10 Minister in relation to which research programs should
11 receive financial assistance under Division 1 of Part 7;
12 (ii) the administration of the regimes of financial assistance
13 provided for in Divisions 1 and 2 of Part 7;
14 (iii) the provision of high quality advice to the Minister
15 about matters related to research; and

16 **2 Section 4**

17 Repeal the section, substitute:

18 **4 Definitions**

19 In this Act:

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

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

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

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

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

29 *research program* means:

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

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

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

5 Repeal the Parts, substitute:

6 **Part 2—Australian Research Council**

7

8 **5 Establishment of the ARC**

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

14 **6 Function of the ARC**

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

17 **Part 4—Designated committees**

18

19 **30 Minister may establish designated committees**

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

23 **31 Functions of a designated committee**

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

1 *Instruments not legislative instruments*

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

3 **32 Appointment of designated committee members**

4 (1) A designated committee consists of the members appointed by the
5 Minister.

6 (2) The Minister must, in appointing members to a designated
7 committee, try to ensure that the composition of the committee
8 reflects the diversity of the interests in the matter or matters that
9 the committee will be dealing with.

10 (3) The Minister may designate a member of a designated committee
11 as the Chair of the committee.

12 **33 Terms and conditions of designated committee members**

13 (1) A member of a designated committee holds office for the period
14 determined by the Minister.

15 (2) A member of a designated committee holds office on the terms and
16 conditions (in relation to matters not otherwise covered by this
17 Act) determined by the Minister.

18 (3) A designated committee member may resign by giving the
19 Minister a written resignation.

20 (4) The Minister may at any time terminate the appointment of a
21 designated committee member.

22 **4 Part 5 (heading)**

23 Repeal the heading, substitute:

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

26 **5 Before section 34**

27 Insert:

1 **Subdivision A—Establishment and functions**

2 **33A Establishment of the CEO**

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

4 **33B Functions of the CEO**

5 The CEO has the following functions:

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

14 **33C Minister may direct CEO about performance of CEO's**
15 **functions**

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

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

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

2 *Directions are not legislative instruments*

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

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

5 **6 Section 34**

6 Repeal the section, substitute:

7 **34 Appointment of the CEO**

8 (1) The CEO is to be appointed by the Minister by written instrument
9 for the period specified in the instrument. That period must not
10 exceed 5 years.

11 (2) The Minister must not appoint a person as CEO unless the Minister
12 has considered the person's record in research and management.

13 **7 Subsection 38(3)**

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

15 **8 Subsections 38(4) and (5)**

16 Repeal the subsections.

17 **9 Section 39**

18 Repeal the section, substitute:

19 **39 Disclosure of interests**

20 *Disclosure on appointment*

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

24 *Disclosures during term of appointment*

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

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

3 **10 Division 2 of Part 5 (heading)**

4 Repeal the heading, substitute:

5 **Division 2—Staff of the ARC**

6 **11 Subsection 41(1)**

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

9 **12 Subsection 42(1)**

10 Omit "Board", substitute "CEO".

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

12 **13 Paragraph 42(4)(a)**

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

15 **14 Paragraph 42(4)(b)**

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

18 **15 Paragraph 42(4)(c)**

19 Omit "Board", substitute "CEO".

20 **16 Subsection 43(1)**

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

22 **17 Paragraph 43(1)(b)**

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

24 **18 Subsections 43(2) and 44(1)**

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

26 **19 Section 45**

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

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

2 **20 At the end of section 45**

3 Add:

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

5 **21 Subsection 46(1)**

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

7 **22 Paragraph 46(1)(b)**

8 Omit “Board”, substitute “CEO”.

9 **23 Subsection 46(1) (note)**

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

12 **24 Section 47 (definition of *approved funding rules*)**

13 Omit “Board”, substitute “CEO”.

14 **25 Subsection 52(1)**

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

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

17 **26 Paragraph 52(1)(b)**

18 Omit “ARC”, substitute “CEO”.

19 **27 Subsection 52(2)**

20 Repeal the subsection.

21 **28 Subsections 52(3) and (4)**

22 Omit “ARC”, substitute “CEO”.

23 **29 Subsection 52(4) (note)**

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

25 **30 Subsection 53(1)**

26 Omit “ARC”, substitute “CEO”.

27 **31 Subsection 59(1)**

1 Omit “Board”, substitute “CEO”.

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

4 **32 Paragraph 59(2)(e)**

5 Omit “Board”, substitute “CEO”.

6 **33 Subsection 59(2)**

7 Omit “ARC”, substitute “CEO”.

8 **34 Subsection 59(5)**

9 Omit “Board”, substitute “CEO”.

10 **35 Subsection 60(1)**

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

12 **36 Paragraph 60(1)(b)**

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

14 **37 Subsection 60(2)**

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

16 **38 At the end of section 60**

17 Add:

18 *Approved rules are legislative instruments*

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

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

23 **39 Subsection 61(1)**

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

25 **40 Subsection 64(1)**

26 Omit “ARC”, substitute “CEO”.

27 **41 Section 65**

1 Omit “ARC”, substitute “CEO”.

2 **42 Subsection 66(2)**

3 Repeal the subsection, substitute:

4 (2) The CEO may, in writing, delegate all or any of the CEO’s powers
5 or functions (including powers or functions delegated to the CEO
6 by the Minister) to a member of the staff of the ARC who:

7 (a) is an SES employee or acting SES employee; or

8 (b) holds, or is acting in, an Executive Level 2, or equivalent,
9 position.

10 (3) A delegate must exercise a power delegated by the Minister or the
11 CEO in accordance with any directions of the Minister or the CEO,
12 as the case requires.

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

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2 **Part 2—Transitional provisions**

3 **Division 1—Preliminary**

4 **43 Definitions**

5 (1) In this Part:

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

8 *amend* includes repeal and remake.

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

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

11 *instrument*:

12 (a) includes:

13 (i) a contract, deed, undertaking or agreement; and

14 (ii) a notice, authority, order or instruction; and

15 (iii) an instrument made under an Act or regulations; and

16 (iv) regulations; but

17 (b) does not include an Act.

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

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

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

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

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

29 **Division 2—Reference to, and things done by or in**
30 **relation to, old ARC**

31 **44 References in instruments**

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

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

8 *Minister and regulations may provide otherwise*

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

13 A determination under this subitem has effect accordingly.

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

18 *Determinations are not legislative instruments*

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

20 **45 Operation of laws**

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

- 22 (1) Subject to Division 3, if, before the commencement time, a thing was
- 23 done by, or in relation to, the old ARC or the Board, then, for the
- 24 purposes of the operation of any law of the Commonwealth after the
- 25 commencement time, the thing is taken to have been done by, or in
- 26 relation to, the CEO.

- 27 (2) For the purposes of subitem (1), a thing done before the commencement
- 28 time under a provision that is amended by this Schedule has effect from
- 29 that time as if it were done under that provision as amended. However,
- 30 this is not taken to change the time at which the thing was actually
- 31 done.

1 *Minister and regulations may provide otherwise*

- 2 (3) The Minister may, by writing, determine that subitem (1):
3 (a) does not apply in relation to a specified thing done by, or in
4 relation to, the old ARC or the Board; or
5 (b) applies as if the reference in that subitem to the CEO were a
6 reference to the Commonwealth.
7 A determination under this subitem has effect accordingly.
- 8 (4) The regulations may provide for a thing specified in a determination
9 under paragraph (3)(a) to be taken to have been done by, or in relation
10 to, a specified person or body other than the Commonwealth or the
11 CEO.

12 *Meaning of **doing***

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

15 *Determinations are not legislative instruments*

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

17 **46 Continued effect of certain instruments made under the**
18 **old law**

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

29 **Division 3—CEO and designated committees**

30 **47 CEO**

1 *Appointment, terms and conditions*

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

10 *Directions*

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

18 **48 Designated committees**

19 *Designated committees continue in existence*

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

25 *Members*

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

1 *Chairs*

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

6 **Division 4—Miscellaneous**

7 **49 Compensation for acquisition of property**

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

15 **50 Delegation by Minister**

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

23 **51 Regulations**

- 24 (1) The Governor-General may make regulations prescribing matters:
25 (a) required or permitted by this Part to be prescribed; or
26 (b) necessary or convenient to be prescribed for carrying out or
27 giving effect to this Part.
- 28 (2) In particular, regulations may be made prescribing matters of a
29 transitional nature (including prescribing any saving or application
30 provisions) relating to the amendments or repeals made by this
31 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.