THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

PRIMARY INDUSTRIES AND ENERGY RESEARCH AND DEVELOPMENT
AMENDMENT BILL 2007

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Agriculture, Fisheries and Forestry, the Hon Peter McGauran MP)
GENERAL OUTLINE

This bill provides for amendments to the Primary Industries and Energy Research and Development Act 1989 (PIERD Act) to improve the governance of the eight statutory rural Research and Development Corporations (RDCs). The PIERD Act provides the legislative basis for the funding and administration of the RDCs.

These amendments reflect the Government’s endorsement of the assessments by the Minister for Agriculture, Fisheries and Forestry of the RDCs against the Review of the Corporate Governance of Statutory Authorities and Office Holders (the Uhrig Report). This Review had been undertaken by Mr John Uhrig AC to assess the governance arrangements of Commonwealth statutory authorities, with particular focus on those that impacted on the business sector.

For the RDCs, the key conclusions of the Minister’s assessments were that the Board template (identified in the Uhrig Report) should continue to apply for each RDC. It was also agreed that appointment of an Australian Government Director to each RDC Board should be discontinued to remove the potential for conflict of interest for serving public servants. The skills set for Board selection would be expanded to include expertise in public administration.

Other amendments to the PIERD Act also respond to the Uhrig Report’s intent to improve corporate governance and will improve board expertise, experience and management arrangements. These follow an internal review by the Department of Agriculture, Fisheries and Forestry of the PIERD Act's operational and reporting requirements to consider the appropriate balance between the Minister's role, effective communications and accountability and the role of the RDC boards. The interactions of the PIERD Act with the Commonwealth Authorities and Companies Act 1997 (CAC Act) in regard to accountability and management obligations were also considered.

FINANCIAL IMPACT STATEMENT

The proposed amendments to the Primary Industries and Energy Research and Development Act 1989 will have no financial impact on the Commonwealth.

NOTES ON CLAUSES

Clause 1: Short title
This clause provides for the short title of the Act to be the *Primary Industries and Energy Research and Development Amendment Act 2007*.

**Clause 2: Commencement**

This clause provides that the Bill will commence on the day it receives Royal Assent.

**Clause 3: Schedule**

Clause 3 provides that each item in the Schedule to this Act is amended or repealed as set out in the Schedule and that any other item in the Schedule to this Act has effect according to its terms.

**Schedule 1 – Amendments**

**PRIMARY INDUSTRIES AND ENERGY RESEARCH AND DEVELOPMENT ACT 1989**

**Items 1, 2, 3, 4, 5 and 6**

These items delete various references to *government director* and *government member* under subsection 4(1) [Definitions].

**Item 7**

This item inserts at subsection 11(d) [Functions] an additional assessment function and reporting function (to the Parliament, Minister and representative organizations) of the impact on the primary industry in respect of which a Corporation was established, of R&D activities that it coordinated or funded.

**Item 8**

This item repeals the reference to *government director* in subsection 16(1) [Constitution].

**Item 9**

This allows for the number of directors, as determined by the Minister, to remain an odd number once the position of government director has been repealed by omitting “*not fewer than 4 nor more than 6*” and substituting “*not fewer than 5 nor more than 7*” in paragraph 16(1)(d) [Constitution].

**Item 10**

This item repeals the reference to *government director* in subsection 17(2) [Appointment of directors].

**Item 11**

This item inserts a reference to the Minister in section 24 [Consultation]. This will require the RDC to consult with the Minister in preparing or varying an R&D plan and provide a consultative link between the Minister and the RDC in developing R&D plans following removal of the government director.
Item 12
This item inserts a reporting requirement after subparagraph 28(1)(a)(iiia) [Annual report] in the annual report consistent with subsection 11(d) [Functions] on the impact on the primary industry or class of primary industries in respect of which a Corporation was established.

Item 13
This item omits the *government director* from subparagraph 63(2) (b) (ii) [Motions of no confidence].

Items 14 and 15
This item omits the reference to *government director* in paragraph 66(1) (b) and the reference to *government director* in subsection 66(2) [Term of office].

Item 16
This item omits reference to *government director* in subsection 71(2) [Leave of absence].

Item 17
This item omits the reference to *government director* in subsection 77(2) [Appointment].

Item 18
This item repeals section 84 [Disclosure of interests] and removes a potential inconsistency between the PIERD Act and the *Commonwealth Authorities and Companies Act 1997* (CAC Act), leaving it clear that all directors on RDC boards, including the Executive Director, are subject to the notification regime for material personal interest in the CAC Act.

Item 19
This item inserts after subsection 93(d) [Functions] an additional assessment function and reporting function of the impact on the primary industry or class of primary industries in respect of which a Council was established, consistent with those inserted at subsection 11(d) [Functions] and subparagraph 28(1)(a)(iiia) [Annual report].

Item 20
This item omits the reference to *government member* in paragraph 97(1)(b) [Constitution of R&D Councils].

Item 21
This item omits the reference to *government member* in subsection 98(2) [Appointment of members].

Item 22
This item omits the reference to *government director* and *government member* in paragraph 100(1)(e) [Applied provisions].

Item 23
This item inserts a reporting requirement after subparagraph 105(2)(a)(ii) [Annual report] in the annual report consistent with subsection 11(d) [Functions], subparagraph 28(1)(a)(iiia) [Annual report] and subsection 93(d) [Functions] on the impact on the primary industry or class of primary industries in respect of which a Council was established.

Items 24 and 25
These items insert a requirement after paragraph 123(1) (c) and paragraph 123(2) (d) [Minister may request the establishment of a Selection Committee] requesting the Presiding Member of a Selection Committee to ask each of the R&D Corporation’s or R&D Council’s representative organisations to have regard to the desirability of reflecting a diversity of expertise, experience and gender among the persons nominated for appointment to the Selection Committee.

**Item 26**
This item inserts requirements in paragraph 124(1)(b) [Establishment of Selection Committees - R&D Corporations], consistent with paragraph 123(1)(c) and paragraph 123(2)(d) [Minister may request the establishment of a Selection Committee], for the Presiding Member to give each of the Corporation’s representative organisations written notice requesting that nominations to the Minister of persons for appointment to the Selection Committee should having regard to the desirability of reflecting a diversity of expertise, experience and gender among the nominees.

**Item 27**
This item inserts requirements in paragraph 125(3)(b) [Establishment of Selection Committees - predominantly Commonwealth funded R&D Corporations], consistent with paragraph 123(1)(c), paragraph 123(2)(d) [Minister may request the establishment of a Selection Committee] and paragraph 124(1)(b) [Establishment of Selection Committees - R&D Corporations], for the Presiding Member to give to each of the representative organisations of the predominantly Commonwealth funded R&D Corporations written notice requesting that nominations to the Minister of persons for appointment to the Selection Committee should have regard to the desirability of reflecting a diversity of expertise, experience and gender among the nominees.

**Item 28**
This item inserts requirements in paragraph 126(1)(b) [Establishment of Selection Committees - R&D Councils], consistent with paragraph 123(1)(c), paragraph 123(2)(d) [Minister may request the establishment of a Selection Committee], paragraph 124(1)(b) [Establishment of Selection Committees - R&D Corporations] and paragraph 125(3)(b) [Establishment of Selection Committees - predominantly Commonwealth funded R&D Corporations], for the Presiding Member to give each of the representative organisations of the R&D Councils written notice requesting that nominations to the Minister of persons for appointment to the Selection Committee should have regard to the desirability of reflecting a diversity of expertise, experience and gender among the nominees.

**Item 29**
This item repeals the current paragraph 130(3) (b) [Nominations to be made by Selection Committees] and substitutes a new paragraph that requires the Selection Committee to specify how nominations to the R&D Corporation or the R&D Council concerned collectively possess an appropriate balance of expertise as set out in subsection 131(1) [Selecting persons for nominations] and experience in board affairs.

**Item 30**
This item adds a new expertise (public administration) in subsection 131(1) [Selecting persons for nominations] to respond to the removal of the government member.

**Item 31**
This item inserts two new paragraphs after subsection 131(1) [Selecting persons for nomination] that requires the Selection Committee to consult with the Chairperson (if any) of an R&D Corporation (new paragraph 131(1)(1A)) or the Chairperson (if any) of an R&D Council (new paragraph 131(1)(1b)) on the appropriate balance of expertise and experience required that would best ensure the effective performance of the organisation.

**Item 32**
This item requires nominations under subsection 131(2) [Selecting persons for nominations] to collectively possess an appropriate balance of expertise defined in subsection 131(1) in regard to the particular primary industry or class of primary industries in respect of which the R&D Corporation or R&D Council is established and experience in board affairs.

**Item 33**
This item allows for transition provisions to apply to items 23 to 31 despite the amendments of Part 4 of the *Primary Industries and Energy Research and Development Act 1989* made by this Act. Provisions in force immediately before the commencement of this item continue to apply in relation to a written notice given by the Minister before that commencement under subsection 123(1) or (2) as if these amendments had not been made.

**Item 34**
This item inserts a provision after subsection 141(1) [Annual reports of Selection Committees] for reports of a Selection Committee for a financial year to include an assessment of the processes undertaken by each Selection Committee to identify the widest possible field of available candidates for nomination for appointment.

**Item 35**
This item allows for the amendment made by item 33 to apply in relation to financial years starting on or after the commencement of this item.