



National Health and Medical Research Council Amendment Act 2006

No. 50, 2006

***An Act to amend the *National Health and Medical
Research Council Act 1992*, and for related
purposes***

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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National Health and Medical Research Council Amendment Act 2006

No. 50, 2006

An Act to amend the *National Health and Medical Research Council Act 1992*, and for related purposes

[Assented to 9 June 2006]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *National Health and Medical
Research Council Amendment Act 2006*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	9 June 2006
2. Schedule 1, Parts 1 and 2	The later of: (a) the day after this Act receives the Royal Assent; and (b) 1 July 2006.	1 July 2006
3. Schedule 1, Part 3	The latest of: (a) the day after this Act receives the Royal Assent; and (b) 1 July 2006; and (c) immediately after the commencement of item 34 of Schedule 1 to the <i>Financial Framework Legislation Amendment Act (No. 1) 2006</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (c) does not occur.	1 July 2006 (paragraph (b) applies)
4. Schedule 1, Part 4	The later of: (a) the day after this Act receives the Royal Assent; and (b) 1 July 2006.	1 July 2006 (paragraph (b) applies)

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

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- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—Amendment of the National Health and Medical Research Council Act 1992

1 Subsection 3(2)

Omit “Council”, substitute “NHMRC”.

2 Section 4 (definition of *appointed member*)

Repeal the definition.

3 Section 4

Insert:

CEO means the Chief Executive Officer of the NHMRC referred to in section 6.

4 Section 4 (definition of *Chief Executive Officer*)

Repeal the definition.

5 Section 4 (paragraph (b) of the definition of *chief officer*)

Omit “authority; and”, substitute “authority.”.

6 Section 4 (paragraph (c) of the definition of *chief officer*)

Repeal the paragraph.

7 Section 4 (definition of *committee*)

Omit “, the Executive Committee”.

8 Section 4 (definition of *Commissioner*)

Omit “appointed under section 69”, substitute “referred to in section 55”.

Note: The definitions of *committee* and *Commissioner* must be substituted in the appropriate alphabetical positions in section 4: see section 14A of the *Acts Interpretation Act 1901*.

9 Section 4 (definition of *Commonwealth member*)

Repeal the definition.

10 Section 4 (definition of *Council*)

Repeal the definition, substitute:

Council means the Council of the NHMRC referred to in section 20.

11 Section 4

Insert:

Embryo Research Licensing Committee of the NHMRC means the Embryo Research Licensing Committee of the NHMRC established by section 13 of the *Research Involving Human Embryos Act 2002*.

12 Section 4 (definition of *Executive Committee*)

Repeal the definition.

13 Section 4

Insert:

financial year means each period of 12 months commencing on 1 July.

14 Section 4 (definition of *Health Minister*)

Repeal the definition.

15 Section 4

Insert:

human research guidelines means guidelines for the conduct of medical research involving humans.

16 Section 4

Insert:

information provider has the meaning given by subsection 80(1).

17 Section 4

Insert:

interim human research guidelines means human research guidelines issued by the CEO under paragraph 7(1)(a) in the circumstances referred to in subsection 14(1) or (5).

18 Section 4

Insert:

interim guidelines means guidelines issued by the CEO under paragraph 7(1)(a) in the circumstances referred to in subsection 14(1), (3) or (5).

19 Section 4 (definition of *interim regulatory recommendation*)

Omit “section 14”, substitute “subsection 14(1) or (3)”.

20 Section 4

Insert:

member:

- (a) of the Council—includes the Chair of the Council; and
- (b) of a committee—includes the Chair of that committee.

21 Section 4

Insert:

NHMRC means the National Health and Medical Research Council.

22 Section 4

Insert:

NHMRC officer has the meaning given by subsection 80(1).

23 Section 4 (definition of *NHMRC Order*)

Repeal the definition.

24 Section 4 (definition of *previous Fund*)

Repeal the definition.

25 Section 4 (definition of *proclaimed day*)

Repeal the definition.

26 Section 4 (definition of *regulatory recommendation*)

Omit “Council”, substitute “CEO”.

27 Section 4 (definition of *reviewable action*)

Repeal the definition, substitute:

reviewable action means:

(a) action taken by the CEO or any delegate of the CEO in the performance of the CEO’s function under paragraph 7(1)(c) in relation to an application for funding made on or after 24 June 1993; or

(b) action taken by the Research Committee in the performance of its function under paragraph 35(2)(a) in relation to an application for funding made on or after 24 June 1993;

and includes any unreasonable delay by the CEO or Committee in relation to his, her or its consideration of such an application or any failure or refusal of the CEO or Committee to consider such an application.

28 Section 4

Insert:

staff of the NHMRC means the staff referred to in section 45.

29 Section 4 (definition of *State or Territory health instrumentality*)

Repeal the definition.

30 Section 4 (definition of *State or Territory member*)

Repeal the definition.

31 Part 2

Repeal the Part, substitute:

Part 2—The National Health and Medical Research Council

5B Establishment of the NHMRC

- (1) The National Health and Medical Research Council is established by this section.
- (2) The NHMRC comprises the following:
 - (a) the CEO;
 - (b) the Council and committees;
 - (c) the staff of the NHMRC.

5C Function of the NHMRC

The function of the NHMRC (other than the CEO) is to assist the CEO in the performance of his or her functions.

5D Reference of matters to the CEO, Council and Principal Committees by the Minister

- (1) The Minister may refer to the CEO, the Council or a Principal Committee (other than the Embryo Research Licensing Committee of the NHMRC) any matter within the scope of the CEO, Council or Committee's functions.
- (2) The CEO, the Council or a Principal Committee must deal with a matter referred to him, her or it by the Minister under subsection (1).

Instruments are not legislative instruments

- (3) An instrument under subsection (1) is not a legislative instrument.

5E Minister may give directions to the CEO, Council and Principal Committees

- (1) The Minister may, by writing, direct the CEO, the Council or a Principal Committee (other than the Embryo Research Licensing Committee of the NHMRC) as to the performance of the CEO,

Council or Committee's functions or the exercise of the CEO,
Council or Committee's powers.

- (2) Directions given by the Minister under subsection (1) must be of a general nature only, and, in particular, the Minister is not entitled to direct the CEO, the Council or a Principal Committee:
 - (a) to recommend the allocation of research funds to a particular person, organisation, State or Territory; or
 - (b) as to the manner of the CEO, Council or Principal Committee's treatment of particular scientific, technical or ethical issues.
- (3) The CEO, the Council or a Principal Committee must comply with any direction given by the Minister under subsection (1).
- (4) If the Minister gives a direction under subsection (1), the Minister must cause a statement setting out particulars of, and of the reasons for, the direction to be laid before each House of the Parliament within 15 sitting days of that House after giving the direction.

Directions are not legislative instruments

- (5) A direction under subsection (1) is not a legislative instrument.

32 Part 3 (heading)

Repeal the heading, substitute:

Part 3—The Chief Executive Officer

33 Divisions 1 and 2 of Part 3

Repeal the Divisions, substitute:

Division 1—Establishment and functions

6 The Chief Executive Officer

There is to be a Chief Executive Officer of the NHMRC.

Note: For the appointment, terms and conditions of the CEO, see Part 5.

7 Functions of the CEO

- (1) The functions of the CEO are:
- (a) in the name of the NHMRC, to inquire into, issue guidelines on, and advise the community on, matters relating to:
 - (i) the improvement of health; and
 - (ii) the prevention, diagnosis and treatment of disease; and
 - (iii) the provision of health care; and
 - (iv) public health research and medical research; and
 - (v) ethical issues relating to health; and
 - (b) to advise, and make recommendations to, the Commonwealth, the States and the Territories on the matters referred to in paragraph (a); and
 - (c) to make recommendations to the Minister on expenditure:
 - (i) on public health research and training; and
 - (ii) on medical research and training;including recommendations on the application of the Account; and
 - (d) any other functions conferred on the CEO in writing by the Minister; and
 - (e) any other functions conferred on the CEO by this Act, the regulations or any other law; and
 - (f) any functions incidental to any of the foregoing.

Note: The Minister may delegate additional functions to the CEO: see section 82.

Instruments are not legislative instruments

- (2) An instrument under paragraph (1)(d) is not a legislative instrument.

8 Timetables and procedures to assist CEO make recommendations on application of Account

- (1) Each financial year, the CEO must publish a timetable and procedures to assist him or her to make recommendations to the Minister on the application of the Account under paragraph 7(1)(c).

Timetables and procedures are not legislative instruments

- (2) The timetable and the procedures are not legislative instruments.

Division 2—Regulatory recommendations and guidelines

Subdivision A—Regulatory recommendations made, and guidelines issued, by CEO

9 CEO to only make regulatory recommendations and issue guidelines as developed by Council

- (1) The CEO may only:
- (a) make a regulatory recommendation; or
 - (b) issue guidelines under paragraph 7(1)(a);
- precisely as developed by the Council (or in the case of human research guidelines, as developed by the Australian Health Ethics Committee) and provided to the CEO by the Council for the purpose under this Division.

Note: Subsection (1) does not apply if the recommendation or guidelines are urgent: see subsection 14(1).

- (2) However, the CEO is not obliged to make a particular recommendation or to issue particular guidelines (including human research guidelines) merely because the Council has provided the recommendation or guidelines to him or her in accordance with this Division.

Regulatory recommendations and guidelines are not legislative instruments

- (3) Regulatory recommendations and guidelines are not legislative instruments.

10 Human research guidelines

CEO to issue guidelines

- (1) Without limiting any of the matters on which the CEO may issue guidelines under subparagraph 7(1)(a)(v), the CEO must, under that subparagraph, issue human research guidelines.

Australian Health Ethics Committee to develop guidelines

- (2) The Council may only provide human research guidelines to the CEO under subsection 9(1) precisely as developed by the Australian Health Ethics Committee and provided to the Council for the purpose under this Division.
- (3) However, the Council is not obliged to provide particular guidelines referred to in subsection (2) to the CEO merely because the Australian Health Ethics Committee has provided the guidelines to it in accordance with this Division.

Guidelines must be tabled in Parliament

- (4) Human research guidelines issued by the CEO are to be laid before each House of the Parliament within 15 sitting days of that House of the issuing of the guidelines.

12 Consultation about regulatory recommendations

- (1) Before the Council provides a regulatory recommendation to the CEO for the purposes of subsection 9(1), the Council must consult persons or bodies in accordance with the steps set out in this section.

Note: This section does not apply if the recommendation is urgent or of minor significance: see subsection 14(3) and section 14B.

- (2) As soon as practicable after deciding that, subject to consultation processes, it intends to provide a regulatory recommendation to the CEO, the Council must publish a notice, in the manner and form specified in the regulations:
 - (a) stating its intention to provide the regulatory recommendation to the CEO; and
 - (b) inviting persons or bodies to make submissions relating to the proposed recommendation in accordance with the procedures, and within the period, specified in the notice.
- (3) As soon as practicable after the end of the period specified under paragraph (2)(b), the Council must, having regard to any submissions received pursuant to the invitation referred to in that paragraph:

- (a) prepare a draft of the regulatory recommendation the Council proposes to provide to the CEO and publish a notice, in the manner and form specified in the regulations:
 - (i) containing a summary of the draft recommendation; and
 - (ii) stating where copies of the draft recommendation can be obtained; and
 - (iii) inviting persons or bodies to make submissions relating to the draft recommendation in accordance with the procedures, and within the period, specified in the notice; or
 - (b) publish, in the manner and form specified in the regulations, a notice stating that it no longer proposes to provide the recommendation to the CEO.
- (4) The Council must have regard to any submissions received pursuant to the invitation referred to in subparagraph (3)(a)(iii) before providing the recommendation to the CEO.

13 Consultation about guidelines

Before:

- (a) the Council provides guidelines (other than human research guidelines) to the CEO for the purposes of subsection 9(1); or
- (b) the Australian Health Ethics Committee provides human research guidelines to the Council for the purposes of subsection 10(2);

the Council or Committee must:

- (c) prepare a draft of the guidelines; and
- (d) publish a notice, in the manner and form specified in the regulations:
 - (i) containing a summary of the draft guidelines; and
 - (ii) stating where copies of the draft guidelines can be obtained; and
 - (iii) inviting persons or bodies to make submissions relating to the draft guidelines in accordance with the procedures, and within the period, specified in the notice; and
- (e) have regard to any submissions received as a result of the invitation referred to in subparagraph (d)(iii).

Note: This section does not apply if the guidelines are urgent or of minor significance: see subsections 14(3) and (5) and section 14B.

14 Interim regulatory recommendations and guidelines

CEO may make interim regulatory recommendations and issue interim guidelines without Council in urgent circumstances

- (1) If a matter:
 - (a) would ordinarily be the subject of a regulatory recommendation made, or guidelines issued, as provided to the CEO under subsection 9(1); and
 - (b) must, in the opinion of the CEO, for any reason, be dealt with urgently;the CEO may, despite subsection 9(1), make a regulatory recommendation, or issue guidelines, without receiving them from the Council.
- (2) Within 30 days after the CEO makes an interim regulatory recommendation or issues interim guidelines in accordance with subsection (1), the CEO must publish a notice, in the manner and form specified in the regulations:
 - (a) setting out his or her reasons for making the recommendation or issuing the guidelines; and
 - (b) setting out:
 - (i) a summary of the recommendation; or
 - (ii) the guidelines; and
 - (c) inviting persons or bodies to make submissions to:
 - (i) in the case of human research guidelines—the Australian Health Ethics Committee; or
 - (ii) otherwise—the Council;relating to the recommendation or guidelines in accordance with the procedures, and within the period, specified in the notice.

Council may provide recommendations and guidelines to CEO without consultation in urgent circumstances

- (3) If a matter:

- (a) would ordinarily be the subject of a regulatory recommendation, or guidelines (other than human research guidelines), provided to the CEO under subsection 9(1); and
- (b) must, in the opinion of the Council, for any reason, be dealt with urgently;

the Council may provide a regulatory recommendation or guidelines to the CEO without first undertaking one or more of the steps set out in section 12 or 13.

- (4) Within 30 days after the CEO makes an interim regulatory recommendation, or issues interim guidelines, provided to him or her in accordance with subsection (3), the Council must publish a notice, in the manner and form specified in the regulations:
 - (a) setting out its reasons for providing the recommendation or guidelines to the CEO; and
 - (b) setting out:
 - (i) a summary of the recommendation; or
 - (ii) the guidelines; and
 - (c) inviting persons or bodies to make submissions to the Council relating to the recommendation or guidelines in accordance with the procedures, and within the period, specified in the notice.

Australian Health Ethics Committee may provide human research guidelines to Council without consultation in urgent circumstances

- (5) If a matter:
 - (a) would ordinarily be the subject of human research guidelines provided to the Council under subsection 10(2); and
 - (b) must, in the opinion of the Australian Health Ethics Committee, for any reason, be dealt with urgently;the Committee may provide guidelines to the Council without first undertaking one or more of the steps set out in section 13.
- (6) Within 30 days after the CEO issues interim guidelines provided to the Council in accordance with subsection (5), the Australian Health Ethics Committee must publish a notice, in the manner and form specified in the regulations:
 - (a) setting out its reasons for providing the guidelines to the Council; and
 - (b) setting out the guidelines; and

- (c) inviting persons or bodies to make submissions to the Committee relating to the guidelines in accordance with the procedures, and within the period, specified in the notice.

Council must advise CEO to confirm, vary or revoke interim regulatory recommendations or guidelines

- (7) If the CEO makes an interim regulatory recommendation or issues interim guidelines:
 - (a) in the case of human research guidelines—the Australian Health Ethics Committee must:
 - (i) as soon as practicable after, but not later than 30 days after, the end of the period specified in the relevant notice under subsection (2) or (6); and
 - (ii) having regard to any submissions received; advise the Council to advise the CEO to confirm, vary or revoke the guidelines; or
 - (b) otherwise—the Council must:
 - (i) as soon as practicable after, but not later than 30 days after, the end of the period specified in the relevant notice under subsection (2) or (4); and
 - (ii) having regard to any submissions received; advise the CEO to confirm, vary or revoke the recommendation or guidelines.
- (8) The Council may only advise the CEO to confirm, vary or revoke interim human research guidelines in accordance with the Committee's advice under paragraph (7)(a). However, the Council is not obliged to provide particular advice to the CEO merely because it has been advised to do so by the Committee in accordance with this section.

Interim regulatory recommendations and guidelines automatically revoked after 45 days

- (9) If the CEO fails, within 45 days after the end of the period specified in the relevant notice under subsection (2), (4) or (6), to confirm, vary or revoke an interim regulatory recommendation or interim guidelines in accordance with the Council's advice (if any) under paragraph (7)(b) or subsection (8), the CEO is to be treated as having revoked the recommendation or guidelines.

14AA Consultation requirements do not apply to revoking guidelines

- (1) The Council may, without undertaking consultation, advise the CEO to revoke guidelines (other than human research guidelines).
- (2) The Australian Health Ethics Committee may, without undertaking consultation, advise the Council to advise the CEO to revoke human research guidelines.

Note: The requirements of this Division still apply to variations of guidelines: see subsection 33(3) of the *Acts Interpretation Act 1901*.

Subdivision B—Guidelines approved by CEO

14A Approval by CEO of guidelines for third parties

- (1) The CEO may, on the advice of the Council, approve guidelines prepared by a person or body from outside the NHMRC.
- (2) The Council may only advise the CEO to approve the guidelines if the Council is satisfied that the person or body, before submitting the guidelines to the CEO for his or her approval:
 - (a) prepared a draft of the guidelines that the person or body proposed to submit to the CEO; and
 - (b) published a notice, in a manner and form acceptable to the Council:
 - (i) containing a summary of the draft guidelines; and
 - (ii) stating where copies of the draft guidelines could be obtained; and
 - (iii) inviting persons or bodies to make submissions relating to the draft in accordance with the procedures, and within the period, specified in the notice; and
 - (c) had regard to any submissions received pursuant to the invitation referred to in subparagraph (b)(iii).

Note: Subsection (2) does not apply if the guidelines are of minor significance: see section 14B.

Subdivision C—Other provisions about consultation

14B Consultation may be dispensed with in certain circumstances

- (1) If:

- (a) the Council is satisfied that:
 - (i) a proposed regulatory recommendation referred to in section 12; or
 - (ii) proposed guidelines referred to in paragraph 13(a) or section 14A;
raise issues that are of minor significance only; or
 - (b) the Australian Health Ethics Committee is satisfied that proposed human research guidelines referred to in paragraph 13(b) raise issues that are of minor significance only;
the Council or Committee may dispense with the requirement for all or any of the steps set out in section 12 or 13 or subsection 14A(2), as the case requires.
- (2) If the Council or Committee proposes to dispense with the requirement for all or any of the steps set out in section 12 or 13 or subsection 14A(2), the Council or Committee must publish a notice, in the manner and form, and within the period, specified in the regulations, stating its reasons for so proposing.

15 CEO must develop procedures

- (1) The CEO must develop and publish procedures to assist persons or bodies to make submissions under this Division.

Procedures are not legislative instruments

- (2) The procedures are not legislative instruments.

34 Subsection 16(1)

Omit “Council” (first occurring), substitute “CEO”.

35 Paragraph 16(1)(a)

Omit “Council’s”, substitute “CEO’s”.

36 Paragraph 16(1)(b)

Omit “Council proposes to perform its”, substitute “CEO proposes to perform his or her”.

37 Subsection 16(3)

Omit “Council”, substitute “CEO”.

38 Subsection 16(3)

After “Minister”, insert “and the Council”.

39 Subsection 16(4)

Omit “the proclaimed day”, substitute “24 June 1993”.

40 Subsection 17(1)

Repeal the subsection, substitute:

- (1) Not later than 6 months before the end of a strategic plan, the CEO must prepare and give to the Minister a written review evaluating the CEO’s success in implementing the strategic plan.

41 Subsection 18(1)

Omit “the proclaimed day”, substitute “24 June 1993”.

42 Paragraph 18(5)(b)

Omit “Council” (wherever occurring), substitute “CEO”.

43 Subsection 18(6)

Omit “Council” (wherever occurring), substitute “CEO”.

44 Subsection 19(1A)

Omit “Council”, substitute “CEO”.

45 Subsection 19(1)

Omit “Council” (first and second occurring), substitute “CEO”.

46 Subsection 19(1)

Omit “its”, substitute “his or her”.

47 Subsection 19(1)

Omit “Council” (third occurring), substitute “CEO”.

48 Subsection 19(2)

Omit “Council” (wherever occurring), substitute “CEO”.

49 Subsection 19(3)

Omit “Council”, substitute “CEO”.

50 Subsection 19(3)

After “Minister”, insert “and the Council”.

51 Paragraph 19(4)(a)

Omit “Council”, substitute “CEO”.

52 Part 4

Repeal the Part, substitute:

**Part 4—The Council and committees of the
NHMRC**

Division 1—The Council of the NHMRC

20 Establishment of the Council of the NHMRC

- (1) The Council of the NHMRC is established by this section.
- (2) The Council of the NHMRC consists of the following:
 - (a) the Chair;
 - (b) the chief medical officer for the Commonwealth;
 - (c) the chief medical officer for each State and Territory;
 - (d) a person with expertise in the health needs of Aboriginal persons and Torres Strait Islanders;
 - (e) a person with expertise in consumer issues;
 - (f) a person with expertise in business;
 - (g) at least 6, but no more than 11, persons with expertise in one or more of the following:
 - (i) health care training;
 - (ii) professional medical standards;
 - (iii) the medical profession and post-graduate medical training;
 - (iv) the nursing profession;
 - (v) public health research and medical research issues;
 - (vi) public health;
 - (vii) ethics relating to research involving humans;
 - (viii) other appropriate expertise.

Note: For the appointment, terms and conditions of the Chair and other members of the Council, see Part 5.

21 Functions of the Council

- (1) The functions of the Council are:
- (a) to provide advice to the CEO in relation to the performance of his or her functions; and
 - (b) any other functions conferred on the Council in writing by the Minister after consulting the CEO; and
 - (c) any other functions conferred on the Council by this Act, the regulations or any other law.

Note: The CEO may delegate additional functions to the Council: see section 82.

Instruments are not legislative instruments

- (2) An instrument under paragraph (1)(b) is not a legislative instrument.

22 Meetings of the Council

The Chair of the Council must convene at least one Council meeting in each financial year.

Note: The CEO may determine other matters relating to Council meetings: see section 40.

53 Part 5 (heading)

Repeal the heading, substitute:

Division 2—Principal Committees

54 At the end of subsection 35(1)

Add:

Note: For the constitution, functions and members of the Embryo Research Licensing Committee of the NHMRC, see Division 3 of Part 2 of the *Research Involving Human Embryos Act 2002*.

55 At the end of paragraph 35(2)(d)

Add “in writing after consulting the CEO”.

56 At the end of subsection 35(2)

Add:

- ; and (e) any other functions conferred on the Committee by this Act, the regulations or any other law.

Note: The CEO or the Council may delegate additional functions to the Research Committee: see section 82.

57 Subsections 35(3) and (4)

Repeal the subsections, substitute:

- (3) The functions of the Australian Health Ethics Committee are:
- (a) to advise the Council on ethical issues relating to health; and
 - (b) to develop and give the Council human research guidelines under subsection 10(2); and
 - (c) any other functions conferred on the Committee in writing by the Minister after consulting the CEO; and
 - (d) any other functions conferred on the Committee by this Act, the regulations or any other law.

Note: The CEO or the Council may delegate additional functions to the Australian Health Ethics Committee: see section 82.

58 Paragraph 35(6)(b)

Repeal the paragraph, substitute:

- (b) must have as its Chair a person who is:
- (i) a member of the Council; and
 - (ii) not a member of the Research Committee.

59 At the end of subsection 35(6)

Add:

Note 1: For the appointment, terms and conditions of the Chair and other members of the Australian Health Ethics Committee, see Part 5.

Note 2: In certain circumstances, the Chair may be a person who is not a member of the Council: see subsection (10).

60 Subsection 35(7)

After “determine”, insert “, in writing and after consulting the CEO,”.

61 At the end of subsection 35(7)

Add:

Note: The CEO or the Council may delegate additional functions to a Principal Committee: see section 82.

62 Subsections 35(9) and (10)

Repeal the subsections, substitute:

- (9) A Principal Committee other than the Australian Health Ethics Committee comprises:
- (a) a Chair, who must be a member of the Council; and
 - (b) the members appointed by the Minister (whether Council members or not).

Note 1: For the appointment, terms and conditions of the Chairs and other members of the Principal Committees, see Part 5.

Note 2: In certain circumstances, the Chair of a Principal Committee may be a person who is not a member of the Council: see subsection (10).

- (10) Despite subparagraph (6)(b)(i) and paragraph (9)(a), the Chair of a Principal Committee may be a person who is not a member of the Council if:
- (a) the Minister does not consider that any member of the Council has the appropriate expertise to be Chair of the Principal Committee; and
 - (b) another member of the Principal Committee is a member of the Council.

63 Subsection 35(11)

Omit “, functions and constitution”, substitute “and functions”.

64 Subsections 35(12) and (13)

Repeal the subsections, substitute:

Instruments are not legislative instruments

- (12) An instrument under this section is not a legislative instrument.

65 Paragraph 36(1)(a)

Omit “Chairperson”, substitute “Chair”.

Note: The heading to section 36 is altered by omitting “and appointment to”.

66 Subsections 36(3), (4), (5) and (6)

Repeal the subsections.

67 Sections 37 to 44

Repeal the sections.

68 At the end of Part 5

Add:

Division 3—Working committees

39 Working committees

(1) The CEO may, by writing, establish any working committees that he or she thinks necessary to help carry out the functions of the CEO, the Council or a Principal Committee.

(2) A working committee comprises the members appointed by the CEO.

Note: For the appointment, terms and conditions of the members of the working committees, see Part 5.

(3) A working committee has the functions determined in writing by the CEO.

Note: The CEO, the Council or a Principal Committee may delegate additional functions to a working committee: see section 82.

(4) The CEO may, by writing, abolish a working committee.

Instruments are not legislative instruments

(5) An instrument under this section is not a legislative instrument.

Division 4—CEO’s determinations of Council and committee procedures etc.

40 CEO’s determinations of Council and committee procedures etc.

The CEO may determine:

(a) the manner in which the Council or a committee carries out its functions; and

(b) the procedure to be followed by the Council or a committee in relation to its meetings, including, for example:

(i) the convening of meetings; and

- (ii) the number of members to constitute a quorum; and
- (iii) who presides at meetings; and
- (iv) the manner in which questions arising at a meeting are to be decided; and
- (v) the voting rights of members; and
- (vi) the arrangements for non-members to attend meetings.

69 Parts 5A and 6

Repeal the Parts, substitute:

Part 5—Appointments, terms and conditions

41 Appointments

Appointments

- (1) The Minister must, by writing and after consulting appropriately, appoint the following:
 - (a) the CEO;
 - (b) the Chair and other members of the Council;
 - (c) the Chairs and other members of the Principal Committees (other than the Embryo Research Licensing Committee of the NHMRC);
 - (d) the Commissioner.

Note: For the appointment of the Chairperson and members of the Embryo Research Licensing Committee of the NHMRC, see sections 16 and 17 of the *Research Involving Human Embryos Act 2002*.

- (2) The CEO must, by writing, appoint the members of the working committees.

Full-time or part-time

- (3) The CEO must be appointed on a full-time basis.
- (4) Any other appointment under subsection (1) or (2) must be on a part-time basis only.

Term of office

- (5) A person appointed under this section holds office for the period that is specified in the instrument of appointment. The period must not exceed:
- (a) in the case of the CEO—5 years; or
 - (b) in any other case—3 years.

Note: The person is eligible for reappointment: see subsection 33(4A) of the *Acts Interpretation Act 1901*.

42 Acting appointments

- (1) This section applies to the following offices:
- (a) the CEO;
 - (b) the Chair of the Council;
 - (c) a member of the Council other than the Chair;
 - (d) the Chair of a Principal Committee (including the Chairperson of the Embryo Research Licensing Committee of the NHMRC);
 - (e) the Commissioner.
- (2) The Minister may appoint a person to act in an office that this section applies to:
- (a) during a vacancy in the office, whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when the holder of the office is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.
- (3) However, the Minister may only appoint a person to act in an office if the person is:
- (a) in the case of the Chair of the Council—a member of the Council; or
 - (b) in the case of a member of the Council referred to in paragraph 20(2)(b)—a person having appropriate expertise; or
 - (c) in the case of a member of the Council referred to in paragraph 20(2)(c)—a person:
 - (i) having appropriate expertise; and

- (ii) nominated by the Minister who has primary responsibility for health in the relevant State or Territory; or
- (d) in the case of a member of the Council referred to in paragraph 20(2)(d), (e), (f) or (g)—a person with the expertise specified in the applicable paragraph; or
- (e) in the case of the Chair of a Principal Committee (other than the Chairperson of the Embryo Research Licensing Committee of the NHMRC):
 - (i) a member of the Council; or
 - (ii) if the Minister does not consider that any member of the Council has the appropriate expertise to act as Chair of the Principal Committee, and another member of the Principal Committee is a member of the Council—a person having appropriate expertise; or
- (f) in the case of the Chairperson of the Embryo Research Licensing Committee of the NHMRC—a member of the Committee (other than the member mentioned in paragraph 16(1)(a) of the *Research Involving Human Embryos Act 2002*) with appropriate expertise; or
- (g) in the case of the Commissioner—a person having appropriate expertise.

Note: The Minister may appoint any person to act in the office of the CEO.

- (4) Anything done by or in relation to a person purporting to act under an appointment 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.

42A Disclosures of interests

CEO—disclosure on appointment

- (1) Before starting to hold office, the CEO must give to the Minister a written statement of any interest the CEO has that may relate to the functions of the CEO.

CEO—disclosures during term of appointment

- (2) If the CEO has, or acquires, an interest that could conflict with the proper performance of the CEO's functions, the CEO must, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of the interest to the Minister.

Members of Council and committees—disclosures on appointment

- (3) Before starting to hold office:
- (a) a member of the Council; or
 - (b) a member of a committee;
- must give to the CEO a written statement of any interest the member has that may relate to any activity of the Council or committee.

Members of Council and committees—disclosures at or before meetings

- (4) A member of the Council or of a committee who has an interest in a matter being considered, or about to be considered, by the Council or committee must, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of the interest:
- (a) at a meeting of the Council or committee; or
 - (b) if the matter is to be decided before a meeting of the Council or committee takes place:
 - (i) if the member is the Chair of the Council or committee—to the CEO; or
 - (ii) otherwise—to the Chair of the Council or committee.
- (5) A member who has disclosed an interest in a matter under subsection (3) or (4) must not:
- (a) be present when the Council or committee considers the matter; or
 - (b) take part in any decision of the Council or committee in relation to the matter.
- (6) Subsection (5) does not apply if:
- (a) if the member is the Chair of the Council or committee—the CEO otherwise determines; or

- (b) otherwise—the Chair of the Council or committee otherwise determines.
- (7) A member's disclosure at a Council or committee meeting must be recorded in the minutes of the meeting.
- (8) A member's disclosure, given otherwise than at a Council or committee meeting, must be recorded in the minutes of the first Council or committee meeting after the disclosure.

Note: For disclosures of interests by the Commissioner, see section 76.

43 Remuneration and allowances

CEO and Chair of the Council

- (1) The CEO or the Chair of the Council is to be paid the remuneration, by way of a yearly amount, that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, he or she is to be paid the remuneration that is prescribed.

Members of the Council and committees

- (2) A:
 - (a) member of the Council, other than the Chair; or
 - (b) member of a committee who is not also the Chair of the Council;is to be paid the remuneration, by way of sitting fees, that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, he or she is to be paid the remuneration that is prescribed.
- Note: If the Chair of the Council is also a member of a committee, he or she is to be paid, in respect of his or her duties as such a member, the allowances that are prescribed under subsection (5).
- (3) If a member of the Council or a member of a committee is also:
 - (a) in the service or employment of, or of an authority of, the Commonwealth, a State or a Territory on a full-time basis; or
 - (b) a person who holds or performs the duties of an office or position established by or under a law of the Commonwealth, a State or a Territory on a full-time basis;

the member is not, unless the member is the Chair of the Council and the Minister otherwise directs in writing, entitled to remuneration under this Act in respect of his or her duties as Chair of the Council, a member of the Council or a member of a committee.

Commissioner

- (4) The Commissioner 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, he or she is to be paid the remuneration that is prescribed.

Allowances

- (5) A person appointed under subsection 41(1) or (2) is to be paid the allowances that are prescribed.

Remuneration Tribunal Act 1973

- (6) This section has effect subject to the *Remuneration Tribunal Act 1973*.

44 Leave of absence

- (1) The Minister may grant the CEO or the Commissioner leave of absence on such terms and conditions as the Minister determines.
- (2) The CEO may grant:
- (a) a member of the Council; or
 - (b) a member of a committee;
- leave of absence on such terms and conditions as the CEO determines.

44A Resignations

A person appointed under subsection 41(1) or (2) may resign his or her appointment by giving the Minister or CEO (whoever made the appointment) a written resignation.

44B Terminations of appointments

- (1) This section applies to an appointment under subsection 41(1) or (2).
- (2) The Minister or CEO (whoever made the appointment) may terminate the appointment for misbehaviour or for physical or mental incapacity.
- (3) The Minister or CEO (whoever made the appointment) must terminate the appointment if the holder of the office:
 - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
 - (b) fails, without reasonable excuse, to comply with an obligation to disclose an interest under section 42A or 76, as the case requires; or
 - (c) in the case of the CEO or the Commissioner—is absent, except on leave of absence granted under section 44, without reasonable excuse; or
 - (d) in the case of a member of the Council or of a committee—is absent, except on leave of absence granted under section 44, from 3 consecutive meetings of the Council or committee.
- (4) If the Minister or CEO terminates an appointment, the Minister or CEO must give the holder of the office a written notice:
 - (a) informing the holder of the office of the termination of the appointment; and
 - (b) setting out the reasons for the termination.

44C Other terms and conditions

The CEO and the Commissioner hold office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

Part 6—Staff, consultants and work arrangements

45 Staff of the NHMRC

- (1) The staff of the NHMRC 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 of the NHMRC together constitute a Statutory Agency; and
 - (b) the CEO is the Head of that Statutory Agency.

46 Consultants

The CEO may, on behalf of the Commonwealth, engage consultants to perform services for the CEO related to the CEO's functions.

48 CEO may make arrangements relating to various matters

- (1) The CEO may make arrangements with the chief officer of a State or Territory Department or authority for:
 - (a) the services of officers or employees of that Department or authority to be made available to the NHMRC; or
 - (b) both:
 - (i) officers or employees of that Department or authority; and
 - (ii) the CEO, the members of the Council, the members of a committee or the staff of the NHMRC;to co-operate in the performance of their functions; or
 - (c) the resources of that Department or authority to be made available to be used by the CEO, the Council, a committee or the staff of the NHMRC.
- (2) The CEO may make arrangements with the chief officer of a State or Territory Department or authority relating to any matter within the scope of the CEO's functions, including arrangements for the CEO to undertake activities on behalf of a State or Territory Department or authority.

Arrangements are not legislative instruments

(3) Arrangements under this section are not legislative instruments.

70 At the end of subsection 51(1)

Add:

Note: Paragraph 22(1)(a) of the *Acts Interpretation Act 1901* provides that *person* includes a body politic or corporate as well as an individual.

71 Subsection 51(2)

Omit “Subject to subsection (2A), assistance”, substitute “Assistance”.

72 Subsection 51(2)

Omit “Council”, substitute “CEO”.

73 Subsection 51(2A)

Repeal the subsection.

74 Section 54

Repeal the section.

75 Paragraphs 56(2)(a) and (b)

Omit “Council”, substitute “CEO”.

76 Paragraph 61(1)(e)

Omit “Council” (wherever occurring), substitute “CEO”.

77 Section 62

Omit “Council”, substitute “CEO”.

Note: The heading to section 62 is altered by omitting “**Council**” and substituting “CEO”.

78 Paragraph 64(3)(a)

Omit “Council”, substitute “CEO”.

79 Paragraph 64(3)(c)

Omit “Council”, substitute “NHMRC”.

80 Paragraph 64(3)(f)

Repeal the paragraph, substitute:

- (f) a person assisting the CEO, the Council, a committee or the staff of the NHMRC in the performance of its or their functions under an arrangement under section 48.

81 Paragraphs 66(c) and (d)

Omit “Council”, substitute “CEO”.

82 Subsection 67(1)

Omit “Council” (first occurring), substitute “CEO”.

83 Paragraph 67(1)(a)

Omit “Council” (wherever occurring), substitute “CEO”.

84 Subsections 67(2) and (3)

Omit “Council”, substitute “CEO”.

85 Paragraphs 67(3)(a) and (b)

Omit “it”, substitute “the CEO”.

86 Paragraph 67(3)(b)

Omit “its”, substitute “the CEO’s”.

87 Section 68

Omit “calendar year, give the Council”, substitute “financial year, give the CEO”.

88 Division 3 of Part 8 (heading)

Repeal the heading, substitute:

**Division 3—Administrative arrangements for
Commissioner**

89 Section 69

Repeal the section, substitute:

69 Commissioner must have appropriate expertise

A person must not be appointed as the Commissioner unless he or she has appropriate expertise.

Note: For the appointment, terms and conditions of the Commissioner, see Part 5.

90 Sections 70 and 71

Repeal the sections.

91 Section 72

Omit “Secretary to the Department”, substitute “CEO”.

Note: The heading to section 72 is altered by omitting “**Department**” and substituting “**NHMRC**”.

92 Paragraph 72(a)

Omit “officers or employees of the Department engaged under the *Public Service Act 1999*”, substitute “staff of the NHMRC”.

93 Sections 73, 74, 75 and 77

Repeal the sections.

94 Subsections 80(1) and (2)

Repeal the subsections, substitute:

(1) In this Act:

information provider means a person who provides confidential commercial information to an NHMRC officer.

NHMRC officer means a person who is:

- (a) the CEO; or
- (b) a member of the Council or of a committee (other than the Embryo Research Licensing Committee of the NHMRC); or
- (c) a member of the staff of the NHMRC; or
- (d) a consultant engaged under section 46; or
- (e) a person assisting the CEO, the Council or a committee (other than the Embryo Research Licensing Committee of the NHMRC) in the performance of functions under this Act; or
- (f) the Commissioner; or
- (g) a person assisting the Commissioner in the performance of his or her functions under this Act.

(2) A person commits an offence if:

- (a) the person is an NHMRC officer; and

- (b) the person discloses information; and
- (c) the information was acquired by the person because of being an NHMRC officer; and
- (d) the information is in respect of any matter under consideration by the CEO, the Council, a committee (other than the Embryo Research Licensing Committee of the NHMRC) or the Commissioner; and
- (e) the person knows, or has reasonable grounds for believing, that the information is confidential commercial information.

Penalty: Imprisonment for 2 years.

95 Subsection 80(5)

Repeal the subsection, substitute:

- (5) Despite subsection (2), the CEO may deal with confidential commercial information acquired by an NHMRC officer (other than the Commissioner or a person assisting the Commissioner in the performance of his or her functions under this Act) because of being such an NHMRC officer, in the following ways:
 - (a) if the Minister certifies in writing that it is necessary in the public interest for the information to be disclosed to a specified person, the CEO may disclose the information to that person;
 - (b) the CEO may disclose the information to a person or body specified in the regulations;
 - (c) if, in the CEO's opinion, the information provider has expressly or impliedly authorised another person to receive the information, the CEO may disclose the information to that other person.

96 Subsections 80(7), (8) and (9)

Omit "Chairperson", substitute "CEO".

97 Paragraph 80(9)(d)

Repeal the paragraph, substitute:

- (d) a person assisting under an arrangement entered into under section 48 (other than an arrangement to assist the Embryo Research Licensing Committee of the NHMRC);

98 Subsection 80(9)

Omit “40 or”.

99 Paragraph 80(11)(b)

Omit “40 or”.

100 Section 81

Repeal the section.

101 Subsection 82(1)

Repeal the subsection, substitute:

- (1) The Minister may, in writing, delegate to the CEO all or any of the Minister’s powers or functions under section 42 in relation to members of the Council (including the Chair).

102 Subsections 82(2) and (3)

Repeal the subsections, substitute:

- (1C) The CEO may delegate all or any of his or her powers or functions to:
 - (a) the Council; or
 - (b) a committee (other than the Embryo Research Licensing Committee of the NHMRC); or
 - (c) a member of the staff of the NHMRC.
- (2) The Council may delegate all or any of the Council’s powers or functions (including a power or function delegated to it by the CEO) to:
 - (a) the Chair of the Council; or
 - (b) a committee (other than the Embryo Research Licensing Committee of the NHMRC).
- (3) A Principal Committee may delegate to a working committee all or any of the Principal Committee’s powers or functions (including a power or function delegated to it by the CEO or the Council).

103 Subsection 82(4)

After “the Minister,” (wherever occurring), insert “the CEO,”.

104 Subsection 83(1)

Repeal the subsection, substitute:

- (1) The CEO must, as soon as practicable after the end of each financial year, give to the Minister a written report of the operations of the NHMRC during that year.

105 Paragraph 83(2)(c)

Omit “Council”, substitute “CEO”.

106 Paragraphs 83(2)(d), (e), (f) and (g)

Repeal the paragraphs, substitute:

- (d) details of any matter referred by the Minister to the CEO, the Council or a Principal Committee during the year under section 5D;
- (e) details of any direction given by the Minister to the CEO, the Council or a Principal Committee during the year under section 5E;
- (f) details of any guidelines or interim guidelines issued by the CEO during the year in the performance of the CEO’s functions under paragraph 7(1)(a);
- (g) details of all recommendations made by the CEO during the year to the Minister in the performance of the CEO’s functions under paragraph 7(1)(c);

107 Paragraphs 83(2)(h) and (i)

Omit “Council”, substitute “CEO”.

108 Section 84

Repeal the section.

109 Part 10

Repeal the Part.

Part 2—Amendment of other Acts

Australian Institute of Health and Welfare Act 1987

110 Subsection 16(3)

Before “National Health and Medical Research Council”, insert “CEO of the”.

Food Standards Australia New Zealand Act 1991

111 Subsection 3(1) (paragraph (b) of the definition of *appropriate government agency*)

Before “National Health and Medical Research Council”, insert “CEO of the”.

112 Paragraph 40(1)(e)

Before “National Health and Medical Research Council”, insert “CEO of the”.

Freedom of Information Act 1982

113 Division 1 of Part II of Schedule 2

Before “National Health and Medical Research Council” (second occurring), insert “Council of the”.

National Health Act 1953

114 Subsection 73EA(1)

Before “National Health and Medical Research Council”, insert “CEO of the”.

Privacy Act 1988

115 Subsections 73(2) and (3), 95(1) and 95A(1)

Before “National Health and Medical Research Council”, insert “CEO of the”.

Research Involving Human Embryos Act 2002

116 Section 8 (paragraphs (a) and (b) of the definition of *proper consent*)

Before “NHMRC”, insert “CEO of the”.

117 Paragraphs 13(2)(a), (b), (c) and (d)

Repeal the paragraphs, substitute:

- (a) sections 5D and 5E;
- (b) section 35;
- (c) section 41;
- (d) section 80;
- (e) subsections 82(1C) and (2).

118 Subsection 13(5)

Omit “A determination by the NHMRC under paragraph 38(b)(vi)”, substitute “Section 42A”.

119 Subsection 18(2)

Before “NHMRC” (second occurring), insert “CEO of the”.

120 Paragraph 21(4)(c)

Before “NHMRC”, insert “CEO of the”.

121 Subsection 47(1)

Before “NHMRC”, insert “CEO of the”.

Therapeutic Goods Act 1989

122 Subsection 3(1) (paragraph (a) of the definition of *ethics committee*)

Before “National Health and Medical Research Council”, insert “CEO of the”.

**Part 3—Amendment conditional on the Financial
Framework Legislation Amendment Act
(No. 1) 2006**

National Health and Medical Research Council Act 1992

123 Subsection 82(1A)

Omit “Chief Executive Officer or to an APS employee in the Department”, substitute “CEO or to a member of the staff of the NHMRC”.

Part 4—Transitional provisions

Division 1—Preliminary

124 Definitions

(1) In this Part:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

amend includes repeal and remake.

asset means:

- (a) any legal or equitable estate or interest in real or personal property, whether actual, contingent or prospective; and
- (b) any right, power, privilege or immunity, whether actual, contingent or prospective.

assets official, in relation to an asset other than land, means the person or authority who, under a law of the Commonwealth, a State or a Territory, under a trust instrument or otherwise, has responsibility for keeping a register in relation to assets of the kind concerned.

commencement time means the time when this Part commences.

financial liability means a liability to pay a person an amount, where the amount, or the method for working out the amount, has been determined.

instrument:

- (a) includes:
 - (i) a contract, deed, undertaking or agreement; and
 - (ii) a notice, authority, order or instruction; and
 - (iii) an instrument made under an Act or regulations; and
 - (iv) regulations; but
- (b) does not include an Act.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

land means any legal or equitable estate or interest in real property, whether actual, contingent or prospective.

land registration official, in relation to land, means the Registrar of Titles or other proper officer of the State or Territory in which the land is situated.

liability means any liability, duty or obligation, whether actual, contingent or prospective.

new law means the *National Health and Medical Research Council Act 1992* as in force immediately after the commencement time.

old law means the *National Health and Medical Research Council Act 1992* as in force immediately before the commencement time.

old NHMRC means the National Health and Medical Research Council established by the old law.

- (2) Subject to subitem (1), an expression used in this Part that is also used in the new law has the same meaning in this Part as it has in the new law.

Division 2—Assets, liabilities and legal proceedings

125 Vesting of assets of old NHMRC

- (1) This item applies to the assets of the old NHMRC immediately before the commencement time.
- (2) At the commencement time, the assets to which this item applies cease to be assets of the old NHMRC and become assets of the Commonwealth without any conveyance, transfer or assignment. The Commonwealth becomes the successor in law in relation to these assets.

126 Vesting of liabilities of old NHMRC

- (1) This item applies to the liabilities of the old NHMRC immediately before the commencement time.
- (2) At the commencement time, the liabilities to which this item applies cease to be liabilities of the old NHMRC and become liabilities of the Commonwealth without any conveyance, transfer or assignment. The Commonwealth becomes the successor in law in relation to these liabilities.

127 Certificates relating to vesting of land

- (1) This item applies if:

- (a) any land vests in the Commonwealth under this Division; and
- (b) there is lodged with a land registration official a certificate that:
 - (i) is signed by the Minister; and
 - (ii) identifies the land, whether by reference to a map or otherwise; and
 - (iii) states that the land has become vested in the Commonwealth under this Division.

Note: Certificates under paragraph (1)(b) are presumed to be authentic: see item 141.

- (2) The land registration official may:
 - (a) register the matter in a way that is the same as, or similar to, the way in which dealings in land of that kind are registered; and
 - (b) deal with, and give effect to, the certificate.

128 Certificates relating to vesting of assets other than land

- (1) This item applies if:
 - (a) any asset other than land vests in the Commonwealth under this Division; and
 - (b) there is lodged with an assets official a certificate that:
 - (i) is signed by the Minister; and
 - (ii) identifies the asset; and
 - (iii) states that the asset has become vested in the Commonwealth under this Division.

Note: Certificates under paragraph (1)(b) are presumed to be authentic: see item 141.

- (2) The assets official may:
 - (a) deal with, and give effect to, the certificate as if it were a proper and appropriate instrument for transactions in relation to assets of that kind; and
 - (b) make such entries in the register as are necessary having regard to the effect of this Part.

129 Substitution of Commonwealth as a party to pending proceedings

If any proceedings to which the old NHMRC was a party were pending in any court or tribunal immediately before the commencement time, the Commonwealth is substituted for the old NHMRC, from the commencement time, as a party to the proceedings.

130 Transfer of custody of old NHMRC records

- (1) This item applies to any records or documents that, immediately before the commencement time, were in the custody of:
 - (a) the old NHMRC; or
 - (b) a committee.
- (2) The records and documents are to be transferred into the custody of the CEO at or after the commencement time.

Division 3—Reference to, and things done by or in relation to, old NHMRC

131 References in instruments

References to old NHMRC taken to be references to CEO or Commonwealth

- (1) If:
 - (a) an instrument is in force immediately before the commencement time; and
 - (b) the instrument contains a reference to the old NHMRC;the instrument has effect from the commencement time as if the reference to the old NHMRC were a reference to the CEO.
- (2) However, if:
 - (a) an instrument is in force immediately before the commencement time; and
 - (b) the instrument relates to assets or liabilities covered by item 125 or 126; and
 - (c) the instrument refers to the old NHMRC;the reference is to be read as a reference to the Commonwealth as necessary to give effect to item 125 or 126, as the case requires.

References to staff of old NHMRC taken to be references to staff of NHMRC

- (3) If:
- (a) an instrument is in force immediately before the commencement time; and
 - (b) the instrument contains a reference to a member of the staff of the old NHMRC;

the instrument has effect from the commencement time as if the reference to the member of staff of the old NHMRC were a reference to a member of the staff of the NHMRC.

Minister and regulations may provide otherwise

- (4) The Minister may, by writing, determine that subitem (1), (2) or (3):
- (a) does not apply in relation to a specified reference; or
 - (b) applies as if:
 - (i) in the case of subitem (1)—the reference in that subitem to the CEO were a reference to the Commonwealth or the Council; or
 - (ii) in the case of subitem (2)—the reference in that subitem to the Commonwealth were a reference to the CEO; or
 - (iii) in the case of subitem (3)—the reference in that subitem to a member of the staff of the NHMRC were a reference to the CEO.

A determination under this subitem has effect accordingly.

- (5) The regulations may provide that an instrument containing a reference specified in a determination under paragraph (4)(a) has effect from the commencement time as if:
- (a) in the case of an instrument covered by subitem (1)—the reference were a reference to a specified person or body other than the Commonwealth, the CEO or the Council; or
 - (b) in the case of an instrument covered by subitem (2)—the reference were a reference to a specified person or body other than the Commonwealth or the CEO; or
 - (c) in the case of an instrument covered by subitem (3)—the reference were a reference to a specified person or body other than the CEO or a member of the staff of the NHMRC.

References to parts of Department in Account instruments

- (6) If:
- (a) an instrument is in force immediately before the commencement time; and
 - (b) the instrument relates to the Account; and
 - (c) the instrument refers to a part of the Department; and
 - (d) the CEO certifies, in writing, that the functions of that part of the Department are now performed by a specified part of the NHMRC;

the instrument has effect from the commencement time as if the reference to that part of the Department were a reference to that part of the NHMRC.

Note: Certificates under paragraph (6)(d) are presumed to be authentic: see item 141.

Determinations and certificates are not legislative instruments

- (7) A determination under subitem (4) or a certificate under subitem (6) is not a legislative instrument.

132 Operation of laws

Things done by old NHMRC taken to be done by CEO

- (1) If, before the commencement time, a thing was done by, or in relation to, the old NHMRC, then, for the purposes of the operation of any law of the Commonwealth after the commencement time, the thing is taken to have been done by, or in relation to, the CEO.
- (2) For the purposes of subitem (1), a thing done before the commencement time under a provision that is amended by this Schedule has effect from that time as if it were done under that provision as amended. However, this is not taken to change the time at which the thing was actually done.

Minister and regulations may provide otherwise

- (3) The Minister may, by writing, determine that subitem (1):
- (a) does not apply in relation to a specified thing done by, or in relation to, the old NHMRC; or

- (b) applies as if the reference in that subitem to the CEO were a reference to the Commonwealth, the Council or a Principal Committee.

A determination under this subitem has effect accordingly.

- (4) The regulations may provide for a thing specified in a determination under paragraph (3)(a) to be taken to have been done by, or in relation to, a specified person or body other than the Commonwealth, the CEO, the Council or a Principal Committee.

Things done by Australian Health Ethics Committee

- (5) A thing done before the commencement time by the Australian Health Ethics Committee under a provision of Part 3 of the old law that is amended by this Schedule has the effect from that time as if it were done under Part 3 of the new law. However, this is not taken to change the time at which the thing was actually done.

Meaning of doing

- (6) To avoid doubt, for the purposes of this item, **doing** a thing includes making an instrument.

Determinations are not legislative instruments

- (7) A determination made under subitem (3) is not a legislative instrument.

133 Continued effect of certain instruments made under the old law

An instrument:

- (a) made or given under the old law and specified in the following table; and
- (b) in force immediately before the commencement time;

continues to have effect from the commencement time as if it were made or given under the corresponding provision of the new law specified in the table.

Instruments made under the old law that continue to have effect		
Item	This instrument made or given under this provision of the old law...	continues to have effect as if it were made or given under this provision of the new law...
1	guidelines and advice under paragraph 7(1)(a)	paragraph 7(1)(a)
2	advice and recommendations under paragraph 7(1)(b)	paragraph 7(1)(b)
3	recommendations under paragraph 7(1)(c)	paragraph 7(1)(c)
4	references under subsection 9(1)	subsection 5D(1)
5	directions under subsection 10(1)	subsection 5E(1)
6	procedures under section 15	section 15
7	reviews under subsection 17(1)	subsection 17(1)
8	determinations under paragraph 24(1)(a)	subsection 43(1) in relation to the Chair of the Council
9	determinations under paragraph 25(1)(a)	subsection 43(2) in relation to members of the Council
10	determinations under paragraph 26(2)(b)	subsection 44(2) in relation to the Chair of the Council
11	determinations under subsection 26(3)	subsection 44(2) in relation to members of the Council (other than the Chair)
12	determinations under paragraph 41(2)(a)	subsection 43(2) in relation to members of a committee
13	determinations under subsection 42(1)	subsection 44(2) in relation to members of a Principal Committee
14	determinations under subsection 42(2A) or (3)	subsection 44(2) in relation to members of a working committee
15	determinations under subsection 44C(1)	subsection 43(1) in relation to the CEO
16	determinations under section 44E	section 44C in relation to the CEO
17	engagements under subsection 46(1)	section 46
18	arrangements under paragraph 48(1)(c)	subsection 48(1)
19	arrangements under subsection 48(2)	subsection 48(2)
20	determinations under subsection 51(2)	subsection 51(2)

Instruments made under the old law that continue to have effect

Item	This instrument made or given under this provision of the old law...	continues to have effect as if it were made or given under this provision of the new law...
21	determinations under subsection 70(2)	section 44C in relation to the Commissioner
22	determinations under paragraph 74(1)(a)	subsection 43(4)
23	determinations under section 75	subsection 44(1) in relation to the Commissioner
24	certificates under paragraph 80(5)(a)	paragraph 80(5)(a)

Division 4—Committees and Commissioner

134 Principal Committees

- (1) A Principal Committee that is:
- (a) established under section 35 of the old law; and
 - (b) in existence immediately before the commencement time;
- continues in existence, at the commencement time, as if it were established under section 35 of the new law.
- (2) An instrument that is:
- (a) either:
 - (i) a determination of the functions of a Principal Committee under paragraph 35(2)(d) or (3)(c) or subsection 35(7) of the old law; or
 - (ii) a determination of the name of a Principal Committee under subsection 35(7) of the old law; and
 - (b) in force immediately before the commencement time;
- continues to have effect, at the commencement time, as if it had been made under paragraph 35(2)(d) or (3)(c) or subsection 35(7), as the case requires, of the new law.

135 Working committees

- (1) A working committee that is:
- (a) established under section 39 of the old law; and
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- (b) in existence immediately before the commencement time; continues in existence, at the commencement time, as if it were established under section 39 of the new law.
- (2) A person who, immediately before the commencement time, was a member of a working committee:
- (a) is taken to have been appointed, at the commencement time, under subsection 41(2) of the new law for the balance of the term of appointment under subsection 39(4) of the old law; and
 - (b) is taken to have been so appointed on the same terms and conditions as applied to the person immediately before the commencement time.
- (3) An instrument that is:
- (a) a determination of the functions of a working committee under paragraph 39(5)(a) of the old law; and
 - (b) in force immediately before the commencement time;
- continues to have effect, at the commencement time, as if it had been made under subsection 39(3) of the new law.

136 Commissioner

- (1) The person holding office as Commissioner under subsection 69(1) of the old law immediately before the commencement time continues, on and after that time, by force of this item, to hold office as the Commissioner.
- (2) The person referred to in subitem (1):
- (a) is taken to have been duly appointed by the Minister under paragraph 41(1)(d) of the new law for the balance of the term of appointment under section 71 of the old law; and
 - (b) is taken to have been so appointed on the same terms and conditions as applied to the person immediately before the commencement time.

Division 5—Reporting obligations

137 First annual reports by CEO and Commissioner

- (1) Sections 68 and 83 of the new law apply in relation to the financial year ending on 30 June 2007 and later financial years.

- (2) Those sections apply in relation to the financial year ending on 30 June 2007 as if that financial year also included the period:
- (a) starting on 1 January 2006; and
 - (b) ending on 30 June 2006.

Division 6—Miscellaneous

138 Exemption from stamp duty and other State or Territory taxes

No stamp duty or other tax is payable under a law of a State or Territory in respect of, or anything connected with:

- (a) the transfer of an asset or liability under this Part; or
- (b) the operation of this Part in any other respect.

139 Application—subsection 41(1) of the *National Health and Medical Research Council Act 1992*

Consultation under subsection 41(1) of the new law may take place before or after the commencement time in relation to the first appointment to each office under that subsection after that time.

140 Constitutional safety net—acquisition of property

- (1) If the operation of this Part would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

141 Certificates taken to be authentic

A document that appears to be a certificate made or issued under a particular provision of this Part:

- (a) is taken to be such a certificate; and
- (b) is taken to have been properly given;

unless the contrary is established.

142 Delegation by Minister

- (1) The Minister may, by writing, delegate all or any of his or her powers and functions under this Part to the Secretary of the Department or to the CEO.
- (2) In exercising or performing powers or functions under a delegation, the delegate must comply with any directions of the Minister.
- (3) A power or function delegated to the CEO under subitem (1) must not be sub-delegated under subsection 82(1C) of the new law.

143 Regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Part to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Part.
- (2) In particular, regulations may be made prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by this Schedule.

*[Minister's second reading speech made in—
Senate on 29 March 2006
House of Representatives on 24 May 2006]*

(33/06)