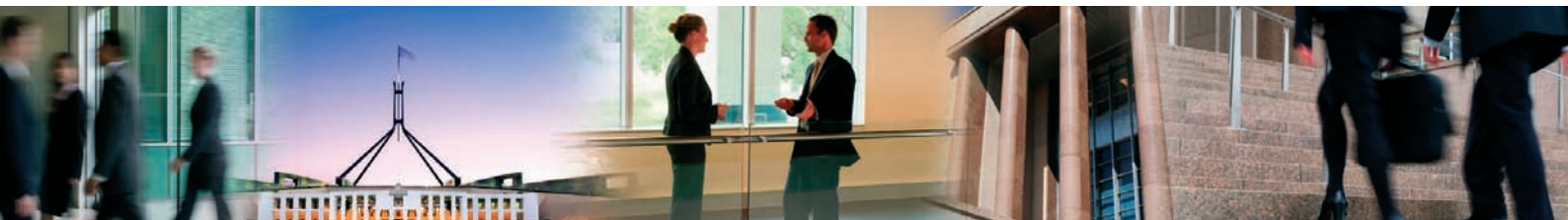




CAC Act Matters



02

Spring Edition 2010

CAC Act Forum

Wednesday 8 December 2010

National Portrait Gallery, Canberra, 10am - 4pm

Following the inaugural *CAC Act Matters* Newsletter we have received positive feedback and support for the establishment of a *Commonwealth Authorities and Companies Act 1997* (CAC Act) discussion forum.

We have received some initial suggestions for forum topics, but are still developing the agenda and would welcome further suggestions. Suggestions can be forwarded to CACAct@finance.gov.au.

Some possible topics for discussion include:

- How partnerships between CAC Act bodies can produce mutual benefits
- The role of delegations and authorisations within CAC Act bodies
- Revised Commonwealth authority Orders and new Commonwealth company Orders (refer page 4)

The forum is designed to bring CAC Act bodies, and Departments, together to share experiences, views and ideas to improve the way we all work.

Once the agenda is finalised we will forward more information through the CAC Act Matters Newsletter mailing list.

RSVP to CACAct@finance.gov.au by 1 December 2010.

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

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The value of Partnerships

Director of National Parks and Tourism Australia

In recognition of the need to make Australia's protected areas "digestible" for international travellers, two CAC Act authorities, Tourism Australia and Director of National Parks - Parks Australia, have formed a unique tourism and conservation partnership. *Australia's National Landscapes* is a program to identify and promote up to 15 of Australia's exceptional natural and cultural experiences to the international market and to achieve environmental, social and economic outcomes for each region.



Mt Borradaile, Arnhem Land, NT. Copyright: Tourism Australia

Parks Australia's role in the program is to enhance the value and role of protected areas in regional economies. Tourism Australia's interest is to increase the knowledge of international visitors of Australia's most inspirational destinations, ensuring that each landscape's natural and cultural experiences meet the target market's expectations.

For both agencies, the National Landscapes program has attracted enormous interest, built new partnerships and increased attention in the nature-based tourism industry. The National Landscapes program is providing practical opportunities to emphasise the importance of Australia's protected area estate to the \$81 billion tourism sector. The program has also fostered the involvement of multiple regional protected area and tourism agencies, state and local governments, Australian Government agencies, non-government conservation agencies and individual business operators.

Tourism Australia and Parks Australia have partnered on a range of activities including:

1. **Research and strategy:** a collective approach through research to understand consumer demand for natural and cultural assets
2. **Promotion:** identifying the best of Australia's destinations that offer a distinctive natural and cultural experience and promoting these destinations
3. **Distribution:** using identified landscapes to better motivate tourism markets to visit Australia
4. **Product development:** developing world class tourism experiences in protected areas and surrounding regions
5. **Planning:** aligning the plans and actions of agencies, governments, communities (including Indigenous) and industry in the development and adoption of Experience Development Plans

The first eight National Landscapes were launched by the Minister for Tourism, the Hon Martin Ferguson AM MP, in June 2008: Australia's Red Centre, Australian Alps, Great Ocean Road, Kakadu, Australia's Coastal Wilderness, Greater Blue Mountains, Flinders Ranges and Green Cauldron. Kangaroo Island joined this group in June 2009, followed by the Kimberley in April 2010. Candidates in Western Australia, Queensland and Tasmania are actively seeking recognition as future National Landscapes.

Through the building and sharing of knowledge, Tourism Australia and Parks Australia have created a partnership that provides ongoing leadership and management to protect Australia's distinctive natural and cultural assets. Further information is available at

www.tourism.australia/nl



Seal Bay, Kangaroo Island SA. Copyright: Tourism Australia

New Finance Minister, New Flipchart

On 14 September 2010, the Governor-General appointed a new Finance Minister and made a new [Administrative Arrangements Order](#) (AAO) setting out the departmental portfolios and who does what.

[Senator the Hon Penny Wong](#) was appointed as the new Minister for Finance and Deregulation and Minister responsible for the CAC Act.

The new [Flipchart](#) issued on 15 September 2010 details the new portfolio arrangements for CAC Act bodies and is available from the Finance website.

The two biggest changes for CAC Act bodies were:

- responsibility for cultural affairs (including the arts and heritage) moving from the Environment portfolio to the Prime Minister and Cabinet portfolio; and
- responsibility for sport and recreation moving from the Health and Ageing portfolio to the Prime Minister and Cabinet portfolio.

The AAO determines the Minister responsible for a CAC Act body, but aside from that there will be no significant impact on the legal and financial environments of bodies. The CAC Act, enabling Acts and company constitutions continue to operate as they did before the changes to the AAO.



Australian Government

Department of the Prime Minister and Cabinet



Above: Logos of CAC Act bodies now in the Prime Minister and Cabinet portfolio.

Spot the CAC Act Body



Can you pick which destinations on the sign to the left in the Parliamentary Triangle in Canberra also get you to a CAC Act body?

The first to provide a correct response to the CACAct@finance.gov.au email address will be named in our next edition (and, if you're really lucky, receive a year's supply of the FMA and CAC Act flipcharts).

The search continues

In the last edition of the CAC Act Matters Newsletter we asked for a suggested alternative title for the newsletter. While there have been no adverse reactions to the current title, even some support, we have received some alternative suggestions these include:

- *In touch with the CAC Act*
- *CAC Action*
- *CAC Act Governance*

If you have any further suggested titles or views on the above suggestions we would welcome hearing from you, which can be provided to CACAct@finance.gov.au

Consultation 1: annual reporting orders



As all CAC Act bodies have just finalised their annual reports, we thought it would be opportune to review the current arrangements to ensure that they meet the needs of all stakeholders. Accordingly, we are looking at fine-tuning the current *Commonwealth Authorities (Report of Operations) Orders 2008* (current Orders) and implementing similar requirements for Commonwealth companies.

Finance is trying to make it as easy as possible for CAC Act bodies to provide the information that readers, especially the Parliament, are interested in.

The primary change to the current Orders is to make it more reader friendly by providing context to why we require certain information, such as details of Ministerial directions.

For companies, we are looking to introduce the *Commonwealth Companies (Government Reporting Requirements) Orders 2010*. This type of reporting for companies will be new. We're not trying to add unnecessary red-tape, but there needs to be greater public transparency around the operation of Government owned companies. Currently the disclosure requirements for public and private sector company annual reports are the same, as determined by the *Corporations Act 2001*.

The proposed changes seek to improve the visibility of the operations of Commonwealth companies and their subsidiaries to stakeholders, such as the Parliament and taxpayers in general. For example, currently a company is not required by the CAC Act to disclose any directions given to it by its Minister. Such directions can have a significant effect on how a company operates and this should be clear to the readers of annual reports.

Based on recommendations of the Senate Standing Committee on Finance and Public Administration, we have included two new requirements in the reporting Orders not previously sought from Commonwealth authorities or Commonwealth companies:

- First is 'Index of annual reporting'. This is designed to help readers locate information required by the CAC Act and other relevant legislation.
- Second is information on 'related party transactions'. This will also assist readers to determine whether the CAC Act body has entered into business transactions with an entity that is connected to a director or former director.

Stein Helgeby, Deputy Secretary, Financial Management Group, wrote to all CAC Act body Chairs seeking feedback on the draft orders.

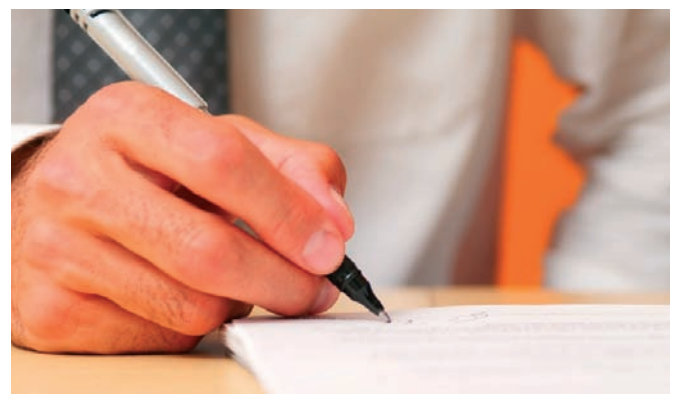
Any comments you may have on the proposed draft orders are welcome.

Electronic copies of the draft *Commonwealth Authorities (Annual Report of Operations) Orders 2010* and the *Commonwealth Companies (Government Reporting Requirements) Orders 2010* can be found on the Finance website at this link:

www.finance.gov.au/draft-orders

Comments by Friday 15 December 2010 would be greatly appreciated.

As noted in the article on the CAC Act Forum, we are looking to discuss the proposed orders and hear your views and suggestions.



Consultation 2: Departmental oversight of CAC Act compliance

Consistent with the AAO, departments of state are responsible for overseeing activities within the portfolio on behalf of their Minister, including monitoring CAC Act compliance within their portfolio.



This responsibility extends to all the Commonwealth authorities and wholly-owned Commonwealth companies in their portfolio. The recent AAO changes provide a perfect opportunity to review departmental processes to ensure there is adequate oversight within the portfolio.

Currently, directors of CAC Act bodies in the General Government Sector are required to provide the Finance Minister and their Minister with an annual compliance report. Guidelines on how to complete annual compliance reports can be found in the Finance Circular 2008/05: [Compliance Reporting – CAC Act Bodies](#).

However, departments should not simply rely on the annual compliance reporting process to fulfil their oversight role. To assist officials, Finance has prepared a draft Finance Circular to help departments develop compliance processes for monitoring CAC Act compliance within their portfolio. The circular encourages departments and CAC Act bodies to establish a strong relationship that involves regular dialogue and feedback. The compliance processes can be incorporated into existing arrangements for monitoring and reporting on a CAC Act body's compliance obligations.

Section 16 of the CAC Act for Commonwealth authorities and section 41 for wholly-owned Commonwealth companies – keeping the responsible Minister and Finance Minister informed – can be used to help departments with their oversight role. These sections not only put the onus on directors to keep Ministers informed of their entity, and its subsidiaries', operations but also allow responsible Ministers to request any information that he or she requires.

In addition to the Finance Minister's broader responsibility for the CAC Act, she is also responsible for civil breaches of directors' duties by Commonwealth authorities under the CAC Act. Similarly, the Australian Securities and Investments Commission is responsible for civil breaches of directors' duties by CAC Act companies under the *Corporations Act 2001*. Under the CAC Act criminal breaches are a matter for the Commonwealth Director of Public Prosecutions and the Australian Federal Police.

As a result Finance is interested in working with both Departments and CAC Act bodies to address non-compliance issues, particularly civil breaches by Commonwealth authorities.

The draft Finance Circular was circulated for comment to departmental Chief Financial Officers (CFOs) along with Chief Executive Officers and CFOs of CAC Act bodies on Friday 1 October 2010. An electronic copy of the draft circular can be found on the Finance website at www.finance.gov.au/draft-circular.



What to do with the company you keep?

The Commonwealth, some CAC Act bodies and their subsidiaries can participate in forming a company in the course of regular business. This is not just limited to the registering of a company. For example the Commonwealth may become a member of a company (along with members from the states and territories) but the company is formally registered with ASIC by a person other than the Commonwealth.

There are three provisions of the CAC Act that can be triggered when this type of activity is undertaken. These are:

- for CAC Act bodies, sections 15 & 40 - Responsible Minister to be notified of significant events; and
- for departments of state, section 45 – Ministers must inform Parliament of share acquisitions etc.

Sections 15 & 40 - Responsible Minister to be notified of significant events (CAC Act)

Paragraph 15(1)(a) for Commonwealth authorities and paragraph 40(1)(a) for wholly-owned Commonwealth companies (and their subsidiaries) require bodies that propose to “form a company or participate in the formation of a company” to immediately inform their Minister of the proposal.

The purposes of these sections are to ensure that the responsible Minister is aware of any proposed involvement in significant new business ventures. Such notice could highlight a change in the strategic direction of an authority or company and provides the Minister with an opportunity to respond.

Subsections 15(3) & 40(3) allow the responsible Minister to issue guidelines on the extent of reporting he or she requires under these sections.

Sections 15 & 40 are key provisions of the CAC Act that help Departments, on behalf of their Minister, to oversight significant events within a CAC Act body within their portfolio. The importance of this oversighting role is also identified in the earlier article on Departmental oversight of CAC Act compliance. These provisions can help departments better service their Minister in the policy debate.



Section 45 - Ministers must inform Parliament of share acquisitions etc. (CAC Act)

Section 45 of the CAC Act relates to when the Commonwealth:

- a) forms or participates in forming a company; ß
- b) acquires or disposes of shares in a company; ß
- c) becomes a member of a company; ß
- d) has the rights attached to shares of a company held by the Commonwealth varied;
- e) has its rights as a member of a company varied; or
- f) ceases to be a member of a company.

When any of these events occur, the Minister responsible for the event is required to inform Parliament by way of tabling a notice.

Despite the current Finance Circular on this matter ([2004/12](#)) we have received numerous queries, particularly about the way in which section 45 notifications are to be completed and tabled in the Parliament. Accordingly, we have started updating the existing Finance Circular and hope to issue it shortly for comment. To assist further Departments we also propose to include a template section 45 notice in the *Commonwealth Authorities and Companies Regulations 1997* (CAC Regulations).

In the meantime, the [Financial Framework Legislative Amendment Bill 2010](#), introduced in Parliament on 30 September 2010, proposes to move the requirements of section 45 of the CAC Act into the *Financial Management and Accountability Act 1997*, as it deals with Commonwealth involvement with companies. We will let you know about the progress of this amendment.

AGS's Fact Sheet on Procurement for certain CAC Act bodies



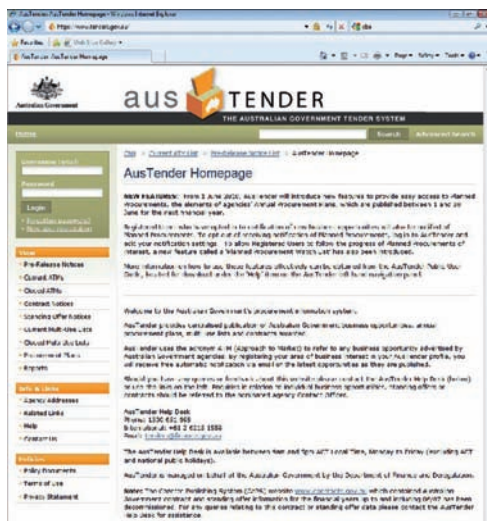
Australian Government Solicitor

Section 47A of the CAC Act requires the CAC Act bodies prescribed by the CAC Regulations to comply with procurement directions made by the Finance Minister. The [CAC Regulations](#) currently prescribe 19 CAC Act bodies (relevant CAC Act bodies).

The Finance Minister has issued the [Finance Minister's \(CAC Act Procurement\) Directions 2009](#) (Directions), which require the directors of all relevant CAC Act bodies to ensure that their officials apply Division 2 of the [Commonwealth Procurement Guidelines](#) (CPGs) in respect to covered procurements only. Division 2 relates to Mandatory Procurement Procedures.

The threshold for relevant CAC Act bodies is A\$400,000 or, for procurements of construction services, A\$9m.

Covered procurements by relevant CAC Act bodies will usually need to be by open tender in which case they must be published on AusTender.



The homepage of AusTender, accessible at www.tenders.gov.au

The CPGs also impose a number of procedural as well as tender and contract documentation requirements. For example:

Procedural requirements

- There are minimum time and content requirements.
- Tenderers must be treated equitably and there can be no discrimination on the basis of foreign affiliation or ownership, geographic location or size.
- Late tenders generally cannot be accepted.
- Tenderers cannot have a judicial decision (not including decisions on appeal) against them for unpaid employee entitlements.
- There are requirements in relation to the award of contract following a procurement, debriefing unsuccessful tenderers and complaints handling.

Tender documentation

- Tender documentation must include any mandatory requirements (such as conditions for participation) and all evaluation criteria (take care with mandatory requirements because, if not met, the tender must be excluded).

Contract

- Where an indemnity or liability cap is under consideration, the relevant CAC Act body must undertake a risk assessment.
- The contract must provide for the contractor to make available the names of any subcontractors and agree to their public disclosure.
- All contracts for covered procurements must be reported on AusTender.

AGS has a [Fact Sheet No. 7 on the Commonwealth Procurement Guidelines \(August 2010\)](#) which provides a more detailed summary.

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Top End CAC Act bodies

In June 2010, Outback Stores Pty Ltd, as a new Commonwealth company, invited members of the CAC Team, Paul Levi and Graeme Selleck to visit Darwin to discuss the application of the CAC Act with staff and directors. The journey from cold Canberra (minus 4 degrees) to Darwin (a balmy 32 degrees) was a bit of a shock. A tip for the uninitiated, wool suits in Darwin are a Bad idea.



The visit to Darwin was also a good opportunity to gain a greater insight of the operations and issues surrounding the Northern Land Council (NLC) and Tiwi Land Council (TLC), two established bodies.

Paul and Graeme also met with the Northern Territory Treasury to find out how it manages its State Owned Corporations. The visit was a perfect opportunity to introduce Legislative Review Branch's indigenous cadets Kristin Wuruki and Zoe Cochrane to the diversity of the CAC Act and its bodies.



Finance staff from left: Kristin Wuruki, Graeme Selleck and Zoe Cochrane visit the Northern Land Council's head office.

Outback Stores manages shops in remote areas to provide healthy food choices to local Aboriginal communities. It was previously a subsidiary of another CAC Act body, Indigenous Business Australia, but all shares were bought by the Commonwealth in March 2010 making Outback Stores a wholly-owned Commonwealth company.

Our meeting with Outback Stores allowed us to explain to the staff and directors how their obligations will change in a wholly-owned Commonwealth company under the CAC Act.

The key differences relate to the:

- requirement for directors to advise the responsible minister of significant events (section 40);
- requirement for the directors to produce a Compliance Report each year (section 41);
- structure of Outback Stores' audit committee (section 44); and
- need to comply with relevant General Policy Orders (section 48A).

The two land councils have been subject to the CAC Act since its introduction in 1998. NLC covers the top part of the Northern Territory, including Arnhem Land. TLC is responsible for the Bathurst and Melville Islands, north of Darwin.



The visit allowed us to talk about proposed future reforms to the CAC Act and also seek views from the land councils on issues that they had with the financial framework.

We received excellent feedback from both these bodies that can be used to develop the CAC Act in the future.

The opportunity to speak directly with CAC Act bodies to get a greater understanding of what they do and how the framework impacts on their ability to do that work provided great insights. The development of the Discussion Forum is a good way to get this regular exchange of views and knowledge, but we also welcome the chance to meet with bodies one-to-one to discuss any framework issues that they may have.

Thank you to all of the Top End CAC Act bodies who made our visit so enjoyable.