



Australian Research Council Act 2001

No. 8, 2001



Australian Research Council Act 2001

No. 8, 2001

**An Act to establish an Australian Research Council
and to provide for the funding of research
programs, and for related purposes**

Contents

Part 1—Preliminary	2
1 Short title	2
2 Commencement	2
3 Objects of Act	2
4 Definitions	3
Part 2—Establishment and functions of the Australian Research Council	4
5 Establishment of the ARC	4
6 The functions of the ARC	4
7 Ministerial directions about performance of ARC's functions	5
Part 3—The Board of the ARC	6
Division 1—Establishment and functions	6
8 Establishment of the Board	6
9 The Board's functions	6
10 Ministerial directions about performance of Board's functions	7
11 Notification of general Commonwealth Government policies that are to apply to ARC etc.	7
Division 2—Membership	8
12 Membership of Board	8
13 Appointment of Chair	8
14 Appointment of the 8 members referred to in paragraph 12(c)	9
15 Acting appointments	9
16 Appointed members hold office on part-time basis	9
17 Remuneration and allowances of appointed members	10
18 Appointed members may be granted leave of absence from meetings	10
19 Other terms and conditions of appointed members	10
20 Resignation of appointed member	10
21 Termination of appointment of Chair	11
22 Termination of appointment of other appointed members	11
Division 3—Meetings	13
23 Convening meetings	13
24 Presiding at meetings	13
25 Quorum	13
26 Voting at meetings	14

27	Disclosure of interests	14
28	Conduct of meetings.....	15
29	Certain Board members may be represented at meetings by another person	15
Part 4—Committees		17
30	Board may establish committees	17
31	Functions of a committee	17
32	Appointment of committee members	17
33	Terms and conditions of committee members	18
Part 5—Chief Executive Officer and staff		19
Division 1—Chief Executive Officer		19
34	Appointment of CEO.....	19
35	Acting CEO.....	19
36	CEO holds office on full-time basis	20
37	Remuneration and allowances of CEO	20
38	Other terms and conditions of CEO.....	20
39	Duties of CEO	21
40	Resignation of CEO.....	21
Division 2—Staff		22
41	Staff to be engaged under Public Service Act etc.	22
Part 6—Planning and reporting		23
Division 1—Strategic plans		23
42	Board to prepare strategic plans	23
43	Ministerial approval of strategic plans.....	23
44	Variation of strategic plans.....	24
45	Annual report to include assessment of ARC’s performance using performance indicators in strategic plan	24
Division 2—Annual report		25
46	Annual report.....	25
Part 7—Funding of research		26
Division 1—Financial assistance for approved research programs		26
Subdivision A—Preliminary		26
47	Definitions.....	26
48	Years to which Division applies	27
Subdivision B—Capping of funding		27
49	Annual cap on funding	27

50	Minister must divide funding caps between different categories of research programs	27
Subdivision C—Provision of financial assistance		28
51	Approval of expenditure on research programs	28
52	Recommendations by ARC in relation to approval of proposals.....	29
53	Requirements for approval or recommendation of proposals	29
54	Variation of funding approvals.....	31
55	Payment of financial assistance for approved research programs.....	31
56	Advances	32
57	Source of payments	33
58	Conditions of payment of financial assistance.....	33
Subdivision D—Funding rules		34
59	Board to make rules.....	34
60	Ministerial approval of rules.....	35
61	Variation of rules.....	36
Division 2—The ARC Research Endowment Account		37
62	Establishment of ARC Research Endowment Account	37
63	Credits to Account	37
64	Purposes of Account.....	37
65	Terms and conditions of financial assistance.....	37
Part 8—Miscellaneous		38
66	Delegation by Minister	38
67	Regulations.....	38



Australian Research Council Act 2001

No. 8, 2001

An Act to establish an Australian Research Council and to provide for the funding of research programs, and for related purposes

[Assented to 22 March 2001]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *Australian Research Council Act 2001*.

2 Commencement

- (1) Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.
- (2) If this Act does not commence under subsection (1) within the period of 6 months beginning on the day on which it receives the Royal Assent, it commences on the first day after the end of that period.

3 Objects of Act

The objects of this Act are:

- (a) to establish a body:
 - (i) that will provide the Minister with high quality advice about matters related to research; and
 - (ii) that will make high quality recommendations to the Minister in relation to which research programs should receive financial assistance under Division 1 of Part 7; and
 - (iii) that will administer the regimes of financial assistance provided for in Divisions 1 and 2 of Part 7; and

(b) to provide for the funding of research programs.

4 Definitions

In this Act, unless the contrary intention appears:

Account means the ARC Research Endowment Account established by section 62.

appointed member means a member of the Board referred to in paragraph 12(a) or (c).

ARC means the Australian Research Council established by section 5.

Board means the Board of the ARC.

Board member means a member of the Board (including the Chair).

CEO means the Chief Executive Officer of the ARC.

Chair means the Chair of the Board.

research program means:

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

Section 5

Part 2—Establishment and functions of the Australian Research Council

5 Establishment of the ARC

- (1) The Australian Research Council is established by this section.
- (2) The ARC consists of:
 - (a) the Board (which includes the CEO); and
 - (b) the committees referred to in section 30; and
 - (c) the staff referred to in section 41.

6 The functions of the ARC

- (1) The ARC has the following functions:
 - (a) the function of making 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; and
 - (b) the function of administering the regimes of financial assistance provided for in Divisions 1 and 2 of Part 7; and
 - (c) the function of providing advice to the Minister on research matters as requested under subsection (2); and
 - (d) such other functions as are conferred on the ARC by the other provisions of this Act and by any other Act.
- (2) The Minister may, in writing, request the ARC to provide the Minister with advice about a particular matter related to research.
- (3) The ARC must comply with a request under subsection (2) for advice. The advice must be in writing.
- (4) Particulars of any requests made by the Minister under subsection (2) in a financial year must be included in the annual report for the ARC for the financial year.

- (5) The Minister must cause a copy of any request made under subsection (2) to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the request was made.

7 Ministerial directions about performance of ARC's functions

- (1) Subject to subsection (2), the Minister may, by written notice given to the Chair, give directions to the Board about the performance of the ARC's functions.
- (2) The Minister is not entitled to direct the ARC (or the Board) to recommend that a particular proposal should, or should not, be approved as deserving financial assistance under Division 1 of Part 7.
- (3) Particulars of any directions given by the Minister under this section in a financial year must be:
 - (a) tabled in each House of the Parliament within 15 sitting days of that House after the direction is given; and
 - (b) included in the annual report for the ARC for the financial year.
- (4) The Board must ensure that a direction given under this section is complied with.

Part 3—The Board of the ARC

Division 1—Establishment and functions

8 Establishment of the Board

The Board of the ARC is established by this section.

9 The Board's functions

- (1) In addition to the functions conferred on the Board by other provisions of this Act, the Board has the functions of:
 - (a) deciding the ARC's goals, priorities, policies and strategies; and
 - (b) subject to subsections (2) and (3), initiating inquiries, on its own motion, into matters related to research; and
 - (c) ensuring that the ARC's functions are performed properly, efficiently and effectively.
- (2) The Board may initiate an inquiry under paragraph (1)(b) only if:
 - (a) the inquiry will not prejudice the performance of any or all of the ARC's functions under section 6; and
 - (b) the Board has consulted the Minister about the proposal to initiate the inquiry.
- (3) If the Board initiates an inquiry under paragraph (1)(b):
 - (a) the Board must provide the Minister with information about the results of that inquiry; and
 - (b) the Board may, if it considers it appropriate to do so, publish information about the results of the inquiry in such manner as the Board thinks appropriate.

Note: Provisions relevant to the proper performance of the ARC's functions include (in addition to the provisions giving the ARC those functions) section 10 (obligation to ensure Ministerial directions complied with) and section 11 (obligation to comply with general Government policies).

10 Ministerial directions about performance of Board's functions

- (1) The Minister may, by written notice given to the Chair, give directions to the Board about the performance of the Board's functions.
- (2) Particulars of any directions given by the Minister under this section in a financial year must be:
 - (a) tabled in each House of the Parliament within 15 sitting days of that House after the direction is given; and
 - (b) included in the annual report for the ARC for the financial year.
- (3) The Board must comply with any directions given to it under this section.

11 Notification of general Commonwealth Government policies that are to apply to ARC etc.

- (1) The Minister may, by written notice given to the Chair, notify the Board of general policies of the Commonwealth Government that are to apply in relation to all or any of the following:
 - (a) the ARC;
 - (b) the Board (which includes the CEO);
 - (c) the committees referred to in section 30;
 - (d) the staff referred to in section 41.
- (2) Particulars of any notifications given by the Minister under this section in a financial year must be:
 - (a) tabled in each House of the Parliament within 15 sitting days of that House after the notification is given; and
 - (b) included in the annual report for the ARC for the financial year.
- (3) The Board must ensure that any policies notified under this section are complied with.

Division 2—Membership

12 Membership of Board

The Board consists of:

- (a) a Chair; and
- (b) the people who, from time to time, hold the following offices:
 - (i) CEO of the ARC;
 - (ii) the Chief Scientist;
 - (iii) Chairperson of the National Health and Medical Research Council (established by the *National Health and Medical Research Council Act 1992*);
 - (iv) Secretary of the Department of Education, Training and Youth Affairs;
 - (v) Secretary of the Department of Industry, Science and Resources; and
- (c) 8 other members.

Note: The performance of the Board's functions and the exercise of its powers is not affected merely because of a vacancy or vacancies in the membership of the Board (see subsection 33(2B) of the *Acts Interpretation Act 1901*).

13 Appointment of Chair

- (1) The Chair is to be appointed by the Governor-General by written instrument for the period specified in the instrument of appointment. That period must not exceed 3 years.
- (2) A person appointed under this section must be someone who:
 - (a) in the Minister's opinion, is a prominent member of the Australian community and is held in high regard by the research community; and
 - (b) is not an APS employee within the meaning of the *Public Service Act 1999*.

14 Appointment of the 8 members referred to in paragraph 12(c)

- (1) The 8 Board members referred to in paragraph 12(c) are to be appointed by the Minister by written instrument for the periods specified in their instruments of appointment. A specified period must not exceed 3 years.
- (2) The Minister must, in making appointments under this section, try to ensure that the composition of the Board reflects the breadth of academic, industry and community interests in the outcomes of research.
- (3) The Minister must not appoint a person under this section if the person is an APS employee within the meaning of the *Public Service Act 1999*.

15 Acting appointments

- (1) The Minister may appoint a person to act as an appointed member:
 - (a) during a vacancy in the office of the member (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the member is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.
- (2) Anything done by a person purporting to act under an appointment under subsection (1) is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

Note: For more information about acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

16 Appointed members hold office on part-time basis

An appointed member holds office on a part-time basis.

17 Remuneration and allowances of appointed members

- (1) An appointed member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed by the regulations.
- (2) An appointed member is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

18 Appointed members may be granted leave of absence from meetings

- (1) The Minister may grant the Chair leave to be absent from a meeting or meetings of the Board on the terms and conditions that the Minister determines.
- (2) The Chair may grant another appointed member leave to be absent from a meeting or meetings of the Board on the terms and conditions that the Chair determines.

19 Other terms and conditions of appointed members

- (1) The Chair holds office on the terms and conditions (in relation to matters not otherwise covered by this Act) that are determined in writing by the Governor-General.
- (2) The other appointed members hold office on the terms and conditions (in relation to matters not otherwise covered by this Act) that are determined in writing by the Minister.

20 Resignation of appointed member

- (1) The Chair may resign his or her appointment by giving a written resignation to the Governor-General.
- (2) Any other appointed member may resign his or her appointment by giving a written resignation to the Minister.

21 Termination of appointment of Chair

- (1) The Governor-General may terminate the appointment of the Chair for misbehaviour or physical or mental incapacity.
- (2) The Governor-General must terminate the appointment of the Chair if:
 - (a) the Chair:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
 - (b) the Chair is absent, except on leave of absence granted under subsection 18(1), from 3 consecutive meetings of the Board; or
 - (c) the Chair engages in paid employment that conflicts or could conflict with the proper performance of the Chair's duties; or
 - (d) the Chair fails, without reasonable excuse, to comply with section 27 (disclosure of interests).

22 Termination of appointment of other appointed members

- (1) The Minister may terminate the appointment of an appointed member, other than the Chair (who is dealt with in section 21), for misbehaviour or physical or mental incapacity.
- (2) The Minister must terminate the appointment of an appointed member, other than the Chair, if:
 - (a) the member:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or

Part 3 The Board of the ARC

Division 2 Membership

Section 22

- (b) the member is absent, except on leave of absence granted under subsection 18(2), from 3 consecutive meetings of the Board; or
- (c) the member engages in paid employment that conflicts or could conflict with the proper performance of the member's duties; or
- (d) the member fails, without reasonable excuse, to comply with section 27 (disclosure of interests).

Division 3—Meetings

23 Convening meetings

- (1) Subject to subsection (3), the Chair may convene a meeting of the Board at any time.
- (2) The Minister may convene a meeting of the Board at any time.
- (3) The Chair, in exercising his or her power to convene meetings, must ensure that meetings of the Board are scheduled to meet the following requirements:
 - (a) the first meeting of the Board must be within 3 months after the commencement of this Act;
 - (b) there must be a minimum of 4 meetings each year;
 - (c) the period between a meeting and the next meeting must not be more than 6 months.

24 Presiding at meetings

A meeting of the Board must be presided over by:

- (a) if the Chair is present—the Chair; or
- (b) otherwise—a member who is present and who is elected by a majority of the members present to preside.

25 Quorum

At a meeting of the Board a quorum is constituted by such number of members as constitutes a majority of the members then holding office.

Note: For example:

- (a) if there are 14 members holding office, the quorum will be 8; or
- (b) if (because of vacancies) there are only 11 members holding office, the quorum will be 6.

Section 26

26 Voting at meetings

- (1) A question arising at a meeting of the Board is to be determined by a majority of the votes of Board members present and voting.
- (2) The person presiding at a meeting has:
 - (a) a deliberative vote; and
 - (b) if necessary, also a casting vote.

27 Disclosure of interests

- (1) A Board member who has a direct or indirect pecuniary interest in a matter that is being considered, or is about to be considered, by the Board must disclose the nature of the interest at a meeting of the Board.
- (2) The disclosure must be made as soon as possible after the relevant facts have come to the member's knowledge, and must be recorded in the minutes of the meeting.
- (3) Unless the Board otherwise determines, the member:
 - (a) must not be present during any deliberation by the Board on the matter; and
 - (b) must not take part in any decision of the Board on the matter.
- (4) For the purposes of any determination being made under subsection (3), a Board member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates:
 - (a) must not be present during any deliberation of the Board on whether to make the determination; and
 - (b) must not take part in making the determination.
- (5) This section has effect subject to subsection 38(5) (which completely prohibits the CEO from participating in deliberations and decisions relating to a proposal to appoint a person as the next CEO or to terminate the CEO's appointment).

28 Conduct of meetings

- (1) The Board may regulate proceedings at its meetings as it considers appropriate. However, proceedings at a meeting must not be inconsistent with the other provisions of this Division.

Note: Section 33B of the *Acts Interpretation Act 1901* provides for people to participate in meetings by various means of communication (e.g. telephone).

- (2) Without limiting subsection (1), the Board may invite a person to attend a meeting for the purpose of advising or informing the Board on any matter.
- (3) The Board must ensure that minutes of its meetings are kept.

29 Certain Board members may be represented at meetings by another person

- (1) A Board member (the *nominating member*) referred to in paragraph 12(b) who does not attend a meeting of the Board may be represented at that meeting by a person (the *representative*) nominated for the purpose by the Board member. The nomination must be made by notice (whether in writing or otherwise) given to the Chair.
- (2) The representative:
 - (a) counts for the purpose of determining whether there is a quorum at the meeting; and
 - (b) subject to subsections (3) and (4), may participate (including by voting) in the meeting as if he or she were the nominating member.
- (3) In participating in the meeting, the representative must comply with any instructions given to him or her by the nominating member.
- (4) Section 27 (disclosure of interests) applies to the representative in relation to the following direct or indirect interests in matters being, or about to be, considered at the meeting:
 - (a) interests of the representative;

Part 3 The Board of the ARC

Division 3 Meetings

Section 29

- (b) interests of the nominating member of which the representative is aware.

Part 4—Committees

30 Board may establish committees

- (1) The Board may, with the approval of the Minister, establish a committee or committees to assist in carrying out the functions of the ARC or the Board.
- (2) The Board may, with the approval of the Minister, dissolve a committee at any time.

31 Functions of a committee

- (1) The functions of a committee established under section 30 are as determined by the Board.
- (2) In performing its functions, the committee must comply with any directions given to the committee by the Board.

32 Appointment of committee members

- (1) Subject to subsections (2) and (3), a committee established under section 30 is to consist of such members as are appointed by the Board with the approval of the Minister.
- (2) A committee must have at least 5 members.
- (3) A committee may consist of:
 - (a) persons who are all Board members (other than the CEO); or
 - (b) one or more Board members (other than the CEO) and one or more other persons; or
 - (c) persons none of whom are Board members.The CEO cannot be appointed as a member of a committee.
- (4) The Board must, in making appointments to a 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.

Section 33

- (5) Subject to subsection (6), the Board may, with the approval of the Minister, designate a member of a committee as the Chair of the committee.
- (6) The Board must not designate as Chair of a committee a person who is a member of the staff referred to in section 41.

33 Terms and conditions of committee members

- (1) A member of a committee established under section 30 holds office for such period as is determined by the Board with the approval of the Minister.
- (2) A member of a committee holds office on the terms and conditions (in relation to matters not otherwise covered by this Act) that are determined by the Board with the approval of the Minister.
- (3) A committee member may resign by giving the Board a written resignation.
- (4) The Board may at any time, with the approval of the Minister, terminate the appointment of a committee member.

Part 5—Chief Executive Officer and staff

Division 1—Chief Executive Officer

34 Appointment of CEO

- (1) There is to be a Chief Executive Officer of the ARC.
- (2) The CEO is to be appointed by the Minister by written instrument for the period specified in the instrument. That period must not exceed 5 years.
- (3) The Minister must not appoint a person as CEO unless:
 - (a) except in the case of the first appointment of a person as CEO—the Minister has:
 - (i) asked the Board for its advice in relation to the proposed appointment; and
 - (ii) considered the Board’s advice; and
 - (b) in any case—the Minister has considered the proposed appointee’s record in research and management.

35 Acting CEO

- (1) The Minister may appoint a person to act as the CEO:
 - (a) during a vacancy in the office of CEO (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the CEO is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.
- (2) Anything done by a person purporting to act under an appointment under subsection (1) is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

Section 36

Note: For more information about acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

36 CEO holds office on full-time basis

The CEO holds office on a full-time basis.

37 Remuneration and allowances of CEO

- (1) The CEO is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the CEO is to be paid the remuneration that is prescribed by the regulations.
- (2) The CEO is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

38 Other terms and conditions of CEO

- (1) The CEO must not engage in paid employment outside the duties of the CEO's office without the Minister's approval.
- (2) The CEO holds office on the terms and conditions (in relation to matters not covered by this Act) that are determined by the Minister in writing.
- (3) Subject to subsection (4), the Minister may at any time, in writing, terminate the appointment of the CEO.
- (4) The Minister must not terminate the appointment of the CEO unless the Minister has:
 - (a) asked the Board for its advice in relation to the proposed termination; and
 - (b) considered the Board's advice.
- (5) The CEO:
 - (a) must not be present during any deliberation by the Board that relates to the provision of advice to the Minister for the

purposes of paragraph 34(3)(a) (advice about appointment of person as CEO) or subsection (4) of this section (advice about termination of appointment); and

- (b) must not take part in any decision of the Board as to what advice to provide on that matter.

39 Duties of CEO

- (1) In addition to the CEO's duties under other provisions of this Act, the CEO has such other duties as are determined by the Board from time to time.
- (2) The Board's power to determine the CEO's other duties is subject to the following qualifications:
 - (a) the Board must ensure that the duties of the CEO include a duty to manage the day-to-day administration of the ARC;
 - (b) the Board must consult the Minister about any proposed determination.

40 Resignation of CEO

The CEO may resign his or her appointment by giving the Minister a written resignation.

Division 2—Staff

41 Staff to be engaged under Public Service Act etc.

- (1) The staff required to assist the ARC in the performance of its functions are to be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
 - (a) the CEO and the staff referred to in subsection (1) together constitute a Statutory Agency; and
 - (b) the CEO is the Head of that Statutory Agency.

Part 6—Planning and reporting

Division 1—Strategic plans

42 Board to prepare strategic plans

- (1) The Board must prepare a strategic plan at least once a year and give it to the Minister for approval under section 43. The plan must comply with the requirements of this section.
- (2) The plan must be in writing.
- (3) The plan must cover a period of at least 3 years.
- (4) The plan must:
 - (a) set out the goals, priorities, policies and strategies to be adopted by the ARC in performing its functions; and
 - (b) set out performance indicators for the assessment of the ARC's performance of its functions; and
 - (c) deal with any other matters that the Minister, by notice in writing to the Board, requires to be dealt with in the plan.

43 Ministerial approval of strategic plans

- (1) After receiving a strategic plan (or a revised strategic plan) from the Board, the Minister must either:
 - (a) approve the plan; or
 - (b) give the plan back to the Board with a written request for the Board to give the Minister a strategic plan (prepared in accordance with section 42) for the same period, revised to take account of specified concerns of the Minister.
- (2) 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.

Section 44

- (3) The Minister must cause a copy of a strategic plan that he or she has approved to be laid before each House of the Parliament within 15 sitting days of that House after that approval.
- (4) A strategic plan is of no effect unless it has been approved by the Minister.

44 Variation of strategic plans

- (1) If the Board considers that a variation of a strategic plan is necessary or desirable, the Board may, with the approval of the Minister, vary the strategic plan.
- (2) The Minister must cause a copy of a variation that he or she has approved to be laid before each House of the Parliament within 15 sitting days of that House after that approval.
- (3) A variation of a strategic plan is of no effect unless the variation has been approved by the Minister.

45 Annual report to include assessment of ARC's performance using performance indicators in strategic plan

The annual report for the ARC for a financial year must include an assessment of the ARC's performance of its functions during that year. The performance indicators set out in the strategic plan as required by paragraph 42(4)(b) must be used in making that assessment.

Division 2—Annual report

46 Annual report

- (1) The Board must, as soon as practicable after 30 June in each year, prepare and give to the Minister a report of the operations of the ARC during the year that ended on that 30 June. The report must also deal with:
 - (a) any matters required by other provisions of this Act to be dealt with in the report; and
 - (b) any other matters that the Minister, by notice in writing to the Board, requires to be dealt with in the report.

Note: Other provisions of this Act that require matters to be dealt with in the report are subsections 6(4), 7(3), 10(2) and 11(2), and section 45.

- (2) The report must be prepared in accordance with the guidelines referred to in subsection 63(2) of the *Public Service Act 1999* (as if the report were a report to which those guidelines applied).
- (3) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

Part 7—Funding of research

Division 1—Financial assistance for approved research programs

Subdivision A—Preliminary

47 Definitions

In this Division:

approved amount, in relation to a funding approval and a year to which the approval relates, means the amount determined under paragraph 51(2)(b) for the year and the funding proposal concerned.

approved funding rules for a year to which this Division applies means the set of rules prepared by the Board for that year under section 59 and approved by the Minister under section 60.

funding approval means an instrument of approval under subsection 51(1).

funding cap for a year to which this Division applies means the amount set out in section 49 for that year.

funding proposal means a proposal that expenditure by an organisation on a research program be approved under subsection 51(1) as a proposal deserving financial assistance under this Division. A funding proposal may relate to a single year to which this Division applies or to 2 or more such years.

funding split determination means a determination by the Minister under subsection 50(1) dividing the funding cap for a year to which this Division applies between 2 or more categories of research programs.

governing funding rules, in relation to a funding approval, means the approved funding rules referred to in paragraph 53(1)(c).

year to which this Division applies means a year specified in section 48.

48 Years to which Division applies

This Division applies to the following years:

- (a) the year 2001;
- (b) the year 2002.

Subdivision B—Capping of funding

49 Annual cap on funding

The total of all the approved amounts determined in respect of a year to which this Division applies must not exceed:

- (a) for the year 2001—\$247,830,000; and
- (b) for the year 2002—\$243,812,000.

50 Minister must divide funding caps between different categories of research programs

- (1) The Minister must, in writing, determine that the funding cap for a year to which this Division applies is to be divided, in such proportions as the Minister specifies in the determination, between such categories of research programs as the Minister specifies in the determination.
- (2) The determination for a year must be made before the start of that year.
- (3) The Minister may, in writing, vary a determination for a year (but only in a way so that the varied determination will still comply with subsection(1)).
- (4) The Minister may, in a single instrument, make a determination covering 2 or more years to which this Division applies.

Subdivision C—Provision of financial assistance

51 Approval of expenditure on research programs

- (1) Subject to section 53, the Minister may, in writing, approve a proposal for expenditure by an organisation (the *approved organisation*) on a research program (the *approved program*) as a proposal deserving financial assistance under this Division in respect of a year to which this Division applies, or in respect of each of 2 or more such years.
- (2) If the Minister approves the proposal, the Minister must, in writing, for the year, or each of the years, in respect of which the proposal is approved, determine:
 - (a) an amount as the estimated total expenditure on the proposal for the year; and
 - (b) an amount of approved expenditure in relation to the proposal for the year.

The amount of approved expenditure on the proposal for a year must not be greater than the amount of estimated total expenditure on the proposal for the year.

Note: If the proposal is approved in respect of 2 or more years, different amounts may be determined in respect of different years.

- (3) The Minister must cause a copy of the determination under paragraph (2)(b) to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the determination is made.
- (4) The instrument of approval under subsection (1) must include the following information:
 - (a) the name of the approved organisation;
 - (b) a description of the approved research program;
 - (c) the name and title of the person leading the approved research program;
 - (d) the amount determined under paragraph (2)(b) in relation to the year, or each of the years, for which the approved program is approved.

52 Recommendations by ARC in relation to approval of proposals

- (1) Subject to section 53, the ARC must make recommendations to the Minister in relation to the following matters in respect of each year to which this Division applies:
 - (a) what proposals should be approved under subsection 51(1) and what proposals should not be approved;
 - (b) what amounts should be determined under paragraphs 51(2)(a) and (b) in respect of proposals recommended by the ARC for approval.
- (2) A recommendation must not be made unless it has been approved by the Board.
- (3) The recommendation that the ARC makes in relation to a particular proposal for expenditure on a research program (whether it is a recommendation that the proposal should be approved under subsection 51(1) or should not be so approved) must include the following information:
 - (a) the name of the organisation seeking financial assistance for the proposal;
 - (b) a description of the research program;
 - (c) the name and title of the person leading the research program;
 - (d) a statement of the reasons why the proposal is, or is not, recommended for approval under subsection 51(1).
- (4) In deciding what proposals to approve under subsection 51(1), the Minister may (but is not required to) rely solely on recommendations made by the ARC under subsection (1) of this section.

Note: Decisions by the ARC to make recommendations to the Minister are reviewable under the *Administrative Decisions (Judicial Review) Act 1977*, and the ARC may be requested to give a statement of reasons under section 13 of that Act.

53 Requirements for approval or recommendation of proposals

- (1) Subject to subsection (2), a funding proposal must not be approved under subsection 51(1), or recommended by the ARC under
-

Part 7 Funding of research

Division 1 Financial assistance for approved research programs

Section 53

subsection 52(1) for such approval, as deserving financial assistance under this Division in respect of a year to which this Division applies unless:

- (a) the approval of the proposal would be consistent with the funding cap for the year, or each of the years, to which the proposal relates; and
 - (b) the Minister has made a funding split determination in relation to the year, or each of the years, to which the proposal relates and the approval of the proposal would be consistent with that determination; and
 - (c) a set of approved funding rules for the year, or the first of the years, to which the proposal relates is in force; and
 - (d) the eligibility criteria set out in those approved funding rules are satisfied in relation to the proposal; and
 - (e) the application for financial assistance for the proposal satisfies the requirements set out in those approved funding rules; and
 - (f) the assessment process set out in those approved funding rules has been complied with in relation to the proposal.
- (2) If, after a recommendation is made in relation to a proposal and before the Minister decides whether to approve the proposal, there is a variation of:
- (a) the funding split determination for the year, or any of the years, to which the proposal relates; or
 - (b) the governing funding rules in relation to the recommendation;
- the Minister must, in making that decision, disregard that variation and have regard to the funding split determination, or the funding rules, (as the case requires) as in force when the recommendation was made.
- (3) If an approval or recommendation relating to a proposal is, when given, in accordance with this section, the validity or effectiveness of the approval or recommendation is not affected by:
- (a) any subsequent variation of:
 - (i) the funding split determination for the year, or any of the years, to which the proposal relates; or

- (ii) the governing funding rules; or
- (b) if the proposal relates to 2 or more years—the subsequent making and approval of a set of funding rules for the second or a later one of those years.

Example 1: A proposal that relates to the year 2001 is approved. The approval is consistent with the funding cap and the funding split determination for that year as at that time. Subsequently, the Minister varies the funding split determination by specifying different categories of research programs. Because of paragraph (3)(a), the approval of the proposal remains effective (including for the purposes of section 55) whether or not the proposal fits into one of the new categories of research programs.

Example 2: A proposal relates to the years 2001 and 2002. The governing funding rules are the funding rules for 2001. The proposal meets the requirements of those rules and is approved for both years. Subsequently, a set of funding rules is made and approved for the year 2002 specifying new eligibility criteria. Because of paragraph (3)(b), the approval of the proposal remains effective for the year 2002 (including for the purposes of section 55), whether or not the proposal satisfies the eligibility criteria specified in the new set of rules.

54 Variation of funding approvals

- (1) Subject to subsection (2), the Minister may, in writing, vary a funding approval as provided for in the governing funding rules.
- (2) A variation of a funding approval:
 - (a) must be consistent with:
 - (i) the funding cap for the year, or each of the years, to which the approval relates; and
 - (ii) the funding split determination for the year, or each of the years, to which the approval relates; and
 - (b) cannot vary the approved amount for a year to which the approval relates to make it less than the amount of financial assistance (including advances) that has already been paid under this Division pursuant to the approval in respect of that year.

55 Payment of financial assistance for approved research programs

- (1) This section applies if, under section 51, the Minister approves a proposal for expenditure by an organisation on a research program

Part 7 Funding of research

Division 1 Financial assistance for approved research programs

Section 56

in respect of a year, or each of 2 or more years, to which this Division applies.

- (2) Subject to subsections (3) and (4), there is payable to the organisation, for the purpose of financial assistance in respect of expenditure incurred or to be incurred by the organisation in connection with the proposal in respect of the year, or each of the years, an amount equal to the approved amount in relation to the proposal and the year, or each of the years.
 - (3) The financial assistance is not payable at a time after any of the following things happen:
 - (a) the organisation's involvement with the research program ends;
 - (b) the research program changes so that it is no longer consistent with the description in the funding approval;
 - (c) the person named in the funding approval as the person leading the research program ceases to lead the program.
- Note: It may be possible to vary the funding approval to accommodate a change that would otherwise result in the financial assistance ceasing to be payable because of this subsection (see section 54).
- (4) The financial assistance is to be paid in such amounts, and at such times, as the Minister determines.

56 Advances

- (1) The Minister may make arrangements for the making of advances by the Minister to an organisation, by way of financial assistance to the organisation, on account of an amount that is expected to become payable under section 55 in respect of a research program and a year to which this Division applies.
- (2) An advance so paid to the organisation is paid:
 - (a) subject to the conditions specified in paragraphs 58(1)(a) to (e), which apply to the advance as if it were an actual payment of financial assistance under section 55 in respect of the research program and the year; and
 - (b) such other conditions as the Minister imposes by notice in writing to the organisation.

57 Source of payments

The Consolidated Revenue Fund is appropriated for the purpose of paying financial assistance under section 55 and advances under section 56.

58 Conditions of payment of financial assistance

- (1) Financial assistance under section 55 in relation to a proposal for expenditure by an organisation on a research program in respect of a year to which this Division applies is paid to the organisation subject to the following conditions:
 - (a) the sum of the amounts spent by the organisation in connection with the proposal in respect of the year (being amounts spent before the end of the year or spent after the year in respect of commitments entered into before the end of the year) must not be less than the sum of the amounts of financial assistance paid to the organisation under section 55 in relation to the proposal in respect of the year;
 - (b) the organisation must give to the Minister, not later than 30 June next following the year, a statement by a qualified auditor, in a form approved in writing by the Minister for the purpose, as to the amounts spent as described in paragraph (a);
 - (c) if the Minister informs the organisation that the Minister is satisfied that the organisation has failed to fulfil a condition applicable to the financial assistance, the organisation will pay to the Commonwealth the amount (if any) specified by the Minister, not exceeding the amount of the financial assistance;
 - (d) if the amount of the financial assistance paid to the organisation exceeds the amount of the financial assistance that is properly payable to the organisation, the organisation will pay an amount equal to the excess to the Commonwealth;
 - (e) despite paragraph (d), if:

Part 7 Funding of research

Division 1 Financial assistance for approved research programs

Section 59

- (i) the organisation fails to spend all of that financial assistance as required by this Division (including the other conditions) in respect of the year; and
 - (ii) the Minister determines that this paragraph is to apply in relation to the organisation in respect of the year;
so much of the unspent amount as the Minister specifies will be taken to have been paid to the organisation under section 55 in respect of the next following year under similar conditions to the conditions of the original payment or under other conditions determined by the Minister;
 - (f) the organisation will comply with any applicable additional accountability requirements specified in the governing funding rules;
 - (g) such other conditions as the Minister imposes by notice in writing to the applicant.
- (2) In this section:

qualified auditor means:

- (a) the Auditor-General of a State, of the Australian Capital Territory or of the Northern Territory; or
- (b) a person registered as a company auditor or a public accountant under a law in force in a State, the Australian Capital Territory or the Northern Territory; or
- (c) a member of the Institute of Chartered Accountants in Australia, or of the Australian Society of Certified Practising Accountants; or
- (d) a person approved by the Minister in writing as a qualified auditor for the purposes of this Act.

Subdivision D—Funding rules

59 Board to make rules

- (1) The Board must, before the start of each year to which this Division applies, prepare a set of rules dealing with the matters set out in subsection (2) for funding proposals that relate to that year, or that relate to that year and to one or more later years to which

this Division applies, and give it to the Minister for approval under section 60.

- (2) The matters that must be dealt with in the rules are as follows:
- (a) the eligibility criteria to be met in order for a proposal to be approved for financial assistance (including criteria relating to the kinds of organisation that may receive assistance and the kinds of research program in respect of which assistance may be provided);
 - (b) how to apply for financial assistance;
 - (c) the assessment process for deciding which proposals will be recommended for approval;
 - (d) the ways in which, and circumstances in which, a funding approval may be varied;
 - (e) any additional accountability requirements that the Board thinks desirable.

The rules may also deal with such other matters as the ARC considers appropriate.

- (3) The rules must be in writing.
- (4) The rules must take account of, and be consistent with:
- (a) the funding cap for the year, or each of the years, to which the rules apply; and
 - (b) the funding split determination for the year, or each of the years, to which the rules apply.
- (5) The rules take effect from the time determined by the Board, which must not be a time before the rules have been approved by the Minister.

60 Ministerial approval of rules

- (1) After receiving a set of rules (or a revised set of rules) from the Board, the Minister must either:
- (a) approve the set of rules; or
 - (b) give the set of rules back to the Board with a written request for the Board to give the Minister a set of rules (prepared in

Part 7 Funding of research

Division 1 Financial assistance for approved research programs

Section 61

accordance with section 59), revised to take account of specified concerns of the Minister.

- (2) If the Minister requests the Board to give him or her a revised set of rules, the Board must do so as soon as reasonably practicable.
- (3) A set of rules is of no effect unless it has been approved by the Minister.

61 Variation of rules

- (1) If the Board considers that a variation of a set of approved funding rules is necessary or desirable, the Board may, with the approval of the Minister, vary the set of rules.
- (2) The circumstances in which a variation of a set of approved funding rules is necessary include (but are not limited to) the following:
 - (a) there is a change in the amount of the funding cap for the year, or any of the years, to which the rules apply and the rules are not consistent with the changed funding cap;
 - (b) the funding split determination for the year, or any of the years, to which the rules apply is varied and the rules are not consistent with the varied determination.
- (3) A variation of a set of rules is of no effect unless the variation has been approved by the Minister.

Division 2—The ARC Research Endowment Account

62 Establishment of ARC Research Endowment Account

- (1) The ARC Research Endowment Account is established by this section.
- (2) The Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.

63 Credits to Account

There must be credited to the Account:

- (a) amounts that are given or bequeathed for the purposes of the Account; and
- (b) amounts (if any) from time to time appropriated by the Parliament for the Account.

64 Purposes of Account

- (1) Amounts standing to the credit of the Account may be expended by the ARC on providing financial assistance to organisations for eligible research programs if the following conditions are satisfied:
 - (a) if a funding proposal for that financial assistance were proposed under Division 1, that proposal would satisfy the eligibility criteria set out in the approved funding rules for the year in which expenditure occurs; and
 - (b) the Minister has, in writing, approved the expenditure.
- (2) In this section, *approved funding rules* and *funding proposal* have the same meanings as they have in Division 1.

65 Terms and conditions of financial assistance

Financial assistance under section 64 is provided on such terms and conditions (if any) as are determined by the ARC, with the written approval of the Minister, by notice in writing to the organisation to which the assistance is provided.

Part 8—Miscellaneous

66 Delegation by Minister

- (1) The Minister may, in writing, delegate all or any of the Minister's powers or functions under the following provisions to the CEO or a member of the staff referred to in section 41:
 - (a) subsection 54(1);
 - (b) subsection 55(4);
 - (c) section 56;
 - (d) section 58.
- (2) A delegate must, in exercising a delegated power or function, comply with any directions of the Minister.

67 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

*[Minister's second reading speech made in—
House of Representatives on 7 September 2000
Senate on 9 November 2000]*

(161/00)