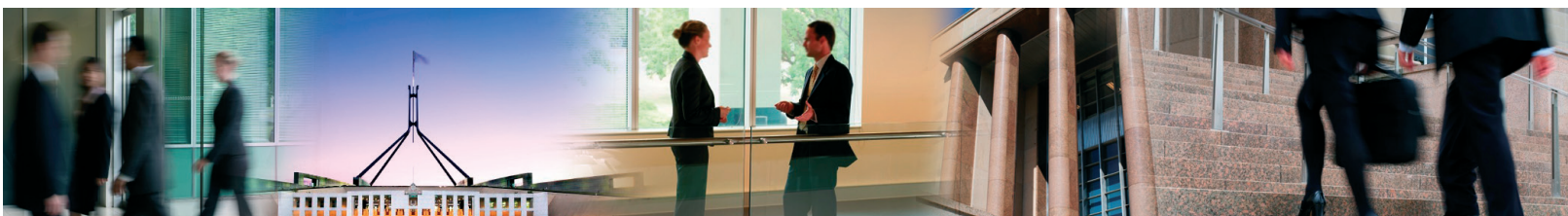




# CAC Act Matters



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## Welcome from Stein Helgeby

Welcome to our inaugural issue of the *CAC Act Matters* newsletter.

Having recently taken on policy responsibilities for the *Commonwealth Authorities and Companies Act 1997* (CAC Act), I see this newsletter as another way to help keep you up-to-date on issues that are relevant to your operations.

The newsletter is designed to provide you with assistance to understand your obligations under the CAC Act, and to assist you in your roles and responsibilities.

CAC Act bodies play an important role in the Australian community. We are keen to maintain good communication on CAC Act matters. We also expect that those of our colleagues in Departments who work closely with CAC Act bodies will have an interest in *CAC Act Matters*.

Stein Helgeby  
Deputy Secretary  
Financial Management Group  
Department of Finance and Deregulation

## What's in this for you?

In this issue we look at what is a CAC Act body and how CAC Act bodies benefit from working together. We also provide an update on legislative changes affecting CAC Act bodies.

Included with this newsletter is the CAC Act side of our flipchart with our guide to the chart and a Legislative Update to the CAC Legislation booklet published in August 2008. For a hardcopy version of any of these, please contact us at the email address below.

As this is our first issue, we are looking for a name for the newsletter. Currently, it is titled *CAC Act Matters*, but if you can come up with a better idea we would like to hear from you.

Also, if you have any comments, questions, or ideas for articles, or want to add someone to our mailing list, please contact us at [CACAct@finance.gov.au](mailto:CACAct@finance.gov.au).

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## What is a CAC Act body?

Did you know that when you use your wi-fi internet connection, collect your mail from your letter box or watch Spicks and Specks on TV you benefit from the work of a CAC Act body? CSIRO (as inventor of technology that allows wi-fi internet communications), Australia Post and the ABC, along with other iconic entities such as SBS, the Australian War Memorial and Medibank Private Ltd are all CAC Act bodies.



So what is a CAC Act body? Simply, a CAC Act body is a statutory authority, (called a Commonwealth authority), or a company that is controlled by the Commonwealth, (called a Commonwealth company), established for a public purpose that holds money

on its own account and, in most cases, is governed by a board of directors.

In short, CAC Act bodies are different from other Commonwealth entities in that they are legally and financially separate from the Commonwealth and their directors and officers are subject to a range of directors' duties.



CAC Act bodies tend to be more entrepreneurial in nature than other Commonwealth entities. They are bodies that have a commercial focus but, for a variety of policy reasons, the Commonwealth seeks to have a role in that sector of the economy. For example, marketing "There's Nothing Like Australia" is a major role for Tourism Australia, another CAC Act body.

One difference between the two types of CAC Act bodies (Commonwealth authorities and Commonwealth companies) is that directors of Commonwealth companies, as entities established under the *Corporations Act 2001*, are required, like any company, to ensure that the company can meet its debts as and when they fall due. But, directors of Commonwealth authorities under the CAC Act are not subject to this requirement.



THE AUSTRALIAN NATIONAL UNIVERSITY

To help understand the different types of Australian Government bodies, including CAC Act bodies, Finance has developed the flipchart and a guide to the chart. (The CAC Act side of the flipchart and guide is included for your information with this newsletter). The flipchart is regularly updated by Finance to reflect changes to bodies. Events that usually trigger an update of the flipchart include the creation of a new CAC Act body, the abolition of an existing body, when the Commonwealth obtains control of a company and a change to the administrative arrangements order.

The flipchart also arranges Commonwealth authorities and Commonwealth companies by portfolio and different legal structures. For example, it identifies bodies that are Government Business Enterprises and General Government Sector bodies.

Updates to the flipchart can be found at <http://www.finance.gov.au/publications/flipchart/index.html>



Departments, when considering arrangements for new activities (such as establishing a new company) should refer to the policy document *Governance Arrangements for Australian Government Bodies* and contact Finance for help in determining the appropriate structure and arrangement for the new activity.

So the next time you see Blue Poles at the National Gallery of Australia or visit Kakadu National Park, remember you are enjoying the benefits of another CAC Act body.



## Many hands make light work

CAC Act bodies are a varied bunch and there are many opportunities for them to work together. Recently we came across two instances where CAC Act bodies have worked closely together to the benefit of the bodies involved, as indicated below.

### National Gallery of Australia and Australian Broadcasting Corporation

Recently the National Gallery of Australia wound up its highly successful *Masterpieces from Paris* exhibition. Works displayed at the exhibition included pieces from Vincent van Gogh, Paul Gauguin, Paul Cézanne, Georges Seurat, Pierre Bonnard, Claude Monet, Maurice Denis and Edouard Vuillard. These works are normally housed in the Musée d'Orsay in Paris, but were on loan to the National Gallery of Australia during renovations to the Musée d'Orsay's Post-Impressionist Galleries.

Following an extended showing, the exhibition ended on 18 April 2010 with the National Gallery of Australia open for 32 hours straight over the last two days of the exhibition. With the Gallery open all night, ABC Local Radio Overnight presenter, Rod Quinn, broadcasted live from the Gallery.



Above: Rod Quinn, ABC local radio presenter during the all-night opening of the National Gallery of Australia.

The ABC saw this as an opportunity to highlight the successful exhibition during the first all-night opening of the National Gallery of Australia. It was a great publicity opportunity for the Gallery and a good opportunity for ABC local radio to get out and about to meet its listeners.

## Grape and Wine Research and Development Corporation (GWRDC) and Australian Wine and Brandy Corporation (Wine Australia)

Adelaide is the City of Churches, home of the Adelaide Festival of Arts and close to the world famous Barossa Valley. Adelaide is also home of two CAC Act bodies working together to improve Australia's wine industry, the GWRDC and Wine Australia.



The GWRDC supports the development of grape and wine industry through funding research and development, and then disseminates and commercialises the results throughout the industry.

Wine Australia is the first point of contact for wine sector information and analysis. Wine Australia is also responsible for the strategic marketing of Australian wine and assisting with international market access while preserving Australia's international reputation through its regulatory activities.

The two bodies work together as the research and development, marketing and export regulatory bodies for Australia's wine industry. For example, following the 2003 bushfires in Victoria, some wine made from smoke-affected grapes caused Wine Australia to reject certain wines for export. The GRWDC then organised research into the effects of bushfires on grapes.

Both bodies used the information from the research to better understand how bushfires affect the quality of grapes and wine in the Australian industry, and help maintain Australia's strong reputation in the international wine market.

If you have stories of CAC Act bodies working together, please let us know.

## When is a GPO not the post office?



For the everyday Australian, a GPO would be a General Post Office. However, for bodies under the CAC Act (which includes Australia Post), GPOs (General Policy Orders) are a mechanism in the CAC Act for applying general policies of the Australian Government to CAC Act bodies.

Two CAC Act bodies (ABC and Australian National University) have a full exemption from the requirements to comply with GPOs, while two other CAC Act bodies (SBS and Australian Industry Development Corporation) have a partial exemption.

On 13 November 2009, Finance issued [Finance Circular 2009/08: Application of general policies of the Australian Government to bodies subject to the CAC Act](#). The Circular explains the process for applying general policies through GPOs.

It reflects a change from the original requirements for applying general policies, through a letter from a body's responsible Minister.

However, notifications of general policies of government made under the previous arrangements are still in force until they are formally revoked by the Finance Minister.

A requirement in the new arrangement is that a GPO will be a legislative instrument recorded on the Federal Register of Legislative Instruments, enabling CAC Act bodies to identify which general policies are applicable to them. This makes it clearer for CAC Act bodies to understand what general policies of government are applicable to them.

This is an improvement on the previous process that relied on CAC Act bodies retaining accurate records of the notification letters sent to them by their Minister. Over time these letters were either lost or misplaced and no central record was kept regarding which general

policies applied to specific CAC Act bodies.

For more information on the application of GPOs, refer to the [Finance Circular 2009/08](#).

### Requirement for CAC Act bodies to report applicable GPOs

Commonwealth authorities are required to disclose all general policies applicable to them in their Report of Operations, and where applicable the extent of, and reasons for, any non compliance with a general policy.

So, the next time you hear public servants talking about GPOs, you'll know that they are more than likely referring to General Policy Orders and not heading to the Post Office.

## Using credit responsibly

### Borrowing power

Every day, most, if not all of us, deal with some aspect of a credit related transaction. We regularly use credit facilities (such as credit cards and credit vouchers) in a business and personal sense. Finance is aware of this and supports the use of credit facilities as an efficient and effective way to help transact business.



Commonwealth authorities can use credit facilities in their normal business operations, whether that be through an express borrowing power in their enabling legislation or through section 28A of the CAC Act.

Section 28A also allows for the creation of regulations

on the use of credit cards and credit vouchers.

These regulations were introduced on 1 July 2009. In summary, they:

- require an agreement between an authority and credit provider to be in writing;
- make the card or voucher holder responsible for the physical security of the card or voucher and for ensuring the card or voucher is used for the purpose for which it is provided;
- allow the authority's directors to place limits on the amount that may be borrowed on the card or voucher;
- require the authority's directors to ensure records are kept for cards and vouchers issued and transactions undertaken; and
- allow the authority's directors to make guidelines in relation to the use of the credit cards and vouchers that are consistent with the CAC Act and the *Commonwealth Authorities and Companies Regulations 1997* (CAC Regulations).

Directors of CAC Act bodies that make use of credit facilities may wish to provide guidelines on their use. For example, they may focus on issues such as the approval required to use a credit facility, reconciling credit statements, internal audits and general training on the use of those credit facilities.

### Misuse of credit cards or credit vouchers – criminal offence

To combat the intentional misuse of credit cards or credit vouchers, section 28B was introduced. It is now a specific offence (punishable by 7 years' imprisonment) to intentionally misuse a Commonwealth authority's credit card or credit voucher.

It is important to note that while section 28A does not apply to those authorities that have an express borrowing power in their enabling legislation, section 28B applies to all Commonwealth authorities that use credit cards.

In respect to section 28B, the CAC Regulations allow the directors of a Commonwealth authority to authorise a holder of a Commonwealth authority

credit card to use the card to pay a claim that includes both official and coincidental private expenditure. In summary, credit cards and vouchers can be an effective way for a Commonwealth authority to conduct business, but the CAC Act makes directors responsible for ensuring that they are used appropriately.

## Implementing amendments to the CAC Act

The environment in which we live and operate is constantly changing and as a result it is necessary for the CAC Act to try and keep pace. Like any piece of legislation the CAC Act needs to be regularly updated to cater for emerging issues (such as the use of credit facilities).

*The Commonwealth Authorities and Companies Amendment Act 2008* (CAC Amendment Act) addressed a deficiency that existed regarding the use of Commonwealth authority credit cards and was the most significant amendment to the CAC Act since its enactment in 1997.

Finance consulted heavily in the development of the CAC Amendment Act and since then has been working with departments and CAC Act bodies to implement the changes.

A summary of the key changes that commenced on 1 July 2009 include:

- borrowing regulations were amended to specify the requirements for Commonwealth authorities using credit cards and credit vouchers, where the authority relies on the borrowing power in section 28A of the CAC Act;
- section 28B of the CAC Act commenced, making it an offence to misuse a credit card or credit voucher; and
- regulations 6AD and 6AE commenced, providing an exception to the offence for coincidental private expenditure, when using a Commonwealth authority's credit card or credit voucher.

To assist Commonwealth authorities and companies understand these and other obligations under the CAC Act, we have issued a Legislative Update (as at June 2010) that reflects the changes to the CAC Act since the last hard cover publication (August 2008). The Legislative Update is designed to slip neatly inside the front cover of the hard cover publication.

A consolidated electronic copy of the hard cover publication is available on the [Finance Website](#).

### Further work

In June 2010, the *Financial Framework Legislation Amendment Bill 2010* (FFLA Bill) was introduced into Parliament. Amongst other reforms, the FFLA Bill proposed to amend the governance and legal arrangements of a number of CAC Act bodies.

Following the calling of the election the FFLA Bill has lapsed. The possible reintroduction of the FFLA Bill would be a matter for consideration by the incoming Government.

## How do some CAC Act bodies do procurement?

1 January 2010 saw the commencement of *Finance Minister's (CAC Act Procurement) Directions 2009* (Directions) on the application of the Commonwealth Procurement Guidelines (CPGs) to certain CAC Act bodies. The Directions replace the previous directions in place since December 2004.



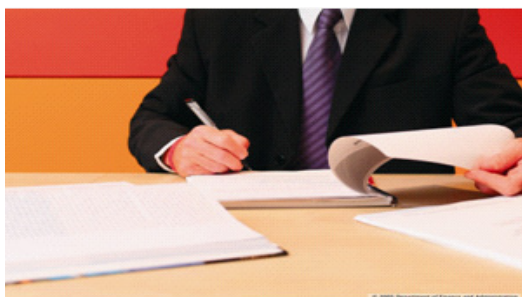
The Directions, which are included in the Legislative Update, only apply to those 19 CAC Act bodies listed in the CAC Regulations.

The Directions clarify the application of the CPGs to relevant CAC Act bodies. In particular they clarify:

- that CAC Act bodies must apply all of the CPGs when undertaking a 'covered procurement'. That is, the estimated value of the property or services being procured meets the threshold of \$400,000 or \$9 million for the procurement of construction services;
- that CAC Act bodies may choose to use coordinated procurement arrangements; and
- the meaning of certain phrases in the CPGs as they relate to CAC Act bodies.

For more information, on applying the CPGs, please e-mail Procurement Policy and Advice at [procurementagencyadvice@finance.gov.au](mailto:procurementagencyadvice@finance.gov.au)

## Compliance Reporting



It's that time of year again, when directors and Chief Financial Officers trawl over pages of figures and reports in preparation for the opening of the reporting season. For CAC Act bodies this time of year also means preparing Compliance Reports.

Compliance Reports for the 2009-10 year must be sent to the Finance Minister through the Secretary of the Department of Finance and Deregulation by 15 October 2010. The address is:

Department of Finance and Deregulation  
John Gorton Building  
King Edward Terrace  
Parkes ACT 2600 Australia.

Further information on the requirements for Compliance Reports can be found in *Finance Circular 2008/05: Compliance Reporting - CAC Act bodies*.

## Complying with the CAC Act

It is important for all CAC bodies to understand their CAC Act compliance obligations and for Departments of State to know what is expected of them when one of their portfolio CAC Act bodies advises it has a compliance issue under the CAC Act.

Portfolio departments should contact Finance about reported compliance issues when they need to seek input.

They can also contact Finance if their responsible Minister is of the opinion that the Finance Minister should commence civil penalty provisions under the CAC Act against the director or relevant staff member responsible for a reported compliance breach, in relation to Commonwealth authorities.

This does not prevent a CAC Act body or its portfolio department from referring a compliance issue to the Australian Federal Police or the Director of Public Prosecutions where an alleged criminal compliance breach is reported for Commonwealth authorities. In relation to Commonwealth companies, civil matters are, of course regulated by the Australian Securities and Investments Commission.



## Be the first to know!

We are considering the introduction of a discussion forum for issues surrounding the CAC Act. The forum would be designed to allow members to raise topics and questions related to the CAC Act.

Through the forum, it is hoped that a community of knowledge could be developed, that would allow users to access advice on common questions.

The forum would also assist Finance to better understand what issues are being experienced by those using the CAC Act.

A possible format for the forum could be based on the Procurement Discussion Forum that currently operates to support the CPGs.

However, given that this format involves regular physical meetings, it may not be an appropriate structure, given the geographical location of CAC Act bodies.



Notwithstanding this, we still consider the value of an annual get together as part of the Forum, where Finance and CAC Act bodies can come together and discuss broad CAC Act issues.

Another method could be regular correspondence through the CAC Act mailbox, [CACAct@finance.gov.au](mailto:CACAct@finance.gov.au) for question-and-answer type discussion, as well as allowing for additional comments to be posted on issues being discussed. A blog type forum may also be a possibility.

We are very interested in readers' views on how these suggestions and any others you may have on the structure of the proposed forum. Please contact us with your ideas and suggestions.

### Need to know more?

We often come across reference materials for CAC Act bodies and what it means to be working for and be involved with a CAC Act body.

For example, the Australian Institute of Company Directors (AICD), in October 2009 held its first major conference on public sector governance. The seminar covered topics including ethics in the public sector,

directors' duties, collaboration of bodies within the public sector, etc. The AICD plans to hold another conference in October 2010.

Minter Ellison also recently prepared a Guide for persons serving on, or considering serving on the boards of Commonwealth authorities or Commonwealth companies. The Guide covers their legal duties and obligations, focusing in particular on the *Corporations Act 2001* and the CAC Act.

The Guide is in three parts:

- Part One outlines the key statutory duties of directors, the sources of those duties and the possible liabilities for breach.
- Part Two looks at key measures for directors to manage their potential exposure to personal liability.
- Part Three comprises of checklists that focus on common issues that arise, in particular, to directors of Commonwealth companies.

This Guide has been independently developed by Minter Ellison, and it can be found on the [Minter Ellison Website](#).

If you come across other useful reference material on the CAC Act, we would be interested to hear from you.

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