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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AUSTRALIAN RESEARCH COUNCIL AMENDMENT BILL 2006

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Education, Science and Training,
the Honourable Julie Bishop MP)

AUSTRALIAN RESEARCH COUNCIL AMENDMENT BILL 2006

OUTLINE

The Bill amends the *Australian Research Council Act 2001* (the Act) to implement changes to the Australian Research Council's (ARC's) governance arrangements in response to the Government's endorsement of the recommendations of the *Review of the Corporate Governance of Statutory Authorities and Office Holders* (the Uhrig Review).

The Bill provides for the:

- (a) retirement of the Board of the ARC;
- (b) establishment of other new governance arrangements; and
- (c) update of annual funding caps to reflect revised forward estimates and the transfer of the Commercialisation Training Scheme to the Department of Education, Science and Training.

The Bill allows for the creation of, and appointments to, designated committees by the Minister for Education, Science and Training. Designated committees will provide advice to the Chief Executive Officer (CEO). The College of Experts will be maintained as a designated committee and will continue to play a key role in the ARC's peer review processes.

An ARC Advisory Committee will also be established, as a designated committee, to provide strategic advice to the CEO.

The ARC's accountability framework will be maintained by requiring the ARC to formulate a Strategic Plan and provide an Annual Report to the Minister. Following the recommendations of the Uhrig Review, the Minister will also issue a Statement of Expectations to the ARC, who will in turn respond with a Statement of Intent. These documents will be updated at least annually.

FINANCIAL IMPACT

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.

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NOTES ON CLAUSES

Clause 1 – Short title

Provides for the Act to be cited as the *Australian Research Council Amendment Act 2006*.

Clause 2 – Commencement

Subclause 2(1) inserts a three column table setting out commencement information for various provisions in the Act. Each provision of the Act specified in column 1 of the table commences (or is taken to have commenced) in accordance with column 2 of the table, and any other statement in column 2 has effect according to its terms.

The table provides for sections 1 to 3 to commence on Royal Assent. Schedule 1 commences either the day after the Act receives Royal Assent, or 1 July 2006, whichever is later. Schedule 2 commences the day after the Act receives Royal Assent.

Subclause 2(2) provides that column 3 of the table contains additional information which may be added to or edited in any published version of the Act, but that information in this column is not part of the Act.

Clause 3 – Schedule(s)

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

Schedule 1 — Structure of the Australian Research Council

Part 1 – Main amendments

Australian Research Council Act 2001

Item 1 – Paragraph 3(a)

Section 3 sets out the objects of the Act. **Item 1** repeals paragraph 3(a) which refers to the establishment of the ARC, and inserts a new paragraph 3(a) which provides that an object of the Act is to establish a body for the purposes of:

- making high quality recommendations to the Minister in relation to which research programs should receive financial assistance under Division 1 of Part 7;
- administration of the regimes of financial assistance provided for in Division 1 of Part 7; and
- provision of high quality advice to the Minister about matters related to research

Item 2 – Section 4

Section 4 sets out a number of definitions. Item 2 repeals this section and replaces it with a new section 4, which also includes a number of definitions. *Account* is defined as 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 is defined as any direct or indirect, pecuniary or non pecuniary interest. *Research program* means a program of research or a program that supports the conduct of a program of research. *Staff of the ARC* means the staff referred to in section 41.

Item 3 – Parts 2, 3 and 4

Item 3 repeals Parts 2, 3 and 4 of the Act (which deal with the establishment and functions of the ARC, the Board of the ARC and Committees) and substitutes new Parts 2 (Australian Research Council) and 4 (Designated Committees). Proposed new section 5 deals with the establishment of the ARC. Proposed subsection 5(1) provides that the Australian Research Council is established by this section. Proposed subsection 5(2) provides that the ARC consists of the CEO, the designated committees and the staff of the ARC.

Proposed section 6 provides that the function of the ARC, other than the CEO, is to assist the CEO in the performance of his or her functions.

Proposed section 30 deals with designated committees. Proposed subsection 30(1) provides that the Minister may establish a committee or committees, known as designated committees, to assist in carrying out the functions of the CEO. Proposed subsection 30(2) provides that the Minister may dissolve a designated committee at any time.

Proposed section 31 deals with the functions of a designated committee. Proposed subsection 31(1) provides that a designated committee has the functions determined in writing by the Minister. Proposed subsection 31(2) provides that in performing its functions, a committee must comply with any directions given to it by the Minister.

Proposed subsection 31(3) provides that an instrument under section 31 is not a legislative instrument. This provision is included to assist readers, as an instrument made under section 31 is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Proposed section 32 deals with appointment of designated committee members. Proposed subsection 32(1) provides that a designated committee consists of the members appointed by the Minister.

Proposed subsection 32(2) provides 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. Proposed subsection 32(3) provides that the Minister may appoint a member of a designated committee as the Chair of the committee.

Proposed section 33 deals with the terms and conditions of designated committee members. Proposed subsection 33(1) provides that a member of a designated committee holds office for the period determined by the Minister. Proposed subsection 33(2) provides that a member of a designated committee holds office on the terms and conditions, in relation to matters not otherwise covered by the Act, determined by the Minister.

Proposed subsection 33(3) states that a designated committee member may resign by giving the Minister a written resignation. Proposed subsection 33(4) allows the Minister to terminate the appointment of a designated committee member at any time.

Item 4 – Part 5 (heading)

Item 4 repeals the heading to Part 5 and inserts a new heading: “Chief Executive Officer and staff of the ARC”.

Item 5 – Before section 34

Item 5 inserts a new subdivision A about the establishment and functions of the CEO into Part 5 of the Act. Proposed section 33A states that there is to be a Chief Executive Officer of the ARC.

Proposed section 33B sets out the functions of the CEO, which are:

- 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;
- to administer the regimes of financial assistance provided for in Divisions 1 and 2 of Part 7;
- to provide advice to the Minister on research matters;
- any other functions conferred on the CEO by the ARC Act or any other Act.

Proposed section 33C deals with the Minister's directions to the CEO. Proposed subsection 33C(1) provides that the Minister may, in writing, direct the CEO about the performance of the CEO's functions.

Proposed paragraph 33C(2)(a) provides that the Minister must not direct the CEO to recommend that a particular proposal should, or should not, be approved as deserving financial assistance under Division 1 of Part 7. Proposed paragraph 33C(2)(b) further provides that the Minister must not direct the CEO 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*.

Proposed subsection 33C(3) provides that particulars of any direction given by the Minister under subsection 33C(1) must be tabled in each House of the Parliament within 15 sitting days of that house after the direction is given, and must be included in the annual report for the ARC for the financial year. A note at the end of this subsection indicates that more information about the ARC's annual report can be found in section 46.

Proposed subsection 33C(4) provides that the CEO must comply with a direction under subsection 33C(1).

Proposed subsection 33C(5) indicates that a direction under subsection 33C(1) is not a legislative instrument. This provision is included to assist readers, as a direction under subsection 33C(1) is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Item 6 – Section 34

Item 6 inserts new Subdivision B which deals with appointment of the CEO and the terms and conditions of that appointment. Proposed new section 34 provides for the appointment of the CEO. Proposed subsection 34(1) states that the CEO is to be appointed by the Minister by written instrument for the period specified in the instrument, which is not to exceed 5 years.

Proposed subsection 34(2) provides that the Minister must not appoint a person as CEO unless he or she has considered the person's record in research and management.

Item 7 – Subsection 38(3)

Makes a minor technical amendment as a consequence of the amendment made by item 8.

Item 8 – Subsections 38(4) and (5)

Subsections 38(4) and (5) deal with certain interactions between the Board and the CEO. **Item 8** repeals these subsections as a consequence of the removal of provisions about the Board.

Item 9 – Section 39

Section 39 provides that in addition to the duties set out in the Act, the CEO has such duties as are determined by the Board from time to time. **Item 9** repeals this section and substitutes proposed new section 39 which deals with disclosure of interests by the CEO.

Proposed subsection 39(1) provides that before starting to hold office, the CEO must give to the Minister a written statement of any interest he or she has that may relate to the functions of the CEO. Proposed subsection 39(2) provides that 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. Proposed subsection 39(3) provides that the disclosure must be made as soon as possible after the relevant facts come to the CEO's knowledge.

Item 10 – Division 2 of Part 5 (heading)

Minor technical amendment which substitutes the heading for Division 2 of Part 5.

Item 11 – Subsection 41(1)

Subsection 41(1) provides that the staff required to assist the ARC in the performance of its functions are to be persons engaged under the *Public Service Act 1999*. **Item 11** amends this subsection so it provides that the staff of the ARC are required to be persons engaged under the *Public Service Act 1999*.

Item 12 – Subsection 42(1)

Subsection 42(1) requires the Board to prepare a strategic plan at least once a year and give it to the Minister for approval. The plan must comply with the requirements of section 42. **Item 12** amends this section so that the obligation to prepare the strategic plan is placed on the CEO, not the Board. A note at the end of this item makes it clear that the heading to section 42 is altered by omitting 'Board' and substituting 'CEO'.

Items 13, 14 and 15 – Paragraphs 42(4)(a), (b) and (c)

Subsection 42(4) sets out the requirements for the strategic plan. **Items 13 and 14** remove references to the ARC and substitute references to the CEO. **Item 15** removes a reference to the Board and substitutes a reference to the CEO.

Items 16 and 17 – Subsection 43(1) and paragraph 43(1)(b)

Section 43 deals with the Minister's approval of the strategic plan. **Items 16 and 17** remove references to the Board, and substitute references to the CEO.

Item 18 – Subsections 43(2) and 44(1)

Subsection 43(2) provides that if the Minister requests the Board to give him or her a revised strategic plan, the Board must do so as soon as reasonably practicable. Subsection 44(1) provides that if the Board considers it necessary to vary the strategic plan it may do so with the approval of the Minister. **Item 18** removes the references to ‘Board’ and substitutes references to the CEO.

Item 19 – section 45

Section 45 provides that the annual report for the ARC must include an assessment of the ARC’s performance of its functions during that year. **Item 19** amends this section so that the annual report must include an assessment of the CEO’s performance of his or her functions during that year. The note at the end of this item makes it clear that the heading to section 45 is altered by omitting ‘ARC’s’ and substituting ‘CEO’s’.

Item 20 –At the end of section 45

Adds a note to the end of section 45 making it clear that further information about the annual report can be found in section 46.

Items 21 and 22 – Subsection 46(1) and paragraph 46(1)(b)

Subsection 46(1) requires the Board to prepare an annual report for the ARC. **Items 21** and **22** remove references to the Board and substitute references to the CEO, which has the effect of requiring the CEO to prepare the annual report.

Item 23 – Subsection 46(1) (note)

The note at the end of subsection 46(1) refers to other provisions of the Act which require matters to be dealt with in the annual report. **Item 23** amends this note to refer to subsection 33C(3) and section 45 as the source of references to matters which must be dealt with in the annual report.

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

Section 27 includes a definition of approved funding rules, which means the set of rules prepared by the Board for that year and approved by the Minister. **Item 24** amends this definition to make it clear that the funding rules are prepared by the CEO.

Items 25 and 26 – Subsection 52(1) and paragraph 52(1)(b)

Subsection 52(1) requires the ARC to make recommendations to the Minister about what funding proposals should and should not be approved, and what amounts should be determined in respect of the proposals recommended for approval.

Items 25 and 26 remove references to the Board in subsection 52(1) and paragraph 52(1)(b) and substitute references to the CEO, making it clear that the CEO must make recommendations to the Minister about which funding proposals should and should not be approved.

Items 27, 28, 29, 30 – Subsections 52(2), (3), (4) and subsection 52(4)(note)

Subsections 52(2), (3) and (4) deal with recommendations about funding proposals, including what information must be contained in a recommendation. **Item 27** repeals subsection 52(2) which provides that a recommendation must not be made unless it is approved by the Board. **Item 28** omits references to the Board in subsections 52(3) and (4) and substitutes references to the CEO, making it clear that the CEO is required to make recommendations about funding proposals. **Item 29** amends the note at the end of subsection 52(4) which indicates that decisions to make recommendations are reviewable under the *Administrative Decisions (Judicial Review) Act 1977* to make it clear that a decision by the CEO (rather than the ARC) is reviewable under that Act.

Item 30 – Subsection 53(1)

Subsection 53(1) deals with requirements that must be met before a proposal can be approved or recommended for approval. **Item 30** amends subsection 53(1) by omitting a reference to the ARC and substituting it with a reference to the CEO.

Item 31 – Subsection 59(1)

Subsection 59(1) requires the Board to make funding rules before the start of a year to which Division 1 of Part 7 applies. **Item 31** amends this subsection to make it clear that the obligation is on the CEO to make the funding rules. A note at the end of subsection 59(1) makes it clear that the heading to section 59 will be ‘CEO to make funding rules’.

Item 32, 33 and 34 – Paragraph 59(2)(e) and subsections 59(2) and (5)

Subsection 59(2) sets out the matters that must be dealt with in funding rules. Subsection 59(5) provides that the rules take effect from the time determined by the Board. **Items 32, 33 and 34** amend paragraph 59(2)(e) and subsections 59(2) and (5) to substitute references to the Board and the ARC with references to the CEO.

Items 35, 36 and 37 – Subsection 60(1), paragraph 60(1)(b) and subsection 60(2)

Section 60 deals with Ministerial approval of the funding rules referred to in section 59. **Items 35, 36 and 37** substitute references to the Board with references to the CEO to make it clear that the CEO is required to meet the obligations set out in the section.

Item 38 – At the end of section 60

Adds proposed subsection 60(4) which states that a set of rules made by the Minister on the day on which they are approved (under section 60) is a legislative instrument. A note at the end of the subsection indicates that the rules are not subject to disallowance in accordance with subsection 44(2) of the *Legislative Instruments Act 2003*.

Item 39 – Subsection 61(1)

Subsection 61(1) allows the Board to vary a set of funding rules with the approval of the Minister. **Item 39** amends subsection 61(1) to substitute references to the Board with references to the CEO to make it clear that the CEO may vary a set of funding rules with the Minister's approval.

Item 40 – Subsection 64(1)

Section 64 deals with the conditions on expenditure of funds in the ARC research endowment account. **Item 40** amends subsection 64(1) to substitute references to the ARC with references to the CEO.

Item 41 – Section 65

Section 65 states that financial assistance under section 64 is provided on such terms and conditions (if any) as determined by the ARC, with the written approval of the Minister. **Item 41** amends section 65 to substitute a reference to the ARC with a reference to the CEO, making it clear that the CEO may determine the conditions on which financial assistance is provided.

Item 42 – Subsection 66(2)

Section 66 deals with delegation by the Minister. **Item 42** substitutes proposed new subsection 66(2) which provides that 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 is an SES employee or acting SES employee; or holds, or is acting in, an Executive Level 2, or equivalent, position.

Proposed subsection 66(3) provides that 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.

A note at the end of this subsection makes it clear that the heading to section 66 is replaced by the heading 'Delegation'.

Part 2 – Transitional provisions

Division 1 – Preliminary

Item 43 - Definitions

Proposed subitem 43(1) inserts a number of definitions which apply to Part 2 of Schedule 1:

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 includes a contract, deed, undertaking or agreement, a notice, authority, order or instruction; an instrument made under an Act or regulations; and regulations, but 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.

Proposed subitem 43(2) provides that subject to subitem 43(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

Item 44 – References in instruments

Proposed subitem 44(1) provides that if an instrument is in force immediately before the commencement time, and the instrument contains a reference to the old ARC then the instrument has effect from the commencement time as if the reference to the old ARC were a reference to the CEO.

Proposed subitem 44(2) provides that the Minister may, by writing, determine that subitem 44(1) does not apply in relation to a specified reference, or applies as if the reference in that subitem to the CEO were a reference to the Commonwealth. A determination under subitem 44(2) has effect accordingly.

Proposed subitem 44(3) states that regulations may provide that an instrument containing a reference specified in a determination under paragraph 44(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.

Proposed subitem 44(4) states that a determination that a reference in an instrument to the CEO is a reference to the Commonwealth is not a legislative instrument. In the majority of cases a determination of this kind would not be legislative within the meaning of section 5 of the *Legislative Instruments Act 2003*. If any determination of this kind is arguably legislative within

the meaning of that section (for example, because it changes such a reference in a legislative instrument), the determination has been declared not to be legislative as it is transitional and will only be required for a limited period of time.

Item 45 – Operation of laws

Proposed subitem 45(1) provides that 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.

Proposed subitem 45(2) provides that for the purposes of subitem 45(1), a thing done before the commencement time under a provision that is amended by Schedule 1 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.

Proposed subitem 45(3) provides that the Minister may, by writing, determine that subitem 45(1) does not apply in relation to a specified thing done by, or in relation to, the old ARC or the Board, or that subitem 45(1) applies as if the reference in that subitem to the CEO were a reference to the Commonwealth. A determination under subitem 45(3) has effect accordingly.

Proposed subitem 45(4) states that the regulations may provide for a thing specified in a determination under paragraph 45(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.

Proposed subitem 45(5) provides that to avoid doubt, for the purposes of item 45, doing a thing includes making an instrument.

Proposed subitem 45(6) provides that a determination under subitem 45(3) is not a legislative instrument. This provision is included to assist readers as a determination under subitem 45(3) is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Item 46 – Continued effect of certain instruments made under the old law

Proposed subitem 46(1) provides that the amendment of the *Australian Research Council Act 2001* by Schedule 1 does not affect the continuity of the following instruments as in force under that Act immediately before the commencement time:

- a notice under paragraph 42(4)(c);
- a strategic plan under Division 1 of Part 6;
- a recommendation under subsection 52(1);
- approved funding rules under Division 1 of Part 7

Proposed subitem 46(2) provides that a direction under subsection 66(2) of the old law (requiring a delegate of the Minister to comply with any direction of the Minister) 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

Item 47 - CEO

Proposed subitem 47(1) provides that the person holding office as CEO under section 34 of the old law immediately before the commencement time 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 is taken to have been so appointed on the same terms and conditions as applied to the person immediately before the commencement time.

Proposed subitem 47(2) states that a direction under subsection 7(1) of the old law given to the Board about the performance of the ARC's functions, and 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.

Item 48 – Designated committees

Proposed subitem 48(1) provides that a designated committee established under section 30 of the old law and 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.

Note that proposed new section 31 provides that a designated committee has the functions determined in writing by the Minister. Previously, the functions of a designated committee could have been determined by the Board.

Proposed subitem 48(2) provides that a person holding office as a member of a designated committee under subsection 32(1) of the old law immediately before the commencement time 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 is taken to have been so appointed on the same terms and conditions as applied to the person immediately before the commencement time.

Proposed subitem 48(3) provides that 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

Item 49 – Compensation for acquisition of property

Proposed subitem 49(1) provides that if the operation of Part 2 of Schedule 1 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.

Proposed subitem 49(2) provides that 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.

Item 50 – Delegation by Minister

Proposed subitem 50(1) provides that the Minister may, by writing, delegate all or any of his or her powers and functions under Part 2 of Schedule 1 to the CEO.

Proposed subitem 50(2) provides that in exercising or performing powers or functions under a delegation under subitem 51(1), the CEO must comply with any directions of the Minister.

Proposed subitem 50(3) state that a power or function delegated to the CEO under subitem 50(1) must not be sub-delegated under subsection 66(2) of the new law.

Item 51– Regulations

Proposed subitem 51(1) provides that the Governor-General may make regulations prescribing matters required or permitted to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to Part 2 of Schedule 1.

Proposed subitem 51(2) state that 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 Schedule 1.

Schedule 2 — Funding of research

Australian Research Council Act 2001

Item 1 – At the end of subsection 48(2)

Subsection 48(2) sets out the years to which Division 1 of Part 7 applies – ie, the years for which financial assistance may be provided. **Item 1** adds paragraph (e) the financial year starting on 1 July 2008 to the list of years.

Item 2 – Paragraphs 49(f), (g) and (h)

Section 49 is about the annual cap on funding and sets out the total amounts which must not be exceeded. 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:

- for the financial year starting on 1 July 2005 the funding cap is \$546,151,000;
- for the financial year starting on 1 July 2006 the funding cap is \$560,569,000;
- for the financial year starting on 1 July 2007 the funding cap is \$550,583,000;
- for the financial year starting on 1 July 2008 the funding cap is \$552,945,000.