



Higher Education Legislation Amendment Act 2003

No. 87, 2003

**An Act to amend legislation relating to higher
education and the Australian Research Council,
and for related purposes**

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No. 87, 2003

An Act to amend legislation relating to higher education and the Australian Research Council, and for related purposes

[Assented to 23 September 2003]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Higher Education Legislation
Amendment Act 2003*.

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Higher Education Funding Act 1988

1 Paragraphs 17(n) and (o)

Repeal the paragraphs, substitute:

- (n) in the case of the year 2002—\$2,847,634,000; and
- (o) in the case of the year 2003—\$2,904,491,000; and

2 Paragraph 20(3)(o)

Repeal the paragraph, substitute:

- (o) in the case of the year 2003—\$121,497,000; and

3 Paragraph 23C(2)(k)

Repeal the paragraph, substitute:

- (k) for the year 2003—\$1,121,399,000; and

4 Paragraph 24(3)(o)

Repeal the paragraph, substitute:

- (o) in the case of the year 2003—\$5,412,000; and

5 Paragraph 27A(6)(j)

Repeal the paragraph, substitute:

- (j) for the year 2003—\$49,489,000; and

6 Paragraph 27D(2)(f)

Repeal the paragraph, substitute:

- (f) in the case of the year 2003—\$5,410,000; and

Schedule 2—Australian Research Council Act 2001

1 Subparagraphs 12(b)(iv) and (v)

Repeal the subparagraphs, substitute:

- (iv) the Secretary of the Department;
- (v) the Secretary of the Department of Industry, Tourism and Resources; and

2 Subsection 27(1)

Repeal the subsection, substitute:

- (1) A Board member who has an interest, pecuniary or otherwise:
 - (a) that is in a matter that is being considered, or is about to be considered, by the Board; and
 - (b) that could conflict with the proper performance of his or her functions in relation to that matter;must disclose the nature of the interest at a meeting of the Board.

3 Subsection 27(4)

Omit “a direct or indirect pecuniary interest in”, substitute “an interest, pecuniary or otherwise, that could conflict with the proper performance of his or her functions in relation to”.

4 Application of amendments of section 27

The amendments of section 27 of the *Australian Research Council Act 2001* made by this Schedule apply in relation to matters that the Board starts to consider after the commencement of this Schedule.

5 Subsection 29(4)

Omit “direct or indirect”.

6 Paragraphs 32(3)(a) and (b)

Omit “(other than the CEO)”.

7 Subsection 32(3) (second sentence)

Repeal the sentence.

8 Paragraphs 48(a), (b) and (c)

After “the”, insert “calendar”.

9 Paragraph 48(c)

Omit “2003;”, substitute “2003.”.

10 Paragraphs 48(d), (e) and (f)

Repeal the paragraphs.

11 At the end of section 48

Add:

- (2) This Division also applies to the following years:
 - (a) the financial year starting on 1 July 2004;
 - (b) the financial year starting on 1 July 2005;
 - (c) the financial year starting on 1 July 2006.

First half of 2004 calendar year treated as a year

- (3) This Division also applies in relation to the period starting at the start of 1 January 2004 and ending at the end of 30 June 2004 as if the period were a year.

12 Transitional provision for funding approvals etc.

- (1) This item applies if, before the commencement of this Schedule, the Minister had approved under subsection 51(1) of the *Australian Research Council Act 2001* a proposal as deserving financial assistance in respect of one or more of the following years:
 - (a) the calendar year 2004;
 - (b) the calendar year 2005;
 - (c) the calendar year 2006.
- (2) Division 1 of Part 7 of that Act as in force after that commencement has effect as if:
 - (a) the Minister had approved the proposal as deserving financial assistance in respect of each year (the **new year**) to which that Division (as in force after that commencement) applies that falls partly or wholly within a calendar year (the **old year**) in respect of which the Minister had approved the proposal before that commencement; and

- (b) the approved amount for the funding approval in respect of each of the new years for the proposal equalled the sum of 50% of the approved amount for the funding approval in respect of each old year within which part or all of the new year falls; and
 - (c) the funding approval reflected the effect of paragraphs (a) and (b).
- (3) Subitem (2) does not prevent variation of the funding approval or approved amount under that Division after the commencement of this Schedule.
- (4) Subitem (2) does not affect the operation of that Division in relation to a year to which that Division applies that ends before 1 January 2004.

13 Paragraphs 49(a) and (b)

After “the”, insert “calendar”.

14 Paragraphs 49(c), (d), (e) and (f)

Repeat the paragraphs, substitute:

- (c) for the calendar year 2003—\$356,760,000; and
- (d) for the period treated by subsection 48(3) as a year—\$206,929,000; and
- (e) for the financial year starting on 1 July 2004—\$483,072,000; and
- (f) for the financial year starting on 1 July 2005—\$561,244,000; and
- (g) for the financial year starting on 1 July 2006—\$573,115,000.

15 After subsection 50(1)

Insert:

- (1A) The Minister may specify in a determination under subsection (1) proportions in a specified range for each of 2 or more categories of research programs specified in the determination. A range specified for a category must be specified as a range of percentages of the funding cap with reference to a single percentage (the *specified percentage*) of the cap, so the lower end of the range is not more than 5% (of the cap) less than the specified percentage and the higher end of the range is not more than 5% (of the cap) greater than the specified percentage. If one of the following things

is consistent with one proportion in the range specified for the relevant category, the thing is taken to be consistent with the determination for the purposes of this Division:

- (a) approval of a funding proposal;
- (b) variation of a funding approval;
- (c) rules prepared under section 59.

16 Subsection 53(3) (examples 1 and 2)

Repeal the examples.

17 Paragraph 58(1)(b)

Repeal the paragraph, substitute:

- (b) the organisation must give the Minister, not more than 6 months after the end of an accounting period of the organisation that includes part or all of the year, a statement by a qualified auditor in an approved form as to the amounts spent as described in paragraph (a) in respect of so much of the year as is included in the accounting period;

18 Subsection 58(2)

Insert:

approved form means a form approved in writing by the Minister for the purposes of paragraph (1)(b).

19 Application of amendments of section 58

The amendments of section 58 of the *Australian Research Council Act 2001* made by this Schedule apply in relation to periods that:

- (a) are years to which Division 1 of Part 7 of that Act (as amended by this Schedule) applies; and
- (b) start after 31 December 2003.

20 Subsection 66(1)

Repeal the subsection, substitute:

- (1) The Minister may, in writing, delegate all or any of the Minister's powers or functions under Division 1 of Part 7 (except sections 50 and 51 and Subdivision D) to the CEO or a member of the staff referred to in section 41.

21 Saving of delegations and directions to delegates

- (1) A delegation that was in force under section 66 of the *Australian Research Council Act 2001* immediately before the commencement of this Schedule has effect after that commencement as if the delegation had been made immediately after that commencement under that section as amended by this Schedule.
- (2) A direction to a delegate that had effect for the purposes of section 66 of the *Australian Research Council Act 2001* immediately before the commencement of this Schedule has effect after that commencement as if the direction had been given for the purposes of a delegation under that section as amended by this Schedule.
- (3) This item does not prevent the revocation or amendment of a delegation or direction described in subitem (1) or (2).

[Minister's second reading speech made in—
House of Representatives on 26 June 2003
Senate on 13 August 2003]

(116/03)