

2004-2005-2006

The Parliament of the  
Commonwealth of Australia

THE SENATE

*Presented and read a first time*

## **National Health and Medical Research Council Amendment Bill 2006**

**No.     , 2006**

*(Health and Ageing)*

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

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1     **A Bill for an Act to amend the *National Health and***  
2     ***Medical Research Council Act 1992, and for related***  
3     **purposes**

4     The Parliament of Australia enacts:

5     **1 Short title**

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

8     **2 Commencement**

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

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
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.	
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.	
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.	
4. Schedule 1, Part 4	The later of: (a) the day after this Act receives the Royal Assent; and (b) 1 July 2006.	

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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.

7

### **3 Schedule(s)**

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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

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concerned, and any other item in a Schedule to this Act has effect according to its terms.

1  
2 **Schedule 1—Amendments**

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

5 **1 Subsection 3(2)**

6 Omit “Council”, substitute “NHMRC”.

7 **2 Section 4 (definition of *appointed member*)**

8 Repeal the definition.

9 **3 Section 4**

10 Insert:

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

13 **4 Section 4 (definition of *Chief Executive Officer*)**

14 Repeal the definition.

15 **5 Section 4 (paragraph (b) of the definition of *chief officer*)**

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

17 **6 Section 4 (paragraph (c) of the definition of *chief officer*)**

18 Repeal the paragraph.

19 **7 Section 4 (definition of *committee*)**

20 Omit “, the Executive Committee”.

21 **8 Section 4 (definition of *Commissioner*)**

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

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

26 **9 Section 4 (definition of *Commonwealth member*)**

27 Repeal the definition.

1     **10 Section 4 (definition of *Council*)**

2             Repeal the definition, substitute:

3                     *Council* means the Council of the NHMRC referred to in  
4                     section 20.

5     **11 Section 4**

6             Insert:

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

11    **12 Section 4 (definition of *Executive Committee*)**

12             Repeal the definition.

13    **13 Section 4**

14             Insert:

15                     *financial year* means each period of 12 months commencing on  
16                     1 July.

17    **14 Section 4 (definition of *Health Minister*)**

18             Repeal the definition.

19    **15 Section 4**

20             Insert:

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

23    **16 Section 4**

24             Insert:

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

26    **17 Section 4**

27             Insert:

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

4 **18 Section 4**

5 Insert:

6 *interim guidelines* means guidelines issued by the CEO under  
7 paragraph 7(1)(a) in the circumstances referred to in subsection  
8 14(1), (3) or (5).

9 **19 Section 4 (definition of *interim regulatory***  
10 ***recommendation*)**

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

12 **20 Section 4**

13 Insert:

14 *member*:

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

17 **21 Section 4**

18 Insert:

19 *NHMRC* means the National Health and Medical Research  
20 Council.

21 **22 Section 4**

22 Insert:

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

24 **23 Section 4 (definition of *NHMRC Order*)**

25 Repeal the definition.

26 **24 Section 4 (definition of *previous Fund*)**

27 Repeal the definition.

28 **25 Section 4 (definition of *proclaimed day*)**



1           Repeal the definition.

2   **26 Section 4 (definition of *regulatory recommendation*)**

3           Omit “Council”, substitute “CEO”.

4   **27 Section 4 (definition of *reviewable action*)**

5           Repeal the definition, substitute:

6                   *reviewable action* means:

7                   (a) action taken by the CEO or any delegate of the CEO in the  
8                   performance of the CEO’s function under paragraph 7(1)(c)  
9                   in relation to an application for funding made on or after  
10                  24 June 1993; or

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

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

18   **28 Section 4**

19           Insert:

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

21   **29 Section 4 (definition of *State or Territory health***  
22           ***instrumentality*)**

23           Repeal the definition.

24   **30 Section 4 (definition of *State or Territory member*)**

25           Repeal the definition.

26   **31 Part 2**

27           Repeal the Part, substitute:

1 **Part 2—The National Health and Medical Research**  
2 **Council**  
3

4 **5B Establishment of the NHMRC**

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

11 **5C Function of the NHMRC**

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

14 **5D Reference of matters to the CEO, Council and Principal**  
15 **Committees by the Minister**

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

23 *Instruments are not legislative instruments*

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

25 **5E Minister may give directions to the CEO, Council and Principal**  
26 **Committees**

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

- 1 Council or Committee's functions or the exercise of the CEO,  
2 Council or Committee's powers.
- 3 (2) Directions given by the Minister under subsection (1) must be of a  
4 general nature only, and, in particular, the Minister is not entitled  
5 to direct the CEO, the Council or a Principal Committee:  
6 (a) to recommend the allocation of research funds to a particular  
7 person, organisation, State or Territory; or  
8 (b) as to the manner of the CEO, Council or Principal  
9 Committee's treatment of particular scientific, technical or  
10 ethical issues.
- 11 (3) The CEO, the Council or a Principal Committee must comply with  
12 any direction given by the Minister under subsection (1).
- 13 (4) If the Minister gives a direction under subsection (1), the Minister  
14 must cause a statement setting out particulars of, and of the reasons  
15 for, the direction to be laid before each House of the Parliament  
16 within 15 sitting days of that House after giving the direction.
- 17 *Directions are not legislative instruments*
- 18 (5) A direction under subsection (1) is not a legislative instrument.

19 **32 Part 3 (heading)**

20 Repeal the heading, substitute:

21 **Part 3—The Chief Executive Officer**

22 **33 Divisions 1 and 2 of Part 3**

23 Repeal the Divisions, substitute:

24 **Division 1—Establishment and functions**

25 **6 The Chief Executive Officer**

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

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

1       **7 Functions of the CEO**

- 2               (1) The functions of the CEO are:
- 3                   (a) in the name of the NHMRC, to inquire into, issue guidelines
- 4                       on, and advise the community on, matters relating to:
- 5                       (i) the improvement of health; and
- 6                       (ii) the prevention, diagnosis and treatment of disease; and
- 7                       (iii) the provision of health care; and
- 8                       (iv) public health research and medical research; and
- 9                       (v) ethical issues relating to health; and
- 10                  (b) to advise, and make recommendations to, the
- 11                    Commonwealth, the States and the Territories on the matters
- 12                       referred to in paragraph (a); and
- 13                  (c) to make recommendations to the Minister on expenditure:
- 14                       (i) on public health research and training; and
- 15                       (ii) on medical research and training;
- 16                       including recommendations on the application of the
- 17                       Account; and
- 18                  (d) any other functions conferred on the CEO in writing by the
- 19                       Minister; and
- 20                  (e) any other functions conferred on the CEO by this Act, the
- 21                       regulations or any other law; and
- 22                  (f) any functions incidental to any of the foregoing.

23                Note:        The Minister may delegate additional functions to the CEO: see

24                        section 82.

25                        *Instruments are not legislative instruments*

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

28        **8 Timetables and procedures to assist CEO make recommendations**

29                **on application of Account**

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

1 *Timetables and procedures are not legislative instruments*

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

3 **Division 2—Regulatory recommendations and guidelines**

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

6 **9 CEO to only make regulatory recommendations and issue**  
7 **guidelines as developed by Council**

8 (1) The CEO may only:

9 (a) make a regulatory recommendation; or

10 (b) issue guidelines under paragraph 7(1)(a);

11 precisely as developed by the Council (or in the case of human  
12 research guidelines, as developed by the Australian Health Ethics  
13 Committee) and provided to the CEO by the Council for the  
14 purpose under this Division.

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

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

22 *Regulatory recommendations and guidelines are not legislative*  
23 *instruments*

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

26 **10 Human research guidelines**

27 *CEO to issue guidelines*

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

1                                    *Australian Health Ethics Committee to develop guidelines*

2                                    (2) The Council may only provide human research guidelines to the  
3                                    CEO under subsection 9(1) precisely as developed by the  
4                                    Australian Health Ethics Committee and provided to the Council  
5                                    for the purpose under this Division.

6                                    (3) However, the Council is not obliged to provide particular  
7                                    guidelines referred to in subsection (2) to the CEO merely because  
8                                    the Australian Health Ethics Committee has provided the  
9                                    guidelines to it in accordance with this Division.

10                                   *Guidelines must be tabled in Parliament*

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

## 14                                   **12 Consultation about regulatory recommendations**

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

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

21                                   (2) As soon as practicable after deciding that, subject to consultation  
22                                   processes, it intends to provide a regulatory recommendation to the  
23                                   CEO, the Council must publish a notice, in the manner and form  
24                                   specified in the regulations:

25                                                                      (a) stating its intention to provide the regulatory  
26                                                                      recommendation to the CEO; and

27                                                                      (b) inviting persons or bodies to make submissions relating to  
28                                                                      the proposed recommendation in accordance with the  
29                                                                      procedures, and within the period, specified in the notice.

30                                   (3) As soon as practicable after the end of the period specified under  
31                                   paragraph (2)(b), the Council must, having regard to any  
32                                   submissions received pursuant to the invitation referred to in that  
33                                   paragraph:

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

### 17 **13 Consultation about guidelines**

18 Before:

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

24 the Council or Committee must:

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

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

3         **14 Interim regulatory recommendations and guidelines**

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

6                 (1) If a matter:  
7                                 (a) would ordinarily be the subject of a regulatory  
8   recommendation made, or guidelines issued, as provided to  
9   the CEO under subsection 9(1); and  
10                                 (b) must, in the opinion of the CEO, for any reason, be dealt with  
11   urgently;  
12                                 the CEO may, despite subsection 9(1), make a regulatory  
13                                 recommendation, or issue guidelines, without receiving them from  
14                                 the Council.

15                 (2) Within 30 days after the CEO makes an interim regulatory  
16                                 recommendation or issues interim guidelines in accordance with  
17                                 subsection (1), the CEO must publish a notice, in the manner and  
18                                 form specified in the regulations:  
19   (a) setting out his or her reasons for making the recommendation  
20   or issuing the guidelines; and  
21   (b) setting out:  
22   (i) a summary of the recommendation; or  
23   (ii) the guidelines; and  
24   (c) inviting persons or bodies to make submissions to:  
25   (i) in the case of human research guidelines—the  
26   Australian Health Ethics Committee; or  
27   (ii) otherwise—the Council;  
28   relating to the recommendation or guidelines in accordance  
29   with the procedures, and within the period, specified in the  
30   notice.

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

33                 (3) If a matter:



- 1 (a) would ordinarily be the subject of a regulatory  
2 recommendation, or guidelines (other than human research  
3 guidelines), provided to the CEO under subsection 9(1); and  
4 (b) must, in the opinion of the Council, for any reason, be dealt  
5 with urgently;  
6 the Council may provide a regulatory recommendation or  
7 guidelines to the CEO without first undertaking one or more of the  
8 steps set out in section 12 or 13.
- 9 (4) Within 30 days after the CEO makes an interim regulatory  
10 recommendation, or issues interim guidelines, provided to him or  
11 her in accordance with subsection (3), the Council must publish a  
12 notice, in the manner and form specified in the regulations:  
13 (a) setting out its reasons for providing the recommendation or  
14 guidelines to the CEO; and  
15 (b) setting out:  
16 (i) a summary of the recommendation; or  
17 (ii) the guidelines; and  
18 (c) inviting persons or bodies to make submissions to the  
19 Council relating to the recommendation or guidelines in  
20 accordance with the procedures, and within the period,  
21 specified in the notice.
- 22 *Australian Health Ethics Committee may provide human research*  
23 *guidelines to Council without consultation in urgent circumstances*
- 24 (5) If a matter:  
25 (a) would ordinarily be the subject of human research guidelines  
26 provided to the Council under subsection 10(2); and  
27 (b) must, in the opinion of the Australian Health Ethics  
28 Committee, for any reason, be dealt with urgently;  
29 the Committee may provide guidelines to the Council without first  
30 undertaking one or more of the steps set out in section 13.
- 31 (6) Within 30 days after the CEO issues interim guidelines provided to  
32 the Council in accordance with subsection (5), the Australian  
33 Health Ethics Committee must publish a notice, in the manner and  
34 form specified in the regulations:  
35 (a) setting out its reasons for providing the guidelines to the  
36 Council; and  
37 (b) setting out the guidelines; and

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

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

6 (7) If the CEO makes an interim regulatory recommendation or issues  
7 interim guidelines:

8 (a) in the case of human research guidelines—the Australian  
9 Health Ethics Committee must:

10 (i) as soon as practicable after, but not later than 30 days  
11 after, the end of the period specified in the relevant  
12 notice under subsection (2) or (6); and

13 (ii) having regard to any submissions received;  
14 advise the Council to advise the CEO to confirm, vary or  
15 revoke the guidelines; or

16 (b) otherwise—the Council must:

17 (i) as soon as practicable after, but not later than 30 days  
18 after, the end of the period specified in the relevant  
19 notice under subsection (2) or (4); and

20 (ii) having regard to any submissions received;  
21 advise the CEO to confirm, vary or revoke the  
22 recommendation or guidelines.

23 (8) The Council may only advise the CEO to confirm, vary or revoke  
24 interim human research guidelines in accordance with the  
25 Committee's advice under paragraph (7)(a). However, the Council  
26 is not obliged to provide particular advice to the CEO merely  
27 because it has been advised to do so by the Committee in  
28 accordance with this section.

29 *Interim regulatory recommendations and guidelines automatically*  
30 *revoked after 45 days*

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

1 **14AA Consultation requirements do not apply to revoking**  
2 **guidelines**

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

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

10 **Subdivision B—Guidelines approved by CEO**

11 **14A Approval by CEO of guidelines for third parties**

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

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

31 **Subdivision C—Other provisions about consultation**

32 **14B Consultation may be dispensed with in certain circumstances**

- 33 (1) If:

- 1 (a) the Council is satisfied that:  
2 (i) a proposed regulatory recommendation referred to in  
3 section 12; or  
4 (ii) proposed guidelines referred to in paragraph 13(a) or  
5 section 14A;  
6 raise issues that are of minor significance only; or  
7 (b) the Australian Health Ethics Committee is satisfied that  
8 proposed human research guidelines referred to in paragraph  
9 13(b) raise issues that are of minor significance only;  
10 the Council or Committee may dispense with the requirement for  
11 all or any of the steps set out in section 12 or 13 or subsection  
12 14A(2), as the case requires.
- 13 (2) If the Council or Committee proposes to dispense with the  
14 requirement for all or any of the steps set out in section 12 or 13 or  
15 subsection 14A(2), the Council or Committee must publish a  
16 notice, in the manner and form, and within the period, specified in  
17 the regulations, stating its reasons for so proposing.

18 **15 CEO must develop procedures**

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

21 *Procedures are not legislative instruments*

- 22 (2) The procedures are not legislative instruments.

23 **34 Subsection 16(1)**

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

25 **35 Paragraph 16(1)(a)**

26 Omit “Council’s”, substitute “CEO’s”.

27 **36 Paragraph 16(1)(b)**

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

30 **37 Subsection 16(3)**

31 Omit “Council”, substitute “CEO”.

- 1     **38 Subsection 16(3)**  
2             After “Minister”, insert “and the Council”.
- 3     **39 Subsection 16(4)**  
4             Omit “the proclaimed day”, substitute “24 June 1993”.
- 5     **40 Subsection 17(1)**  
6             Repeal the subsection, substitute:  
7                 (1) Not later than 6 months before the end of a strategic plan, the CEO  
8                     must prepare and give to the Minister a written review evaluating  
9                     the CEO’s success in implementing the strategic plan.
- 10    **41 Subsection 18(1)**  
11            Omit “the proclaimed day”, substitute “24 June 1993”.
- 12    **42 Paragraph 18(5)(b)**  
13            Omit “Council” (wherever occurring), substitute “CEO”.
- 14    **43 Subsection 18(6)**  
15            Omit “Council” (wherever occurring), substitute “CEO”.
- 16    **44 Subsection 19(1A)**  
17            Omit “Council”, substitute “CEO”.
- 18    **45 Subsection 19(1)**  
19            Omit “Council” (first and second occurring), substitute “CEO”.
- 20    **46 Subsection 19(1)**  
21            Omit “its”, substitute “his or her”.
- 22    **47 Subsection 19(1)**  
23            Omit “Council” (third occurring), substitute “CEO”.
- 24    **48 Subsection 19(2)**  
25            Omit “Council” (wherever occurring), substitute “CEO”.
- 26    **49 Subsection 19(3)**  
27            Omit “Council”, substitute “CEO”.

1     **50 Subsection 19(3)**

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

3     **51 Paragraph 19(4)(a)**

4             Omit “Council”, substitute “CEO”.

5     **52 Part 4**

6             Repeal the Part, substitute:

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

9     **Division 1—The Council of the NHMRC**

10    **20 Establishment of the Council of the NHMRC**

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

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

### 3 **21 Functions of the Council**

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

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

13 *Instruments are not legislative instruments*

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

### 16 **22 Meetings of the Council**

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

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

### 21 **53 Part 5 (heading)**

22 Repeal the heading, substitute:

### 23 **Division 2—Principal Committees**

#### 24 **54 At the end of subsection 35(1)**

25 Add:

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

#### 29 **55 At the end of paragraph 35(2)(d)**

30 Add “in writing after consulting the CEO”.

1     **56 At the end of subsection 35(2)**

2             Add:

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

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

7     **57 Subsections 35(3) and (4)**

8             Repeal the subsections, substitute:

9             (3) The functions of the Australian Health Ethics Committee are:

10            (a) to advise the Council on ethical issues relating to health; and

11            (b) to develop and give the Council human research guidelines  
12            under subsection 10(2); and

13            (c) any other functions conferred on the Committee in writing by  
14            the Minister after consulting the CEO; and

15            (d) any other functions conferred on the Committee by this Act,  
16            the regulations or any other law.

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

19     **58 Paragraph 35(6)(b)**

20             Repeal the paragraph, substitute:

21             (b) must have as its Chair a person who is:

22                (i) a member of the Council; and

23                (ii) not a member of the Research Committee.

24     **59 At the end of subsection 35(6)**

25             Add:

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

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

30     **60 Subsection 35(7)**

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

32     **61 At the end of subsection 35(7)**

33             Add:





1     **67 Sections 37 to 44**

2             Repeal the sections.

3     **68 At the end of Part 5**

4             Add:

5     **Division 3—Working committees**

6     **39 Working committees**

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

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

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

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

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

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

19                         *Instruments are not legislative instruments*

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

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

23     **40 CEO’s determinations of Council and committee procedures etc.**

24             The CEO may determine:

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

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

29                             (i) the convening of meetings; and

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

7 **69 Parts 5A and 6**

8 Repeal the Parts, substitute:

9 **Part 5—Appointments, terms and conditions**  
10

11 **41 Appointments**

12 *Appointments*

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

21 Note: For the appointment of the Chairperson and members of the Embryo  
22 Research Licensing Committee of the NHMRC, see sections 16 and  
23 17 of the *Research Involving Human Embryos Act 2002*.

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

26 *Full-time or part-time*

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

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*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

- 1 (ii) nominated by the Minister who has primary  
2 responsibility for health in the relevant State or  
3 Territory; or  
4 (d) in the case of a member of the Council referred to in  
5 paragraph 20(2)(d), (e), (f) or (g)—a person with the  
6 expertise specified in the applicable paragraph; or  
7 (e) in the case of the Chair of a Principal Committee (other than  
8 the Chairperson of the Embryo Research Licensing  
9 Committee of the NHMRC):  
10 (i) a member of the Council; or  
11 (ii) if the Minister does not consider that any member of the  
12 Council has the appropriate expertise to act as Chair of  
13 the Principal Committee, and another member of the  
14 Principal Committee is a member of the Council—a  
15 person having appropriate expertise; or  
16 (f) in the case of the Chairperson of the Embryo Research  
17 Licensing Committee of the NHMRC—a member of the  
18 Committee (other than the member mentioned in paragraph  
19 16(1)(a) of the *Research Involving Human Embryos Act*  
20 *2002*) with appropriate expertise; or  
21 (g) in the case of the Commissioner—a person having  
22 appropriate expertise.

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

- 24 (4) Anything done by or in relation to a person purporting to act under  
25 an appointment is not invalid merely because:  
26 (a) the occasion for the appointment had not arisen; or  
27 (b) there was a defect or irregularity in connection with the  
28 appointment; or  
29 (c) the appointment had ceased to have effect; or  
30 (d) the occasion to act had not arisen or had ceased.

## 31 **42A Disclosures of interests**

### 32 *CEO—disclosure on appointment*

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

1                                    *CEO—disclosures during term of appointment*

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

6                                    *Members of Council and committees—disclosures on appointment*

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

13                                    *Members of Council and committees—disclosures at or before*  
14                                    *meetings*

- 15                    (4) A member of the Council or of a committee who has an interest in  
16                    a matter being considered, or about to be considered, by the  
17                    Council or committee must, as soon as possible after the relevant  
18                    facts have come to his or her knowledge, disclose the nature of the  
19                    interest:

- 20                                    (a) at a meeting of the Council or committee; or  
21                                    (b) if the matter is to be decided before a meeting of the Council  
22                                    or committee takes place:  
23    (i) if the member is the Chair of the Council or  
24    committee—to the CEO; or  
25    (ii) otherwise—to the Chair of the Council or committee.

- 26                    (5) A member who has disclosed an interest in a matter under  
27                    subsection (3) or (4) must not:

- 28                                    (a) be present when the Council or committee considers the  
29                                    matter; or  
30                                    (b) take part in any decision of the Council or committee in  
31                                    relation to the matter.

- 32                    (6) Subsection (5) does not apply if:

- 33                                    (a) if the member is the Chair of the Council or committee—the  
34                                    CEO otherwise determines; or

1 (b) otherwise—the Chair of the Council or committee otherwise  
2 determines.

3 (7) A member's disclosure at a Council or committee meeting must be  
4 recorded in the minutes of the meeting.

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

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

### 9 **43 Remuneration and allowances**

#### 10 *CEO and Chair of the Council*

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

#### 16 *Members of the Council and committees*

17 (2) A:  
18 (a) member of the Council, other than the Chair; or  
19 (b) member of a committee who is not also the Chair of the  
20 Council;  
21 is to be paid the remuneration, by way of sitting fees, that is  
22 determined by the Remuneration Tribunal. If no determination of  
23 that remuneration by the Tribunal is in operation, he or she is to be  
24 paid the remuneration that is prescribed.

25 Note: If the Chair of the Council is also a member of a committee, he or she  
26 is to be paid, in respect of his or her duties as such a member, the  
27 allowances that are prescribed under subsection (5).

28 (3) If a member of the Council or a member of a committee is also:  
29 (a) in the service or employment of, or of an authority of, the  
30 Commonwealth, a State or a Territory on a full-time basis; or  
31 (b) a person who holds or performs the duties of an office or  
32 position established by or under a law of the Commonwealth,  
33 a State or a Territory on a full-time basis;

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

6                   *Commissioner*

7                   (4) The Commissioner is to be paid the remuneration that is  
8                   determined by the Remuneration Tribunal. If no determination of  
9                   that remuneration by the Tribunal is in operation, he or she is to be  
10                  paid the remuneration that is prescribed.

11                  *Allowances*

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

14                  *Remuneration Tribunal Act 1973*

15                  (6) This section has effect subject to the *Remuneration Tribunal Act*  
16                  1973.

17                  **44 Leave of absence**

18                  (1) The Minister may grant the CEO or the Commissioner leave of  
19                  absence on such terms and conditions as the Minister determines.

20                  (2) The CEO may grant:

21                         (a) a member of the Council; or

22                         (b) a member of a committee;

23                  leave of absence on such terms and conditions as the CEO  
24                  determines.

25                  **44A Resignations**

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



1       **44B Terminations of appointments**

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

27       **44C Other terms and conditions**

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

1 **Part 6—Staff, consultants and work arrangements**  
2

3 **45 Staff of the NHMRC**

- 4 (1) The staff of the NHMRC are to be persons engaged under the  
5 *Public Service Act 1999*.
- 6 (2) For the purposes of the *Public Service Act 1999*:  
7 (a) the CEO and the staff of the NHMRC together constitute a  
8 Statutory Agency; and  
9 (b) the CEO is the Head of that Statutory Agency.

10 **46 Consultants**

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

14 **48 CEO may make arrangements relating to various matters**

- 15 (1) The CEO may make arrangements with the chief officer of a State  
16 or Territory Department or authority for:  
17 (a) the services of officers or employees of that Department or  
18 authority to be made available to the NHMRC; or  
19 (b) both:  
20 (i) officers or employees of that Department or authority;  
21 and  
22 (ii) the CEO, the members of the Council, the members of a  
23 committee or the staff of the NHMRC;  
24 to co-operate in the performance of their functions; or  
25 (c) the resources of that Department or authority to be made  
26 available to be used by the CEO, the Council, a committee or  
27 the staff of the NHMRC.
- 28 (2) The CEO may make arrangements with the chief officer of a State  
29 or Territory Department or authority relating to any matter within  
30 the scope of the CEO's functions, including arrangements for the  
31 CEO to undertake activities on behalf of a State or Territory  
32 Department or authority.

1 *Arrangements are not legislative instruments*

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

3 **70 At the end of subsection 51(1)**

4 Add:

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

7 **71 Subsection 51(2)**

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

9 **72 Subsection 51(2)**

10 Omit “Council”, substitute “CEO”.

11 **73 Subsection 51(2A)**

12 Repeal the subsection.

13 **74 Section 54**

14 Repeal the section.

15 **75 Paragraphs 56(2)(a) and (b)**

16 Omit “Council”, substitute “CEO”.

17 **76 Paragraph 61(1)(e)**

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

19 **77 Section 62**

20 Omit “Council”, substitute “CEO”.

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

22 **78 Paragraph 64(3)(a)**

23 Omit “Council”, substitute “CEO”.

24 **79 Paragraph 64(3)(c)**

25 Omit “Council”, substitute “NHMRC”.

26 **80 Paragraph 64(3)(f)**

27 Repeal the paragraph, substitute:

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

4 **81 Paragraphs 66(c) and (d)**

5 Omit “Council”, substitute “CEO”.

6 **82 Subsection 67(1)**

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

8 **83 Paragraph 67(1)(a)**

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

10 **84 Subsections 67(2) and (3)**

11 Omit “Council”, substitute “CEO”.

12 **85 Paragraphs 67(3)(a) and (b)**

13 Omit “it”, substitute “the CEO”.

14 **86 Paragraph 67(3)(b)**

15 Omit “its”, substitute “the CEO’s”.

16 **87 Section 68**

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

19 **88 Division 3 of Part 8 (heading)**

20 Repeal the heading, substitute:

21 **Division 3—Administrative arrangements for**  
22 **Commissioner**

23 **89 Section 69**

24 Repeal the section, substitute:

25 **69 Commissioner must have appropriate expertise**

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

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

3     **90 Sections 70 and 71**

4                     Repeal the sections.

5     **91 Section 72**

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

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

9     **92 Paragraph 72(a)**

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

12     **93 Sections 73, 74, 75 and 77**

13                    Repeal the sections.

14     **94 Subsections 80(1) and (2)**

15                    Repeal the subsections, substitute:

16                    (1) In this Act:

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

19                        *NHMRC officer* means a person who is:

- 20                        (a) the CEO; or  
21                        (b) a member of the Council or of a committee (other than the  
22                        Embryo Research Licensing Committee of the NHMRC); or  
23                        (c) a member of the staff of the NHMRC; or  
24                        (d) a consultant engaged under section 46; or  
25                        (e) a person assisting the CEO, the Council or a committee  
26                        (other than the Embryo Research Licensing Committee of the  
27                        NHMRC) in the performance of functions under this Act; or  
28                        (f) the Commissioner; or  
29                        (g) a person assisting the Commissioner in the performance of  
30                        his or her functions under this Act.

31                    (2) A person commits an offence if:

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

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

10 Penalty: Imprisonment for 2 years.

11 **95 Subsection 80(5)**

12 Repeal the subsection, substitute:

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

28 **96 Subsections 80(7), (8) and (9)**

29 Omit "Chairperson", substitute "CEO".

30 **97 Paragraph 80(9)(d)**

31 Repeal the paragraph, substitute:

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

35 **98 Subsection 80(9)**

1 Omit “40 or”.

2 **99 Paragraph 80(11)(b)**

3 Omit “40 or”.

4 **100 Section 81**

5 Repeal the section.

6 **101 Subsection 82(1)**

7 Repeal the subsection, substitute:

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

11 **102 Subsections 82(2) and (3)**

12 Repeal the subsections, substitute:

13 (1C) The CEO may delegate all or any of his or her powers or functions  
14 to:

15 (a) the Council; or

16 (b) a committee (other than the Embryo Research Licensing  
17 Committee of the NHMRC); or

18 (c) a member of the staff of the NHMRC.

19 (2) The Council may delegate all or any of the Council’s powers or  
20 functions (including a power or function delegated to it by the  
21 CEO) to:

22 (a) the Chair of the Council; or

23 (b) a committee (other than the Embryo Research Licensing  
24 Committee of the NHMRC).

25 (3) A Principal Committee may delegate to a working committee all or  
26 any of the Principal Committee’s powers or functions (including a  
27 power or function delegated to it by the CEO or the Council).

28 **103 Subsection 82(4)**

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

30 **104 Subsection 83(1)**

31 Repeal the subsection, substitute:

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

4           **105 Paragraph 83(2)(c)**

5           Omit “Council”, substitute “CEO”.

6           **106 Paragraphs 83(2)(d), (e), (f) and (g)**

7           Repeal the paragraphs, substitute:

8           (d) details of any matter referred by the Minister to the CEO, the  
9           Council or a Principal Committee during the year under  
10          section 5D;

11          (e) details of any direction given by the Minister to the CEO, the  
12          Council or a Principal Committee during the year under  
13          section 5E;

14          (f) details of any guidelines or interim guidelines issued by the  
15          CEO during the year in the performance of the CEO’s  
16          functions under paragraph 7(1)(a);

17          (g) details of all recommendations made by the CEO during the  
18          year to the Minister in the performance of the CEO’s  
19          functions under paragraph 7(1)(c);

20          **107 Paragraphs 83(2)(h) and (i)**

21          Omit “Council”, substitute “CEO”.

22          **108 Section 84**

23          Repeal the section.

24          **109 Part 10**

25          Repeal the Part.



1

2 **Part 2—Amendment of other Acts**

3 *Australian Institute of Health and Welfare Act 1987*

4 **110 Subsection 16(3)**

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

7 *Food Standards Australia New Zealand Act 1991*

8 **111 Subsection 3(1) (paragraph (b) of the definition of**  
9 ***appropriate government agency*)**

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

12 **112 Paragraph 40(1)(e)**

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

15 *Freedom of Information Act 1982*

16 **113 Division 1 of Part II of Schedule 2**

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

19 *National Health Act 1953*

20 **114 Subsection 73EA(1)**

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

23 *Privacy Act 1988*

24 **115 Subsections 73(2) and (3), 95(1) and 95A(1)**

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

1 ***Research Involving Human Embryos Act 2002***

2 **116 Section 8 (paragraphs (a) and (b) of the definition of**  
3 ***proper consent*)**

4 Before “NHMRC”, insert “CEO of the”.

5 **117 Paragraphs 13(2)(a), (b), (c) and (d)**

6 Repeal the paragraphs, substitute:

7 (a) sections 5D and 5E;

8 (b) section 35;

9 (c) section 41;

10 (d) section 80;

11 (e) subsections 82(1C) and (2).

12 **118 Subsection 13(5)**

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

15 **119 Subsection 18(2)**

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

17 **120 Paragraph 21(4)(c)**

18 Before “NHMRC”, insert “CEO of the”.

19 **121 Subsection 47(1)**

20 Before “NHMRC”, insert “CEO of the”.

21 ***Therapeutic Goods Act 1989***

22 **122 Subsection 3(1) (paragraph (a) of the definition of *ethics***  
23 ***committee*)**

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

1

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

5 *National Health and Medical Research Council Act 1992*

6 **123 Subsection 82(1A)**

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

1

2 **Part 4—Transitional provisions**

3 **Division 1—Preliminary**

4 **124 Definitions**

5 (1) In this Part:

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

8 *amend* includes repeal and remake.

9 *asset* means:

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

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

18 *commencement time* means the time when this Part commences.

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

22 *instrument*:

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

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

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

- 1            *land registration official*, in relation to land, means the Registrar of  
2            Titles or other proper officer of the State or Territory in which the land  
3            is situated.
- 4            *liability* means any liability, duty or obligation, whether actual,  
5            contingent or prospective.
- 6            *new law* means the *National Health and Medical Research Council Act*  
7            *1992* as in force immediately after the commencement time.
- 8            *old law* means the *National Health and Medical Research Council Act*  
9            *1992* as in force immediately before the commencement time.
- 10           *old NHMRC* means the National Health and Medical Research Council  
11           established by the old law.
- 12           (2)        Subject to subitem (1), an expression used in this Part that is also used  
13           in the new law has the same meaning in this Part as it has in the new  
14           law.

## 15           **Division 2—Assets, liabilities and legal proceedings**

### 16           **125 Vesting of assets of old NHMRC**

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

### 23           **126 Vesting of liabilities of old NHMRC**

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

### 31           **127 Certificates relating to vesting of land**

- 32           (1)        This item applies if:

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

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

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

## 16 **128 Certificates relating to vesting of assets other than land**

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

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

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

## 33 **129 Substitution of Commonwealth as a party to pending** 34 **proceedings**

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

5           **130 Transfer of custody of old NHMRC records**

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

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

14           **131 References in instruments**

15                     *References to old NHMRC taken to be references to CEO or*  
16                     *Commonwealth*

- 17          (1)     If:  
18                     (a) an instrument is in force immediately before the  
19                     commencement time; and  
20                     (b) the instrument contains a reference to the old NHMRC;  
21           the instrument has effect from the commencement time as if the  
22           reference to the old NHMRC were a reference to the CEO.
- 23          (2)     However, if:  
24                     (a) an instrument is in force immediately before the  
25                     commencement time; and  
26                     (b) the instrument relates to assets or liabilities covered by  
27                     item 125 or 126; and  
28                     (c) the instrument refers to the old NHMRC;  
29           the reference is to be read as a reference to the Commonwealth as  
30           necessary to give effect to item 125 or 126, as the case requires.

1           *References to staff of old NHMRC taken to be references to staff*  
2           *of NHMRC*

- 3       (3)    If:
- 4                   (a) an instrument is in force immediately before the  
5                               commencement time; and
- 6                   (b) the instrument contains a reference to a member of the staff  
7                               of the old NHMRC;
- 8           the instrument has effect from the commencement time as if the  
9           reference to the member of staff of the old NHMRC were a reference to  
10          a member of the staff of the NHMRC.

11           *Minister and regulations may provide otherwise*

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

23           A determination under this subitem has effect accordingly.

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



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1                    *References to parts of Department in Account instruments*

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

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

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

15                    *Determinations and certificates are not legislative instruments*

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

18        **132 Operation of laws**

19                    *Things done by old NHMRC taken to be done by CEO*

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

29                    *Minister and regulations may provide otherwise*

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

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

4 A determination under this subitem has effect accordingly.

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

9 *Things done by Australian Health Ethics Committee*

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

15 *Meaning of doing*

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

18 *Determinations are not legislative instruments*

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

20 **133 Continued effect of certain instruments made under the**  
21 **old law**

22 An instrument:

23 (a) made or given under the old law and specified in the  
24 following table; and

25 (b) in force immediately before the commencement time;

26 continues to have effect from the commencement time as if it were  
27 made or given under the corresponding provision of the new law  
28 specified in the table.  
29

<b>Instruments made under the old law that continue to have effect</b>		
<b>Item</b>	<b>This instrument made or given under this provision of the old law...</b>	<b>continues to have effect as if it were made or given under this provision of the new law...</b>
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)

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**Instruments made under the old law that continue to have effect**

<b>Item</b>	<b>This instrument made or given under this provision of the old law...</b>	<b>continues to have effect as if it were made or given under this provision of the new law...</b>
20	determinations under subsection 51(2)	subsection 51(2)
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)

1

2 **Division 4—Committees and Commissioner**

3 **134 Principal Committees**

4 (1) A Principal Committee that is:

- 5 (a) established under section 35 of the old law; and  
6 (b) in existence immediately before the commencement time;

7 continues in existence, at the commencement time, as if it were  
8 established under section 35 of the new law.

9 (2) An instrument that is:

10 (a) either:

11 (i) a determination of the functions of a Principal  
12 Committee under paragraph 35(2)(d) or (3)(c) or  
13 subsection 35(7) of the old law; or

14 (ii) a determination of the name of a Principal Committee  
15 under subsection 35(7) of the old law; and

16 (b) in force immediately before the commencement time;

17 continues to have effect, at the commencement time, as if it had been  
18 made under paragraph 35(2)(d) or (3)(c) or subsection 35(7), as the case  
19 requires, of the new law.

20 **135 Working committees**

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

## 21 **136 Commissioner**

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

## 33 **Division 5—Reporting obligations**

### 34 **137 First annual reports by CEO and Commissioner**

- 1 (1) Sections 68 and 83 of the new law apply in relation to the financial year  
2 ending on 30 June 2007 and later financial years.
- 3 (2) Those sections apply in relation to the financial year ending on 30 June  
4 2007 as if that financial year also included the period:  
5 (a) starting on 1 January 2006; and  
6 (b) ending on 30 June 2006.

7 **Division 6—Miscellaneous**

8 **138 Exemption from stamp duty and other State or Territory**  
9 **taxes**

- 10 No stamp duty or other tax is payable under a law of a State or Territory  
11 in respect of, or anything connected with:  
12 (a) the transfer of an asset or liability under this Part; or  
13 (b) the operation of this Part in any other respect.

14 **139 Application—subsection 41(1) of the *National Health and***  
15 ***Medical Research Council Act 1992***

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

19 **140 Constitutional safety net—acquisition of property**

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

27 **141 Certificates taken to be authentic**

- 28 A document that appears to be a certificate made or issued under a  
29 particular provision of this Part:  
30 (a) is taken to be such a certificate; and  
31 (b) is taken to have been properly given;  
32 unless the contrary is established.

1     **142 Delegation by Minister**

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

9     **143 Regulations**

- 10    (1)     The Governor-General may make regulations prescribing matters:  
11             (a) required or permitted by this Part to be prescribed; or  
12             (b) necessary or convenient to be prescribed for carrying out or  
13             giving effect to this Part.
- 14    (2)     In particular, regulations may be made prescribing matters of a  
15             transitional nature (including prescribing any saving or application  
16             provisions) relating to the amendments or repeals made by this  
17             Schedule.  
18