



Australian Research Council Amendment (Review Response) Act 2024

No. 8, 2024

An Act to amend the *Australian Research Council Act 2001*, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)

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No. 8, 2024

An Act to amend the *Australian Research Council Act 2001*, and for related purposes

[Assented to 28 March 2024]

The Parliament of Australia enacts:

1 Short title

This Act is the *Australian Research Council Amendment (Review Response) Act 2024*.

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
Provisions	Commencement	Date/Details
1. The whole of this Act	1 July 2024.	1 July 2024

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Australian Research Council Act 2001

1 Section 3

Repeal the section, substitute:

3 Object of Act

The object of this Act is to establish a national body to:

- (a) support Australian universities in conducting excellent research, including collaborative research with local, national and international partners, for Australia’s economic, social, environmental and cultural benefit; and
- (b) promote and conduct activities to shape and foster the Australian research landscape and community, including by supporting academic career pathways, expanding Indigenous knowledge systems and evaluating the excellence, impact and depth of Australian research; and
- (ba) support Australian universities to attract and retain academic researchers and promote quality academic jobs; and
- (c) support research integrity, promote ethical research and facilitate access to research publications and research data; and
- (d) uphold peer review as a core process to identify excellent research; and
- (e) administer funding of excellent pure basic research, strategic basic research and applied research in all disciplines under the National Competitive Grants Program, except experimental development; and
- (f) administer funding for nationally significant research programs; and
- (g) provide expert advice on research to the Commonwealth Government; and
- (h) partner with other Commonwealth entities to deliver research grants by those other entities.

Schedule 1 Object of Act

Note: **Research** does not include medical research (see section 4). The *National Health and Medical Research Council Act 1992* deals with funding for medical research.

2 Section 4

Insert:

medical research has the same meaning as it has in the *National Health and Medical Research Council Act 1992*.

research does not include medical research.

Schedule 2—Australian Research Council Board and CEO

Australian Research Council Act 2001

1 Section 4

Insert:

Board means the Australian Research Council Board established by section 8.

Board committee means a committee established under section 29.

Board member means a member of the Board and includes the Chair and Deputy Chair.

Chair means the Chair of the Board.

Commonwealth entity has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

Deputy Chair means the Deputy Chair of the Board.

2 Section 4 (definition of *designated committee*)

Repeal the definition, substitute:

designated committee means a committee established under section 30.

3 Section 4

Insert:

Indigenous person has the same meaning as in the *Indigenous Education (Targeted Assistance) Act 2000*.

paid work means work for financial gain or reward (whether as an employee, a self-employed person or otherwise).

4 Before paragraph 5(2)(a)

Insert:

(aa) the Board; and

5 Paragraph 5(3)(b)

Repeal the paragraph, substitute:

- (b) the members of the Board are the accountable authority of the ARC; and

6 After subparagraph 5(3)(c)(i)

Insert:

- (ia) the members of the Board;
- (ib) the members of the Board committees;

7 Subparagraph 5(3)(d)(i)

Omit “function”, substitute “functions”.

8 After subparagraph 5(3)(d)(i)

Insert:

- (ia) the functions of the Board referred to in section 9; and

9 Section 6

Repeal the section, substitute:

6 Functions of ARC

The functions of the ARC (other than the Board and the CEO) are the following:

- (a) to assist the Board in the performance of the Board’s functions;
- (b) to assist the CEO in the performance of the CEO’s functions.

10 After Part 2

Insert:

Part 3—The Australian Research Council Board

Division 1—Introduction

7 Simplified outline of this Part

The Australian Research Council Board is established.

The Board's functions include determining priorities, strategies and policies for the ARC.

The Board consists of the Chair, the Deputy Chair and up to 7 other members. The Minister appoints the members of the Board.

This Part also deals with the terms and conditions of appointment for Board members, meetings of the Board and Board committees.

Division 2—The Board

8 Establishment

The Australian Research Council Board is established by this section.

9 Functions and powers of the Board

- (1) The functions of the Board are:
 - (a) to determine priorities, strategies and policies for the ARC and to advise the Minister of those priorities, strategies and policies; and
 - (b) to assist the Minister in the performance of the Minister's functions under this Act; and
 - (c) to provide advice to the Minister on research matters; and
 - (d) any other functions that are specified in an instrument under subsection (2); and
 - (e) any other functions conferred on the Board by this Act.
- (2) The Minister may, by legislative instrument, specify functions for the purposes of paragraph (1)(d).

- (3) The Board has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.
- (4) The Board may engage consultants or contractors to assist in the performance of the Board's functions.

10 Minister may give directions to the Board

- (1) The Minister may, by legislative instrument, give directions to the Board about the performance of its functions or the exercise of its powers.

Note: Section 42 (disallowance) and Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* do not apply to the directions (see regulations made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of that Act).

- (2) However, the Minister must not give a direction in relation to the making of a decision by the Board about whether or not to give a particular funding approval.
- (3) The Board must comply with a direction under subsection (1).

11 Membership

The Board consists of the following members:

- (a) the Chair;
- (b) the Deputy Chair;
- (c) not fewer than 5, and not more than 7, other members.

11A Review of the Board

- (1) In the financial year beginning on 1 July 2026, the Minister must cause to be conducted an independent review of the following:
 - (a) whether the functions of the Board are appropriate;
 - (b) whether the size and membership of the Board are appropriate.
- (2) The persons undertaking the review must give the Minister a written report of the review.

Division 3—Board members

12 Appointment

- (1) The Board members are to be appointed by the Minister by written instrument.

Note: Board members may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

- (2) A Board member holds office on a part-time basis.
- (3) A person is not eligible for appointment as the Chair unless the Minister is satisfied that the person has:
- (a) substantial experience or expertise; and
 - (b) professional credibility and significant standing;
- in one or more fields of research or in the management of research.
- (4) In appointing Board members, the Minister must:
- (a) ensure that a majority of the Board members are persons whom the Minister is satisfied have substantial experience or expertise in one or more fields of research or in the management of research; and
 - (b) ensure that one of the Board members is an Indigenous person; and
 - (c) ensure that one of the Board members is a person whom the Minister is satisfied will represent regional, rural and remote Australia; and
 - (d) ensure that the membership of the Board reflects the diversity of the general community, to the extent that is reasonably practicable.

13 Term of appointment

A Board member holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: Board members may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

14 Acting appointments

Acting by operation of law

- (1) The Deputy Chair is to act as the Chair:
 - (a) during a vacancy in the office of Chair (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Chair:
 - (i) is absent from duty; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Acting appointments

- (2) The Minister may, by written instrument, appoint a Board member to act as the Deputy Chair:
 - (a) during a vacancy in the office of Deputy Chair (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Deputy Chair:
 - (i) is acting as the Chair; or
 - (ii) is absent from duty; or
 - (iii) is, for any reason, unable to perform the duties of the office.
- (3) The Minister may, by written instrument, appoint a person to act as a Board member (other than the Chair or the Deputy Chair):
 - (a) during a vacancy in the office of a Board member (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when a Board member:
 - (i) is acting as the Deputy Chair; or
 - (ii) is absent from duty; or
 - (iii) is, for any reason, unable to perform the duties of the office.
- (4) A person must not be appointed under subsection (2) or (3) to act as the Deputy Chair, or as another Board member, unless the

Minister is satisfied that the person has appropriate qualifications, knowledge, skills or experience.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

15 Remuneration

- (1) A Board 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) A Board 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*.

16 Leave

- (1) The Minister may grant the Chair leave of absence on the terms and conditions that the Minister determines.
- (2) The Chair may grant leave of absence to any other Board member on the terms and conditions that the Chair determines.
- (3) The Chair must notify the Minister if the Chair grants a Board member leave of absence for a period that exceeds 6 months.

17 Paid work

A Board member must not engage in any paid work that, in the Minister's opinion, conflicts or could conflict with the proper performance of the member's duties.

18 Disclosure of interests

- (1) A disclosure by a Board Member under section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) must be made to the Minister.

- (2) Subsection (1) applies in addition to any rules made for the purposes of that section.
- (3) For the purposes of this Act and the *Public Governance, Performance and Accountability Act 2013*, the Board member is taken not to have complied with section 29 of that Act if the Board member does not comply with subsection (1) of this section.

19 Resignation of appointment

- (1) A Board member may resign the member's appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

20 Termination of appointment

- (1) The Minister may terminate the appointment of a Board member:
 - (a) for misbehaviour; or
 - (b) if the member is unable to perform the duties of the member's office because of physical or mental incapacity.
- (2) The Minister may terminate the appointment of a Board member 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 the member's creditors; or
 - (iv) makes an assignment of the member's remuneration for the benefit of the member's creditors; or
 - (b) the member is absent, except on leave of absence, from 3 consecutive meetings of the Board; or
 - (c) the member engages in paid work that, in the Minister's opinion, conflicts or could conflict with the proper performance of the member's duties (see section 17); or
 - (d) the member fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to

disclose interests) or rules made for the purposes of that section.

21 Other terms and conditions

A Board member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

Division 4—Procedures of the Board

22 Convening meetings

- (1) The Board must hold such meetings as are necessary for the efficient performance of its functions.
- (2) The Chair:
 - (a) may convene a meeting at any time; and
 - (b) must convene a meeting within 30 days after receiving a written request to do so from:
 - (i) a majority of the Board members; or
 - (ii) the Minister.

23 Quorum

- (1) At a meeting of the Board, a quorum is constituted by a majority of Board members.
- (2) However, if:
 - (a) a Board member is required by rules made for the purposes of section 29 of the *Public Governance, Performance and Accountability Act 2013* not to be present during the deliberations, or to take part in any decision, of the Board with respect to a particular matter; and
 - (b) when the Board member leaves the meeting concerned there is no longer a quorum present;the remaining Board members constitute a quorum for the purposes of any deliberation or decision at that meeting with respect to that matter.

24 Presiding at meetings

- (1) The Chair must preside at all meetings of the Board at which the Chair is present.
- (2) If the Chair is not present at a meeting of the Board, the Deputy Chair, if present, must preside at the meeting.
- (3) If neither the Chair nor the Deputy Chair is present at a meeting of the Board, the other Board members present must appoint one of themselves to preside.

25 Voting at meetings

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

26 Minutes

The Board must keep minutes of its meetings.

27 Conduct of meetings

The Board may, subject to this Division, regulate proceedings at its meetings as it considers appropriate.

Note: Section 33B of the *Acts Interpretation Act 1901* contains further information about the ways in which Board members may participate in meetings.

28 Decisions without meetings

- (1) The Board is taken to have made a decision at a meeting if:
 - (a) without meeting, a majority of the Board members entitled to vote on the proposed decision indicate agreement with the decision; and
 - (b) that agreement is indicated in accordance with the method determined by the Board under subsection (2); and

- (c) all the Board members were informed of the proposed decision, or reasonable efforts were made to inform all the Board members of the proposed decision.
- (2) Subsection (1) applies only if the Board:
 - (a) has determined that it may make decisions of that kind without meeting; and
 - (b) has determined the method by which Board members are to indicate agreement with proposed decisions.
- (3) For the purposes of paragraph (1)(a), a Board member is not entitled to vote on a proposed decision if the Board member would not have been entitled to vote on that proposal if the matter had been considered at a meeting of the Board.
- (4) The Board must keep a record of decisions made in accordance with this section.

Division 5—Board committees

29 Board committees

- (1) The Board must establish a committee to be known as the College of Experts to assist the Board in the performance of its functions or the exercise of its powers.
- (2) The Board may establish other committees:
 - (a) to assist the Board in the performance of its functions or the exercise of its powers; and
 - (b) to assist the CEO in the CEO's performance of the CEO's functions.
- (3) A committee is to consist of such persons (whether Board members or not) as the Board determines.
- (4) The Board may determine:
 - (a) a committee's terms of reference; and
 - (b) the terms and conditions of appointment of the members of a committee; and
 - (c) the procedures to be followed by a committee.

- (5) The Board may abolish a committee established under subsection (2) at any time.

11 Section 30 (heading)

Repeal the heading, substitute:

30 Designated committees

12 Subsection 30(1)

Repeal the subsection, substitute:

- (1) The Minister must establish a committee to be known as the ARC Advisory Committee to assist the Board to determine priorities, strategies and policies for the ARC.
- (1A) The Minister may establish other committees to assist the Board to determine priorities, strategies and policies for the ARC.

13 Section 33B (heading)

After “**Functions**”, insert “**and powers**”.

14 Section 33B

Before “The”, insert “(1)”.

15 Paragraph 33B(a)

Repeal the paragraph.

16 Paragraph 33B(c)

Omit “Minister”, substitute “Board”.

17 After paragraph 33B(c)

Insert:

- (ca) to assist the Board in the performance of its functions and to provide advice to the Board on the priorities, strategies and policies for the ARC;
- (cb) to evaluate the excellence, quality and impact of research in Australian universities;
- (cc) to provide administration services to other Commonwealth entities in relation to research grants by those other entities;

- (cd) any other functions that are specified in an instrument under subsection (2);

18 At the end of section 33B

Add:

- (2) The Minister may, by legislative instrument, specify functions for the purposes of paragraph (1)(cd).
- (3) The CEO has power to do all things necessary or convenient to be done for, or in connection with, the performance of the CEO's functions.
- (4) The CEO may, on behalf of the Commonwealth, engage consultants or contractors to assist in the performance of the CEO's functions.

19 Section 33C

Repeal the section.

20 Subsection 34(1)

Omit "Minister", substitute "Board".

21 Subsection 34(2)

Repeal the subsection, substitute:

- (2) A person is not eligible for appointment as the CEO unless the Board is satisfied that the person has:
 - (a) substantial experience or expertise; and
 - (b) professional credibility and significant standing;in one or more fields of research or in the management of research.
- (3) The Board must:
 - (a) give the Minister details of at least 2 possible candidates for appointment as CEO; and
 - (b) give the Minister a reasonable opportunity to make representations to the Board about those candidates.
- (4) A person must not be appointed as the CEO unless the Board is satisfied that the selection of the person for the appointment is the result of a process that:

- (a) was merit-based; and
- (b) included public advertising of the position.

22 Section 35

Omit “Minister”, substitute “Board”.

23 Subsection 38(1)

Repeal the subsection, substitute:

- (1) The CEO must not engage in paid work outside the duties of the CEO’s office without the Board’s approval.

24 Subsection 38(2)

Omit “Minister”, substitute “Board”.

25 Subsection 38(3)

Repeal the subsection.

26 Section 39

Omit “Minister”, substitute “Board”.

27 Section 40

Omit “Minister”, substitute “Board”.

28 At the end of Subdivision B of Division 1 of Part 5

Add:

40A Termination of appointment

- (1) The Board may terminate the appointment of the CEO:
 - (a) for misbehaviour; or
 - (b) if the CEO is unable to perform the duties of the CEO’s office because of physical or mental incapacity.
- (2) The Board may terminate the appointment of the CEO if:
 - (a) the CEO:
 - (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 the CEO's creditors; or
 - (iv) makes an assignment of the CEO's remuneration for the benefit of the CEO's creditors; or
 - (b) the CEO is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (c) the CEO engages, except with the Board's approval, in paid work outside the duties of the CEO's office (see section 38); or
 - (d) the CEO fails, without reasonable excuse, to comply with section 39 (which deals with the duty to disclose interests); or
 - (e) the CEO fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section.
- (3) The Board may terminate the appointment of the CEO if the Board is satisfied that the performance of the CEO has been unsatisfactory for a significant period of time.
- (4) The Board must consult the Minister before terminating the appointment of the CEO.

40B CEO to act in accordance with directions of Board

- (1) The Board may give written directions to the CEO about the performance of the CEO's functions, which may include a direction to provide advice to the Minister on the priorities, strategies and policies for the ARC.
- (2) The CEO must comply with a direction under subsection (1).
- (3) Subsection (1) does not apply to the extent that the direction relates to the CEO's performance of functions or exercise of powers under the *Public Service Act 1999* in relation to the ARC.
- (4) A direction under subsection (1) is not a legislative instrument.

29 Application provisions—CEO

- (1) The amendments of sections 34 and 39 of the *Australian Research Council Act 2001* made by this Schedule apply in relation to the

appointment of a person as CEO on or after the commencement of this item.

- (2) The amendments of sections 33B, 35, 38 and 40 of the *Australian Research Council Act 2001* made by this Schedule, and sections 40A and 40B of that Act as added by this Schedule, apply in relation to a person appointed as CEO before, on or after the commencement of this item.

30 Saving provision—directions

Paragraph 33C(3)(a) of the *Australian Research Council Act 2001*, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to a direction given before that commencement.

Schedule 3—Funding of research

Australian Research Council Act 2001

1 Section 4

Before “In”, insert “(1)”.

2 Section 4

Insert:

approved funding rules means the rules approved by the Minister under section 59 (including as varied under section 60).

designated research program means the following research programs:

- (a) the research program known as the ARC Centres of Excellence scheme;
- (b) the research program known as the Industrial Transformation Training Centres scheme;
- (c) the research program known as the Industrial Transformation Research Hubs scheme;
- (d) any nationally significant research program specified in an instrument under subsection (2).

foreign government body has the same meaning as in Division 70 of the *Criminal Code*.

foreign intelligence agency means an intelligence or security service (however described) of a foreign country.

foreign law enforcement agency means:

- (a) a police force (however described) of a foreign country; or
- (b) any other authority or person responsible for the enforcement of the laws of the foreign country.

foreign military body means:

- (a) the armed forces of the government of a foreign country; or
- (b) the civilian component of:
 - (i) the Department of State of a foreign country; or

- (ii) a government agency in a foreign country;
that is responsible for the defence of the country.

funding agreement means an agreement under subsection 49(1)
(including as varied).

funding approval means an approval under subsection 47(1) or
48(1) (including as varied).

3 At the end of section 4

Add:

- (2) The Minister may, by legislative instrument, specify a nationally significant research program for the purposes of paragraph (d) of the definition of ***designated research program*** in subsection (1). The Minister must be satisfied that the program will help build research capability.

4 Paragraph 33B(b)

Omit “the regimes”, substitute “grants”.

5 Paragraph 33B(b)

Omit “Divisions 1 and 2”, substitute “Division 1”.

6 Division 1 of Part 7

Repeal the Division, substitute:

Division 1—Grants of financial assistance for research programs

47 Board approval of grants of financial assistance for research programs

Approval

- (1) The Board may, in writing, approve the making of a grant of financial assistance to an organisation for a research project in relation to a research program.

-
- (2) If the Board does so, the Board must specify in the approval the total amount of financial assistance to be paid to the organisation in relation to the approval.

Note: The terms and conditions on which a grant of financial assistance is to be made to an organisation are to be set out in a funding agreement: see section 49.

- (3) Subsection (1) does not apply in relation to a designated research program.

Note: Section 48 deals with designated research programs.

- (4) The Board must not give an approval under subsection (1) unless:
- (a) approved funding rules, to which the application for the approval relates, are in force; and
 - (b) the eligibility criteria set out in those rules are satisfied in relation to the application; and
 - (c) the application satisfies the requirements set out in those rules; and
 - (d) the assessment process set out in those rules has been complied with in relation to the application.

Variation of approval

- (5) The Board may, in writing, vary an approval under subsection (1).

Board to give copy of approval or variation to organisation

- (5A) If the Board gives or varies an approval under this section, the Board must give the organisation that is the subject of the approval a copy of the approval or variation before the end of the period of 21 days beginning on the day the approval is given or the variation is made.

Board to give details of approval or variation to Minister

- (6) If the Board gives or varies an approval under this section, the Board must give the Minister:
- (a) for an approval—the following details:
 - (i) the name of the organisation that is the subject of the approval;

- (ii) a description of the research program the subject of the approval;
 - (iii) the total amount of financial assistance to be paid to the organisation in relation to the approval; or
- (b) for a variation—details of the variation.

Board to give copy of approval or variation to CEO

- (7) If the Board gives or varies an approval under this section, the Board must give the CEO a copy of the approval or variation.

Limitation—security, defence or international relations of Australia

- (8) If the Minister considers that, for reasons relevant to the security, defence or international relations of Australia, the Board should not give an approval under subsection (1), the Minister must, by notice in writing given to the Board, inform the Board to this effect.
- (9) The Board must comply with the notice.
- (10) A notice under subsection (8) is not a legislative instrument.

Tabling requirement

- (11) The Minister must cause a statement setting out the following to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the Board gives the Minister details of an approval under this section:
- (a) the name of the organisation that is the subject of the approval;
 - (b) a description of the research program the subject of the approval;
 - (c) the total amount of financial assistance to be paid to the organisation in relation to the approval.

48 Ministerial approval of grants of financial assistance for designated research programs

Approval

- (1) The Minister may, on behalf of the Commonwealth and in writing, approve the making of a grant of financial assistance to an organisation for a research project in relation to a designated research program.
- (2) If the Minister does so, the Minister must specify in the approval the total amount of financial assistance to be paid to the organisation in relation to the approval.

Note: The terms and conditions on which a grant of financial assistance is to be made to an organisation are to be set out in a funding agreement: see section 49.

- (3) The Minister must not give an approval under subsection (1) unless:
 - (a) approved funding rules, to which the application for the approval relates, are in force; and
 - (b) the eligibility criteria set out in those rules are satisfied in relation to the application; and
 - (c) the application satisfies the requirements set out in those rules; and
 - (d) the assessment process set out in those rules has been complied with in relation to the application.

Variation of approval

- (4) The Minister may, on behalf of the Commonwealth and in writing, vary an approval under subsection (1).

Minister to give copy of approval or variation to organisation

- (4A) If the Minister gives or varies an approval under this section, the Minister must give the organisation that is the subject of the approval a copy of the approval or variation before the end of the period of 21 days beginning on the day the approval is given or the variation is made.

Minister to give copy of approval or variation to CEO

- (5) If the Minister gives or varies an approval under this section, the Minister must give the CEO a copy of the approval or variation.

Limitation—security, defence or international relations of Australia

- (6) The Minister must refuse to give an approval under subsection (1) if the Minister considers that, for reasons relevant to the security, defence or international relations of Australia, the approval should be refused.

Notice to Board

- (7) The Minister must give the Board written notice of a decision under subsection (6).

Tabling requirement

- (8) The Minister must cause a statement setting out the following to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the Minister gives an approval under this section:
- (a) the name of the organisation that is the subject of the approval;
 - (b) a description of the designated research program the subject of the approval;
 - (c) the total amount of financial assistance to be paid to the organisation in relation to the approval.

49 Funding agreements

- (1) The terms and conditions on which a grant of financial assistance is to be made to an organisation under this Division are to be set out in a written agreement (the **funding agreement**) between the organisation and the CEO.
- (2) Without limiting subsection (1), the agreement must:
- (a) specify the one or more periods to which the grant relates;
- and

-
- (b) specify the amount of financial assistance to be paid in each of those periods; and
 - (c) specify the times at which each amount of financial assistance is to be paid; and
 - (d) include a description of the research project concerned; and
 - (e) include the name and title of the person leading the research project concerned; and
 - (ea) require each researcher involved in the research project concerned to declare any conflicts of interest, potential conflicts of interest, or perceived conflicts of interest, to the Australian Research Council; and
 - (eb) require that the organisation gives the CEO a report, after the end of the final period to which the grant relates, detailing the nature of the employment of researchers employed by the organisation for the purposes of the research project concerned; and
 - (f) include terms or conditions relating to the organisation giving the CEO regular independent auditor statements relating to the organisation's compliance with some or all of the terms and conditions set out in the agreement.

CEO may enter into funding agreement

- (3) The CEO may, on behalf of the Commonwealth, enter into a funding agreement.

Notification to Board or Minister of breach of term or condition

- (4) If the CEO is satisfied that the organisation that is a party to a funding agreement has breached a term or condition of the agreement, the CEO must:
 - (a) if the agreement relates to a funding approval given under subsection 47(1)—give the Board:
 - (i) a notice in writing to this effect, including specifying the term or condition and the reasons for the CEO's view; and
 - (ii) a copy of the agreement; and
 - (b) if the agreement relates to a funding approval given under subsection 48(1)—give the Minister:

- (i) a notice in writing to this effect, including specifying the term or condition and the reasons for the CEO's view; and
 - (ii) a copy of the agreement.
- (5) Subsection (4) does not apply if the breach is of a minor nature.

50 Termination or variation of funding agreement or proposals

CEO may terminate or vary funding agreement

- (1) If the CEO is satisfied that the organisation that is a party to a funding agreement has breached a term or condition of the agreement, the CEO may, on behalf of the Commonwealth:
 - (a) terminate the agreement; or
 - (b) vary the agreement.
- (2) The CEO may vary the funding agreement in any other circumstances.
- (3) Subsections (1) and (2) do not limit the terms and conditions that may be set out in a funding agreement.

Board may terminate or vary funding approval

- (4) The Board may terminate or vary a funding approval given under subsection 47(1) in relation to an organisation if:
 - (a) the CEO gives the Board a notice under subsection 49(4) about a term or condition of the funding agreement that relates to the funding approval; and
 - (b) the Board is satisfied that the organisation has breached the term or condition.

Note: The Board also has a general power to vary a funding approval: see subsection 47(5).

Minister may terminate or vary funding approval

- (5) The Minister may terminate or vary a funding approval given under subsection 48(1) in relation to an organisation if:

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- (a) the CEO gives the Minister a notice under subsection 49(4) about a term or condition of the funding agreement that relates to the funding approval; and
 - (b) the Minister is satisfied that the organisation has breached the term or condition.

Note: The Minister also has a general power to vary a funding approval: see subsection 48(4).

Process for making decisions under this section

- (6) Before making a decision under paragraph (1)(a) or subsection (4) or (5), the CEO, Board or Minister (as the case requires) must give the organisation notice in writing:
 - (a) stating the decision the CEO, Board or Minister is considering making; and
 - (b) stating the reasons why the CEO, Board or Minister is considering making the decision; and
 - (c) inviting the organisation to make written submissions to the CEO, Board or Minister within 28 days concerning why the decision should not be made.
- (7) In deciding whether to make a decision under paragraph (1)(a) or subsection (4) or (5), the CEO, Board or Minister (as the case requires) must consider any submissions received from the organisation within the 28-day period.

Notice of decision

- (8) The CEO, Board or Minister (as the case requires) must give the organisation notice in writing of a decision under subsection (1), (2), (4) or (5) and of the reasons for the decision.
- (9) The CEO must give the Board notice in writing of the CEO's termination of a funding agreement that relates to a funding approval under subsection 47(1).
- (10) The CEO must give the Minister notice in writing of the CEO's termination of a funding agreement that relates to a funding approval under subsection 48(1).

51 Cessation and repayment of financial assistance—breach of terms of conditions of funding agreement

Cessation of financial assistance

- (1) Financial assistance to an organisation under a funding agreement is not payable at a time after a decision is made under subsection 50(1), (4) or (5) to terminate the funding agreement or the funding approval concerned.

Repayment of financial assistance

- (2) If the CEO makes a decision under paragraph 50(1)(a) to terminate a funding agreement covering an organisation, the CEO may give the organisation a notice in writing:
 - (a) requiring the organisation to pay a specified amount to the Commonwealth that is equal to the whole or a part of the financial assistance already paid to the organisation under the agreement; and
 - (b) specifying the period within which the organisation must pay that specified amount, which must be a period of at least 28 days starting on the day on which the notice is given.
- (3) If the Board or the Minister makes a decision under subsection 50(4) or (5) to terminate a funding approval for an organisation, the Board or Minister (as the case requires) may give the organisation a notice in writing:
 - (a) requiring the organisation to pay a specified amount to the Commonwealth that is equal to the whole or a part of the financial assistance already paid to the organisation under the funding agreement relating to the approval; and
 - (b) specifying the period within which the organisation must pay that specified amount, which must be a period of at least 28 days starting on the day on which the notice is given.
- (4) Without limiting the matters that the CEO, Board or Minister may consider in deciding whether it is appropriate to give a notice under subsection (2) or (3), the CEO, Board or Minister may consider any or all of the following matters:
 - (a) the nature of the breach of the term or condition;

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- (b) the impact of the breach on the research provided by the organisation and on the organisation's research partners or reputation;
 - (c) the impact of the breach on Australia's reputation as a provider of high quality research;
 - (d) the nature of any other breaches by the organisation of terms or conditions of the funding agreement in the last 12 months.

Debt

- (5) If an amount payable by the organisation under subsection (2) or (3) remains unpaid at the end of the period specified in the notice under that subsection, the amount:
 - (a) is a debt due to the Commonwealth; and
 - (b) may be recovered by the CEO, on behalf of the Commonwealth, by action in a court of competent jurisdiction.

Set-off

- (6) The CEO may, on behalf of the Commonwealth, set off the whole or a part of the amount payable to the Commonwealth under subsection (2) or (3) against a later payment of financial assistance to the organisation under this Division in relation to another funding approval.
- (7) The debt under subsection (5) is reduced by the amount of the set-off.

52 Cessation and repayment of financial assistance—security, defence or international relations of Australia

- (1) The Minister may, on behalf of the Commonwealth, terminate a funding approval in relation to an organisation if the Minister considers that, for reasons relevant to the security, defence or international relations of Australia, the approval should be terminated.

Note: The funding approval may have been given by the Board or the Minister.

No further payments of financial assistance

- (2) If the Minister does so, no further payment of financial assistance to the organisation in relation to that funding approval is to be made under this Division.

Notice to organisation

- (3) The Minister:
- (a) must give the organisation written notice of the decision under subsection (1); and
 - (b) may in that notice:
 - (i) include a requirement for the organisation to pay a specified amount to the Commonwealth that is equal to the whole or a part of the financial assistance already paid to the organisation under the funding agreement relating to the approval; and
 - (ii) specify the period within which the organisation must pay that specified amount, which must be a period of at least 28 days starting on the day on which the notice is given.

Notice to Board and CEO

- (4) The Minister must give the Board and CEO a copy of the notice given to the organisation under subsection (3).

Debt

- (5) If an amount payable by the organisation under subsection (3) remains unpaid at the end of the period specified in the notice under that subsection, the amount:
- (a) is a debt due to the Commonwealth; and
 - (b) may be recovered by the CEO, on behalf of the Commonwealth, by action in a court of competent jurisdiction.

Set-off

- (6) The CEO may, on behalf of the Commonwealth, set off the whole or a part of the amount payable to the Commonwealth under

subsection (3) against a later payment of financial assistance to the organisation under this Division in relation to another funding approval.

- (7) The debt under subsection (5) is reduced by the amount of the set-off.

Compensation for acquisition of property

- (8) If the operation of this section would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (9) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia for the recovery from the Commonwealth of such reasonable amount of compensation as the Court determines.

53 Cessation of financial assistance—other circumstances

Financial assistance to an organisation under a funding agreement is not payable at a time after any of the following happen:

- (a) the organisation's involvement with the research project concerned ends;
- (b) the research project concerned changes so that it is no longer consistent with the description in the agreement;
- (c) the person named in the agreement as the person leading the research project ceases to lead the project.

54 Overpayments of financial assistance

Set-off

- (1) The CEO may, on behalf of the Commonwealth, set off the whole or a part of an overpayment of an amount of financial assistance to an organisation under this Division against another payment of financial assistance to the organisation under this Division.

Notice requiring organisation to pay amount to Commonwealth

- (2) If the CEO is not able to do so, the CEO may give the organisation a written notice:
- (a) specifying the amount the Commonwealth is not able to set off; and
 - (b) requiring the organisation to pay to the Commonwealth the amount specified in the notice; and
 - (c) specifying the period within which the organisation must pay the amount specified in the notice, which must be a period of at least 28 days starting on the day on which the notice is given.

Debt

- (3) If the organisation is required by a notice under subsection (2) to pay an amount to the Commonwealth and an amount payable by the organisation remains unpaid at the end of the period specified in the notice, the amount unpaid:
- (a) is a debt due to the Commonwealth; and
 - (b) may be recovered by the CEO, on behalf of the Commonwealth, by action in a court of competent jurisdiction.

55 Reasons relevant to the security, defence or international relations of Australia

- (1) The Minister must, in deciding whether there are reasons relevant to the security, defence or international relations of Australia for the making of a decision under subsection 47(8), 48(6) or 52(1), have regard to the following:
- (a) the nature and extent of the organisation's research activities (if any) that are being, or have been, carried out and the financial support (if any) the organisation has received for those activities from a foreign government body;
 - (b) whether the organisation or a person involved in the research project concerned has, or has had, an association with a tertiary education institution (however described) located outside Australia and, if so, the nature of that association;

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- (c) whether the organisation or a person involved in the research project concerned has, or has had, an association with a foreign government body, foreign law enforcement agency, foreign military body or foreign intelligence agency and, if so, the nature of that association;
 - (d) whether the organisation or a person involved in the research project concerned has, or has had, an association with a foreign country upon which the Security Council of the United Nations or Australia has imposed a sanction and, if so, the nature of that association;
 - (e) whether the organisation or a person involved in the research project concerned has, or has had, an association with a person or entity proscribed by an instrument under the *Autonomous Sanctions Act 2011* and, if so, the nature of that association;
 - (f) whether the organisation or a person involved in the research project concerned has, or has had, an association with a proscribed person or entity within the meaning of Part 4 of the *Charter of the United Nations Act 1945* and, if so, the nature of that association.
- (2) The Minister may have regard to any other matters that the Minister considers appropriate.

56 Minister's obligations in relation to decisions relevant to the security, defence or international relations of Australia

Notice to Parliamentary Joint Committee on Intelligence and Security

- (1) The Minister must:
- (a) give the Parliamentary Joint Committee on Intelligence and Security a written statement of any decision under subsection 47(8), 48(6) or 52(1); and
 - (b) do so as soon as practicable after the decision is made.

Tabling requirement

- (2) The Minister must cause a statement specifying the following to be tabled in each House of the Parliament within 15 sitting days of

that House after the day on which the Minister makes a decision under subsection 47(8), 48(6) or 52(1):

- (a) the day on which the Minister made the decision and the subsection under which the decision was made;
- (b) a description of the research program to which the decision relates.

57 Relationship with other laws

To avoid doubt, the power of the Board or Minister to approve the making of a grant of financial assistance to an organisation under this Division must be disregarded for the purpose of paragraph 32B(1)(a) of the *Financial Framework (Supplementary Powers) Act 1997*.

Note: The effect of this section is to make clear that this Division does not effectively limit the operation of section 32B of the *Financial Framework (Supplementary Powers) Act 1997*. The Commonwealth has the power to make, vary or administer an arrangement or grant under that section whether the Board or Minister also has the power to approve the making of a grant of financial assistance to an organisation under this Division.

58 Board to prepare rules

- (1) The Board must:
 - (a) prepare written rules dealing with the following:
 - (i) the eligibility criteria to be met in order for the Board or the Minister to approve the making of grants of financial assistance to organisations under this Division;
 - (ii) the making of applications by organisations for such an approval;
 - (iii) the assessment process for deciding which applications will receive such an approval;
 - (iv) any other matters that the Board considers appropriate; and
 - (b) give the rules to the Minister for approval under section 59.
- (2) Without limiting subparagraph (1)(a)(i), the eligibility criteria may relate to the kinds of organisation that may receive financial assistance and the kinds of research projects in respect of which financial assistance may be approved.

59 Ministerial approval of rules

- (1) After receiving rules under section 58, or revised rules under this section, from the Board, the Minister must, in writing:
 - (a) approve the rules; or
 - (b) request the Board to give the Minister revised rules to take account of specified concerns of the Minister.
- (2) If the Minister makes such a request, the Board must comply with the request as soon as reasonably practicable.

Approved rules are legislative instruments

- (3) Rules (including revised rules) prepared by the Board and approved by the Minister are a legislative instrument made by the Minister on the day on which the rules are approved.

60 Variation of funding rules

- (1) The Board may prepare a proposed variation of the approved funding rules and give the proposed variation to the Minister.
- (2) After receiving a proposed variation (including a revised variation), the Minister must, in writing:
 - (a) approve the variation; or
 - (b) request the Board to give the Minister a revised variation to take account of specified concerns of the Minister.
- (3) If the Minister makes such a request, the Board must comply with the request as soon as reasonably practicable.

Approved variation is a legislative instrument

- (4) A variation (including a revised variation) of the approved funding rules prepared by the Board and approved by the Minister is a legislative instrument made by the Minister on the day on which the variation is approved.

7 Section 63 (note)

Repeal the note, substitute:

Note: An Appropriation Act may contain a provision to the effect that, if any of the purposes of a special account is a purpose that is covered by an

item in the Appropriation Act (whether or not the item expressly refers to the special account), then amounts may be debited against the appropriation for that item and credited to that special account.

8 Sections 64 and 65

Repeal the sections, substitute:

64 Purpose of Account

The purpose of the Account is paying financial assistance under Division 1.

9 Subsection 66(1)

Repeal the subsection, substitute:

Minister

- (1) The Minister may, in writing, delegate all or any of the Minister's powers or functions under Division 1 of Part 7, except those under provisions covered by subsection (1A), to:
- (a) the CEO; or
 - (b) a member of the staff referred to in section 41 who is an SES employee or an acting SES employee.
- (1A) The provisions are subsections 47(8) and (11), 48(1), (2), (4), (6) and (8), 50(5), 51(3) and 52(1) and (3) and sections 56, 59 and 60.

Board

- (1B) The Board may, in writing, delegate all or any of the Board's powers or functions under Division 1 of Part 7, except those under provisions covered by subsection (1C), to:
- (a) a Board member; or
 - (b) the CEO; or
 - (c) a member of the staff referred to in section 41 who is an SES employee or an acting SES employee.
- (1C) The provisions are subsections 47(1), (2) and (5), 50(4) and 51(3).

10 Before subsection 66(2)

Insert:

CEO

11 Subsection 66(2)

Omit “(including powers or functions delegated to the CEO by the Minister)”, substitute “under this Act”.

12 Before subsection 66(3)

Insert:

Directions

13 Subsection 66(3)

After “A delegate must”, insert “perform a function or”.

14 Subsection 66(3)

Omit “Minister or the CEO” (wherever occurring), substitute “Minister, Board or CEO”.

15 Transitional provisions—existing funding approvals

- (1) Subject to this item, Division 1 of Part 7 of the *Australian Research Council Act 2001* (including the approved funding rules under that Division), as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to a funding approval (within the meaning of that Part) in force immediately before that commencement.
- (2) If that funding approval (the *old approval*) is in force immediately before 1 July 2025:
 - (a) subject to subitem (3), that Division (including the approved funding rules under that Division) ceases to apply in relation to the old approval on and after that day; and
 - (b) Division 1 of Part 7 of the *Australian Research Council Act 2001* (the *new Division*), as substituted by this Schedule applies in relation to the old approval on and after that day as if it were:
 - (i) if the old approval was in relation to a designated research program within the meaning of that Act as amended by this Schedule—a funding approval (the

- new approval*) under subsection 48(1) of that Act as amended by this Schedule; or
 - (ii) otherwise—a funding approval (the *new approval*) under subsection 47(1) of that Act as amended by this Schedule; and
 - (c) no financial assistance is to be paid in relation to the new approval under the new Division unless a written agreement, in relation to the new approval, is entered into under subsection 49(1) of that Act as amended by this Schedule.
- (3) Paragraphs 58(1)(c) and (d) of the *Australian Research Council Act 2001*, as in force immediately before the commencement of this item, continue to apply on and after that commencement in relation to financial assistance paid before 1 July 2025 in relation to the old approval.

16 Transitional provisions—pending funding proposals

- (1) Subject to this item if:
- (a) before the commencement of this item, under the *Australian Research Council Act 2001* an application for financial assistance for a proposal for expenditure by an organisation on a research program was made; and
 - (b) immediately before the commencement of this item, the Minister had not made a decision under section 51 of that Act whether or not to approve the proposal;
- then Division 1 of Part 7 of that Act (including the approved funding rules under that Division), as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to that proposal and any funding approval of that proposal by the Minister.
- (2) If, under that Division, there is a funding approval (the *old approval*) of that proposal and the old approval is in force immediately before 1 July 2025:
- (a) subject to subitem (3), that Division (including the approved funding rules under that Division) ceases to apply in relation to the old approval on and after that day; and
 - (b) Division 1 of Part 7 of the *Australian Research Council Act 2001* (the *new Division*), as substituted by this Schedule

applies in relation to the old approval on and after that day as if it were:

- (i) if the old approval was in relation to a designated research program within the meaning of that Act as amended by this Schedule—a funding approval (the ***new approval***) under subsection 48(1) of that Act as amended by this Schedule; or
 - (ii) otherwise—a funding approval (the ***new approval***) under subsection 47(1) of that Act as amended by this Schedule; and
 - (c) no financial assistance is to be paid in relation to the new approval under the new Division unless a written agreement, in relation to the new approval, is entered into under subsection 49(1) of that Act as amended by this Schedule.
- (3) Paragraphs 58(1)(c) and (d) of the *Australian Research Council Act 2001*, as in force immediately before the commencement of this item, continue to apply on and after that commencement in relation to financial assistance paid before 1 July 2025 in relation to the old approval.

Schedule 4—Reporting

Australian Research Council Act 2001

1 Part 6

Repeal the Part.

2 Before section 66

Insert:

65A Annual report

The annual report prepared by the members of the Board and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period must also:

- (a) include particulars of any directions given by the Minister under section 10 in that period; and
- (b) include particulars of any directions given by the Board under section 40B in that period; and
- (c) specify the number of decisions made by the Minister in that period under each of subsections 47(8), 48(6) and 52(1); and
- (ca) include information, in respect of each organisation receiving financial assistance under a funding agreement which ended or was terminated in that period, about the nature of the employment of researchers employed by the organisation for the purposes of a research project mentioned in the funding agreement; and
- (d) deal with any other matters that the Minister, by notice in writing to the Chair, requires to be dealt with in the report.

3 Application and saving provisions—annual report

- (1) Paragraph 33C(3)(b) of the *Australian Research Council Act 2001*, as in force immediately before commencement of this item, continues to apply on and after that commencement in relation to a reporting period that began before that commencement.
- (2) Section 46 of the *Australian Research Council Act 2001*, as in force immediately before the commencement of this item, continues to apply

on and after that commencement in relation to a reporting period that began before that commencement.

- (3) Section 65A of the *Australian Research Council Act 2001*, as inserted by this Schedule, applies in relation to a reporting period beginning on or after the commencement of this item.

Schedule 5—Transitional rules

1 Transitional rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by this Act.
- (2) To avoid doubt, the rules may not do the following:
 - (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) directly amend the text of this Act.
- (3) Schedules 2 to 4 do not limit the rules that may be made under this item.

*[Minister's second reading speech made in—
House of Representatives on 29 November 2023
Senate on 8 February 2024]*

(165/23)
