

Federation of Australian Scientific and Technological Societies (FASTS)

Submission to

Senate Employment, Workplace Relations and Education Legislation Committee

Australian Research Council Amendment Bill 2006

Introduction

The Federation of Australian Scientific and Technological Societies (FASTS) is the peak representative body for 60,000 Australian scientists and technologists.

The primary purpose of the *Australian Research Council Amendment Bill 2006* is to amend the *Australian Research Council Act 2001* to implement the Executive Management template recommended by the *Review Of Corporate Governance Of Statutory Authorities And Office Holders* (Uhrig Report, 2002).¹

In considering the legislation, FASTS believes the key question is: Will the changes undermine or constrain the ARC in carrying out its statutory objects of;

- a) making high quality funding recommendations,
- b) administering funding programs, and
- c) providing high quality advice to the Minister about matters relating to research (s.3(a))?

In summary, FASTS believes the disestablishment of the ARC Board does not, in and of itself, undermine the capacity of the ARC to carry out its functions although we note that the proposed changes to the Act will mean the integrity of the relations between the Minister and the CEO of the ARC will be of critical importance.

FASTS argues the Government is entitled to publicly state its expectations, provide broad direction, approve funding rules and criteria, set funding caps on programs and accept or not accept advice. In turn, the ARC is entitled to determine and manage operational issues as to how it develops and provides advice on funding decisions and other matters related to research consistent with the scope specified by the Government.

FASTS believes there are weaknesses in the legislation with implications for how the ARC carries out its functions of making high quality funding recommendations and providing advice to the Minister on matters relating to research.

Accordingly, FASTS recommends the legislation be amended to:

- ensure the integrity of the selection of members of committees, notably the College of Experts, that play a role in the peer or expert review process leading to recommendations for funding;
- confirm the ARC has the power to initiate inquiries into matters relating to research of its own volition, and
- provide the Minister greater flexibility to delegate powers.

¹ <http://www.finance.gov.au/governancestructures/>

Australian Research Council

FASTS continues to strongly support the policy intent, announced in the White Paper *Knowledge and Innovation* (Kemp, 1999), that the Australian Research Council (ARC) be an independent statutory agency outside the (then) Department of Education, Training and Youth Affairs (now DEST). It remains FASTS' view that the ARCA 2001 did not fully reflect that policy intent and unnecessarily constrains the independence of the ARC.

The ARC is a key institution in Australian research:

- It is the primary source of Commonwealth support for basic research carried out in Australian universities;
- It is well placed to provide in depth analysis and high level advice to Government and the broader community on matters relating to research in universities; and
- its rigorous assessment of grant proposals, notably in the discovery program, is a crucial quality control mechanism to identify and support research excellence.

The ARC's programs collectively represent approximately 10% of total Commonwealth support for science, R&D and innovation. It is important to note, however, that in practice that figure is closer to 20% given the requirement for universities and other grant recipients to provide matching funds and/or top up funding or support in kind.² This leveraging means ARC programs and funding determinations have considerable influence over the direction and scope of Australian R&D.

This underscores the importance of ensuring that funding recommendations are determined through robust and transparent processes, which are free of political whim.

FASTS submits that an independent ARC means the CEO should have the full responsibility to manage the operations of the ARC in line with the expectations and directions articulated by the Government and that if the Government is not satisfied then it has the option of terminating the employment of the CEO.

Credibility And Accountability Of Research

Since World War II, but particularly in recent decades, Governments in developed nations, and increasingly in developing nations (notably China and India), have recognised that a high quality research capability is fundamental to a nation's economic, social and environmental prospects. Moreover, Governments have long recognised that R&D is intrinsically susceptible to market failure thus a significant proportion of research must be funded and conducted in the public sector.

Two key policy issues that arise are;

- 1) the asymmetry of knowledge between the Government as funder and researchers; and
- 2) accountability for public funding decisions.

Research in science and technology is typically highly technical and specialised. While Governments can and do set broad priorities or constrain some research for social or ethical reasons, Governments do not, and are not expected to have the detailed knowledge of cutting

² In addition, institutions' relative success in achieving ARC grants is one of the key drivers for the allocation of the research infrastructure block grant program.

edge research to determine which individuals or individual projects should or should not be funded.

Accordingly, rigorous peer or expert review is internationally accepted as the best process to address this asymmetry and ensure that excellence is the fundamental determinant of what research should be supported.

That is not to say that the importance of peer review should be uncritically asserted. There are issues around conflict of interest and due process that need close and ongoing attention.

FASTS believes confidence in peer or expert review processes is essential not only for domestic researchers and research institutions but also in the international context. Australia produces about 1% of the world's knowledge and accessing the other 99% is significantly dependent on;

- the quality of Australian research;
- the calibre of Australian researchers; and
- the integrity of Australian research agencies and institutions.

More broadly, FASTS submits it is a hallmark of a mature democracy that research and research funding decisions are independent, robust and not subject to politicisation.

Within the research sector there is a range of views as to whether decisions over which projects are funded should be the prerogative of the Minister or entirely delegated to independent funding agencies.

FASTS believes it is appropriate that the Minister, on behalf of the community, is accountable for funding decisions including approving funding recommendations, setting caps on specific programs and approving rules and criteria for ARC programs.

In the current Act, the Minister is not entitled to direct the ARC to recommend that a particular proposal be approved or not (s.7(2)) - a provision retained in the ARCAB 2006. That is, all applications for funding in ARC programs must be assessed by the stipulated peer or expert assessment processes.

However, the Minister has always had the power to not accept ARC funding recommendations since its inception as part of NBEET in 1988. It is on the public record that Minister Vanstone exercised this power once in 1996 and for a number of recommendations in the past two years by Minister Nelson.

FASTS submits that if the Minister has the power to not accept a recommendation of the ARC the Minister must accept the obligation to

- a) ensure that the criteria and rules for ARC programs are explicit, comprehensive and confirm excellence is the fundamental determinant, and
- b) provide good reasons to Parliament, including naming the specific area and topic of research so that the public and researchers are aware of what areas the Government will not support (these statements should not breach the privacy of the applicant or identifying the institution where the research would otherwise have been conducted).

Disestablishing the Board

Under the current Act, the ARC Board does not have the full power to act independently as the Minister has final approval powers over the Board's key statutory functions including setting funding rules, strategic plans, appointments to committees, initiating inquiries and funding determinations.

In FASTS' view, the removal of the Board does not, in and of itself, prevent the ARC from carrying out its statutory functions to make recommendations on grants, administer programs and provide advice on matters related to research.

FASTS notes that the disestablishment of the Board means the nature of the relationship between the Minister and the CEO will be critical and dependent on both acting in good faith and the CEO being unconstrained in providing advice.

FASTS would like to point out that disestablishing the Board removes an administrative step in the grant process and thus it is reasonable to expect an 'efficiency dividend' through streamlining the decision making processes.

This is particularly pertinent for individual researchers, especially early career researchers. If, as has occurred in the past two years, announcements of successful discovery grants are delayed to November, or even later, this creates a great deal of employment uncertainty for researchers who are not employed on an ongoing basis with universities or other eligible research institutions.

FASTS has proposed that it be a standing practice for the Minister to undertake to announce the outcomes of research grant applications at a fixed date, which for the Discovery Program and other parallel applications should be no later than 1 October each year.

Designated Committees

The Bill transfers the current power of the Board to establish committees, subject to the approval of the Minister, to the Minister (as distinct from the CEO of the ARC).

FASTS notes that the Bill retains the current requirement that membership of the committee should reflect the diversity of interests in the matter(s) the committee will be dealing with.

FASTS also notes the Bill drops the current requirement that committees will have at least five members (s.32(2) ARCA 2001). The Government has not provided any explanation for dropping this provision. While FASTS does not see great value in setting prescriptive measures on the number of committee members, there is likely to be concern within the research community if a committee is established that is not consistent with the requirement that committees should reflect the diversity of interests.

FASTS does not oppose the Minister having the capacity to establish designated committees with the proviso that any such committees do not undermine the functions of the CEO of the ARC to fulfil his or her functions of providing high quality advice on funding proposals or advice on matters relating to research.

College of Experts

The College of Experts plays an important role in the ARC's operations. Its members are experts of international standing from both the public and private sector and provide strategic advice to the ARC Board on disciplinary and multi-disciplinary research matters.

The College is an integral and significant part of the peer review process as it assesses and ranks grant applications for the National Competitive Grants Programs.

FASTS welcomes Minister Bishop's comment in her second reading speech that the ARC will retain the current peer review processes including the College of Experts.

FASTS is concerned, however, that the legislation not only transfers the power to establish committees out of the ARC to the Minister but makes no requirement that the Minister consult with the ARC on the membership, terms of reference or appointments of committees. This is not consistent with the policy intent that the ARC be an independent statutory authority.

As the College of Experts is currently integral to the peer review process and thus the performance of one of the functions of the ARC to provide high quality advice on funding applications, this creates a concern that the selection of the College may be politicised by, for example, a Minister selecting members on the basis of attitudes to particular areas of research (eg embryonic stem cells or geosequestration).

Under the current Act, the ARC Board sets terms of reference and makes appointments to committees subject to the approval of the Minister. The process by which College members are appointed is managed – and managed well – by the ARC.

If the College of Experts is to play any role in peer review, then FASTS submits it is important the College's nomination, selection and appointment process continues to be managed by the ARC.

In brief there are several possible approaches to appointments to committees that support the ARC's statutory functions, including;

- a) the Minister appoints through whatever process he or she determines (ARCAB 2006);
- b) the Minister appoints taking regard of advice from the CEO of the ARC;
- c) the ARC appoints – subject to the approval of the Minister (ARCA 2001); and
- d) the ARC appoints.

FASTS does not believe there is a compelling reason for the Minister to have any role in the selection of the College of Experts or any other committee whose primary function is to support the operations by which the ARC performs its functions.

If the Government is not prepared to permit the ARC to make appointments to the College of Experts or similar peer or expert review committees then it should retain the current arrangements where the ARC subject to the Minister's approval makes appointments.

Recommendation: That the legislation be amended to ensure the ARC manages the nomination, selection and appointment process for any committees, including the College of Experts, that play a role in peer and expert review for the purposes of

fulfilling the ARC’s statutory object and function to provide high quality recommendations to the Minister on which research proposal should be funded.

Initiating inquiries

It is a statutory objective of the ARC that it provide high quality advice to the Minister on matters relating to research. To fulfil that objective FASTS submits it is important that the ARC has the power to initiate inquiries into research of its own volition.

This power had existed from when the ARC was established and has been used from time to time to develop high-level analysis (eg Paul Bourke’s paper on the UK Research Assessment Exercise – commissioned jointly by the ARC and HEC and published by NBEET).³

In the current Act, this power is unnecessarily diminished to the extent that the Board is required to consult with the Minister prior to initiating an enquiry of its own volition (s.9(2) and (3)).

The proposed legislation states that the functions of the CEO include providing advice to the Minister on research matters. There are no specified constraints on the CEO as to how he or she might provide such advice (other than the requirements set out in the *Public Service Act 1999* and the *Financial Management and Accountability Act 1997*) such as requiring Ministerial approval to initiate inquiries of his or her own volition.

This could be read as providing the CEO with an implicit power to initiate inquiries of their own volition to enable him or her to carry out the functions of providing high level advice.

FASTS notes however, that the Departments’ submission suggests otherwise by stating that the provisions of the Bill “do not preclude the CEO from asking that the Minister request the CEO’s advice on a specific research matter”.

As a matter of principle, FASTS believes that this is an unnecessary constraint and has the potential to limit the capacity of the ARC to provide high-level advice to the Minister.

Accordingly, FASTS argues that the Government must clarify that the legislation does allow the CEO of the ARC to initiate inquiries into research matters for the purposes of fulfilling his or her statutory function of providing advice to the Minister on matters relating to research.

Recommendation: That the legislation be amended to make explicit that the CEO of the ARC may initiate inquiries for the purposes of fulfilling the function of providing advice to the Minister on matters relating to research (To the extent that the legislation does not explicitly preclude that capacity, FASTS would be satisfied if the Minister confirms this is the intent of the legislation).

Delegation of Powers

The current Act allows the Minister power to delegate all of their responsibilities to the CEO except power to set rules, approve funding and set funding caps (between programs) (refer

³ *Evaluating University Research: The British Research Assessment Exercise and Australian Practice*, P. Bourke, National Board of Employment, Education and Training Commissioned Report No. 56, Australian Government Publishing Service, Canberra, July 1997

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s.66 ARCA 2001). The Bill does not amend the current provisions. However, there is an argument that this section should be amended to provide the Minister with more flexible powers of delegation so that funding determinations for major programs are not unnecessarily delayed.

While FASTS believes that it is appropriate that the Minister set rules, approve funding and set funding caps we would be concerned if circumstances such as a change in Minister or priorities in other areas of the portfolio unduly delayed the timely operations and announcements of ARC programs.

Accordingly, FASTS believes the committee should consider providing greater flexibility for the Minister to delegate all of the Minister's powers. In practice, we envisage that this is only likely to apply to some funding decisions (eg for amounts under \$100,000 or in non-contentious areas of research).

Recommendation: That the provisions in the Act allowing the Minister to delegate their powers to the CEO or staff of the ARC be broadened to allow the Minister to delegate all of their powers.