

The Senate

Employment, Workplace Relations
and Education Legislation Committee

Provisions of the Australian Research Council
Amendment Bill 2006

June 2006

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Government Senators' Report

Conduct of the inquiry

1.1 The Australian Research Council Amendment Bill 2006 (the bill) was introduced in the House of Representatives on 30 March 2006 to amend the *Australian Research Council Act 2001* to implement changes to the governance arrangements of the Australian Research Council (ARC). The provisions of the bill were immediately referred to the committee for inquiry and report by 10 May 2006. On 10 May the Senate agreed to an extension of time to report until 2 June 2006.

1.2 Notice of the inquiry was posted on the committee's website and advertised in the *Australian*. The committee also contacted individuals and organisations to notify them of the inquiry and seek submissions. The committee received 7 submissions, listed at Appendix 1. The committee conducted a public hearing in Melbourne on Thursday, 4 May 2006. A list of the witnesses who gave evidence is at Appendix 2.

Background

1.3 The bill amends the *Australian Research Council Act 2001*. It implements changes to the governance arrangements of the ARC following the Government's endorsement of the recommendations of the *Review of Corporate Governance of Statutory Authorities and Office Holders* conducted by Mr John Uhrig in 2003. The terms of reference for the Uhrig review were based on the examination of statutory authorities' structures for good governance, focusing on the relationships between statutory authorities and the responsible minister, the parliament and the public, including businesses.¹

1.4 The review's findings prescribed the development of two governance templates: first, a board template where responsibilities are not solely accountable to the Commonwealth and where there are commercial interests involving other stakeholders; second, an executive management template which involves single line management.²

1.5 The Minister's second reading speech stated that the appropriate governance arrangements for the ARC are to be modelled on the executive management template.³ The Minister also stated that the ARC will remain a prescribed agency under the *Financial Management and Accountability Act 1997*, and a statutory agency as announced in 2001 under the Government's *Knowledge and Innovation* policy.⁴

1 Uhrig, J., (2003) *Review of Corporate Governance of Statutory Authorities and Office Holders*, p. 1

2 *ibid.*, pp.10-11 and 18

3 Hon. Julie Bishop MP, *Hansard* (House of Representatives), 30 March 2006, p. 7

4 *ibid.*, p. 8

Purpose of the bill

1.6 The purpose of this bill is to amend sections of the ARC Act which will result in the retirement of the ARC Board and the establishment of new governance arrangements to clarify the functions of the Chief Executive Officer. These amendments will remove the potential for confusion between the responsibilities of the Board and the CEO and provide the CEO with full power and responsibility for the ARC.⁵

1.7 The Government took this opportunity to increase the annual funding cap by \$572 million for research funding, due to the indexation arrangements, as part of the Government's ten year commitment to science and innovation under the program named *Backing Australia's Ability*. Also included in this bill is the transfer of the Commercialisation Training Scheme to the Department of Education, Science and Training (DEST), which will maximise the number of research students who benefit from programs administered by the department.⁶

Revised governance arrangements and maintaining independence

1.8 One of the main issues of concern raised in submissions was the ability of the ARC to maintain its independence from ministerial direction with the retirement of the Board.

1.9 The ARC, under direction of the CEO, will maintain its independence within the boundaries drawn up in its legislative framework, and through other governance arrangements recommended by the Uhrig review. The Government recognises the high integrity of the College of Experts peer review process through which research grants are recommended by the ARC. The bill (and currently the Act) also minimises ministerial interference.

1.10 With the whole of government approach to governance arrangements, the ARC has legislative obligations in performing its role as outlined in the FMA Act and Public Service Act. The bill provides clearly stated performance guidelines for the ARC and its CEO, ensuring a clear delineation of roles. Under the executive management template, statutory authorities are not required to maintain a board, especially those authorities which perform largely non-regulatory or non commercial functions, and as such would benefit from another form of governance. Given this, the ARC Board is to be retired under the bill, providing the ARC with more streamlined governance arrangements bringing it wholly in line with the framework that the Uhrig review defined as most appropriate for PS Act and FMA Act agencies.

5 *ibid.*

6 Department of Education, Science and Training (DEST), *Submission 2*, p. 1 and Proof Committee *Hansard*, 4 May 2006, pp. 22-23

1.11 The role of the CEO is further clarified by the bill, which does not allow the minister to 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'.⁷

1.12 The independence of the ARC to develop its strategic planning process and initiation of research inquiries and priorities continues under this bill. The strategic plan will continue to be a public document and published on a rolling triennium. An advisory committee will be created to assist in this process.⁸

1.13 In relation to the power of the Board to conduct inquiries into matters of research, DEST informed the committee that the Board had not utilised this power since the introduction of the 2001 Act. The Government, in retiring the Board, has removed this power because it is already provided for in the PS Act. This does not preclude the CEO from initiating inquiries.⁹

The roles of the minister and the CEO

1.14 The minister, as a representative of the Government, has responsibilities in a governance role, and is accountable for the performance of statutory authorities under Section 64 of the Constitution. Ministers are responsible for the performance of their portfolios and have a duty to execute and maintain the laws of the Commonwealth. But in stating this, the minister is also accountable to the Government through the issue of Administrative Orders by the Governor-General. These orders specify the legislation to be administered by ministers. As such the minister is responsible for the success of the authority and will be held to account by the parliament.¹⁰

1.15 DEST informed the committee in its evidence that the amendments do not change the power of the minister's decision-making role in appointments to designated committees and the grant approval processes. The amendments maintain the current arrangements under the Act.¹¹

1.16 The CEO will be directly responsible to the minister for the operations of the ARC and will not have the added responsibility of having to report to the Board as well as the minister. DEST stated:

Moving from the current ARC arrangements to the executive management template, as the previous minister announced last year, removed that level

7 *Australian Research Council Amendment Bill 2006*, p. 6

8 Proof Committee *Hansard*, p. 24

9 *ibid.*, p. 24

10 Uhrig review, pp. 17 and 33

11 Proof Committee *Hansard*, 4 May 2006, p. 22

of confusion wherein the CEO served two masters. He now reports directly to the minister.¹²

1.17 DEST stated in its submission that the Act gives the minister the power to direct the ARC or the ARC Board regarding its performance and that these directions are to be tabled in each house of parliament within 15 sittings days and published in the ARC's annual report.¹³ The transparency of the minister's directions will still apply after the introduction of the bill and are to be covered in the Statement of Expectations from the minister and the response from the CEO in the Statement of Intent. The Statement of Expectations will be made public.

1.18 With the removal of the Board, the role of the CEO will take on a wider and more diverse level of activity. The CEO will perform the following functions under the bill: administer the regimes of financial assistance under the National Competitive Grants Programmes, *Discovery, Linkage and Centres*; make recommendations to the minister on what proposals should be approved as deserving of financial assistance; and provide advice to the minister on research matters and any other functions conferred on the CEO by the ARC Act or any other act.¹⁴ To assist with the increased workload the CEO will have the support of the ARC and the ability to delegate functions to SES and EL2 level officers within the organisation.¹⁵

1.19 This bill also transfers from the Board to the CEO the obligation to make funding rules and vary these rules with the approval of the minister. The minister cannot approve funding applications which have not been considered according to the approved funding rules. Only those applications which have been through the assessment process for specific ARC program can be approved for funding. In this process the CEO is required to make recommendations to the minister about which funding proposals should and should not be approved. Currently the minister is allowed to seek additional advice from the ARC before making a decision to approve a funding proposal and this will not change.¹⁶

Designated committees

1.20 As is currently the case, the minister will be able to establish designated committees to assist in carrying out the functions of the CEO. The minister will also be able to dissolve a designated committee at any time. Under the bill there is no prescribed number of members needed to form a committee, as with the old requirement of five members for each committee. This is to enable the minister to establish advisory committees of whatever size he or she believes is appropriate to

12 *ibid.*, p. 27

13 DEST, *Submission 2*, p. 2

14 *ibid.*, p. 3

15 Proof Committee *Hansard*, p. 28

16 DEST, *Submission 2*, pp. 3-4

deal with the matter. It will be the minister's responsibility to approve the functions and membership of a designated committee, based on advice from the CEO, and others, as the minister requires.

1.21 The Minister's second reading speech announced the creation of an advisory committee to 'provide high-level, strategic advice' to the ARC. This committee will act in an advisory capacity in support of the CEO's strategic planning. The College of Experts will be maintained as a designated committee and will continue with its role in the ARC's peer review process.¹⁷

Accountability

1.22 Government Senators note that under this bill the current reporting mechanisms for the ARC remain in place, and ensure a high level of transparency. The preparation of the annual report and strategic plan will continue to demonstrate how the ARC supports the Government's commitment to K&I policy. These are public documents, which enables the parliament and the public to examine them.

1.23 Further accountability and transparency will be maintained through the issuing of a Statement of Expectations by the minister. The statement will ensure the ARC has a clear understanding of the Government's expectations and the importance of linking this to the ARC's strategic direction and performance in carrying out its duties. The statement will include values central to the success of ARC, and also those concerning the ARC's relationships with its stakeholders and the Department. The ARC will outline how they propose to meet the Minister's expectations by replying with a Statement of Intent.

1.24 The Uhrig review mentions that there should be a 'strong working relationship between the portfolio department and the statutory authority'. DEST, in its submission, states that there will be a Memorandum of Understanding between the ARC and the department.¹⁸

Conclusion

1.25 The Government acknowledges the concerns and issues raised in evidence, but believes that implementing the recommendations of the Uhrig review will not threaten the role that peer review plays in the ARC's operations. This bill creates a simplified line of accountability between the minister and the ARC creating stronger governance which will lead to enhanced performance, consistent with the Government's interpretation of the Uhrig review recommendations.

17 *ibid.*, pp. 2-3 and Hon. Julie Bishop MP, *Hansard* (House of Representatives), 30 March 2006, p. 8

18 Uhrig review, p. 64 and DEST, *Submission 2*, p. 5

Recommendation

The committee recommends that the bill be passed.

**Senator Judith Troeth
Chairman**

Opposition Senators' Report

2.1 The Australian Research Council Amendment Bill 2006 has the potential to undermine the integrity and independence of the Australian Research Council. The reputation and esteem of Australian research relies upon a competitive grants process that is free from political interference. This bill enables the government of the day to tamper with the work of the ARC in an unacceptable way.

2.2 Although this bill was prepared under the guise of better governance, Opposition senators believe that it will lead to the opposite. It is not in the interests of good governance to invest too much power and too little accountability in one person, the Minister. This Government in particular, has a well-worn track record of politicised interference in funding decisions. The previous Minister for Education, Brendan Nelson, vetoed 11 funding recommendations from the ARC in two years.

2.3 The bill has been drafted without proper consultation with stakeholders. Had the Government properly consulted the academic and research community, they would have realised that this legislation is largely unnecessary and, in fact, detrimental.

2.4 Opposition concerns relate to the proposed new arrangements for the ARC, especially the abolition of the ARC Board and transferral of its functions and responsibilities to the Chief Executive Officer (CEO) and the removal of the ARC's power to initiate inquiries. Submissions to the inquiry raised serious concerns about the ability of the ARC to carry out its role independently and with confidence in Australia and abroad.

2.5 It is completely unacceptable for the Government to attach the ARC's appropriations for 2008-09 to this Bill. There is no conceivable policy benefit to be gained in doing so. The current act gives the ARC financial security until June 2008. Opposition senators believe that the only reason for attaching core funding to the ARC to this Bill is a political one. The Government is well aware that the Opposition will not block core funding to the ARC. It is this last feature of the Bill which means the Opposition will not oppose the ARC Bill. Labor understands that responsibility and care must be exercised when it comes to funding high quality research in Australia.

Ministerial interference

2.6 The ARC bill transfers many of the Board's powers to the Minister. It gives the Minister the power to intervene directly in the everyday operations of the ARC. This includes the power to appoint the CEO and all of the ARC's internal committees, including the ARC's major peer review committee, its College of Experts.

2.7 The CEO will now be directly answerable to the Minister instead of a Board of respected academic, business and community representatives. Not only will the Minister be able to appoint the CEO and members to the ARC's internal committees

directly, but the Minister's appointment decisions will not be considered a legislative instrument under this Bill. The Parliament will not have the ability to challenge the Minister's decisions and hold the actions of the Government to account. This is an unacceptable curtailment of the Parliament's powers.

2.8 The Minister already has the ability to accept or reject recommendations from the Board, including recommendations that relate to committee appointments and grant funding. Generally, appointments and funding recommendations are arrived at by the ARC through rigorous internal processes, involving peer review, expert advice and proper management, as appropriate.

2.9 The Minister will now have the power to put in place people and processes in order to deliver the right political outcomes for the government of the day. It gives the Minister unprecedented powers to manipulate the ARC's processes in such a way that funding recommendations could be considered politically acceptable in the first instance. It is this feature of the bill before us that renders it substantially different to the act as it stands today.

2.10 The submission from the Department of Education, Science and Training (DEST), in referring to the Minister's second reading speech, claimed that the ARC's current accountability framework would be maintained under the provisions of the Bill.¹ The department reiterated this position that there was no change to the Minister's powers to the Committee at its hearings:

I think the first thing to point out is that the amendments actually maintain the Minister's decision-making role in appointments to designated committees and in the grant approval processes. The legislation does not enhance or diminish that; it maintains it.²

2.11 This is simply not true and disingenuous. The ARC's accountability framework will not be maintained under the proposals in this bill. It is one thing to accept or reject appointment recommendations from the Board of an expert body; it is quite another to make them yourself.

Abolition of the ARC Board

2.12 The Government justified its decision to abolish the Board under the guise of the *Review of the Corporate Governance of the Statutory Authorities and Office Holders*, also known as the Uhrig review. The Government has claimed that this bill would simplify reporting arrangements between statutory authorities and elected government representatives.

2.13 Indeed, the Uhrig Review does recommend that Boards of statutory authorities be abolished unless the Government is prepared to devolve all responsibility to those agencies. It is reasonable for governments to have ultimate

¹ Department of Education, Science and Training, *Submission 2*, p.3

² Ms Leanne Harvey, DEST, *Committee Hansard*, 4 May 2006, p.27

accountability for the taxpayer funds disbursed by statutory authorities. As such, complete devolution of power to statutory bodies is not an appropriate solution.

2.14 The problem with the Uhrig recommendations is the political reality of this Government. This Government has shown that it is perfectly willing to silence dissent and undermine those with contrary views. Removing the ARC Board will not deliver better governance, more transparency or proper accountability of taxpayer funds under this Government.

2.15 Opposition senators also note that the academic and research community overwhelmingly support the ARC's current Board structure rather than an executive management template. There is widespread concern that abolishing the Board will send a negative signal to the international research community and tarnish Australia's research reputation.

2.16 The Australian Academy of the Humanities submission provided three main reasons for rejecting the executive management approach: the performance of the ARC would become unacceptably dependent upon the performance of a single individual; the position of CEO would become more vulnerable to a substandard Ministerial appointment which could undermine public confidence in the organisation; and the CEO would be placed under unacceptable pressure to anticipate and please the Minister for political reasons. A Board with rolling appointments would be less vulnerable to political pressure.³ At the committee's public hearing, the Academy summed up its concern by stressing that over time the ARC may be subject to political pressure and forced to respond to the whim of government, which would compromise its independence:

...there is considerable value in having a Board rather than simply a line management model, particularly in functions which require strong reputation and maintenance of integrity, and to forestall any suggestion that decisions are being made on other than appropriate grounds. The main function of the Board...was a good and useful development in ensuring the robustness and the integrity of the grant-giving process.⁴

2.17 Under the ARC's current act, the Minister can only appoint the CEO if he or she has taken the Board's advice on the appointment. If this Bill becomes law, the Minister will no longer be compelled to consult anyone with academic or management expertise before naming a favourite.

2.18 The presence of a Board has created a buffer between this Government's politically-driven agendas and an independent research funding body. Removal of the Board could prevent effective management of research funding because the CEO is unlikely to have much protection or job security if they disagree with a Minister in this Government. There will be no group of respected experts from the academic and

³ The Australian Academy of the Humanities, *Submission 1*, paras 1 and 2

⁴ Professor Stuart Macintyre, *Committee Hansard*, 4 May 2006, p.5

business communities to mediate the Minister's interference. It is far more difficult for a Minister to dismiss 14 distinguished people than the one individual that the Minister has appointed.

2.19 Opposition senators believe a convincing case has not been made for removing the ARC Board. The Government has erred in its approach to the ARC's governance arrangements. The Minister's second reading speech referred specifically to removing the potential for confusion between the ARC Board and the CEO as the main reason for introducing this bill. Yet at a public hearing the Department could not satisfactorily explain how the bill would achieve this.⁵

2.20 The issue was clearly presented to the committee by FASTS:

We have not seen a compelling case that there is confusion around the role of the Board vis-à-vis the CEO and the minister at the moment.⁶

2.21 If the Government was genuinely concerned with improving reporting and accountability of the ARC's decisions, a better outcome would have been achieved by providing clear Ministerial directions to the ARC and establishing a set of expectations for the ARC to meet. Opposition senators agree that there is a difference between external public accountability that a government has the right to expect from statutory bodies, and ministerial meddling in the internal processes of statutory bodies. The Australian Vice Chancellors' Committee is clear on this point:

The AVCC rejects this notion of confusion because effective governance arrangements require clarity in roles and responsibilities between the governing body and CEO, not legislation introduced to remove any confusion. The contemporary understanding of effective governance arrangements is that the role of a Board is to provide leadership concerning the organisation, assure accountability for decisions arising and advise the CEO on matters of strategic importance; whereas the role of the CEO is to implement such directions howsoever he or she may see fit. There is therefore a separation between governance and process.⁷

2.22 The Government's response to the recommendations of the Uhrig Review has not been consistent across the statutory bodies. The Minister for Ageing tabled a bill this year to change the governance arrangements of the National Health and Medical Research Council but without abolishing its Board.

Peer review, College of Experts and international standing

2.23 This Bill allows the Minister to appoint directly all of the ARC's peer review panels, including its College of Experts. All ARC committees will become 'designated committees' under the Bill and, as such, the Minister will be able to appoint members

⁵ Ms Leanne Harvey, DEST, *Committee Hansard*, 4 May 2006, p.27

⁶ Mr Bradley Smith, FASTS, *Committee Hansard*, 4 May 2006, p.19

⁷ Australian Vice Chancellors Committee, *Submission 5*, p.2

to those committees. It is critical to note that the Minister will be able to appoint anyone to designated committees, including the College of Experts, without consulting anyone. The Minister only has to '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' (Subsection 32(3)). Opposition senators do not view this as a substantive restraint to the Minister's powers.

2.24 The current Minister has stated that she does not intend to veto grant recommendations or interfere with the College of Experts. However, the current bill provides no guarantees about the future of the College. If the Minister intends to continue with current practice, Opposition senators do not believe that there is a need for the Minister to have enhanced powers in the first instance.

2.25 Opposition senators agree with the majority of the submissions that the internationally recognised system of peer review should determine how research dollars are allocated. The peer assessment process used by the ARC is the best way we have at present of meeting public accountability, and determining academic quality.⁸ The Opposition believes strongly that the Bill undermines rather than enhances the accountability and governance arrangements which have underscored the independence and integrity of the ARC. The proposed amendments put at risk the ARC's transparency and objectivity and expose the peer review system to political influence from the government of the day. This could potentially undermine the ARC's independence and erode Australia's international research reputation.

2.26 This is a view supported by the Australian Academy of the Humanities, which told the committee at its public hearing:

...these proposed changes to the Act do imperil some of the forms of independence that are required for a research-funding body to work effectively. We see it as being in danger of compromising the reputation of Australian research, should it be thought that the research body is acting directly at the instructions of the Minister.⁹

2.27 The Academy and the NTEU conveyed to the committee concerns from international scholars who provided assessments for peer-reviewed grant applications that were rejected in unprecedented numbers by the previous Minister. This apparently has resulted in some uncertainty and lack of confidence in the approval process.

2.28 The Academy told the committee that the changes proposed by the bill would be of concern to the international research community because the ARC would be structured differently from equivalent bodies in the United Kingdom, the United States and Canada which have provided more safeguards than those provided to the ARC to ensure their independence.

⁸ NTEU, *Submission 4*; Group of Eight, *Submission 7*

⁹ Professor Stuart Macintyre, The Australian Academy of the Humanities, *Committee Hansard*, 4 May 2006, p.2

2.29 The committee's attention was drawn to an anomaly in the bill which will prevent researchers funded by the ARC to participate in international research projects that are peer reviewed and approved abroad. The Forum for European-Australian Science and Technology Cooperation submission claimed that the bill will prevent Australian researchers from participating in international research programs which attract substantial amounts of money, causing embarrassment and loss of trust between Australian teams and their European counterparts.¹⁰

2.30 The department advised the committee at its hearing that the Minister is currently considering the idea of a calendar to better coordinate the process of approving grant applications for Australian and international research programs, and thus overcome the problem of researchers being precluded from international research projects.¹¹ This is clear evidence that the department is concerned about the negative impact of this bill on the international standing of Australian research and researchers.

2.31 Evidence before the committee strongly supported amending the bill to ensure that peer and expert review are protected and that the Minister's role and relationship to this process are clearly defined.¹² Opposition Senators agree with these concerns.

Power to initiate inquiries

2.32 Another area of concern raised in evidence relates to the provision which removes the capacity of the Board to initiate its own inquiries into research matters. The department told the committee that the power would be transferred from the Board to the CEO. However, there is uncertainty as to whether the CEO would need to consult, or seek the approval of, the Minister in order to use the power to initiate inquiries. Although the power has not been used by the Board since 2001, it is generally agreed that the ARC should retain the capacity to conduct research-related reviews. The National Academy of the Humanities described one such review which was carried out by a former disciplinary group to assess the effect of ARC funding on the different research fields:

It was a very important initiative. We were able to show what people who had received grants had done. Grant recipients make final reports at the end of the period of their funding. We were able to show there was a long-term effect in subsequent publications and the career development of researchers who had been employed with the grants and we were able to think about some metrics as to how you would measure the impact of that research. I think exercises such as this are very important.¹³

¹⁰ The Forum for European-Australian Science and Technology Cooperation, *Submission 3*, p.1

¹¹ Ms Leanne Harvey, Department of Education, Science and Training, *Committee Hansard*, 4 May 2006, p.31

¹² NTEU, *Submission 4*, pp.4, 6-7; AVCC, *Submission 5*, p.2

¹³ Professor Stuart Macintyre, *Committee Hansard*, 4 May 2006, p.4

2.33 The Opposition accepts that the ARC should play an important role in assessing, guiding, leading and raising questions about the efficacy of research.¹⁴ Opposition Senators believe the ARC should retain its power to initiate inquiries should it need to, and the body best suited to carry out this function is the ARC Board and not the CEO.

College of Experts and Designated Committees

2.34 The Minister has also stated her intention to appoint an Advisory Committee, with a view to providing the CEO with strategic advice about the ARC's operations. The best mechanism by which to provide strategic guidance and oversight to the CEO is the current Board and by all accounts, the Board serves this purpose well.

Conclusion

2.35 The Opposition does not support the majority of changes to the ARC's governance provisions outlined in this bill. There is no evidence to support the Minister's claim that the changes will remove the potential for confusion between the Board and the CEO under the current structure. The bill will remove one layer of the current process for making recommendations on research grants – the Board – without clarifying the roles of the College of Experts, the CEO and the Minister. There is nothing in the bill that removes the potential for conflict referred to in the Minister's second reading speech.

2.36 Opposition senators have grave concerns that abolition of the Board will enable the Minister to exercise more power under the proposed new governance arrangements. The bill provides no guarantees that the CEO will remain fully independent from the Minister, and there is no guidance on ministerial appointments to designated committees. These are serious deficiencies with the bill.

2.37 It remains unclear how the bill will enhance research quality, excellence in performance and increased accountability to the ARC. Most of the evidence tendered during this inquiry, with the exception of submissions made by the Department, voiced concern that the foreshadowed changes put at risk not only the ARC's independence and accountability but also Australia's international reputation.

2.38 However, the Opposition has agreed not to oppose the bill's passage through the Parliament. To do so would put at risk additional appropriations amounting to \$572 million arising from the indexation of existing ARC grant funding. The Opposition believes it is unacceptable for the Government to make additional research funding conditional upon changes to the ARC's governance arrangements, especially when they create the possibility of ministerial interference in internal decision-making. The Opposition agrees with the point made by the Executive Director of FASTS, Mr Bradley Smith, that the bill in its current form is deficient because it does

¹⁴ *ibid.*

not make a clear distinction between the ARC's operational requirements and the policy parameters of Government.¹⁵

Recommendation

Opposition Senators recommend that this bill be supported, but that amendments be moved to restrict the Minister's ability to interfere in the operations of the ARC and to protect the integrity and independence of the ARC's research assessment processes.

**Senator Gavin Marshall
Deputy Chair**

¹⁵ Mr Bradley Smith, FASTS, *Committee Hansard*, 4 May 2006, p.17

Democrats' Supplementary Report

3.1 The Australian Democrats dissent from the Chair's report and make the following comments about the Australian Research Council Amendment Bill 2006.

3.2 The Democrats believe a number of provisions of the Australian Research Council Amendment Bill 2006 threaten the Australian Research Council's (ARC) peer review process. Last year, we expressed concern that the Minister had intervened in the ARC's peer review process by vetoing some of the projects recommended by the ARC Board. We are concerned that the provisions of this bill provide increased opportunities for intervention by the Minister, thus diminishing the ARC's ability to fulfill its statutory functions - providing high quality recommendations on funding projects and high quality advice on research matters.

3.3 The Democrats note the evidence presented to the Committee that the abolition of the Board, purportedly in accordance with the recommendations of the Uhrig review, will remove a critical step in the grants decision process, potentially compromising transparency and accountability and rendering the ARC more vulnerable to political interference. Stakeholders were concerned about how this would impact upon the international reputation and integrity of the peer review process, as well as the Australian public's perception of research. The NTEU noted in their evidence that the Uhrig recommendations influenced the governance changes in the National Health and Medical Research Council Amendment Bill 2006, to create a "more accountable and independent NHMRC".¹ The NTEU asserts that it would not be inconsistent to interpret the Uhrig review as recommending retaining the ARC Board and providing it with more autonomy.

3.4 In addition, there has been insufficient explanation as to why the Government believes there is the potential for confusion between the responsibilities of the ARC Board and those of the CEO, which it argues, makes the removal of the ARC Board necessary.

3.5 Despite assurances in the Chair's report, the Democrats note and agree with evidence provided by FASTS and the AVCC that the bill will render the ARC unable to initiate its own inquiries. In its evidence to the Committee hearing, DEST asserted that in the new legislation, the ARC's CEO will be able to initiate inquiries under the Public Service Act. However, the Public Service Act does not make specific reference to the ability of the CEO to initiate inquiries. The DEST witness was later unable to unequivocally state that under the provision where the CEO has this power, the CEO does not need to consult with or get approval from the Minister in order to initiate inquiries. As FASTS asserted in its submission, a statutory requirement of the ARC in the Act is to "provide high level advice to the government on matters relating to research."² It is doubtful the ARC will be able to fulfill this role if it is unable to initiate its own inquiries without Ministerial approval.

3.6 The Democrats express our opposition to the provision in the bill diminishing the power of the Board to establish committees with the Minister's approval, and transferring this

¹ National Health and Medical Research Council Amendment Bill 2006

² Federation of Australian Scientific and Technological Societies - Submission to the Senate Inquiry into the Provisions of the Australian Research Council Amendment Bill 2006

power to the Minister. We agree with FASTS' concern that the bill does not require the Minister to "consult with the ARC on membership, terms of reference or appointments to committees" and that "This is not consistent with the policy intent that the ARC be an independent statutory authority".³ If the ARC is to be an independent body providing high level advice of funding decisions, it must be able to decide its own appointments to its committees.

3.7 We question the bill's establishment of Designated Committees and the Minister's proposed powers over them, which include the power to establish and dissolve them at any time, and to determine their functions and composition. The only apparent safeguard is that the Minister must "try to ensure that the composition of the committee reflects the diversity of interests" in choosing members, however, there is no specific direction or guidelines to facilitate this process.⁴

3.8 The Democrats draw attention to the bill's impact on the status of the College of Experts, which plays a critical role in maintaining the peer review process. This legislation renders the future of the College of Experts uncertain. The Explanatory Memorandum states it will be maintained as a Designated Committee and will "continue to play a key role in the peer review process", however, this has not been enshrined in the legislation.⁵

3.9 The Democrats agree with reservations expressed by many of the submissions in regard to the College of Experts being maintained as a Designated Committee, meaning, it too, will be open to the same intervention as other Designated Committees. We agree with the NTEU's recommendation that this provision of the bill be amended to ensure the College of Experts "is listed in the Act and that it is not subject to the same Ministerial determinations as the 'Designated Committees'". However, we also assert that the ARC should be responsible for appointing members to its other committees.⁶

3.10 There has been inadequate information provided in relation to the scope and nature of the bill's proposed Statement of Expectation, to be issued by the Minister. It is unclear how the Minister will formulate this statement and if input from the research sector will be included.

3.11 We reserve our judgement on the Bill contingent on the resolution of the matters outlined above.

Senator Natasha Stott Despoja

³ Federation of Australian Scientific and Technological Societies - Submission to the Senate Inquiry to the Senate Inquiry

⁴ Australian Research Council Amendment Bill 2006

⁵ Australian Research Council Amendment Bill 2006 - Explanatory Memorandum

⁶ National Tertiary Education Union - Submission to the Senate Inquiry into the Provisions of the Australian Research Council Amendment Bill 2006

Appendix 1

List of submissions

Sub No: From:

1	The Australian Academy of the Humanities
2	Dept of Education, Science & Training
3	Forum for European – Australian Science & Technology Co-operation (FEAST)
4	National Tertiary Education Union
5	Australian Vice-Chancellors' Committee
6	Federation of Australian Scientific & Technological Societies (FASTS)
7	The Group of Eight
8	Australian Academy of Technological Sciences & Engineering (ATSE)

Appendix 2

Hearings and witnesses

Melbourne, Thursday, 4 May 2006

The Australian Academy of the Humanities

Professor Stuart Macintyre, *Dean of Arts, University of Melbourne*

Dr Kate Fullager, *Senior Project Officer and Acting Executive Director*

National Tertiary Education Union (NTEU)

Dr Carolyn Allport, *National President*

Ms Emma Cull, *Policy and Research Officer*

Australian Vice-Chancellors' Committee

Dr John Mullarvey, *Chief Executive Officer*

Federation of Australian Scientific and Technical Societies (FASTS)

Mr Bradley Smith, *Executive Director*

Department of Education, Science and Training

Ms Leanne Harvey, *Group Manager, Innovation and Research Systems Group*

Dr Alexander Cooke, *Research Policy and Programs Team*

