

Chapter 3

The provisions of the bill

Current structure of ACIAR

3.1 The *Australian Centre for International Agricultural Research Act 1982* (ACIAR Act) established ACIAR as a body corporate to assist and encourage agricultural researchers in Australia to use their skills for the benefit of developing countries, while at the same time working to solve Australia's own agricultural problems.¹

3.2 In 1992, the ACIAR Act was amended to extend the life of ACIAR past the sunset clause of 12 years, and allow it to establish and fund training schemes, conduct and fund development activities and fund international agricultural research centres.²

3.3 The functions of ACIAR are to:

- formulate programs and policies with respect to agricultural research in relation to agricultural problems of developing countries;
- commission agricultural research and communicate to persons and institutions the results of such research;
- establish and fund training schemes related to its research programs;
- conduct and fund development activities related to its research programs; and
- fund international agricultural research centres.³

3.4 ACIAR's organisation currently consists of a Director; a Board of Management; and a Policy Advisory Council. The Director has the overall responsibility for the administration of ACIAR and its staff 'in accordance with the general directions of the Board'.⁴

Board of management

3.5 The membership of the Board of Management consists of the President of the Policy Advisory Council; the Director of ACIAR; and three board members to be

1 The Hon Greg Hunt MP, Parliamentary Secretary to the Minister for Foreign Affairs, Second Reading Speech, *House of Representatives Hansard*, 10 May 2007, p. 6.

2 Parliamentary Library, 'Australian Centre for International Agricultural Research Amendment Bill 2007', *Bills Digest*, 19 August 1992, p. 1.

3 *ACIAR Act 1982*, ss. 5(1).

4 *ACIAR Act 1982*, ss. 24(2).

appointed from among the members of the Council. Members of the Board are appointed for a period not exceeding three years.⁵

3.6 According to the 1982 Explanatory Memorandum, it was anticipated that 'the three members of the board would reflect the importance of Universities, CSIRO and State Departments of Agriculture as Australia's prime sources of expertise in agricultural research'.⁶

3.7 The Board is responsible for conducting the affairs of ACIAR, in particular with regard to:

- establishing policy and agreeing on strategic issues;
- guiding and monitoring the performance of the Director;
- ensuring good corporate governance; and
- promoting ACIAR and its key relationships, and approving research projects.⁷

Policy Advisory Council

3.8 The Policy Advisory Council was created to be an expert body with members from Australian institutions, developing countries and the international scientific community. Its membership consists of:

- President;
- Director-General of the Australian Public Service, Australian International Development Assistance Bureau (now AusAID), or a person nominated by the Director-General; and
- not fewer than 9 and not more than 11 other members.⁸

3.9 Under the ACIAR Act, the minister is required to ensure that 'a substantial number' of members come from countries other than Australia.⁹ According to ACIAR, the overseas members are to be representative of ACIAR's partner countries of high priority—currently China, Indonesia, India, the Philippines, Papua New Guinea and Vietnam.¹⁰

5 *ACIAR Act 1982*, ss. 8(1) and ss. 8(2).

6 *ACIAR Act 1982, Explanatory Memorandum*, Clause 8 [p. 3].

7 ACIAR, Corporate Governance, Board of Management, <http://www.aciar.gov.au/web.nsf/doc/ACIA-5KLV5K> (accessed 28 May 2007).

8 *ACIAR Act 1982*, ss. 19(1).

9 *ACIAR Act 1982*, para. 19(3)(b).

10 ACIAR, Board of Management <http://www.aciar.gov.au/web.nsf/doc/ACIR-5JE3LB> (accessed 28 May 2007).

ACIAR Amendment Bill 2007

3.10 Both the explanatory memorandum and the second reading speech noted that the changes introduced in the bill form part of the implementation of the Australian Government's response to the *Review of Corporate Governance of Statutory Authorities and Office Holders* conducted by Mr John Uhrig AO.¹¹

3.11 As part of its broad objective to establish effective governance arrangements for statutory authorities, the government assessed ACIAR's existing governance structure against the recommendations and principles of the Uhrig Review.¹² The Minister for Foreign Affairs, who is responsible for ACIAR, considered that the 'current board of management structure is inconsistent with the executive management template recommended by Mr Uhrig for agencies covered by the *Financial Management and Accountability Act 1997* (FMA Act)'.¹³ The assessment found that:

An executive management template would be the most suitable governance structure for ACIAR with responsibility for the administrative and financial management of the Centre vested in a Chief Executive Officer'.¹⁴

3.12 The Uhrig Review considered this model to be the best governance structure for most non-commercial authorities as it provides a direct line of communication between the minister and those performing legislated functions, and the clearest and most direct line of accountability to the minister.¹⁵

3.13 The bill amends the ACIAR Act to:

- abolish the Board of Management along with the office of Director;
- establish a seven-member expert Commission for International Agricultural Research (the Commission);
- avoid duplication in the membership of the proposed Commission and the current Council; and
- create a new position of CEO (to replace the Director) who will be directly accountable to the minister for administrative and financial purposes under the FMA Act.¹⁶

11 The Hon Greg Hunt MP, Parliamentary Secretary to the Minister for Foreign Affairs, Second Reading Speech, *House of Representatives Hansard*, 10 May 2007, p. 6.

12 The Hon Greg Hunt MP, Parliamentary Secretary to the Minister for Foreign Affairs, Second Reading Speech, *House of Representatives Hansard*, 10 May 2007, p. 6.

13 The Hon Greg Hunt MP, Parliamentary Secretary to the Minister for Foreign Affairs, *House of Representatives Hansard*, 10 May 2007, p. 6.

14 *Submission 1*, p. 3.

15 Uhrig Review, p. 67.

16 Parliamentary Library, 'ACIAR Amendment Bill 2007', *Bills Digest* no 160, 2006- 2007, p. 1.

3.14 According to the government, these changes, as noted previously, are consistent with the executive management template recommended by the Uhrig review and will not alter the functions of ACIAR.¹⁷ The changes are discussed below.

Loss of body corporate status

3.15 Item 9 of the bill revokes ACIAR's status as a body corporate and its right to acquire, hold and dispose of real and personal property.¹⁸ As described in the explanatory memorandum:

[Retaining] the Centre as a legal personality separate from the Commonwealth has been assessed as unnecessary given the Centre is budget funded, is a prescribed agency under the FMA Act and does not have any need to own assets in its own right.¹⁹

Commission

3.16 The bill abolishes the Board of Management and replaces it with a Commission, which was seen to be the best way to implement the executive management template.²⁰ The responsibility for administrative and financial management of ACIAR is vested exclusively in the CEO.²¹

Chief Executive Officer

3.17 The joint submission from the Department of Foreign Affairs and Trade, AusAID and ACIAR explained that the executive management template would be the most suitable governance structure for ACIAR, with the CEO having the exclusive responsibility for the administrative and financial management of the centre, and being directly accountable to the minister.²²

Terms of appointment

3.18 The bill abolishes the office of the Director and establishes the office of a CEO who is appointed by the Governor-General for a period specified in the instrument of appointment but not exceeding seven years. The appointment is on a full-time basis.²³

17 The Hon Greg Hunt MP, Parliamentary Secretary to the Minister for Foreign Affairs, Second Reading Speech, *House of Representatives Hansard*, 10 May 2007, p. 6.

18 *ACIAR Amendment Bill 2007*, item 9.

19 *ACIAR Amendment Bill 2007, Explanatory Memorandum*, [p. 4].

20 *Submission 1*, paragraph 12, p. 4.

21 *Submission 1*, paragraph 13, p. 4.

22 *Submission 1*, paragraph 6, p. 3.

23 Proposed section 24.

3.19 The Governor-General may terminate the CEO's appointment on the basis of misbehaviour or physical or mental incapacity and shall terminate the appointment on the grounds of bankruptcy and related matters, or if the CEO is absent for 14 consecutive days or 28 days in any 12 months.²⁴ The CEO may resign by giving the Governor-General a written resignation.²⁵

3.20 Like that of the members of the Council and the Commission, the CEO's remuneration is determined by the Remuneration Tribunal. In the absence of a determination, the CEO will be paid the remuneration and allowances as prescribed by the regulations.²⁶

3.21 The bill prevents the CEO from engaging in paid employment outside his or her ACIAR duties without the minister's approval.²⁷ The CEO must declare to the minister any interest that the CEO has 'that conflicts or could conflict with the proper performance of the CEO's functions'.²⁸

3.22 Other terms and conditions not covered in the bill are determined by the Governor-General.²⁹

Functions

3.23 The bill confers the functions of ACIAR on the CEO, which recognises the CEO's 'exclusive' responsibility for the administrative and financial management of ACIAR.³⁰ The CEO, on behalf of ACIAR, may:

- formulate programs and policies with respect to agricultural research for either or both of the following purposes:
 - identifying agricultural problems of developing countries;
 - finding solutions to agricultural problems of developing countries;
- commission agricultural research by persons or institutions (whether the research is to be conducted in Australia or overseas) in accordance with such programs and policies;
- communicate to persons and institutions the results of such agricultural research;
- establish and fund training schemes related to ACIAR's research programs;

24 Proposed section 29C.

25 Proposed section 29B.

26 Proposed section 27.

27 Proposed section 28.

28 Proposed section 29D.

29 Proposed section 26.

30 *Submission 1*, paragraphs 12 and 13, p. 4.

- conduct and fund development activities related to ACIAR's research programs; and
- fund international agricultural research centres.

3.24 ACIAR is not authorised or permitted to carry out research on its own behalf.³¹

Relationship with minister and Commission

3.25 The CEO is accountable to the minister under the FMA Act,³² and must comply with any directions by the minister.³³ These directions must be in relation to the performance of the CEO's functions and the strategic direction he or she should take in performing those functions. Such a direction is not a legislative instrument.³⁴

3.26 The CEO is not subject to direction by the Commission in relation to the performance of functions or exercise of powers under the FMA Act or the *Public Service Act 1999*.³⁵

3.27 The CEO must prepare an annual report to the minister on the operations of the centre.³⁶ The report must contain financial statements and an audit report pertaining to those statements³⁷ as well as all directions given by the minister to the CEO and the Commission³⁸. The minister must table a copy of the annual report in both Houses of the Parliament.³⁹

3.28 The bill also provides for the CEO to be appointed to the Commission.⁴⁰ According to the explanatory memorandum and the second reading speech, it is the intention of the bill for the CEO to be a member of the Commission 'to ensure consistency in advice to the Minister'.⁴¹ Further, it is stated that '[t]his provision also

31 *ACIAR Act 1982*, section 5.

32 ACIAR Amendment Bill 2007, *Explanatory Memorandum*, [p. 5].

33 Proposed subsection 5(4).

34 Proposed section 5A.

35 Proposed section 29E.

36 Proposed subsection 39(1).

37 *ACIAR Act 1982*, paragraphs 39(2)(a) and 39(2)(b).

38 Proposed paragraphs 39(2)(c) and 39(2)(d).

39 *ACIAR Act 1982*, ss. 39(3).

40 Proposed subsection 24(3).

41 ACIAR Amendment Bill 2007, *Explanatory Memorandum*, [p. 8]; The Hon Greg Hunt MP, Parliamentary Secretary to the Minister for Foreign Affairs, Second Reading Speech, *House of Representatives Hansard*, 10 May 2007, p. 6.

permits an arrangement whereby the Chair of the Commission could be appointed as the CEO'.⁴²

3.29 The committee understands that the CEO's participation in the Commission is intended, but it appears that the current wording of the bill allows for a situation where the CEO may or may not be a commissioner. Since the explanatory memorandum clearly states the intention to appoint the CEO to the Commission, the wording of the legislation should reflect that intention rather than leaving it subject to interpretation.

Recommendation 1

3.30 The committee recommends that the wording pertaining to the appointment of the CEO to the Commission [proposed new subsection 24(3)] be revised to reflect the intention stated in the Explanatory Memorandum that the CEO be appointed as a Commissioner.

Commission

3.31 The bill establishes a Commission to replace the Board. The joint submission from DFAT, AusAID and ACIAR explained that this restructure was necessary:

...to ensure that ACIAR retains a collective expert-decision making role, rather than vesting this entirely under the control of a single chief executive.

This would also ensure that 'the principles of executive management are adhered to'.⁴³

3.32 The Commission consists of seven members (commissioners), including the Chair.⁴⁴ Although its membership is larger than that of the abolished Board (5), the joint submission explained that the increase in the number of members 'is considered to be consistent with the size and complexity of ACIAR's operations' and will provide for 'a diversity of expertise'.⁴⁵

3.33 In order to avoid duplication of membership between the Commission and the Council, a member of the Council cannot be appointed as a Commissioner. However, this or any other provision of the bill does not 'prevent commissioners or Council members from attending the meetings of the other body as non members to maintain linkages between the Commission and PAC'.⁴⁶

42 Proposed subsection 24(3).

43 *Submission 1*, paragraph 12, p. 4.

44 Proposed section 8.

45 *Submission 1*, paragraph 15, p. 5.

46 *Submission 1*, paragraph 17, p. 5.

Terms of appointment

3.34 The commissioners are to be appointed by the Governor-General for a term specified in the instrument of appointment but not exceeding three years. The appointment is on a part-time basis.⁴⁷

3.35 The remuneration for commissioners is to be determined by the Remuneration Tribunal (subject to the *Remuneration Tribunal Act 1973*). If no determination is in operation, the level of remuneration follows the regulations.⁴⁸

Termination of appointment

3.36 The Governor-General may terminate the appointment of a commissioner for misbehaviour or physical or mental incapacity. The Governor-General must terminate the appointment if a commissioner:

- becomes bankrupt and in related matters;
- is absent from three consecutive meetings of the Commission without leave of absence; or
- does not comply with disclosure of interests guidelines.⁴⁹

3.37 A commissioner may resign by providing the Governor-General with a written resignation.⁵⁰

Conflict of interest

3.38 The commissioner must disclose any conflict of interest to a Commission meeting as soon as the relevant facts have come to the commissioner's knowledge, and it must be recorded in the minutes of the meeting. In consequence, the commissioner must not be present during any deliberation on the matter nor take part in any decision with respect to the matter.⁵¹

Functions

3.39 Under the ACIAR Act, the board is responsible for the conduct and control of the administration of ACIAR.⁵² Consistent with the principles set down in the Uhrig Review, the bill repeals the administrative role for the new commission. Instead:

47 Proposed sections 10 and 11.

48 Proposed section 13.

49 Proposed sections 16A and B.

50 Proposed section 16.

51 Proposed section 16B.

52 *ACIAR Act 1982*, ss. 7(2).

[the commission] will provide a forum for collective decision-making to ensure that expert advice is provided to the Minister on program formulation, priority setting and funding. This separation of roles between the Commission and the CEO reflects the new governance and accountability arrangements.⁵³

3.40 The joint submission from DFAT, AusAID and ACIAR explained further:

...given the specialist nature of ACIAR's functions, it remains appropriate for the agency to retain a forum for collective decision-making to enable a group of suitably qualified scientific, development assistance and industry experts to rigorously assess ACIAR's research programs and policies and provide advice to the Minister.⁵⁴

3.41 The proposed functions of the Commission are to provide advice to the minister in relation to:

- the formulation of programs designed to identify and find solutions for agricultural problems of developing countries (paragraph 5(1)(a) of the ACIAR Act);
- the funding for training schemes and development activities that are intended to identify and find solutions for agricultural problems of developing countries and for international agricultural research centres (paragraphs 5(1)(d), (e) and (f);
- program and funding priorities; and
- on the minister's request, on any other matter relating to the ACIAR Act.⁵⁵

Relationship with minister

3.42 The bill provides for the minister to give written directions to the Commission in relation to the performance of the Commission's functions. The minister must take into account any relevant advice received from the Council, and must provide a copy of the direction to the CEO.⁵⁶

3.43 The bill makes it a requirement for any direction given by the minister to the CEO or the Commission to be included in the annual report.⁵⁷ This is to ensure the transparency of ministerial directions.⁵⁸

53 ACIAR Amendment Bill 2007, *Explanatory Memorandum*, [p. 6].

54 *Submission 1*, paragraph 6, p. 3.

55 Proposed section 9.

56 Proposed section 16K.

57 Proposed paragraphs 39(2)(c) and 39(2)(d).

58 ACIAR Amendment Bill 2007, *Explanatory Memorandum*, [p.10].

3.44 The Bills Digest points out that the current legislation contains 'a couple of checks which seem to be absent' in the bill (in relation to the CEO).⁵⁹ These checks refer to directions regarding the exercise of power, including with respect to the commissioning of particular research.⁶⁰

Policy Advisory Council

Establishment

3.45 The Council consists of the President, AusAID Director-General or his/her appointee, and 9-11 members.⁶¹ It remains largely unaffected by the bill.

3.46 The intention is for the Council to continue 'to provide advice on the agricultural problems of developing countries and suitable agricultural research options to address these problems'.⁶² The main change is to the membership which, under the bill, is to exclude the CEO and commissioners from membership.⁶³ This provision is in keeping with the intention of not duplicating membership between the Commission and the Council.⁶⁴ The joint submission from DFAT, AusAID and ACIAR explained:

The provision which ensures no duplication of membership between the Commission and the Policy Advisory Council (PAC) is aimed at clarifying and segregating the advisory roles of the two bodies to ensure best practice in corporate governance and is in line with the clarity of purpose principles enunciated in the Uhrig Review...[t]he avoidance of duplication of PAC membership with the Commission allows for more specialised input with high level partner country participation in PAC. This will complement but not overlap the Commission's role.⁶⁵

3.47 The Uhrig Review supports the existence of a formal consultation mechanism where it can assist government in developing and planning policies, particularly where there is constant need for advice in the formulation of policy and its implementation.⁶⁶

3.48 The committee notes the reasons for not allowing dual membership but is concerned about the lack of clarity surrounding the functions of the Commission and

59 Parliamentary Library, 'ACIAR Amendment Bill 2007', *Bills Digest* no 160, 2006- 2007, p. 4.

60 *ACIAR Act 1982*, ss. 16(1).

61 *ACIAR Act 1982*, ss. 19(1).

62 *Submission 1*, paragraph 17, p. 5.

63 Proposed para. 19(2)(a).

64 ACIAR Amendment Bill 2007, *Explanatory Memorandum*, item 17, Part III, Division 2, s. 10, [p. 6];

65 *Submission 1*, paragraph 17, p. 5.

66 Uhrig Review, p. 74.

the Council. The functions of the Council as stated in the ACIAR Act under section 18 are to provide advice to the minister regarding:

- agricultural problems of developing countries; and
- programs and policies with respect to agricultural research for either or both of the following purposes:
 - (i) identifying agricultural problems of developing countries;
 - (ii) finding solutions to agricultural problems of developing countries.

3.49 This provision remains unchanged. Under the proposed restructure, the Commission will have exactly the same advisory function but will also provide advice on the funding for training schemes and development activities that are intended to identify and find solutions for agricultural problems of developing countries and for international agricultural research centres; on program and funding priorities; and on the minister's request, on any other matter relating to the ACIAR Act.⁶⁷

Recommendation 2

3.50 The committee recommends that the Explanatory Memorandum include a clearer explanation on the functions of the Commission and the Council to avoid unnecessary duplication and to ensure that the work of the Council does complement that of the Commission.

Statement of Expectation and Statement of Intention

3.51 The Uhrig Review recommends that the responsible minister and the statutory authority clearly state the expectations and outcomes for which they would be held accountable:

A Statement of Expectations would enable a Minister to provide greater clarity about government policies and objectives relevant to a statutory authority, including the policies and priorities it is expected to observe in conducting its operations. A statement would not, however, seek to impinge on the level of independence or objectivity provided to an authority under legislation, and accordingly would need to be consistent with the power provided to a Minister under the legislative framework of the relevant authority.⁶⁸

3.52 The response by the statutory authority, a statement of intent, would outline the authority's commitment to the minister's expectations and how it intends to undertake its operations. The minister could request it be modified if it did not

67 Proposed section 9.

68 Uhrig Review, p. 60.

address expectations.⁶⁹ The Uhrig Review also recommends both statements be made public to provide transparency.⁷⁰

3.53 The committee notes that the bill makes no reference to this governance mechanism. Considering that the Government has endorsed this recommendation,⁷¹ the committee recommends that the governance arrangements for ACIAR, albeit absent from the bill, be exchanged between the responsible minister and ACIAR.

Recommendation 3

3.54 The committee recommends that the ACIAR governance arrangements include the statement of expectation and the statement of intention.

Ministerial delegation of functions or powers

3.55 Section 41 of the ACIAR Act describes the minister's rights in relation to the delegation of his powers as follows:

- 'The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to the Board or a person any of his powers under this Act, other than this power of delegation.
- A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Minister.
- A delegation under this section does not prevent the exercise of a power by the Minister.⁷²

3.56 The bill proposes to repeal the old section and replace it with the following:

'the Minister may, by writing, delegate to any person all or any of the Minister's functions or powers under this Act'.⁷³

3.57 The explanatory memorandum states only that the delegation to 'any person' is required because in some circumstances it may not be 'appropriate' to delegate ministerial functions or powers to the CEO.⁷⁴

3.58 The committee notes this reasoning but does not deem it necessary to repeal the existing provision with its more precise guidelines in favour of a rather vague statement ('any person'). The committee considers that the same result could have

69 Uhrig Review, p. 60.

70 Uhrig Review, p. 61.

71 Senator The Hon Nick Minchin, Minister for Finance and Administration, 'Australian Government Response to Uhrig Review', *Media Release 57/04*, 12 August 2004.

72 *ACIAR Act 1982*, Part VIII, s. 41.

73 Proposed section 41.

74 ACIAR Amendment Bill 2007, *Explanatory Memorandum*, item 36, [p. 10].

been achieved by simply omitting the words 'the Board' without losing the checks that were in place.

Recommendation 4

3.59 The committee recommends that section 41 of the current legislation not be repealed but instead omit the words 'the Board or' in order to keep the current checks in place.

Conclusion

3.60 The committee has considered the bill and is of the view that its provisions are consistent with the recommendations of the Uhrig Review. As a statutory agency, it is appropriate that ACIAR aligns more closely with the executive management template as intended by the bill.

3.61 Yet, the committee has several suggestions to improve the clarity and intention of this legislation. The committee suggests that the wording in the legislations be more precise in order to clearly state the intention and to avoid misinterpretations. The committee recommends that the expectations and intentions between the minister and ACIAR be documented in the Statement of Expectation and Statement of Intention as recommended by the Uhrig Review.

3.62 The committee agrees with both Coalition and Opposition members who have stated their support for the bill to the effect that it does not change ACIAR's performance greatly nor does it impede its capacity, but could provide a more efficient model.⁷⁵

Recommendation 5

3.63 The committee recommends that the Senate pass the bill.

SENATOR MARISE PAYNE
CHAIR

⁷⁵ Mr Bob McMullan MP, ACIAR Amendment Bill 2007, Second Reading Speech, *House of Representatives Hansard*, 23 May 2007, p. 76, and Mr Patrick Secker MP, ACIAR Amendment Bill 2007, Second Reading Speech, *House of Representatives Hansard*, 23 May 2007, p. 78.