Commonwealth Authorities and Companies Legislation

November 2011

Commonwealth Authorities and Companies Act 1997
Commonwealth Authorities and Companies Regulations 1997
Commonwealth Authorities (Annual Reporting) Orders 2011
Commonwealth Companies (Annual Reporting) Orders 2011
Finance Minister’s (CAC Act Procurement) Directions 2004

FINANCIAL MANAGEMENT REFERENCE NO.4
Commonwealth Authorities and Companies Legislation

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Finance Minister’s (CAC Act Procurement) Directions 2009
The Financial Management Reference series of publications

No. 1  List of Australian Government Bodies and Governance Relationships, 3rd edition;
No. 2  Governance Arrangements for Australian Government Bodies, August 2005;
No. 3  Financial Management and Accountability Legislation, November 2011;
No. 4  Commonwealth Authorities and Companies Legislation, November 2011;
No. 5  Introduction to Cost-Benefit Analysis and Alternative Evaluation Methodologies, January 2006;
No. 6  Handbook of Cost-Benefit Analysis, January 2006; and

The Financial Management Guidance series of publications

No. 1  Commonwealth Procurement Guidelines, December 2008;
No. 2  Australian Government Foreign Exchange Risk Management Guidelines, September 2006;
No. 4  Australian Government Cost Recovery Guidelines, July 2005;
No. 5  Guidelines for the Implementation of Administrative Arrangements Orders and Other Machinery of Government Changes, September 2003. This guidance has been replaced by the Australian Public Service Commission’s publication Implementing Machinery of Government Changes: A Good Practice Guide;
No. 6  Guidelines for Issuing and Managing Indemnities, Guarantees, Warranties and Letters of Comfort, September 2003;
No. 7  Guidelines for the Management of Special Accounts, October 2003;
No. 8  Guidance on the Listing of Contract Details on the Internet (Meeting the Senate Order on Department and Agency Contracts), January 2004;
No. 9  Australian Government Competitive Neutrality Guidelines for Managers, February 2004;
No. 11  *The role of the CFO – Guidance for Commonwealth Agencies*, April 2003;

No. 16  *The Commonwealth Property Management Guidelines*, October 2009;

No. 17  *Public Private Partnerships: Business Case Development*, December 2006;

No. 18  *Property Management Planning Guidance*, January 2010;

No. 20  *Guidance on the Gateway Review Process – A Project Assurance Methodology for the Australian Government*, August 2006;

No. 22  *Guidelines on Recruitment Advertising*, July 2009; and

No. 23  *Commonwealth Grant Guidelines*, July 2009.

Note: Unlisted Financial Management Guides (3, 10, 12, 13, 14, 15, 19 and 21) have either been merged into, or been superseded by other Financial Management Guides. The latest Finance publications can be found at www.finance.gov.au/publications.
Introduction

This publication, Financial Management Reference No.4, includes the:
• Commonwealth Authorities and Companies Act 1997 (CAC Act), see tab A;
• Commonwealth Authorities and Companies Regulations 1997 (CAC Regulations), see tab R;
• Commonwealth Authorities (Annual Reporting) Orders 2011 (Authority Orders), see tab AO;
• Commonwealth Companies (Annual Reporting) Orders 2011 (Company Orders), see tab CO; and
• Finance Minister’s (CAC Act Procurement) Directions 2009, see tab D.

Collectively, these documents are referred to as the Commonwealth Authorities and Companies Legislation (CAC Legislation).

How current is this publication?

This publication is current as at 1 November 2011 and has been prepared using the latest compilations from the Office of Legislative Drafting and Publishing in the Attorney-General’s Department¹ and the Department of Finance and Deregulation.² While changes to the CAC Act are made periodically, changes to the CAC Regulations and other subsidiary laws may occur more frequently.

Where do I find the latest law online?


The latest available version of the Finance Minister’s (CAC Act Procurement) Directions 2009 can be found on the Department of Finance and Deregulation web site at www.finance.gov.au.

Which entities does the CAC Act cover?

Bodies that are subject to the CAC Act are Commonwealth authorities and Commonwealth companies. On 1 November 2011, there were 85 bodies subject to the CAC Act.

Commonwealth authorities are bodies corporate that are established by legislation for a public purpose, and which hold money on their own account (that is, for their own purposes). Commonwealth companies are companies incorporated under the Corporations Act 2001 that the Commonwealth controls.

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¹ CAC Act compiled on 1 September 2011 taking into account amendments up to Act No. 89 of 2011; CAC Regulations compiled on 1 September 2011; Authority Orders and Company Orders made on 22 September 2011.
² Finance Minister’s (CAC Act Procurement) Directions 2009 made on 17 December 2009.
What does it mean to be subject to the CAC Act?

For Commonwealth authorities, the CAC Act contains rules about reporting and accountability, and deals with matters such as banking and investment, and the conduct of officers, including directors (i.e. directors’ duties).

For Commonwealth companies, the CAC Act contains reporting and other requirements that apply in addition to the directors’ duties and other requirements of the Corporations Act 2001.

The Minister for Finance and Deregulation (Finance Minister), as well as the responsible Minister, can request information from the directors of Commonwealth authorities and wholly-owned Commonwealth companies. These directors also have a positive obligation to keep the responsible Minister informed of the operations of the body and its subsidiaries.

The Finance Minister may also issue Directions to the directors of relevant Commonwealth authorities and wholly-owned Commonwealth companies in relation to their procurement of property or services (see tab D).

Changes to the CAC Act since the previous edition of this publication

The following changes have been made to the CAC Act since 1 April 2010.

1. References to “common law and equity” replaced with references to “general law”

Section 5 has been amended to insert a new definition of “general law” to mean the “principles and rules of the common law and equity.” References in sections 22 and 27 to “at common law or in equity”, have been substituted with references to “under the general law”. This clarifies the scope of the general law referred to, and simplifies sections 22 and 27.

2. Clarification of the submission deadline of a Commonwealth authority’s annual report

Section 9 has been amended to clarify that the deadline for the directors of a Commonwealth authority to submit an authority’s annual report to its responsible Minister is 15 October when the financial year ends on 30 June.
3. Interjurisdictional authorities

A new Part 3A has been added into the CAC Act to allow for regulations to apply to interjurisdictional Commonwealth authorities. Part 3A enhances the ability for the Commonwealth and participating State and Territory jurisdictions to be jointly involved in the governance of interjurisdictional Commonwealth authorities.

Section 33A enables the regulations to prescribe a Commonwealth authority as an “interjurisdictional authority”, to prescribe the persons that comprise an interjurisdictional authority (including State or Territory officers or employees) and prescribe a Minister of a State, the Australian Capital Territory or the Northern Territory to be a “State/Territory Minister”.

4. Notification to the responsible Minister of significant events

Sections 15 and 40 have been clarified to better enable the directors of a Commonwealth authority or wholly-owned Commonwealth company to better determine whether a proposal would be a significant event of which the responsible Minister should be notified. Former subsections 15(2) and 40(2) were repealed as they suggested that the responsible Minister may not be interested in the formation of a company by a Commonwealth authority or wholly-owned Commonwealth company, which is not the case.

5. Minister to notify Parliament where the Commonwealth’s involvement with a company changes

Section 45 of the CAC Act, regarding Ministerial notices to Parliament where the Commonwealth’s involvement with a company changes, has been repealed. This provision was relocated to section 39A of the Financial Management and Accountability Act 1997 (FMA Act) because this function is generally undertaken by the Department on the Minister’s behalf. In effect, the provision will continue to provide for Ministers to table a notice in each House of Parliament for events involving the Commonwealth. The Financial Management and Accountability Regulations 1997 also detail the particulars required in each notice.

6. Compliance with Government procurement requirements

Section 47A of the CAC Act has been amended to insert a new subsection 47A(6A), which provides that the Finance Minister’s directions to CAC Act bodies on procurement are legislative instruments under the Legislative Instruments Act 2003. The amendment has also enabled these directions to be added to the Federal Register of Legislative Instruments, increasing transparency and making it easier to identify when such directions have been issued to CAC Act bodies.
7. **Delegation by a Minister**

A new section 48B allows a Minister (either the responsible Minister or the Finance Minister) to delegate to a Secretary of a Department of State any of the Minister’s powers and functions under the following sections:

- 14 and 39 (preparation of budget estimates by a Commonwealth authority and a wholly-owned Commonwealth company);
- 16 and 41 (requests by a Minister for reports and information from a Commonwealth authority and a wholly-owned Commonwealth company, and the timeframes for the provision of such information); and
- 18 (approval of a Commonwealth authority’s investment methods for surplus money).

A consequential amendment to section 18 was also made to repeal redundant subsection 18(4). The power of delegation set out in section 48B has assisted in achieving greater efficiency in Government operations.

8. **Corporate plan of a Government Business Enterprise (GBE)**

Section 17 and 42 were amended to provide that the content requirements of a corporate plan of a Commonwealth authority or company GBE are to be specified in regulations, rather than in the CAC Act.

### Other changes to CAC legislation

The following additional changes have been made to CAC legislation since 1 April 2010.

1. **CAC Regulations have been updated**

Changes to the CAC Regulations have included:

- Updating the table in Regulation 4A to remove references to former CAC Act bodies (Australian Technology Group Limited and Tuggeranong Office Park Pty. Limited);
- Updating Regulation 5 to change references from the “Australian Wine and Brandy Corporation” to the “Wine Australia Corporation”;
- Inserting a new Regulation 6AAA, which provides the content requirements of a GBE’s corporate plan. This followed the amendment to sections 17 and 42 of the CAC Act (as noted above), and combines, for the first time, the corporate plan content requirements of Commonwealth authority GBEs and Commonwealth company GBEs;
- Repealing former Regulation 7 following the repeal of section 45 of the CAC Act (Ministerial notices to Parliament where the Commonwealth’s involvement with a company changes, which is now in the FMA Act, as noted above), and consequential amendments to Regulation 8; and
- Removing, in Schedule 1, references to former authorities that no longer come under the CAC Act (namely, the Australian Institute of Criminology and the Australian Law Reform Commission).
2. Revised Authority Orders have been issued

On 22 September 2011, the Finance Minister made the Commonwealth Authorities (Annual Reporting) Orders 2011 (Authority Orders) under section 48 of the CAC Act. The Authority Orders replace the Commonwealth Authorities and Companies (Report of Operations) Orders 2008 to broaden the scope of information to be reported in a Commonwealth authority’s Annual Report of Operations. This better reflects public sector standards of accountability and transparency. The new Orders are also more user-friendly.

3. New Company Orders have been issued

On 22 September 2011, the Finance Minister made the Commonwealth Companies (Annual Reporting) Orders 2011 (Company Orders) under section 48 of the CAC Act. These new Orders require wholly-owned Commonwealth companies to report specific public sector issues as part of their annual reports in addition to what is already required by the Corporations Act 2001.

Prior to these Orders, no reporting Orders had been issued for wholly-owned Commonwealth companies. The Company Orders have been closely modelled on the equivalent Authority Orders that apply to Commonwealth authorities.

What laws or instruments under the CAC Act are not in this compilation?

This compilation does not include:

- the Commonwealth Authorities and Companies (Financial Statements) Orders that govern the preparation of financial statements by Commonwealth authorities; and
- General Policy Orders issued by the Finance Minister that apply to Commonwealth authorities and wholly-owned Commonwealth companies under sections 28, 43 and 48A of the CAC Act.

These instruments are available on the Federal Register of Legislative Instruments at www.comlaw.gov.au.
Related documents and further information

For further information on the Commonwealth’s financial framework, please refer to related publications in the Financial Management Reference (FMR) series:3
• FMR No.1, List of Australian Government Bodies and Governance Relationships;
• FMR No.2, Governance Arrangements for Australian Government Bodies;
• FMR No.3, Financial Management and Accountability Legislation;
• FMR No.5, Introduction to Cost-Benefit Analysis and Alternative Evaluation Methodologies;
• FMR No.6, Handbook of Cost-Benefit Analysis; and

Who to contact?
• Comments, corrections and queries can be directed to Finance’s Legislative Review Branch by emailing LRB@finance.gov.au.

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3 The FMR series publications are available at www.finance.gov.au/publications. Hard copies can be obtained by emailing a request to LRB@finance.gov.au.
Commonwealth Authorities and Companies Act 1997
Commonwealth Authorities and Companies Act 1997

Act No. 153 of 1997 as amended

This compilation was prepared on 1 September 2011 taking into account amendments up to Act No. 89 of 2011

The text of any of those amendments not in force on that date is appended in the Notes section

The operation of amendments that have been incorporated may be affected by application provisions that are set out in the Notes section

Prepared by the Office of Legislative Drafting and Publishing, Attorney-General’s Department, Canberra
Reader’s Guide

This Guide aims to give you a general overview of the matters covered by this Act. It also gives you some information about the way this Act is organised.

Overview of this Act

The rules in this Act apply to Commonwealth authorities and Commonwealth companies. Commonwealth authority is defined in section 7. Commonwealth company is defined in section 34.

This Act regulates certain aspects of the financial affairs of Commonwealth authorities. In particular, it has detailed rules about reporting and accountability. This Act also deals with other matters relating to Commonwealth authorities, such as banking and investment and the conduct of officers.

For Commonwealth companies, this Act has reporting requirements and other requirements that apply in addition to the requirements of the Corporations Act 2001.

Summary of this Act

Part 1 Preliminary: This Part deals with the commencement of this Act, its application to things outside Australia and its application to the Crown.

Part 2 General provisions about definitions, offences and civil penalties: This Part contains definitions of terms that are frequently used throughout this Act and general provisions about offences and civil penalty provisions. Schedule 2 sets out the civil and criminal consequences of contravening a civil penalty provision.

Part 3 Reporting and other obligations for Commonwealth authorities: This Part sets out reporting and accountability rules for Commonwealth authorities. It also deals with matters such as banking, investment and the conduct of officers. Schedule 1 deals with the content of the annual report, financial statements and auditor’s report.
Part 3A  **Interjurisdictional authorities:** This Part sets out that the regulations may prescribe a Commonwealth authority to be an interjurisdictional authority. An interjurisdictional authority involves, jointly, the Commonwealth and participating State and/or Territory jurisdictions in the governance of that authority. This Part also provides that the regulations may set out the obligations of officers of an interjurisdictional authority.

Part 4  **Reporting and other obligations for Commonwealth companies:** This Part sets out reporting and other rules for Commonwealth companies. These requirements are additional to those that apply under the *Corporations Act 2001*.

Part 5  **Miscellaneous:** This Part deals with miscellaneous matters such as Finance Minister’s Orders, regulations and delegations.

**Related legislation**

The following Acts are directly relevant to the operation or interpretation of this Act.

The Annual Appropriation Acts appropriate money out of the Consolidated Revenue Fund, including money to be paid directly to CAC Act bodies by the relevant portfolio Departments.

The *Auditor-General Act 1997* establishes the Office of Auditor-General and sets out the functions of the Auditor-General.

The *Acts Interpretation Act 1901* contains many general rules about the meaning or effect of many terms and provisions that are commonly used in Commonwealth Acts.

The main purpose of the *Financial Management and Accountability Act 1997* is to establish a framework for the proper management of public money and public property (broadly, money or property that is owned or held by the Commonwealth). Public money and public property is usually handled by Departments and other Agencies on behalf of the Commonwealth.

This list is not exhaustive. Acts other than those listed above might also affect the operation or interpretation of this Act.
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An Act to provide reporting, accountability and other rules for Commonwealth authorities and Commonwealth companies, and for related purposes

Part 1—Preliminary

1 Short title [see Note 1]

This Act may be cited as the Commonwealth Authorities and Companies Act 1997.

2 Commencement [see Note 1]

This Act commences on the same day as the Financial Management and Accountability Act 1997.

3 This Act binds the Crown

This Act binds the Crown in right of the Commonwealth, but does not make the Crown liable to be prosecuted for an offence.

4 This Act extends to things outside Australia

This Act extends to acts, omissions, matters and things outside Australia (unless the contrary intention appears).
Part 2—General provisions about definitions, offences and civil penalties

5 Definitions

In this Act, unless the contrary intention appears:

*Agency* has the same meaning as in the *Public Service Act 1999*.

*Agency Head* has the same meaning as in the *Public Service Act 1999*.

*APS employee* has the same meaning as in the *Public Service Act 1999*.

*bank* means:
(a) a person who carries on the business of banking, either in Australia or outside Australia; or
(b) any other institution:
   (i) that carries on a business in Australia that consists of or includes taking money on deposit; and
   (ii) the operations of which are subject to prudential supervision or regulation under a law of the Commonwealth, a State or a Territory.

*books* includes:
(a) a register; and
(b) any other record of information; and
(c) financial reports or financial records, however compiled, recorded or stored; and
(d) a document.

*civil penalty provision* has the meaning given by subclause 1(1) of Schedule 2.

*Commonwealth authority* has the meaning given by section 7.

*Commonwealth company* has the meaning given by section 34.
consolidated financial statements, in relation to a Commonwealth authority or Commonwealth company, means financial statements for the group consisting of:

(a) the authority or company; and
(b) the entities that were subsidiaries at any relevant time.

Corporations Act company means a body corporate that is incorporated, or taken to be incorporated, under the Corporations Act 2001.

court means any court exercising jurisdiction under this Act.

Court means:

(a) the Federal Court of Australia; or
(b) the Supreme Court of a State or Territory.

director means:

(a) for a Commonwealth authority that has a council or other governing body—a member of the governing body; or
(b) for a Commonwealth authority that does not have a council or other governing body—a member of the authority; or
(c) for a Commonwealth company—a person who is a director of the company for the purposes of the Corporations Act 2001.

enabling legislation, in relation to a Commonwealth authority, means the Act, regulations or Ordinance by or under which the authority is incorporated.

Finance Minister means the Minister who administers this Act.

Finance Minister’s Orders means Orders made under section 48.

financial statements includes consolidated financial statements.

financial year:

(a) means, for a Commonwealth authority:

(i) a period of 12 months commencing on 1 July; or
(ii) if the enabling legislation specifies another period of 12 months as the financial year for the authority for the purpose of this Act—a period of 12 months as so specified; and
Part 2  General provisions about definitions, offences and civil penalties

Section 5

(b) means, for a Commonwealth company, the company’s annual accounting period.

**GBE** or **government business enterprise** means a Commonwealth authority or Commonwealth company that is prescribed by the regulations for the purpose of this definition.

**general law** means the principles and rules of the common law and equity.

**General Policy Order** means an Order made under section 48A.

**involved**: a person is involved in a contravention if, and only if, the person has:

(a) aided, abetted, counselled or procured the contravention; or
(b) has induced, whether by threats or promises or otherwise, the contravention; or
(c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the contravention; or
(d) has conspired with others to effect the contravention.

**Minister** includes the President of the Senate and the Speaker of the House of Representatives.

**officer**, in relation to a Commonwealth authority, means:

(a) a director of the authority; or
(b) a senior manager of the authority.

**responsible Minister** means:

(a) for a Commonwealth authority—the Minister who is responsible for the authority; or
(b) for a Commonwealth company:

(i) the Minister who is prescribed by the regulations as the Minister responsible for the company; or
(ii) if no Minister is prescribed—the Minister who is responsible for the company.

**senior manager** means:

(a) in relation to a Commonwealth authority—a person (other than a director of the authority, a Minister, or an APS employee engaged as an employee for the purposes of an Agency other than the authority) who:
6 Civil penalties

Schedule 2 deals with the civil consequences of contravening civil penalty provisions.
Part 3—Reporting and other obligations for Commonwealth authorities

Division 1—Preliminary

7 Meaning of Commonwealth authority

(1) In this Act, Commonwealth authority means either of the following kinds of body that holds money on its own account:
   (a) a body corporate that is incorporated for a public purpose by an Act;
   (b) a body corporate that is incorporated for a public purpose by:
      (i) regulations under an Act; or
      (ii) an Ordinance of an external Territory (other than Norfolk Island) or regulations under such an Ordinance; and is prescribed for the purposes of this paragraph by regulations under this Act.

(2) None of the following are Commonwealth authorities:
   (a) Corporations Act companies;
   (b) corporations registered under the Corporations (Aboriginal and Torres Strait Islander) Act 2006;
   (c) associations that are organisations (within the meaning of the Fair Work (Registered Organisations) Act 2009).

(3) For the purposes of subsection (1), all money that a body holds is taken to be held by it on its own account, unless the money is public money as defined in section 5 of the Financial Management and Accountability Act 1997.

8 Role of Auditor-General

(1) The Auditor-General is to be the auditor of each Commonwealth authority.

(2) The Auditor-General is to audit the financial statements of each subsidiary of a Commonwealth authority (there are exceptions to this—see subsection 12(4)).
Note: If the Auditor-General is not the subsidiary’s auditor, this means that the Auditor-General has to do an audit of the statements in addition to that done by the subsidiary’s auditor.
Section 9

Division 2—Reporting obligations

Subdivision A—Annual report and related obligations

9 Directors must prepare annual report

(1) The directors of a Commonwealth authority must:
   (a) prepare an annual report in accordance with Schedule 1 for each financial year; and
   (b) give it to the responsible Minister by the deadline for the financial year for presentation to the Parliament.

Note: Section 34C (other than subsection 34C(2)) of the Acts Interpretation Act 1901 applies to annual reports prepared under this section.

(2) The deadline is:
   (a) the 15th day of the 4th month after the end of the financial year; or
   Note: The deadline will be 15 October if the financial year ends on 30 June. Financial year is defined in section 5.
   (b) the end of such further period granted under subsection 34C(5) of the Acts Interpretation Act 1901.

10 Modified requirements for first year of existence

(1) If a Commonwealth authority is established during the last 3 months of a financial year:
   (a) the directors are not required to prepare an annual report for that financial year; and
   (b) the period from the time of establishment to the end of the financial year must be dealt with in the next annual report.

(2) If a Commonwealth authority is established during the first 9 months of a financial year, the annual report for the financial year must cover the period from the time of establishment to the end of the financial year.

11 Contravention of annual report rules by directors

(1) A director of a Commonwealth authority contravenes this subsection if the director:
Reporting and other obligations for Commonwealth authorities  **Part 3**
Reporting obligations  **Division 2**

Section 12

(a) causes a directors’ reporting rule to be contravened; or
(b) fails to take all reasonable steps to comply with, or secure compliance with, a directors’ reporting rule.

Note: This subsection is a civil penalty provision (see Schedule 2).

(1A) A director of the authority commits an offence if the director contravenes subsection (1) and the contravention is dishonest.

Penalty: 2,000 penalty units or imprisonment for 5 years, or both.

(2) If a contravention of a directors’ reporting rule consists of an omission from the financial statements, it is a defence if the defendant proves that the information omitted was immaterial and did not affect the giving of a true and fair view of the matters required by the Finance Minister’s Orders to be included in the statements.

(3) In this section:

directors’ reporting rule means section 9 or any of the requirements of Schedule 1 that impose obligations on the directors.

**12 Audit of relevant subsidiary’s financial statements**

(1) Subject to subsection (4), the directors of a Commonwealth authority must do whatever is necessary to ensure that all relevant subsidiary’s financial statements are audited by the Auditor-General.

(2) For a subsidiary that is a Corporations Act company that, under the Corporations Act 2001, is required to have those statements audited, the Auditor-General’s report on the subsidiary’s financial statements must be prepared using the relevant rules in the Corporations Act 2001. Those rules must also be used for other subsidiaries, so far as is practicable.

(3) The directors of the authority must give the report to the responsible Minister, together with a copy of the relevant subsidiary’s financial statements.

(4) Relevant financial statements of a subsidiary do not have to be audited by the Auditor-General if:
Part 3 Reporting and other obligations for Commonwealth authorities
Division 2 Reporting obligations

Section 13

(a) the subsidiary is incorporated or formed in a place outside Australia; and
(b) either:
   (i) under the law applying to the subsidiary in that place, the Auditor-General cannot be appointed as auditor of the subsidiary; or
   (ii) in the Auditor-General’s opinion, it is impracticable or unreasonable for the Auditor-General to audit, or to be required to audit, the statements.

(5) In this section:

relevance subsidiary’s financial statements, in relation to a Commonwealth authority, means financial statements of an entity for an annual accounting period of the entity, where the entity is a subsidiary of the authority at the end of that accounting period.

Subdivision B—Other reporting obligations

13 Interim reports

(1) The Finance Minister may, by notice in the Gazette, require particular Commonwealth authorities or a class of Commonwealth authorities to give the responsible Minister either:
   (a) an interim report for the first 6 months of a financial year; or
   (b) an interim report for each of the following periods:
      (i) the first 3 months of each financial year;
      (ii) the first 6 months of each financial year;
      (iii) the first 9 months of each financial year.

(2) The interim report must include:
   (a) a report of operations, prepared by the directors in accordance with the Finance Minister’s Orders; and
   (b) financial statements, prepared by the directors in accordance with the Finance Minister’s Orders; and
   (c) a report prepared by the Auditor-General in accordance with the regulations.

(3) The directors must give the interim report to the responsible Minister within 2 months after the end of the period to which the report relates.
Section 14

(4) The responsible Minister may grant an extension of time in special circumstances.

(5) The responsible Minister must table the interim report in each House of the Parliament as soon as practicable.

14 Estimates

(1) The directors of a Commonwealth authority (other than a GBE) must prepare budget estimates for each financial year, and for any other periods directed by the responsible Minister.

(2) The estimates:
   (a) must be in the form required by the responsible Minister; and
   (b) must be given to the responsible Minister within the time required by the responsible Minister.

15 Responsible Minister to be notified of significant events

(1) If a Commonwealth authority, or any of its subsidiaries, proposes to do any of the following things, the directors of the Commonwealth authority must immediately give the responsible Minister written particulars of the proposal:
   (a) form a company or participate in the formation of a company;
   (b) participate in a significant partnership, trust, unincorporated joint venture or similar arrangement;
   (c) acquire or dispose of a significant shareholding in a company;
   (d) acquire or dispose of a significant business;
   (e) commence or cease a significant business activity;
   (f) make a significant change in the nature or extent of its interest in a significant partnership, trust, unincorporated joint venture or similar arrangement.

(2) The responsible Minister may give written guidelines to the directors that are to be used by the directors in deciding whether a proposal is covered by subsection (1).

16 Keeping responsible Minister and Finance Minister informed

(1) The directors of a Commonwealth authority must:
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Division 2 Reporting obligations

Section 17

(a) keep the responsible Minister informed of the operations of the authority and its subsidiaries; and
(b) give the responsible Minister such reports, documents and information in relation to those operations as the responsible Minister requires; and
(c) give the Finance Minister such reports, documents and information in relation to those operations as the Finance Minister requires.

(2) The directors must comply with requirements under paragraphs (1)(b) and (c) within the time limits set by the Minister concerned.

17 Corporate plan for GBE

(1) This section applies to a Commonwealth authority that is a GBE.

(2) The directors must prepare a corporate plan at least once a year and give it to the responsible Minister.

(3) The plan must cover a period of at least 3 years.

(4) If the Commonwealth authority has subsidiaries, the plan must cover both the authority and its subsidiaries. In particular, for each subsidiary the plan must include details of the matters specified in the regulations for the purposes of subsection (6), so far as they are applicable.

(5) The directors must keep the responsible Minister informed about:

(a) significant changes to the plan; and
(b) matters that arise that might significantly affect the achievement of the objectives in the plan.

(6) The plan must include details of matters (so far as they are applicable) specified in the regulations for the purposes of this subsection.

(7) The plan must also cover any other matters required by the responsible Minister (which may include further details about the matters specified in the regulations for the purposes of subsection (6)).
(8) The responsible Minister may give written guidelines to the directors that are to be used by the directors in deciding which matters are covered by subsection (5).
Division 3—Banking, investment etc.

18 Banking and investment (authorities other than GBEs and SMAs)

(1) This section applies to a Commonwealth authority that is not a GBE or SMA.

(2) The authority must pay all money received by it into an account maintained by it with a bank.

(3) The authority may invest surplus money:
   (a) on deposit with a bank; or
   (b) in securities of the Commonwealth or of a State or Territory; or
   (c) in securities guaranteed by the Commonwealth, a State or a Territory; or
   (d) in any other manner approved by the Finance Minister.

(4) A provision in the authority’s enabling legislation to the effect that the authority must not enter into a contract involving the expenditure or payment of more than a specified amount of money without the approval of a specified person does not apply to a contract for the investment of money under subsection (3), unless the provision expressly states that it applies to such a contract.

(5) In this section:

   *surplus money* means money of the authority that is not immediately required for the purposes of the authority.

19 Banking and investment (GBEs and SMAs)

(1) This section applies to a Commonwealth authority that is a GBE or SMA.

(2) The authority must pay all money received by it into an account maintained by it with a bank.

(3) The authority may invest surplus money:
   (a) on deposit with any bank; or

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Banking, investment etc.  **Division 3**

Section 20

(b) in securities of the Commonwealth or of a State or Territory; or
(c) in securities guaranteed by the Commonwealth, a State or a Territory; or
(d) in any other manner that is consistent with sound commercial practice.

(4) A provision in the authority’s enabling legislation to the effect that the authority must not enter into a contract involving the expenditure or payment of more than a specified amount of money without the approval of a specified person does not apply to a contract for the investment of money under subsection (3), unless the provision expressly states that it applies to such a contract.

(5) In this section:

**surplus money** means money of the authority that is not immediately required for the purposes of the authority.

### 20 Accounting records

(1) A Commonwealth authority must keep accounting records that properly record and explain its transactions and financial position and must keep those records in a way that:

(a) enables the preparation of the financial statements required by this Act; and

(b) allows those financial statements to be conveniently and properly audited in accordance with this Act.

(2) The authority must retain the records for at least 7 years after completion of the transactions to which they relate.

(3) The authority must make the records available at all reasonable times for inspection by any director of the authority.

(4) An officer of the authority contravenes this subsection if the officer:

(a) causes subsection (1), (2) or (3) to be contravened; or

(b) fails to take all reasonable steps to comply with, or secure compliance with, subsection (1), (2) or (3).

Note: This subsection is a civil penalty provision (see Schedule 2).
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Division 3  Banking, investment etc.

Section 20

(5) An officer of the authority commits an offence if the officer contravenes subsection (4) and the contravention is dishonest.

Penalty for a contravention of this subsection: 2,000 penalty units or imprisonment for 5 years, or both.
Division 4—Conduct of officers

21 Background to duties of directors, other officers and employees

(1) This Part sets out some of the most significant duties of officers and employees of Commonwealth authorities. Other duties are imposed by other provisions of this Act and other laws (including the general law).

(2) Section 5 defines both director and officer.

Subdivision A—General duties

22 Care and diligence—civil obligation only

Care and diligence—officers

(1) An officer of a Commonwealth authority must exercise his or her powers and discharge his or her duties with the degree of care and diligence that a reasonable person would exercise if he or she:

(a) were an officer of a Commonwealth authority in the Commonwealth authority’s circumstances; and

(b) occupied the office held by, and had the same responsibilities within the Commonwealth authority as, the officer.

Note: This subsection is a civil penalty provision (see Schedule 2).

Business judgment rule

(2) An officer of a Commonwealth authority who makes a business judgment is taken to meet the requirements of subsection (1), and their equivalent duties under the general law, in respect of the judgment if he or she:

(a) makes the judgment in good faith for a proper purpose; and

(b) does not have a material personal interest in the subject matter of the judgment; and

(c) informs himself or herself about the subject matter of the judgment to the extent he or she reasonably believes to be appropriate; and

(d) rationally believes that the judgment is in the best interests of the Commonwealth authority.
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Division 4  Conduct of officers

Section 23

The officer’s belief that the judgment is in the best interests of the Commonwealth authority is a rational one unless the belief is one that no reasonable person in his or her position would hold.

Note: This subsection only operates in relation to duties under this section and their equivalents under the general law (including the duty of care that arises under the common law principles governing liability for negligence)—it does not operate in relation to duties under any other provision of this Act or under any other laws.

(3) In this section:

business judgment means any decision to take or not take action in respect of a matter relevant to the operations of the Commonwealth authority.

23 Good faith—civil obligations

Good faith—officers

(1) An officer of a Commonwealth authority must exercise his or her powers and discharge his or her duties:

(a) in good faith in the best interests of the Commonwealth authority; and

(b) for a proper purpose.

Note 1: This subsection is a civil penalty provision (see Schedule 2).
Note 2: Section 187 of the Corporations Act 2001 deals with the position of directors of wholly-owned subsidiaries of Commonwealth authorities.
Note 3: Section 27A makes provision for persons who are also APS employees or Agency Heads.

(2) A person who is involved in a contravention of subsection (1) contravenes this subsection.

Note 1: Section 5 defines involved.
Note 2: This subsection is a civil penalty provision (see Schedule 2).
Note 3: Section 27A makes provision for persons who are also APS employees or Agency Heads.
24 Use of position—civil obligations

Use of position—officers and employees

(1) An officer or employee of a Commonwealth authority must not improperly use his or her position to:
    (a) gain an advantage for him or her or someone else; or
    (b) cause detriment to the Commonwealth authority or to another person.

Note 1: Section 27A makes provision for persons who are also APS employees or Agency Heads.
Note 2: This subsection is a civil penalty provision (see Schedule 2).

(2) A person who is involved in a contravention of subsection (1) contravenes this subsection.

Note 1: Section 5 defines involved.
Note 2: This subsection is a civil penalty provision (see Schedule 2).

25 Use of information—civil obligations

Use of information—officers and employees

(1) A person who obtains information because they are, or have been, an officer or employee of a Commonwealth authority must not improperly use the information to:
    (a) gain an advantage for himself or herself or someone else; or
    (b) cause detriment to the Commonwealth authority or to another person.

Note 1: Section 27A makes provision for persons who are also APS employees or Agency Heads.
Note 2: This duty continues after the person stops being an officer or employee of the Commonwealth authority.
Note 3: This subsection is a civil penalty provision (see Schedule 2).

(2) A person who is involved in a contravention of subsection (1) contravenes this subsection.

Note 1: Section 5 defines involved.
Note 2: This subsection is a civil penalty provision (see Schedule 2).
Part 3 Reporting and other obligations for Commonwealth authorities
Division 4 Conduct of officers

Section 26

26 Good faith, use of position and use of information—criminal offences

Good faith—officers

(1) An officer of a Commonwealth authority commits an offence if he or she:
   (a) is reckless; or
   (b) is intentionally dishonest;
and fails to exercise his or her powers and discharge his or her duties:
   (c) in good faith in what he or she believes to be in the best interests of the Commonwealth authority; or
   (d) for a proper purpose.

Note: Section 187 of the Corporations Act 2001 deals with the position of directors of wholly-owned subsidiaries of Commonwealth authorities.

Penalty for a contravention of this subsection: 2,000 penalty units or imprisonment for 5 years, or both.

Use of position—officers and employees

(2) An officer or employee of a Commonwealth authority commits an offence if he or she uses his or her position dishonestly:
   (a) with the intention of directly or indirectly gaining an advantage for himself or herself, or someone else, or causing detriment to the Commonwealth authority or to another person; or
   (b) recklessly as to whether the use may result in him or her or someone else directly or indirectly gaining an advantage, or in causing detriment to the Commonwealth authority or to another person.

Penalty for a contravention of this subsection: 2,000 penalty units or imprisonment for 5 years, or both.

Use of information—officers and employees

(3) A person who obtains information because he or she is, or has been, an officer or employee of a Commonwealth authority commits an offence if he or she uses the information dishonestly:
Section 27A

(a) with the intention of directly or indirectly gaining an advantage for himself or herself, or someone else, or causing detriment to the Commonwealth authority or to another person; or

(b) recklessly as to whether the use may result in himself or herself or someone else directly or indirectly gaining an advantage, or in causing detriment to the Commonwealth authority or to another person.

Penalty for a contravention of this subsection: 2,000 penalty units or imprisonment for 5 years, or both.

27A Compliance with statutory and other duties [see Note.2]

(1) An officer of a Commonwealth authority does not contravene section 23, 24 or 25, or their equivalent duties at common law and in equity, by doing an act:

(a) that another provision of this Act requires the officer to do; or

(b) in the course of the performance of his or her duties as an APS employee or Agency Head.

Note: Subsection (1) provides a defence for a defendant in proceedings for a contravention of section 23, 24 or 25, or their equivalent duties at common law or in equity.

(2) However, paragraph (1)(b) does not apply if the enabling legislation for the Commonwealth authority establishes a Statutory Agency in relation to the Commonwealth authority and the officer is:

(a) an APS employee in the Statutory Agency; or

(b) the Agency Head of the Statutory Agency.

27B Interaction of sections 22 to 26 with other laws etc.

Sections 22 to 26:

(a) have effect in addition to, and not in derogation of, any rule of law relating to the duty or liability of a person because of his or her office or employment in relation to a Commonwealth authority; and

(b) do not prevent the commencement of proceedings for a breach of duty or in respect of a liability referred to in paragraph (a).
Part 3  Reporting and other obligations for Commonwealth authorities
Division 4  Conduct of officers

Section 27C

This section does not apply to subsections 22(2) and (3) to the extent to which they operate on the duties under the general law that are equivalent to the requirements of subsection 22(1).

27C Disqualification order for contravention of civil penalty provision

(1) The Court may disqualify a person from managing bodies corporate for a period that the Court considers appropriate if:
   (a) a declaration is made under clause 1 of Schedule 2 (civil penalty provision) that the person has contravened a civil penalty provision; and
   (b) the Court is satisfied that the disqualification is justified.

(2) An application for a disqualification order under subsection (1) may be made by:
   (a) the Finance Minister; or
   (b) some other person authorised in writing by the Finance Minister, under this paragraph, to make the application.

An authorisation for the purposes of paragraph (b) may relate to applications in relation to specified contraventions, or to all contraventions, of civil penalty provisions.

(3) In determining whether the disqualification is justified, the Court may have regard to:
   (a) the person’s conduct in relation to the management, business or property of any Commonwealth authority or other body corporate; and
   (b) any other matters that the Court considers appropriate.

(4) A person commits an offence if:
   (a) such a disqualification is in force against the person; and
   (b) the person is a director of a Commonwealth authority.

Penalty: Imprisonment for 1 year.

(4A) However, the person has an excuse if the person is a director of a Commonwealth authority with the leave of the Court.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4A), see subsection 13.3(3) of the Criminal Code.
Section 27D

(5) When granting leave under subsection (4A), the Court may impose conditions or restrictions that the Court considers appropriate.

(6) A person must not contravene such a condition or restriction.

Penalty: Imprisonment for 1 year.

(7) A person may only apply for leave under subsection (4) if he or she has given the Finance Minister at least 21 days notice of the application.

(8) On the application of the Finance Minister, the Court may revoke leave granted under subsection (4A).

27D Reliance on information or advice provided by others

If:

(a) a director relies on information, or professional or expert advice, given or prepared by:

(i) an employee of the Commonwealth authority whom the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned; or

(ii) a professional adviser or expert in relation to matters that the director believes on reasonable grounds to be within the person’s professional or expert competence; or

(iii) another director or officer in relation to matters within the director’s or officer’s authority; or

(iv) a committee of directors on which the director did not serve in relation to matters within the committee’s authority; and

(b) the reliance was made:

(i) in good faith; and

(ii) after making an independent assessment of the information or advice, having regard to the director’s knowledge of the authority and the complexity of the structure and operations of the authority; and

(c) the reasonableness of the director’s reliance on the information or advice arises in proceedings brought to determine whether a director has performed a duty under this Division or an equivalent general law duty;
Section 27E

the director’s reliance on the information or advice is taken to be reasonable unless the contrary is proved.

27E Responsibility for actions of directors delegate

(1) If the directors of a Commonwealth authority delegate a power under its enabling legislation, a director is responsible for the exercise of the power by the delegate as if the power had been exercised by the directors themselves.

(2) A director is not responsible under subsection (1) if:
   (a) the director believed on reasonable grounds at all times that the delegate would exercise the power in conformity with the duties imposed on directors of the Commonwealth authority by this Act and the authority’s enabling legislation; and
   (b) the director believed:
      (i) on reasonable grounds; and
      (ii) in good faith; and
      (iii) after making proper inquiry if the circumstances indicated the need for inquiry;
         that the delegate was reliable and competent in relation to the power delegated.

Subdivision B—Disclosure of, and voting on matters involving, material personal interests

27F Material personal interest—director’s duty to disclose

Director’s duty to notify other directors of material personal interest when conflict arises

(1) A director of a Commonwealth authority who has a material personal interest in a matter that relates to the affairs of the authority must give the other directors notice of the interest unless subsection (2) says otherwise.

Penalty: 10 penalty units.

(1A) For an offence based on subsection (1), strict liability applies to the circumstance that the director of the authority has a material personal interest in a matter that relates to the affairs of the authority.
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Section 27F

Note: For strict liability, see section 6.1 of the Criminal Code.

(2) The director does not need to give notice of an interest under subsection (1) if:

(a) the interest:
   (i) arises in relation to the director’s remuneration as a director of the authority; or
   (ii) relates to a contract that insures, or would insure, the director against liabilities the director incurs as an officer of the authority (but only if the contract does not make the authority or a subsidiary of the authority the insurer); or
   (iii) relates to any payment by the authority or a subsidiary of the authority in respect of an indemnity permitted under section 27M or any contract relating to such an indemnity; or
   (iv) is in a contract, or proposed contract, with, or for the benefit of, or on behalf of, a subsidiary of the authority and arises merely because the director is a director of the subsidiary; or

(b) all the following conditions are satisfied:
   (i) the director has already given notice of the nature and extent of the interest and its relation to the affairs of the authority under subsection (1);
   (ii) if a person who was not a director of the authority at the time when the notice under subsection (1) was given is appointed as a director of the authority—the notice is given to that person;
   (iii) the nature or extent of the interest has not materially increased above that disclosed in the notice; or

(c) the director has given a standing notice of the nature and extent of the interest under section 27G and the notice is still effective in relation to the interest.

(3) The notice required by subsection (1) must:

(a) give details of:
   (i) the nature and extent of the interest; and
   (ii) the relation of the interest to the affairs of the authority; and

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Section 27G

(b) be given at a directors’ meeting as soon as practicable after the director becomes aware of his or her interest in the matter.

The details must be recorded in the minutes of the meeting.

Effect of contravention by director

(4) A contravention of this section by a director does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing.

27G Director may give other directors standing notice about an interest

Power to give notice

(1) A director of a Commonwealth authority who has an interest in a matter may give the other directors standing notice of the nature and extent of the interest in the matter in accordance with subsection (2). The notice may be given at any time and whether or not the matter relates to the affairs of the authority at the time the notice is given.

Note: The standing notice may be given to the other directors before the interest becomes a material personal interest.

(2) The notice under subsection (1) must:

(a) give details of the nature and extent of the interest; and

(b) be given:

(i) at a directors’ meeting (either orally or in writing); or

(ii) to the other directors individually in writing.

The standing notice is given under subparagraph (b)(ii) when it has been given to every director.

Standing notice must be tabled at meeting if given to directors individually

(3) If the standing notice is given to the other directors individually in writing it must be tabled at the next directors’ meeting after it is given.
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*Nature and extent of interest must be recorded in minutes*

(4) The director must ensure that the nature and extent of the interest disclosed in the standing notice is recorded in the minutes of the meeting at which the standing notice is given or tabled.

*Dates of effect and expiry of standing notice*

(5) The standing notice:
   (a) takes effect as soon as it is given; and
   (b) ceases to have effect if a person who was not a director of the authority at the time when the notice was given is appointed as a director of the authority.

A standing notice that ceases to have effect under paragraph (b) commences to have effect again if it is given to the person referred to in that paragraph.

*Effect of material increase in nature or extent of interest*

(6) The standing notice ceases to have effect in relation to a particular interest if the nature or extent of the interest materially increases above that disclosed in the notice.

*Effect of contravention by director*

(7) A contravention of this section by a director does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing.

**27H Interaction of sections 27F and 27G with other laws etc.**

Sections 27F and 27G have effect in addition to, and not in derogation of:
   (a) any general law rule about conflicts of interest; and
   (b) any provision in the Commonwealth authority’s enabling legislation that restricts a director from:
      (i) having a material personal interest in a matter; or
      (ii) holding an office or possessing property; involving duties or interests that conflict with their duties or interests as a director.
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Section 27J

27J Restrictions on voting

Restrictions on voting and being present

(1) A director of a Commonwealth authority who has a material personal interest in a matter that is being considered at a directors’ meeting must not:
   (a) be present while the matter is being considered at the meeting; or
   (b) vote on the matter.

Penalty: 5 penalty units.

(1A) Subsection (1) does not apply if:
   (a) subsection (2) or (3) allows the director to be present; or
   (b) the interest does not need to be disclosed under section 27F.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A), see subsection 13.3(3) of the Criminal Code.

(1B) An offence based on subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the Criminal Code.

Participation with approval of other directors

(2) The director may be present and vote if directors who do not have a material personal interest in the matter have passed a resolution that:
   (a) identifies the director, the nature and extent of the director’s interest in the matter and its relation to the affairs of the authority; and
   (b) states that those directors are satisfied that the interest should not disqualify the director from voting or being present.

Participation with Ministerial approval

(3) The director may be present and vote if they are so entitled under a declaration or order made by the responsible Minister under section 27K.

Effect of contravention by director

(4) A contravention by a director of:
   (a) this section; or
(b) a condition attached to a declaration or order made by the responsible Minister under section 27K; does not affect the validity of any resolution.

27K Minister’s power to make declarations and class orders

Minister’s power to make specific declarations

(1) The responsible Minister may declare in writing that a director of a Commonwealth authority who has a material personal interest in a matter that is being, or is to be, considered at a directors’ meeting may, despite the director’s interest, be present while the matter is being considered at the meeting, vote on the matter, or both be present and vote. However, the Minister may only make the declaration if:

(a) the number of directors entitled to be present and vote on the matter would be less than the quorum for a directors’ meeting if the director were not allowed to vote on the matter at the meeting; and

(b) the matter needs to be dealt with urgently, or if there is some other compelling reason for the matter being dealt with at the directors’ meeting.

(2) The declaration may:

(a) apply to all or only some of the directors; or

(b) specify conditions that the authority or director must comply with.

Responsible Minister’s power to make class orders

(3) The responsible Minister may make an order in writing that enables directors who have a material personal interest in a matter to be present while the matter is being considered at a directors’ meeting, vote on that matter, or both be present and vote. The order may be made in respect of a specified class of Commonwealth authorities, directors, resolutions or interests.

(4) The order may be expressed to be subject to conditions.

(5) Notice of the making, revocation or suspension of the order must be published in the Gazette.
Section 27L

27L Right of access to authority’s books

Right while director

(1) A director of a Commonwealth authority may inspect the books of the authority at all reasonable times for the purposes of a legal proceeding:
   (a) to which the director is a party; or
   (b) that the director proposes in good faith to bring; or
   (c) that the director has reason to believe will be brought against him or her.

Right during 7 years after ceasing to be director

(2) A person who has ceased to be a director of a Commonwealth authority may inspect the books of the authority at all reasonable times for the purposes of a legal proceeding:
   (a) to which the person is a party; or
   (b) that the person proposes in good faith to bring; or
   (c) that the person has reason to believe will be brought against him or her.

This right continues for 7 years after the person ceased to be a director of the authority.

Right to take copies

(3) A person authorised to inspect books under this section for the purposes of a legal proceeding may make copies of the books for the purposes of those proceedings.

Commonwealth authority not to refuse access

(4) A Commonwealth authority must allow a person to exercise his or her rights to inspect or take copies of the books under this section.
Division 4A—Restrictions on indemnities and insurance for officers

27M Indemnification and exemption of officer

Power to indemnify officers

(1) Except as provided in this section, a Commonwealth authority may indemnify a person who is or has been an officer of the authority from any liability incurred by the person as an officer of the authority.

Exemptions not allowed

(2) A Commonwealth authority, or a subsidiary of a Commonwealth authority, must not exempt a person (whether directly or through an interposed entity) from a liability to the authority incurred as an officer of the authority.

When indemnity for liability (other than for legal costs) not allowed

(3) A Commonwealth authority, or a subsidiary of a Commonwealth authority, must not indemnify a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against any of the following liabilities incurred as an officer of the authority:
   (a) a liability owed to the authority or a subsidiary of the authority; or
   (b) a liability for a civil penalty order under clause 3 of Schedule 2 or a compensation order under clause 4 of Schedule 2; or
   (c) a liability that is owed to someone other than the authority or a subsidiary of the authority and did not arise out of conduct in good faith.

This subsection does not apply to a liability for legal costs.

When indemnity for legal costs not allowed

(4) A Commonwealth authority, or a subsidiary of a Commonwealth authority, must not indemnify a person (whether by agreement or
by making a payment and whether directly or through an interposed entity) against legal costs incurred in defending an action for a liability incurred as an officer of the authority if the costs are incurred:

(a) in defending or resisting a proceedings in which the person is found to have a liability for which they could not be indemnified under subsection (3); or

(b) in defending or resisting criminal proceedings in which the person is found guilty; or

(c) in defending or resisting proceedings brought by the Finance Minister for a court order if the grounds for making the order are found by the court to have been established; or

(d) in connection with proceedings for relief to the person under this Act in which the Court denies the relief.

Paragraph (c) does not apply to costs incurred in responding to actions taken by the Finance Minister as part of an investigation before commencing proceedings for the court order.

(5) For the purposes of subsection (4), the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.

Section 27N  Insurance for certain liabilities of officers

(1) Except as provided in subsection (2), a Commonwealth authority may insure a person who is or has been an officer against liabilities incurred by the person as an officer.

(2) A Commonwealth authority, or a subsidiary of a Commonwealth authority, must not pay, or agree to pay, a premium for a contract insuring a person who is, or has been, an officer of the authority against a liability (other than one for legal costs) arising out of:

(a) conduct involving a wilful breach of duty in relation to the authority; or

(b) a contravention of section 24 or 25.

This section applies to a premium whether it is paid directly or through an interposed entity.

Penalty: 5 penalty units.
(3) An offence based on subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the Criminal Code.

27P Certain indemnities, exemptions, payments and agreements not authorised and certain documents void

(1) Sections 27M and 27N do not authorise anything that would otherwise be unlawful.

(2) Anything that purports to indemnify or insure a person against a liability or exempt them from a liability is void to the extent that it contravenes section 27M or 27N.
Division 5—Miscellaneous

28 Compliance with General Policy Orders

(1) The directors of a Commonwealth authority must ensure that the authority complies with a General Policy Order to the extent that the Order applies to the authority.

(2) The directors must also ensure, as far as practicable, that the subsidiaries of the authority comply with the Order to that extent.

28A Credit cards and credit vouchers

(1) A Commonwealth authority may obtain:
   (a) cash, goods or services on credit from any person by the use of a credit card; and
   (b) goods or services on credit from any person by the use of a credit voucher.

(2) The regulations may prescribe requirements in relation to the authority’s credit card or voucher, including requirements relating to:
   (a) the agreement between the authority and the person issuing the credit card or voucher; and
   (b) who is authorised to use the credit card or voucher on the authority’s behalf; and
   (c) the circumstances in which the credit card or voucher may be used; and
   (d) how the credit card or voucher is to be kept; and
   (e) the maximum amount that may be borrowed by way of the credit card or voucher; and
   (f) the period in which amounts borrowed by way of the credit card or voucher are to be repaid, being a period not longer than 60 days after the authority is notified by the lender of the amount borrowed.

(3) This section, and regulations made under this section, do not apply to a Commonwealth authority if, under the authority’s enabling legislation, the authority has an express power to borrow money (whether or not that power is subject to conditions).
28B Misuse of credit cards or credit vouchers—criminal offence

(1) A person must not use a Commonwealth authority credit card, Commonwealth authority credit card number or Commonwealth authority credit voucher to obtain cash, goods or services otherwise than for the authority.

Penalty: Imprisonment for 7 years.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(2) Subsection (1) does not apply to a particular use of a Commonwealth authority credit card, Commonwealth authority credit card number or Commonwealth authority credit voucher if:
   (a) the use is authorised by the regulations; and
   (b) the authority is reimbursed in accordance with the regulations.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2), see subsection 13.3(3) of the *Criminal Code*.

(3) For the purposes of paragraph (2)(b), an amount that is to be reimbursed to the authority is a debt due to the authority and is recoverable by the authority in a court of competent jurisdiction.

(4) In this section:

*Commonwealth authority credit card* means a credit card issued to the Commonwealth authority to enable the authority to obtain cash, goods or services on credit.

*Commonwealth authority credit voucher* means a credit voucher issued to the Commonwealth authority to enable the authority to obtain goods or services on credit.

29 Activities of subsidiaries

A Commonwealth authority must ensure that none of its subsidiaries does anything that the authority does not itself have power to do.

30 Aligning accounting periods of subsidiaries

(1) If the annual accounting period of a subsidiary of a Commonwealth authority is not the same as the financial year of the authority, the
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directors of the authority must do whatever is necessary to ensure that the annual accounting period of the subsidiary becomes the same as the authority’s financial year:

(a) within 12 months after the subsidiary becomes a subsidiary; or

(b) within 12 months after the commencement of this Act;

whichever is later.

(2) If the annual accounting period of a subsidiary is already the same as the authority’s financial year, the directors must do whatever is necessary to ensure that it continues to be the same.

(3) A director of a Commonwealth authority contravenes this subsection if the director:

(a) causes this section to be contravened; or

(b) fails to take all reasonable steps to comply with, or secure compliance with, this section.

Note: This is a civil penalty provision (see Schedule 2).

(4) A director of the authority commits an offence if the director contravenes subsection (3) and the contravention is dishonest.

Penalty for a contravention of this subsection: 2,000 penalty units or imprisonment for 5 years, or both.

31 Exemption from requirement to align accounting periods of subsidiaries

(1) The Finance Minister may grant a written exemption to the directors of a Commonwealth authority from the requirements of section 30, either generally or in relation to one or more subsidiaries.

(2) The exemption may be granted subject to conditions.

(3) The Finance Minister may, on behalf of the Commonwealth, engage a registered company auditor to investigate and report on an exemption application. For this purpose, registered company auditor means a person who is registered, or taken to be registered, as an auditor under the Corporations Act 2001.
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(4) The authority is liable to reimburse the Commonwealth for the costs of the investigation and report.

32 Audit committee

(1) The directors of a Commonwealth authority must establish and maintain an audit committee with functions that include:

(a) helping the authority and its directors to comply with obligations under this Act; and

(b) providing a forum for communication between the directors, the senior managers of the authority and the internal and external auditors of the authority.

(2) If the regulations state how the committee is to be constituted, it must be constituted in accordance with the regulations.

33 Special rules for Commonwealth authorities established by regulations etc.

(1) The application of this Act to Commonwealth authorities covered by paragraph 7(1)(b) is subject to any modifications that are prescribed by the regulations.

(2) In this section:

modifications includes additions, omissions and substitutions.
Part 3A—Interjurisdictional authorities

33A Interjurisdictional authorities

(1) The regulations may prescribe:
   (a) a Commonwealth authority to be an interjurisdictional authority for the purposes of this section; and
   (b) persons who comprise an interjurisdictional authority (including directors and employees, for example); and
   (c) a Minister of a State, the Australian Capital Territory, or the Northern Territory to be a State/Territory Minister for an interjurisdictional authority.

(2) The regulations may provide for the following:
   (a) the directors of an interjurisdictional authority to give an interim report, for a period mentioned in subsection 13(1), to a State/Territory Minister;
   (b) the directors of an interjurisdictional authority to give written particulars of a proposal mentioned in subsection 15(1) to a State/Territory Minister;
   (c) a State/Territory Minister to give written guidelines under subsection 15(2) to the directors of an interjurisdictional authority;
   (d) the directors of an interjurisdictional authority:
      (i) to keep a State/Territory Minister informed of the operations of the authority and its subsidiaries; or
      (ii) to give a State/Territory Minister the reports, documents and information in relation to those operations that the State/Territory Minister requires, within the time limits set by the State/Territory Minister;
   (e) the application of section 27A, with necessary modifications, to an officer or employee of a State or Territory;
   (f) anything that is necessary or convenient to be prescribed to give effect to paragraphs (a) to (e).
Part 4—Reporting and other obligations for Commonwealth companies

Division 1—Preliminary

34 Meaning of Commonwealth company, wholly-owned Commonwealth company and related terms

Meaning of Commonwealth company

(1) In this Act, Commonwealth company means a Corporations Act company that the Commonwealth controls. However, it does not include a company that is a subsidiary of a Commonwealth authority or Commonwealth company.

Meaning of controls

(1A) For the purposes of this Act, the Commonwealth controls a company if, and only if, it:

(a) controls the composition of the company’s board; or
(b) is in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the company; or
(c) holds more than one-half of the issued share capital of the company (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital).

(1B) Without limiting paragraph (1A)(a), the Commonwealth is taken to control the composition of a company’s board if the Commonwealth can appoint or remove all, or the majority, of the directors of the company.

(1C) For the purposes of subsection (1B), the Commonwealth is taken to have power to appoint a person as a director of a company if:

(a) the person cannot be appointed as a director of the company without the exercise by the Commonwealth of such a power in the person’s favour; or
(b) the person’s appointment as a director of the company follows necessarily from the person being:
   (i) an Agency Head; or
   (ii) a statutory office holder.

**Meaning of wholly-owned Commonwealth company**

(2) In this Act, *wholly-owned Commonwealth company* means any Commonwealth company, other than a company any of the shares in which are beneficially owned by a person other than the Commonwealth.

*Note:* Because of this definition, a Commonwealth company which is limited by guarantee is a wholly-owned Commonwealth company.

### 35 Role of Auditor-General

(1) The Auditor-General is, in relation to each Commonwealth company, either:
   (a) to be the auditor of the company under the *Corporations Act 2001*; or
   (b) if someone else is the company’s auditor—to give a report on the company’s financial statements (see subsection 36(2)).

(2) The Auditor-General is to audit the financial statements of each subsidiary of a Commonwealth company (there are exceptions to this—see subsection 37(4)).

*Note:* If the Auditor-General is not the subsidiary’s auditor, this means that the Auditor-General has to do an audit of the statements in addition to that done by the subsidiary’s auditor.
Division 2—Reporting obligations

Subdivision A—Annual report and related obligations

36 Annual Report

(1) A Commonwealth company must give the responsible Minister:
   (a) a copy of the company’s financial report, directors’ report and auditor’s report that the company is required by the Corporations Act 2001 to have for the financial year (or would be required by that Act to have if the company were a public company); and
   (b) any additional report under subsection (2); and
   (c) in the case of a wholly-owned Commonwealth company—any additional information or report required by the Finance Minister’s Orders.

(1A) The Commonwealth company must give the reports and information by:
   (a) if the company is required by the Corporations Act 2001 to hold an annual general meeting—the earlier of the following:
      (i) 21 days before the next annual general meeting after the end of the financial year;
      (ii) 4 months after the end of the financial year; and
   (b) in any other case—4 months after the end of the financial year;
   or the end of such further period granted under subsection 34C(5) of the Acts Interpretation Act 1901.

(1B) A director of the company contravenes this subsection if the director:
   (a) causes subsection (1) or (1A) to be contravened; or
   (b) fails to take all reasonable steps to comply with, or secure compliance with, subsection (1) or (1A).

Note: This is a civil penalty provision (see Schedule 2).

(1C) A director of the company commits an offence if the director contravenes subsection (1B) and the contravention is dishonest.

Penalty: 2,000 penalty units or imprisonment for 5 years, or both.
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Division 2 Reporting obligations

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(2) If the auditor’s report required by the *Corporations Act 2001* was prepared by an auditor other than the Auditor-General, subsection (1) also requires the company to give a report by the Auditor-General on the financial statements.

(3) In preparing a report for the purposes of subsection (2), the Auditor-General must use the same *Corporations Act 2001* rules as applied to the report by the other auditor.

(4) If the Commonwealth company is a wholly-owned Commonwealth company, or is not required to hold an annual general meeting, the responsible Minister must table the documents in each House of the Parliament as soon as practicable after receiving them. In all other cases, the Minister must table the documents in each House of the Parliament as soon as practicable after the annual general meeting of the company.

37 Audit of relevant subsidiary’s financial statements

(1) Subject to subsection (4), the directors of a Commonwealth company must do whatever is necessary to ensure that all relevant subsidiary’s financial statements are audited by the Auditor-General.

(2) For a subsidiary that is a Corporations Act company that, under the *Corporations Act 2001*, is required to have financial statements audited, the Auditor-General’s report must be prepared using the relevant rules in the *Corporations Act 2001*. Those rules must also be used for other subsidiaries, so far as is practicable.

(3) The directors of the Commonwealth company must give the report to the responsible Minister, together with a copy of the relevant subsidiary’s financial statements.

(4) Relevant financial statements of a subsidiary do not have to be audited by the Auditor-General if:
   (a) the subsidiary is incorporated or formed in a place outside Australia; and
   (b) either:
      (i) under the law applying to the subsidiary in that place, the Auditor-General cannot be appointed as auditor of the subsidiary; or
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(ii) in the Auditor-General’s opinion, it is impracticable or unreasonable for the Auditor-General to audit, or to be required to audit, the statements.

(5) In this section:

*relevant subsidiary’s financial statements*, in relation to a Commonwealth company, means financial statements of an entity for an annual accounting period of the entity, where the entity is a subsidiary of the company at the end of that accounting period.

**Subdivision B—Other reporting obligations**

**38 Interim reports**

(1) The Finance Minister may, by notice in the *Gazette*, require particular wholly-owned Commonwealth companies or a class of wholly-owned Commonwealth companies to give the responsible Minister either:

(a) an interim report for the first 6 months of a financial year; or

(b) an interim report for each of the following periods:

(i) the first 3 months of each financial year;

(ii) the first 6 months of each financial year;

(iii) the first 9 months of each financial year.

(2) The interim report must include:

(a) a report of operations, prepared by the directors in accordance with the Finance Minister’s Orders; and

(b) financial statements, prepared by the directors in accordance with the Finance Minister’s Orders; and

(c) a report prepared by the Auditor-General in accordance with the regulations.

(3) The directors must give the interim report to the responsible Minister within 2 months after the end of the period to which the report relates.

(4) The responsible Minister may grant an extension of time in special circumstances.

(5) The responsible Minister must table the interim report in each House of the Parliament as soon as practicable.
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39  Estimates

(1) The directors of a wholly-owned Commonwealth company (other than a GBE) must prepare budget estimates for each financial year, and for any other periods directed by the responsible Minister.

(2) The estimates:
   (a) must be in the form required by the responsible Minister; and
   (b) must be given to the responsible Minister within the time required by the responsible Minister.

40  Responsible Minister to be notified of significant events

(1) If a wholly-owned Commonwealth company, or any of its subsidiaries, proposes to do any of the following things, the directors of the Commonwealth company must immediately give the responsible Minister written particulars of the proposal:
   (a) form a company or participate in the formation of a company;
   (b) participate in a significant partnership, trust, unincorporated joint venture or similar arrangement;
   (c) acquire or dispose of a significant shareholding in a company;
   (d) acquire or dispose of a significant business;
   (e) commence or cease a significant business activity;
   (f) make a significant change in the nature or extent of its interest in a significant partnership, trust, unincorporated joint venture or similar arrangement.

(2) The responsible Minister may give written guidelines to the directors that are to be used by the directors in deciding whether a proposal is covered by subsection (1).

41  Keeping responsible Minister and Finance Minister informed

(1) The directors of a wholly-owned Commonwealth company must:
   (a) keep the responsible Minister informed of the operations of the Commonwealth company and its subsidiaries; and
   (b) give the responsible Minister such reports, documents and information in relation to those operations as the responsible Minister requires; and
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(c) give the Finance Minister such reports, documents and information in relation to those operations as the Finance Minister requires.

(2) The directors must comply with requirements under paragraphs (1)(b) and (c) within the time limits set by the Minister concerned.

42 Corporate plan for GBE

(1) This section applies to a wholly-owned Commonwealth company that is a GBE.

(2) The directors must prepare a corporate plan at least once a year and give it to the responsible Minister.

(3) The plan must cover a period of at least 3 years.

(4) If the Commonwealth company has subsidiaries, the plan must cover both the Commonwealth company and its subsidiaries. In particular, for each subsidiary the plan must include details of the matters specified in the regulations for the purposes of subsection (6), so far as they are applicable.

(5) The directors must keep the responsible Minister informed about:

(a) significant changes to the plan; and
(b) matters that arise that might significantly affect the achievement of the objectives in the plan.

(6) The plan must include details of matters (so far as they are applicable) specified in the regulations for the purposes of this subsection.

(7) The plan must also cover any other matters required by the responsible Minister (which may include further details about the matters specified in the regulations for the purposes of subsection (6)).

(8) The responsible Minister may give written guidelines to the directors that are to be used by the directors in deciding which matters are covered by subsection (5).
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Subdivision C—Miscellaneous

43 Compliance with General Policy Orders

(1) The directors of a wholly-owned Commonwealth company must ensure that the company complies with a General Policy Order to the extent that the Order applies to the company.

(2) The directors must also ensure, as far as practicable, that the subsidiaries of the company comply with the Order to that extent.

44 Audit committee

(1) The directors of a wholly-owned Commonwealth company must establish and maintain an audit committee with functions that include:

(a) helping the company and its directors to comply with obligations under this Act and the Corporations Act 2001; and

(b) providing a forum for communication between the directors, the senior managers of the company and the internal and external auditors of the company.

(2) If the regulations state how the committee is to be constituted, it must be constituted in accordance with the regulations.
Part 5—Miscellaneous

46 Companies conducted for the purposes of intelligence or security agencies

(1) The application of this Act to a company conducted for the purposes of an intelligence or security agency is subject to any modifications that are prescribed by the regulations.

(2) In this section:

   - *intelligence or security agency* has the meaning given by section 85ZL of the *Crimes Act 1914*;
   - *modifications* includes additions, omissions and substitutions.

47 Regulations may deal with how this Act applies if body stops being a Commonwealth authority

(1) The regulations may make provision dealing with how this Act applies in relation to a financial year of a body that ceases to be a Commonwealth authority during the financial year.

(2) Without limiting the generality of subsection (1), regulations for the purposes of that subsection may provide that this Act applies with specified modifications.

47A Compliance with government procurement requirements

(1) This section applies to Commonwealth authorities, and wholly-owned Commonwealth companies, specified in the regulations for the purposes of this section.

(2) Subject to subsection (3), the Finance Minister may, in writing, give directions to the directors of an authority or a company to which this section applies on matters related to the procurement of property or services.

(3) The Finance Minister must not give a direction that is inconsistent with Australia’s obligations under any international agreement that
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Deals with government procurement (whether or not the agreement also deals with other matters).

(4) Without limiting the generality of subsection (2), directions permitted by subsection (2) may apply, adopt or incorporate, with or without modifications, all or any of the Commonwealth Procurement Guidelines, as in force from time to time.

(5) The directors must ensure that the directions are complied with by the authority or company.

(6) The directors must also ensure, as far as practicable, that the directions are complied with by the subsidiaries of the authority or company.

(6A) The Finance Minister’s directions are legislative instruments, but neither section 42 (disallowance) nor Part 6 (sunsetting) of the Legislative Instruments Act 2003 apply to the directions.

(7) In this section:

Commonwealth Procurement Guidelines means the guidelines relating to procurement issued under regulations made under the Financial Management and Accountability Act 1997.

48 Finance Minister’s Orders

(1) The Finance Minister may, by legislative instrument, make Orders on any matter on which this Act requires or permits Finance Minister’s Orders to be made.

(2) An Order cannot create offences or impose penalties.

48A General Policy Orders

Finance Minister to make General Policy Orders

(1) The Finance Minister may make an Order (a General Policy Order) that specifies a general policy of the Australian Government.
Consultation before making General Policy Orders

(2) Before making a General Policy Order, the Finance Minister must be satisfied that the responsible Ministers for the Commonwealth authorities and wholly-owned Commonwealth companies to which the Order will apply have consulted those authorities and companies on the application of the policy.

Note: The responsible Ministers may consult with the Commonwealth authorities and wholly-owned Commonwealth companies by consulting:

(a) if the authority or company has a Chair—the Chair; and
(b) otherwise—the directors.

Authorities and companies that General Policy Orders apply to

(3) A General Policy Order applies to:

(a) if the Order is expressed to apply only to specified Commonwealth authorities or wholly-owned Commonwealth companies—those specified authorities or companies; and

(b) if the Order is expressed to apply to all Commonwealth authorities or wholly-owned Commonwealth companies, other than:

(i) specified authorities or companies; or

(ii) a class of authorities or companies;

all Commonwealth authorities or wholly-owned Commonwealth companies except those specified authorities or companies or those authorities or companies that are members of that class; and

(c) otherwise—all Commonwealth authorities or wholly-owned Commonwealth companies.

Partial application of General Policy Orders

(4) If a General Policy Order specifies that a part of the Order does not apply to:

(a) specified authorities or companies; or

(b) a class of authorities or companies;

then that part of the Order does not apply to those specified authorities or companies or those authorities or companies that are members of that class.
Section 48B

**General Policy Orders not subject to disallowance or sunsetting**

(5) A General Policy Order is a legislative instrument, but neither section 42 (disallowance) nor Part 6 (sunsetting) of the *Legislative Instruments Act 2003* applies to it.

**General Policy Orders not to create offences or penalties**

(6) A General Policy Order cannot create offences or impose penalties.

### 48B Delegation by Minister

(1) A Minister may, by written instrument, delegate any of the Minister’s powers or functions under the following provisions of this Act to a Secretary of a Department within the meaning of the *Public Service Act 1999*:

- (a) section 14 (Estimates);
- (b) paragraphs 16(1)(b) and (c) (Keeping responsible Minister and Finance Minister informed);
- (c) subsection 16(2) (Keeping responsible Minister and Finance Minister informed);
- (d) paragraph 18(3)(d) (Banking and investment (authorities other than GBEs and SMAs));
- (e) section 39 (Estimates);
- (f) paragraphs 41(1)(b) and (c) (Keeping responsible Minister and Finance Minister informed);
- (g) subsection 41(2) (Keeping responsible Minister and Finance Minister informed).

(2) In exercising powers or functions under a delegation, the Secretary must comply with the Minister’s directions.

### 49 Regulations

(1) The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The regulations may require the provision of financial statements, estimates or other information by overseas corporations which the Commonwealth controls (within the meaning of section 34). For
this purpose, *overseas corporation* means a body corporate that is incorporated by or under the law of an external Territory or overseas country.

(3) The regulations may make provision for penalties for offences against the regulations by way of fines of up to 10 penalty units.

Note: Section 4AA of the *Crimes Act 1914* sets the current value of a penalty unit.
Schedule 1—Annual report for Commonwealth Authority

Note: See section 9.

Part 1—Contents of annual report

1 Summary of contents

The annual report must include:

(a) a report of operations, prepared by the directors in accordance with the Finance Minister’s Orders; and

(b) financial statements, prepared by the directors under clause 2 of this Schedule; and

(c) the Auditor-General’s report on those financial statements, prepared under Part 2 of this Schedule and addressed to the responsible Minister.

Note: The report may include other matters, for example, matters that are required by another Act or by Ministerial guidelines.

2 Financial statements

(1) The financial statements must be prepared in accordance with the Finance Minister’s Orders and must give a true and fair view of the matters that those Orders require to be included in the statements.

(2) If financial statements prepared in accordance with the Finance Minister’s Orders would not otherwise give a true and fair view of the matters required by those Orders, the directors must add such information and explanations as will give a true and fair view of those matters.

(3) In the financial statements, the directors must state whether, in their opinion, the financial statements give a true and fair view of the matters required by the Finance Minister’s Orders.

(4) If the Commonwealth authority is a GBE or SMA, the directors must state whether or not, in their opinion, there are, when the statement is made, reasonable grounds to believe that the authority will be able to pay its debts as and when they fall due.
Part 2—Auditor’s report on financial statements

3 Whether the statements comply with the Finance Minister’s Orders

(1) The Auditor-General must state whether, in the Auditor-General’s opinion, the financial statements:
   (a) have been prepared in accordance with the Finance Minister’s Orders; and
   (b) give a true and fair view of the matters required by those Orders.

(2) If the Auditor-General is not of that opinion, the Auditor-General must state the reasons.

(3) If the Auditor-General is of the opinion that failing to prepare the financial statements in accordance with the Finance Minister’s Orders has a quantifiable financial effect, the Auditor-General must quantify that financial effect and state the amount.

4 Proper accounting records not kept

If the Auditor-General is of the opinion that the authority has contravened section 20, the Auditor-General must state particulars of the contravention.

5 Inadequate information and explanations

If the Auditor-General is of the opinion that the Auditor-General did not obtain all necessary information and explanations, the Auditor-General must state particulars of the shortcomings.

6 Subsidiaries’ financial statements

(1) This clause applies if the authority’s financial statements are consolidated financial statements.

(2) The Auditor-General must state the name of each entity (if any) that satisfies the following description:
Schedule 1 Annual report for Commonwealth Authority
Part 2 Auditor’s report on financial statements

Clause 7

(a) the entity was a subsidiary of the authority at any time during the financial year; and
(b) the Auditor-General has not:
   (i) acted as auditor of the entity for the financial year; or
   (ii) audited the entity’s financial statements for the financial year.

(3) If the consolidated financial statements include information derived from financial statements of an entity of a kind referred to in subclause (2), then:
   (a) if the Auditor-General has not examined those financial statements and the auditor’s report (if any) on them, the Auditor-General must state that fact; and
   (b) if an auditor’s report on any of those financial statements included any qualification, the Auditor-General must state the name of the subsidiary and particulars of the qualification.

7 Deficiencies in consolidation

If the Auditor-General is of the opinion that:
   (a) any of the financial statements that were used in preparing consolidated financial statements were not appropriate and proper, in both form and content, to be used in that way; or
   (b) there was any deficiency in the procedures and methods used in arriving at the amounts taken in to consolidated financial statements;
the Auditor-General must state particulars of the deficiency.
Schedule 2—Civil consequences of contravening civil penalty provisions

Note: See section 6.

1 Declarations of contravention

(1) If a Court is satisfied that a person has contravened 1 of the following provisions, it must make a declaration of contravention:
   (a) subsections 22(1) and 23(1) and (2), 24(1) and (2), 25(1) and (2) (officers’ duties);
   (b) subsection 11(1) (annual reporting rules for Commonwealth authorities);
   (c) subsection 20(4) (accounting records for Commonwealth authorities);
   (d) subsection 30(3) (aligning accounting periods for subsidiaries of Commonwealth authorities);
   (e) subsection 36(1B) (annual reports for Commonwealth companies).
These provisions are the civil penalty provisions.

   Note: Once a declaration has been made, the Finance Minister can then seek a pecuniary penalty order (clause 3) or a disqualification order (section 27C).

(2) A declaration of contravention must specify the following:
   (a) the Court that made the declaration;
   (b) the civil penalty provision that was contravened;
   (c) the person who contravened the provision;
   (d) the conduct that constituted the contravention;
   (e) the Commonwealth authority or Commonwealth company to which the conduct related.

2 Declaration of contravention is conclusive evidence

A declaration of contravention is conclusive evidence of the matters referred to in subclause 1(2).
Schedule 2  Civil consequences of contravening civil penalty provisions

Clause 3

3 Pecuniary penalty orders

(1) A Court may order a person to pay the Commonwealth a pecuniary penalty of up to $200,000 if:
   (a) a declaration of contravention by the person has been made under clause 1; and
   (b) the contravention:
      (i) materially prejudices the interests of the Commonwealth authority or Commonwealth company; or
      (ii) materially prejudices the ability of the Commonwealth authority or Commonwealth company to pay its creditors; or
      (iii) is serious.

(2) The penalty is a civil debt payable to the Commonwealth. The Commonwealth may enforce the order as if it were an order made in civil proceedings against the person to recover a debt due by the person. The debt arising from the order is taken to be a judgment debt.

4 Compensation orders

Compensation for damage suffered

(1) A Court may order a person to compensate a Commonwealth authority or Commonwealth company for damage suffered by the authority or company if:
   (a) the person has contravened a civil penalty provision in relation to the authority or company; and
   (b) the damage resulted from the contravention.

The order must specify the amount of the compensation.

Damage includes profits

(2) In determining the damage suffered by the Commonwealth authority or Commonwealth company for the purposes of making a compensation order, include profits made by any person resulting from the contravention or the offence.
Clause 5

Recovery of damage

(3) A compensation order may be enforced as if it were a judgment of the Court.

5 Effect of clause 4

Clause 4:
(a) has effect in addition to, and not in derogation of, any rule of law about the duty or liability of a person because of the person’s office or employment in relation to a Commonwealth authority or Commonwealth company; and
(b) does not prevent proceedings from being instituted in respect of such a duty or in respect of such a liability.

6 Who may apply for a declaration or order

Application by Finance Minister

(1) The Finance Minister, or some other person authorised in writing by the Finance Minister under this subclause to make the application, may apply for a declaration of contravention, a pecuniary penalty order or a compensation order.

Application by Commonwealth authority or Commonwealth company

(2) The Commonwealth authority or Commonwealth company may apply for a compensation order.

(3) The Commonwealth authority or Commonwealth company may intervene in an application for a declaration of contravention or a pecuniary penalty order in relation to the Commonwealth authority or Commonwealth company. The Commonwealth authority or Commonwealth company is entitled to be heard on all matters other than whether the declaration or order should be made.

No one else may apply

(4) No person may apply for a declaration of contravention, a pecuniary penalty order or a compensation order unless permitted by this clause.
Schedule 2  Civil consequences of contravening civil penalty provisions

Clause 7

(5) Subclause (4) does not exclude the operation of the Director of Public Prosecutions Act 1983.

7 Time limit for application for a declaration or order

Proceedings for a declaration of contravention, a pecuniary penalty order, or a compensation order, may be started no later than 6 years after the contravention.

8 Civil evidence and procedure rules for declarations of contravention and civil penalty orders

The Court must apply the rules of evidence and procedure for civil matters when hearing proceedings for:
(a) a declaration of contravention; or
(b) a pecuniary penalty order.

9 Civil proceedings after criminal proceedings

A court must not make a declaration of contravention or a pecuniary penalty order against a person for a contravention if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

10 Criminal proceedings during civil proceedings

(1) Proceedings for a declaration of contravention or pecuniary penalty order against a person are stayed if:
(a) criminal proceedings are started or have already been started against the person for an offence; and
(b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.

(2) The proceedings for the declaration or order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the declaration or order are dismissed.
11 Criminal proceedings after civil proceedings

Criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision regardless of whether:

(a) a declaration of contravention has been made against the person; or
(b) a pecuniary penalty order has been made against the person; or
(c) a compensation order has been made against the person; or
(d) the person has been disqualified from managing a Commonwealth authority under section 27C.

12 Evidence given in proceedings for penalty not admissible in criminal proceedings

Evidence of information given or evidence of production of documents by an individual is not admissible in criminal proceedings against the individual if:

(a) the individual previously gave the evidence or produced the documents in proceedings for a pecuniary penalty order against the individual for a contravention of a civil penalty provision (whether or not the order was made); and
(b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.

However, this does not apply to a criminal proceeding in respect of the falsity of the evidence given by the individual in the proceedings for the pecuniary penalty order.

13 Finance Minister requiring person to assist

(1) The Finance Minister may require a person to give all reasonable assistance in connection with:

(a) an application for a declaration of contravention or a pecuniary penalty order; or
(b) criminal proceedings for an offence against this Act.

The person must comply with the request.

Penalty: 5 penalty units.
(2) The Finance Minister can require the person to assist in connection with an application for a declaration or order if, and only if:
   (a) it appears to the Finance Minister that someone other than the person required to assist may have contravened a civil penalty provision; and
   (b) the Finance Minister suspects or believes that the person required to assist can give information relevant to the application.

(3) The Finance Minister can require the person to assist in connection with criminal proceedings if, and only if:
   (a) it appears to the Finance Minister that the person required to assist is unlikely to be a defendant in the proceedings; and
   (b) the person required to assist is, in relation to a person who is or should be a defendant in the proceedings:
      (i) an employee or agent (including a banker or auditor) of the other person; or
      (ii) if the other person is a Commonwealth authority or Commonwealth company—an officer of the other person; or
      (iii) if the other person is an individual—a partner of the other person.

(4) The Finance Minister can require the person to assist regardless of whether:
   (a) an application for the declaration or penalty order has actually been made; or
   (b) criminal proceedings for the offence have actually begun.

(5) The person cannot be required to assist if they are or have been a lawyer for:
   (a) in an application for a declaration or penalty order—the person suspected of the contravention; or
   (b) in criminal proceedings—a defendant or likely defendant in the proceedings.

(6) The requirement to assist must be given in writing.

(7) The Court may order the person to comply with the requirement in a specified way. Only the Finance Minister may apply to the Court for an order under this subsection.
14 Relief from liability for contravention of civil penalty provision

(1) In this section:

eligible proceedings:
(a) means proceedings for a contravention of a civil penalty provision (including proceedings under clause 4); and
(b) does not include proceedings for an offence (except so far as the proceedings relate to the question whether the court should make an order under clause 4).

(2) If:
(a) eligible proceedings are brought against a person; and
(b) in the proceedings it appears to the court that the person has, or may have, contravened a civil penalty provision but that:
   (i) the person has acted honestly; and
   (ii) having regard to all the circumstances of the case, the person ought fairly to be excused for the contravention;
the court may relieve the person either wholly or partly from a liability to which the person would otherwise be subject, or that might otherwise be imposed on the person, because of the contravention.

(3) If a person thinks that eligible proceedings will or may be begun against them, they may apply to the Court for relief.

(4) On an application under subclause (3), the Court may grant relief under subclause (2) as if the eligible proceedings had been begun in the Court.

(5) For the purposes of subclause (2) as applying for the purposes of a case tried by a judge with a jury:
(a) a reference in that subclause to the court is a reference to the judge; and
(b) the relief that may be granted includes withdrawing the case in whole or in part from the jury and directing judgment to be entered for the defendant on such terms as to costs as the judge thinks appropriate.
Clause 15

15 Power to grant relief

(1) If:
   (a) civil proceedings are brought against an officer of a Commonwealth authority for negligence, default, breach of trust or breach of duty in a capacity as such an officer; and
   (b) in the proceedings it appears to the court before which the proceedings are taken that:
      (i) the officer is or may be liable in respect of the negligence, default or breach; and
      (ii) the officer has acted honestly; and
      (iii) having regard to all the circumstances of the case (including those connected with the officer’s appointment), the officer ought fairly to be excused for the negligence, default or breach;
   the court may relieve the officer either wholly or partly from liability on the terms that the court thinks appropriate.

(2) An officer of a Commonwealth authority who has reason to apprehend that a claim will or might be made against him or her for negligence, default, breach of trust or breach of duty in a capacity as such an officer may apply to the Court for relief. On the application, the Court has the same power to relieve the officer as it would have had under subclause (1) if it had been a court before which proceedings against the officer for negligence, default, breach of trust or breach of duty had been brought.

(3) If:
   (a) a case to which subclause (1) applies is being tried by a judge with a jury; and
   (b) the judge after hearing the evidence is satisfied that the defendant ought pursuant to that subclause to be relieved either wholly or partly from the liability sought to be enforced against the officer;
   the judge may withdraw the case in whole or in part from the jury and forthwith direct judgment to be entered for the defendant on the terms as to costs or otherwise that the judge thinks proper.
Schedule 3—Application, transitional and savings provisions

1 Meaning of commencement, new Law and old Law

In this Schedule:

*commencement* means the commencement of the *Corporate Law Economic Reform Program Act 1999*.

*new Law* means this Act as in force after commencement.

*old Law* means this Act as in force immediately before commencement.

2 References to provisions of old Law in laws and other documents

(1) A reference in any law of the Commonwealth or of a State or Territory, or in any document, to a provision of the old Law is to be read after commencement as a reference to the corresponding provision of the new Law except so far as the contrary intention appears in the law or document.

(2) Without limiting subclause (1), sections 27F to 27K of the new Law correspond to section 21 of the old Law.

3 Conduct of officers

Column 2 of the table sets out things that have been done, or situations that have arisen, on or before commencement. Column 3 sets out how the things and situations will be dealt with after commencement—either under the old Law or the new Law.
### Transitional arrangements

<table>
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<tr>
<th>If...</th>
<th>then, after commencement...</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 before commencement, a director of a Commonwealth authority who had an interest in a matter declared the nature of the interest in accordance with subsection 21(1) of the old Law</td>
<td>the director is taken to have disclosed the interest as a material personal interest in accordance with section 27F of the new Law and to have made the disclosure on commencement.</td>
</tr>
<tr>
<td>2 before commencement, the Board of a Commonwealth authority made a determination under subsection 21(3) of the old Law</td>
<td>the determination is taken to be a resolution passed in accordance with subsection 27J(2) of the new Law.</td>
</tr>
<tr>
<td>3 before commencement, the responsible Minister for a Commonwealth authority made a determination under subsection 21(3) of the old Law</td>
<td>the determination has effect as if it were a determination under section 27K of the new Law.</td>
</tr>
<tr>
<td>4 before commencement, an officer of a Commonwealth authority incurred a liability</td>
<td>sections 27M and 27N of the new Law apply if an indemnity was given, or a premium paid, in respect of the liability after commencement; in all other cases, sections 26 and 27 of the old Law continue to apply.</td>
</tr>
<tr>
<td>5 before commencement, an application for a civil penalty order was made and not dealt with under Schedule 2 to the old Law</td>
<td>Schedule 2 to the old Law continues to apply in relation to the application</td>
</tr>
<tr>
<td>6 before commencement, a person was granted leave under subclause 8(2) of Schedule 2 to the old Law</td>
<td>the leave has effect as if it were granted under subsection 27C(4A) of the new Law</td>
</tr>
</tbody>
</table>

### 4 Contraventions of, and offences against, civil penalty provisions

(1) Schedule 2 to the old Law continues to apply in relation to:

(a) a contravention of a civil penalty provision listed in clause 2 of Schedule 2 to the old Law; or

(b) an offence committed against one of those civil penalty provisions; despite its repeal.
(2) Schedule 2 to the new Law applies in relation to a contravention of a civil penalty provision listed in subclause 1(1) of Schedule 2 to the new law.

5 Civil penalty orders made under old Law

(1) An order in force under paragraph 4(a) of Schedule 2 to the old Law immediately before commencement continues to have effect after commencement as if it were made under section 27C of the new Law.

(2) An order in force under paragraph 4(b) of Schedule 2 to the old Law immediately before commencement continues to have effect after commencement as if it were made under clause 3 of Schedule 2 to the new Law.
Notes to the Commonwealth Authorities and Companies Act 1997

Note 1

The Commonwealth Authorities and Companies Act 1997 as shown in this compilation comprises Act No. 153, 1997 amended as indicated in the Tables below.

The Commonwealth Authorities and Companies Act 1997 was amended by the Public Employment (Consequential and Transitional) Regulations 1999 (1999 No. 301 as amended by 2000 No. 332). The amendments are incorporated in this compilation.

For application, saving or transitional provisions made by the Corporations (Repeals, Consequentials and Transitionals) Act 2001, see Act No. 55, 2001.

For all other relevant information pertaining to application, saving or transitional provisions see Table A.

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<th>Date of commencement</th>
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<tr>
<td>as amended by</td>
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## Notes to the Commonwealth Authorities and Companies Act 1997

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<td>Statute Law Revision Act 2002</td>
<td>63, 2002</td>
<td>3 July 2002</td>
<td>Schedule 2 (items 21, 22): (d)</td>
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<td>125, 2006</td>
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<td>Fair Work (State Referral and Consequential and Other Amendments) Act 2009</td>
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<td>25 June 2009</td>
<td>Schedule 10 (item 3): (g)</td>
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<td>Schedule 2 (items 376–380) and Schedule 3 (items 10, 11): [see Note 3 and Table A]</td>
<td>Sch. 2 (item 380) and Sch. 3 (items 10, 11)</td>
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*Archived*
Notes to the Commonwealth Authorities and Companies Act 1997

Act Notes

(a) The Commonwealth Authorities and Companies Act 1997 was amended by Schedule 1 (item 299) only of the Public Employment (Consequential and Transitional) Amendment Act 1999, subsections 2(1) and (2) of which provide as follows:

(1) In this Act, **commencing time** means the time when the Public Service Act 1999 commences.

(2) Subject to this section, this Act commences at the commencing time.

(b) The Commonwealth Authorities and Companies Act 1997 was amended by Schedule 5 (items 2–12) only of the Corporate Law Economic Reform Program Act 1999, subsection 2(2) of which provides as follows:

(2) The following provisions commence on a day or days to be fixed by Proclamation:

(a) section 3;

(b) the items in Schedules 1 to 7 (other than item 18 of Schedule 7);

(c) the items in Schedules 10, 11 and 12.

(c) The Corporate Law Economic Reform Program Act 1999 was amended by Schedule 1 (item 339) only of the Public Employment (Consequential and Transitional) Amendment Act 1999, subsections 2(1) and (2) of which provide as follows:

(1) In this Act, **commencing time** means the time when the Public Service Act 1999 commences.

(2) Subject to this section, this Act commences at the commencing time.

(d) The Public Employment (Consequential and Transitional) Amendment Act 1999 was amended by Schedule 2 (items 21 and 22) only of the Statute Law Revision Act 2002, subsection 2(1) (items 50 and 51) of which provides as follows:

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<tr>
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<td>Provision(s)</td>
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<td>50. Schedule 2, item 21</td>
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<tr>
<td>51. Schedule 2, item 22</td>
<td>Immediately after the time specified in the Public Employment (Consequential and Transitional) Amendment Act 1999 for the commencement of item 339 of Schedule 1 to that Act</td>
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</table>

(e) The Commonwealth Authorities and Companies Act 1997 was amended by Schedule 3 (items 103–120) only of the Corporations (Repeals, Consequentials and Transitionals) Act 2001, subsection 2(3) of which provides as follows:

(3) Subject to subsections (4) to (10), Schedule 3 commences, or is taken to have commenced, at the same time as the Corporations Act 2001.

(f) Subsection 2(1) (item 5) of the Commonwealth Authorities and Companies Amendment Act 2008 provides as follows:

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

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<th>Date/Details</th>
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<tr>
<td>5. Schedule 1, items 51 and 52</td>
<td>Immediately after the commencement of section 3 of the Legislative Instruments Act 2003.</td>
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<td>(g) Subsection 2(1) (item 32) of the Fair Work (State Referral and Consequential and Other Amendments) Act 2009 provides as follows: (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.</td>
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<tr>
<td>32. Schedule 10</td>
<td>Immediately after the commencement of Part 2-4 of the Fair Work Act 2009.</td>
<td>1 July 2009</td>
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Commonwealth Authorities and Companies Act 1997

Notes to the Commonwealth Authorities and Companies Act 1997
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<td>2</td>
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<td></td>
<td>B</td>
<td>S. 40</td>
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<td>S. 48B</td>
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<td>S. 49</td>
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<td>C. 6</td>
<td>rs. No. 156, 1999; am. No. 20, 2008</td>
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<td>rs. No. 156, 1999</td>
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<td>Cc. 11, 12</td>
<td>rs. No. 156, 1999</td>
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*Ad. = added or inserted*  
*Am. = amended*  
*Rep. = repealed*  
*Rs. = repealed and substituted*
Notes to the Commonwealth Authorities and Companies Act 1997

Table of Amendments

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<tr>
<td>Cc. 4, 5</td>
<td>ad. No. 156, 1999</td>
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</table>
Note 2

Subsection 27A(1) and 27A(1) (note)—Schedule 5 (items 7 and 8) of the Financial Framework Legislation Amendment Act 2010 (No. 148, 2010) provide as follows:

Schedule 5

7 Subsection 27A(1)

Omit “at common law or in equity”, substitute “under the general law”.

8 Subsection 27A(1) (note)

Omit “at common law and in equity”, substitute “under the general law”.

The proposed amendments were misdescribed and are not incorporated in this compilation.

Note 3

Acts Interpretation Amendment Act 2011 (No. 46, 2011)

The following amendments commence on 27 December 2011 unless proclaimed earlier:

Schedule 2

376 Section 5 (definition of APS employee)

Repeal the definition.

377 Subsection 33(1)

Omit “(1)”.

378 Subsection 33(2)

Repeal the subsection.
Note 3

379 Subsection 46(2) (definition of *modifications*)

Repeal the definition.

As at 1 September 2011 the amendments are not incorporated in this compilation.
Table A

Application, saving or transitional provisions

Financial Framework Legislation Amendment Act 2005 (No. 8, 2005)

Schedule 2

174 Saving provision—provisions that formerly referred to the Treasurer

(1) Any thing that:
   (a) was done by the Treasurer, or by a delegate of the Treasurer, before the commencing time under an affected provision; and
   (b) was in effect immediately before the commencing time;
continues to have effect after the commencing time as if it had been done by the Finance Minister under the affected provision.

(2) In this item:
   affected provision means a provision that is amended by an item in this Schedule so as to replace references to the Treasurer with references to the Finance Minister.
   commencing time means the day this Act receives the Royal Assent.

Commonwealth Authorities and Companies Amendment Act 2008
(No. 20, 2008)

Schedule 1

70 Application of amendments

(1) The amendments made by items 14 to 18, 46 to 48, 57 (in so far as the amendment made by that item relates to Commonwealth companies), 58 to 66 and 68 of this Schedule apply in relation to annual reports of a Commonwealth authority or Commonwealth company for financial years of the Commonwealth authority or Commonwealth company that commence on or after the commencement of this item.
Table A

(2) The amendments made by items 21 and 49 of this Schedule apply in relation to Auditor-General’s reports on financial statements of a subsidiary of a Commonwealth authority or Commonwealth company for the subsidiary’s annual accounting periods that commence on or after the commencement of this item.

(3) The amendments made by items 24 and 57 (in so far as the amendment made by that item relates to Commonwealth authorities) of this Schedule apply in relation to accounting records of a Commonwealth authority for financial years of the Commonwealth authority that commence on or after the commencement of this item.

71 Transitional provision—general policy notifications for Commonwealth authorities

Application of this item

(1) This item applies to a notification (a section 28 notification) that:
   (a) was given to a Commonwealth authority under section 28 of the Commonwealth Authorities and Companies Act 1997 before the commencement of this item; and
   (b) is in force immediately before the commencement of this item.

Section 28 notification to continue in force

(2) Despite the repeal of that section made by this Schedule, a section 28 notification continues in force, and may be dealt with, after the commencement of this item as if that section had not been repealed.

When section 28 notification ceases to be in force

(3) If a determination is made under item 73 that all notifications about a particular general policy cease to be in force, then a section 28 notification about that general policy ceases to be in force when the determination takes effect.

When part of section 28 notification ceases to be in force

(4) If a determination is made under item 73 that a part of all notifications about a particular general policy ceases to be in force, then that part of a section 28 notification about that policy ceases to be in force when the determination takes effect.
72 Transitional provision—general policy notifications for wholly-owned Commonwealth company

Application of this item

(1) This item applies to a notification (a section 43 notification) that:
   (a) was given to a wholly-owned Commonwealth company under section 43 of the Commonwealth Authorities and Companies Act 1997 before the commencement of this item; and
   (b) is in force immediately before the commencement of this item.

Section 43 notification to continue in force

(2) Despite the repeal of that section made by this Schedule, a section 43 notification continues in force, and may be dealt with, after the commencement of this item as if that section had not been repealed.

When section 43 notification ceases to be in force

(3) If a determination is made under item 73 that all notifications about a particular general policy cease to be in force, then a section 43 notification about that general policy ceases to be in force when the determination takes effect.

When part of section 43 notification ceases to be in force

(4) If a determination is made under item 73 that a part of all notifications about a particular general policy cease to be in force, then that part of a section 43 notification about that policy ceases to be in force when the determination takes effect.

73 Determinations cancelling the whole or part of section 28 notifications and section 43 notifications

(1) This item applies to notifications that are continued in force by subitem 71(2) or 72(2).

(2) The Finance Minister may, by legislative instrument, make a determination that all notifications about a particular general policy of the Australian Government cease to be in force.
Table A

(3) The Finance Minister may make a determination that a part of all notifications about a particular general policy of the Australian Government ceases to be in force.

(4) A determination made under subitem (2) or (3) is a legislative instrument, but neither section 42 nor Part 6 of the Legislative Instruments Act 2003 applies to the determination.

74 Transitional provision—general policy notifications

Section 48A of the Commonwealth Authorities and Companies Act 1997 applies to consultation on the application of a general policy of the Australian Government occurring before or after the commencement of this item.

Acts Interpretation Amendment Act 2011 (No. 46, 2011)

The following provisions commence on 27 December 2011 unless proclaimed earlier:

Schedule 2

380 Saving of regulations

(1) Regulations in force for the purposes of subsection 33(1) of the Commonwealth Authorities and Companies Act 1997 immediately before the commencement of this item continue in force on and after that commencement as if they were regulations in force for the purposes of section 33 of that Act.

(2) The amendment made by item 379 does not affect the validity of regulations in force for the purposes of subsection 46(1) of the Commonwealth Authorities and Companies Act 1997 immediately before the commencement of that item.

Schedule 3

10 Saving—appointments

The amendments made by Schedule 2 do not affect the validity of an appointment that was made under an Act before the commencement of this item and that was in force immediately before that commencement.
11 Transitional regulations

The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments and repeals made by Schedules 1 and 2.

Financial Framework Legislation Amendment Act (No. 1) 2011
(No. 89, 2011)

Schedule 1

7 Application of amendments made by this Schedule

The amendments made by this Schedule apply in respect of a corporate plan prepared on or after the commencement of this item.
Commonwealth Authorities and Companies Regulations 1997

Statutory Rules 1997 No. 391 as amended

made under the

Commonwealth Authorities and Companies Act 1997

This compilation was prepared on 1 September 2011
taking into account amendments up to SLI 2011 No. 162

Prepared by the Office of Legislative Drafting and Publishing,
Attorney-General’s Department, Canberra
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### Schedule 1

Compliance with government procurement requirements — authorities and companies  

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</table>

### Notes  

14
1 Name of regulations [see Note 1]

These regulations are the Commonwealth Authorities and Companies Regulations 1997.

2 Commencement

These Regulations commence on 1 January 1998.

3 Interpretation

In these Regulations, unless the contrary intention appears:


Commonwealth authority credit card has the meaning given by subsection 28B (4) of the Act.

Commonwealth authority credit voucher has the meaning given by subsection 28B (4) of the Act.

4 Government business enterprises (Act s 5)

(1) For the definition of GBE in section 5 of the Act, the authorities mentioned in the following table are prescribed:

<table>
<thead>
<tr>
<th>Item</th>
<th>Authority</th>
<th>Enabling legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Australian Government Solicitor</td>
<td>Judiciary Act 1903</td>
</tr>
<tr>
<td>2</td>
<td>Australian Postal Corporation</td>
<td>Australian Postal Corporation Act 1989</td>
</tr>
<tr>
<td>3</td>
<td>Defence Housing Australia</td>
<td>Defence Housing Australia Act 1987</td>
</tr>
</tbody>
</table>

(2) For the definition of GBE in section 5 of the Act, the companies mentioned in the following table are prescribed:

<table>
<thead>
<tr>
<th>Item</th>
<th>Company</th>
<th>Australian Company Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>ASC Pty Limited</td>
<td>008 605 034</td>
</tr>
</tbody>
</table>
Regulation 4A

<table>
<thead>
<tr>
<th>Item</th>
<th>Company</th>
<th>Australian Company Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Australian Rail Track Corporation Limited</td>
<td>081 455 754</td>
</tr>
<tr>
<td>3</td>
<td>Medibank Private Limited</td>
<td>080 890 259</td>
</tr>
<tr>
<td>4</td>
<td>NBN Co Limited</td>
<td>136 533 741</td>
</tr>
</tbody>
</table>

(3) If the name of a company mentioned in the table in subregulation (2) is changed, the company, under the new name, is taken to be prescribed.

4A Responsible Minister for Commonwealth companies (Act s 5)

(1) For subparagraph (b) (i) of the definition of responsible Minister in section 5 of the Act, the Finance Minister is prescribed as the Minister responsible for the Commonwealth companies mentioned in the following table:

<table>
<thead>
<tr>
<th>Item</th>
<th>Company</th>
<th>Australian Company Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>ASC Pty Limited</td>
<td>008 605 034</td>
</tr>
<tr>
<td>2</td>
<td>Australian River Co. Limited</td>
<td>008 654 206</td>
</tr>
<tr>
<td>3</td>
<td>Medibank Private Limited</td>
<td>080 890 259</td>
</tr>
</tbody>
</table>

(2) If the name of a company mentioned in the table in subregulation (1) is changed, the company, under the new name, is taken to be prescribed.

5 Statutory marketing authorities (Act s 5)

For the definition of SMA in section 5 of the Act, the Wine Australia Corporation is prescribed.

6 Commonwealth authorities incorporated for a public purpose by regulations (Act s 7)

For paragraph 7 (1) (b) of the Act, the bodies corporate mentioned in the following table are prescribed:
6AAA Corporate plan for GBE (Act ss 17 and 42)

(1) For subsection 17 (6) of the Act, this regulation sets out matters, details of which must be included in the corporate plan of a Commonwealth authority that is a GBE.

(2) For subsection 42 (6) of the Act, this regulation sets out matters, details of which must be included in the corporate plan of a wholly-owned Commonwealth company that is a GBE.

(3) The matters are:
   (a) the objectives of the authority or company; and
   (b) assumptions about the business environment in which the authority or company operates; and
   (c) the business strategies of the authority or company; and
   (d) the investment and financing programs of the authority or company, including strategies for managing financial risk; and
   (e) financial targets and projections for the authority or company; and
   (f) the dividend policy of the authority or company; and
   (g) non-financial performance measures for the authority or company; and
   (h) community service obligations of the authority or company, and the strategies and policies the authority or company is to follow to carry out those obligations; and
   (i) review of performance against previous corporate plans and targets; and
   (j) analysis of factors likely to affect achievement of targets or create significant financial risk for:
(i) the authority or company; or
(ii) the Commonwealth; and
(k) price control and quality control strategies for goods or services supplied by the authority or company under a monopoly; and
(l) human resource strategies and industrial relations strategies.

6AA Commonwealth authority’s credit cards (Act s 28A)

(1) For subsection 28A (2) of the Act, this regulation specifies requirements in relation to a Commonwealth authority’s credit cards.

(2) An agreement between the authority and the person who issues the authority’s credit cards must be in writing.

(3) The holder of the card:
   (a) must take responsibility for the physical security of the card; and
   (b) must not permit the card or the personal identification number for the card to be used for a purpose other than the purpose for which the card is provided.

(4) The directors of the authority may determine the maximum amount that may be borrowed using a card for a person, or particular classes of persons, undertaking duties on behalf of the authority.

(5) The directors of the authority must ensure that the authority:
   (a) establishes and maintains records of the cards; and
   (b) keeps records of transactions for which the cards are used.

   Note Section 20 of the Act applies to the cards.

(6) The directors of the authority:
   (a) may make guidelines in relation to the cards; and
   (b) must ensure that the guidelines are consistent with the Act and these Regulations.

   Note This regulation does not apply to a Commonwealth authority if, under the authority’s enabling legislation, the authority has an express power to borrow money (see subsection 28A (3) of the Act).
6AB Commonwealth authority’s credit vouchers
(Act s 28A)

(1) For subsection 28A (2) of the Act, this regulation specifies requirements in relation to a Commonwealth authority’s credit vouchers.

(2) An agreement between the authority and the person who issues the authority’s credit vouchers must be in writing.

(3) The holder of the voucher:
   (a) must take responsibility for the physical security of the voucher; and
   (b) must not permit the voucher to be used for a purpose other than the purpose for which the voucher is provided.

(4) The directors of the authority may determine the maximum amount that may be borrowed using a voucher for a person, or particular classes of persons, undertaking duties on behalf of the authority.

(5) The directors of the authority must ensure that the authority:
   (a) establishes and maintains records of vouchers issued by the authority; and
   (b) keeps records of transactions for which vouchers issued by the authority are used.

Note Section 20 of the Act applies to the vouchers.

(6) The directors of the authority:
   (a) may make guidelines in relation to the vouchers; and
   (b) must ensure that the guidelines are consistent with the Act and these Regulations.

Note This regulation does not apply to a Commonwealth authority if, under the authority’s enabling legislation, the authority has an express power to borrow money (see subsection 28A (3) of the Act).

6AC Authorisation for use of Commonwealth authority credit cards and credit vouchers (Act s 28A)

(1) For subsection 28A (2) of the Act, the directors of a Commonwealth authority may determine who is authorised to use the authority’s credit cards and credit vouchers.
(2) The directors may decide to delegate the power mentioned in subregulation (1) to a senior manager.

6AD Authorised expenditure using Commonwealth authority credit cards (Act s 28B)

(1) For subsection 28B (2) of the Act, the directors of a Commonwealth authority may:
   (a) authorise a holder of the authority’s credit card to use the card to pay a claim that includes both official and coincidental private expenditure; and
   (b) specify arrangements for the holder of the card to reimburse the authority for that coincidental private expenditure.

(2) The holder of the card must pay to the authority the amount paid by the authority for the coincidental private expenditure in accordance with the arrangements.

Note The amount payable to the authority under this regulation is recoverable as a debt in a court of competent jurisdiction (see subsection 28B (3) of the Act).

6AE Authorised expenditure using Commonwealth authority credit vouchers (Act s 28B)

(1) For subsection 28B (2) of the Act, the directors of a Commonwealth authority may:
   (a) authorise a person to use the authority’s credit voucher to pay a claim that includes both official and coincidental private expenditure; and
   (b) specify arrangements for the person to reimburse the authority for that coincidental private expenditure.

(2) The person who uses the voucher must pay to the authority the amount paid by the authority for the coincidental private expenditure in accordance with the arrangements.

Note The amount payable to the authority under this regulation is recoverable as a debt in a court of competent jurisdiction (see subsection 28B (3) of the Act).
6A Audit committees for Commonwealth authorities
(Act s 32)

(1) For subsection 32 (2) of the Act, the audit committee of a Commonwealth authority is to be constituted as follows:
   (a) the chair of the committee must be a person other than:
       (i) the chair of the authority; or
       (ii) an executive director of the authority;
   (b) the committee:
       (i) must be made up of at least 3 persons; and
       (ii) may include only 1 person who is an executive director of the authority; and
       (iii) subject to subregulation (4), must not include senior managers or employees of the authority other than the executive director mentioned in subparagraph (ii).

(2) To avoid doubt, a committee may include persons who are not directors of the authority.

Note The chair of the committee may, for example, be a non-executive director (other than the chair of the authority) or an external appointee of the authority.

(3) The quorum for meetings of the committee is:
   (a) 2 persons; or
   (b) if the majority of the committee is greater than 2 persons — that number of persons.

(4) The audit committee of the Australian Government Solicitor (AGS) may include members of the AGS Advisory Board.

Note The AGS is established under section 55J of the Judiciary Act 1903. The AGS Advisory Board is established under the corporate governance arrangements that apply to the AGS in accordance with section 55ZE of that Act.
6B Audit committees for wholly-owned Commonwealth companies (Act s 44)

(1) For subsection 44(2) of the Act, the audit committee of a wholly-owned Commonwealth company is to be constituted as follows:

(a) the chair of the committee must be a person other than:
   (i) the chair of the company; or
   (ii) an executive director of the company;

(b) the committee:
   (i) must be made up of at least 3 persons; and
   (ii) may include only 1 person who is an executive director of the company; and
   (iii) must not include senior managers or employees of the company other than the executive director mentioned in subparagraph (ii).

(2) To avoid doubt, a committee may include persons who are not directors of the company.

Note The chair of the committee may, for example, be a non-executive director (other than the chair of the company) or an external appointee of the company.

(3) The quorum for meetings of the committee is:

(a) 2 persons; or

(b) if the majority of the committee is greater than 2 persons — that number of persons.

8 Modification of Act for intelligence or security agency (Act s 46)

In its application to a company conducted for the purposes of an intelligence or security agency, the Act has effect as if Part 4 (Reporting and other obligations for Commonwealth companies) were omitted.
Compliance with government procurement requirements (Act s 47A)

(1) For subsection 47A (1) of the Act, the Commonwealth authorities mentioned in Part 1 of Schedule 1, and the wholly-owned Commonwealth companies mentioned in Part 2 of Schedule 1, are specified for section 47A of the Act.

(2) If the name of an authority mentioned in Part 1 of Schedule 1 is amended by a regulation, the authority, under the new name, is taken to be prescribed.

(3) If the name of a company mentioned in Part 2 of Schedule 1 is changed, the company, under the new name, is taken to be prescribed.
### Schedule 1  
**Compliance with government procurement requirements — authorities and companies**  
(regulation 9)

#### Part 1  
**Commonwealth authorities**

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Schedule 1

Wholly-owned Commonwealth companies

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Note 1

The *Commonwealth Authorities and Companies Regulations 1997* (in force under the *Commonwealth Authorities and Companies Act 1997*) as shown in this compilation comprise Statutory Rules 1997 No. 391 amended as indicated in the Tables below.

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Commonwealth Authorities
(Annual Reporting) Orders 2011

I, Penelope Ying Yen Wong, Minister for Finance and Deregulation, make these Orders under section 48 of the Commonwealth Authorities and Companies Act 1997.

PENELOPE YING YEN WONG

.....................................................

Dated 22-9-11

Reader’s Guide

These Orders advise the directors of a Commonwealth authority on what is required for preparing the authority’s annual report, specifically in terms of the Report of Operations that is to be provided annually under the Commonwealth Authorities and Companies Act 1997 (CAC Act).

These Orders require reporting on matters such as:

- Governance of the Commonwealth authority;
- Key events affecting the Commonwealth authority during the reporting period;
- Ministerial directions and Australian Government policies (where relevant);
- Judicial decisions and reviews by outside bodies; and
- Disclosure requirements for a Commonwealth authority that is a Government Business Enterprise (GBE).

Directors are required to prepare these reports (as part of the authority’s annual report) by section 9 and Schedule 1 of the CAC Act.

These Orders form Finance Minister’s Orders for the purposes of section 48 of the CAC Act, and are a legislative instrument which is disallowable under the Legislative Instruments Act 2003.
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Commonwealth Authorities (Annual Reporting) Orders 2011
1 Name of Orders

These Orders are the Commonwealth Authorities (Annual Reporting) Orders 2011.

Preliminary

2 Commencement

These Orders commence on the day after they are registered on the Federal Register of Legislative Instruments.

3 Application of Orders

3.1 Subject to subclause 3.2, these Orders apply to Commonwealth authorities in relation to each financial year ending on or after 30 June 2012.

3.2 Clause 15 (related entity transactions) applies to annual reports for each financial year ending on or after 30 June 2013.

Note: The Orders, apart from clause 15, will relate to the financial year 2011-2012, and to the annual reports due on 15 October 2012 and onwards. More time is provided for the application of clause 15 (related entity transactions) which is to apply for the financial year 2012-2013, and to the annual reports that fall due on 15 October 2013 and onwards.

4 Revocation and transitional application of previous Orders


5 Purpose

These Orders specify the requirements for the Annual Report of Operations that the directors of a Commonwealth authority must provide and include in its annual report. Directors of a Commonwealth authority are required under section 9 of the CAC Act to prepare an annual report in accordance with Schedule 1 to the CAC Act. The report must be given to their responsible Minister within the timeframe prescribed in subsection 9(2) of the CAC Act for tabling in Parliament.
6 Approval by directors

The Annual Report of Operations must be approved by a resolution of directors of a Commonwealth authority. If the Commonwealth authority has only one director, the Report of Operations must be approved by that director.

The Annual Report of Operations must be signed by a director and include details of how and when approval was given. The Annual Report of Operations must also state that directors are responsible for the preparation and contents of the Annual Report of Operations (as required in section 9 of the CAC Act and in accordance with the Finance Minister’s Orders).

7 Exemptions

The Finance Minister may grant a written exemption to the directors of a Commonwealth authority, or a class of Commonwealth authorities, from any requirement of these Orders. An exemption must be in writing and may be subject to conditions.

Details of an exemption relied upon by the Commonwealth authority must be provided in the Annual Report of Operations.

Requirements

8 Parliamentary standards of presentation

The annual report of a Commonwealth authority is tabled in Parliament by the responsible Minister under paragraph 9(1)(b) of the CAC Act. Once tabled in Parliament, the annual report becomes part of the Parliamentary Papers series and as such, the report must comply with the presentation and printing standards for documents presented to the Parliament.

Note: Further information on Parliamentary requirements for tabled documents is available through the link: www.aph.gov.au/house/committee/publ/printing_standards.htm.

9 Plain English and clear design

The Annual Report of Operations must be constructed having regard to the interests of the Parliament and other users. Information included in the report must be relevant, reliable, concise, understandable and balanced. For example, to the extent practicable:

a. use clear design, including through headings and adequate spacing;
b. define acronyms and technical terms (such as through a glossary);
c. use tables, graphs, diagrams and charts; and
d. include any additional matters that may be appropriate.
10 **Enabling legislation**

The Annual Report of Operations must also specify the Commonwealth authority’s enabling legislation, including a summary of its objectives and functions, as specified in its legislation.

11 **Responsible Minister**

The Annual Report of Operations must specify the name of the current responsible Minister and the names of any other responsible Ministers during the relevant financial year being reported on.

12 **Ministerial directions and other statutory requirements**

*Directions and Government policies*

The Annual Report of Operations must provide details of:

a. directions issued by the responsible Minister, or other Minister, under the enabling legislation of the Commonwealth authority or other legislation; and

b. general policies of the Australian Government that were notified to the Commonwealth authority before 1 July 2008 under section 28 of the CAC Act (as in force before 1 July 2008) and which continue to apply to the Commonwealth authority; and

c. General Policy Orders that apply to the Commonwealth authority under section 48A of the CAC Act.

This will assist readers to understand why authorities acted in a particular way.

Where a direction or applicable policy has not been fully complied with, the report must include an explanation of the non-compliance.

*Other legislation*

Other legislation can require reporting on additional matters in the annual report as well. For example, subsection 516A(3) of the *Environmental Protection and Biodiversity Conservation Act 1999* requires a Commonwealth authority to report on certain environmental matters.

Note: *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), section 516A. Information on ecologically sustainable development (including the EPBC Act and a suggested approach to meeting the statutory reporting requirements) can be found on the website of the Department of Sustainability, Environment, Water, Population and Communities at: www.environment.gov.au/esd.
13 **Information about directors**

The Annual Report of Operations must include information on the directors of the Commonwealth authority. This information includes directors’ names, qualifications, experience, attendance of board meetings, and whether the director is an executive or non-executive director.

14 **Outline of organisational structure and statement on governance**

*Organisational structure*

The Annual Report of Operations must provide an outline of:

a. the organisational structure of the Commonwealth authority (including subsidiaries); and  

b. the location, in Australia or elsewhere, of major activities and facilities.

*Statement on governance*

The Annual Report of Operations can assist a Commonwealth authority to demonstrate that its governance is sound.

Consequently, the Annual Report of Operations must include information on the main corporate governance practices that the Commonwealth authority used during the financial year. For example, details should be provided on:

a. board committees of the authority and their main responsibilities; and  

b. education and performance review processes for directors; and  

c. ethics and risk management policies.
15 Related entity transactions

The Annual Report of Operations must disclose the decision-making process undertaken by the board of the authority when:

a. it approves for the authority to pay for a good or service from another entity, or provide a grant to another entity; and

b. a director of the authority is also a director of the other entity that provides the good or service or receives the grant; and

c. the value of the transaction, or if there is more than one transaction, the aggregate value of those transactions, exceeds $10,000 (GST inclusive).

If decision-making processes relate to multiple transactions to a single entity, with an aggregate value of more than $10,000 (GST inclusive), then a single report can be provided that explains the number of transactions and the aggregate of expenditure.

The aim is to improve transparency around potential conflicts of interests in the operations of Commonwealth authorities.1

16 Key activities and changes affecting the authority

Highlighting key activities and changes that have affected the Commonwealth authority can assist the reader to understand the authority’s performance over the past financial year. Consequently, the annual report must detail any key activities and changes that affected the operations or structure of the authority during the financial year. This may include:

a. significant events under section 15 of the CAC Act such as forming or participating in the formation of a company, significant partnership or trust; and

b. operational and financial results of the authority; and

c. key changes to the authority’s state of affairs or principal activities; and

d. amendments to the authority’s enabling legislation and to any other legislation directly relevant to its operation.

1 This requirement arose out of Recommendation 2 of the Senate Standing Committee on Finance and Public Administration’s report: Annual Reports (No. 2 of 2009) issued in September 2009. Consistent with clause 3, this applies to 2012-2013 and to annual reports due on 15 October 2013 and onwards.
17 Judicial decisions and reviews by outside bodies

As entities of the Australian Government, Commonwealth authorities are expected to have levels of accountability suitable for the public sector. Part of demonstrating these qualities involves reporting on judicial decisions and reports by third parties. As such, the Annual Report of Operations must include particulars of:

a. judicial decisions and decisions of administrative tribunals that have had, or may have, a significant affect on the operations of the Commonwealth authority; and

b. reports about the authority made by the Auditor-General, a Parliamentary committee, the Commonwealth Ombudsman or the Office of the Australian Information Commissioner.

18 Obtaining information from subsidiaries

Where directors of a Commonwealth authority are unable to obtain information from a subsidiary that is required to be included in the Annual Report of Operations before the annual report is submitted under section 9 of the CAC Act, the directors must include an explanation on the missing information and how this affects the annual report.

19 Indemnities and insurance premiums for officers

The Annual Report of Operations must include details of any indemnity given to an officer against a liability, including premiums paid, or agreed to be paid, for insurance against the officer’s liability for legal costs.
20 Disclosure requirements for GBEs

Changes in financial conditions and community service obligations

The Annual Report of Operations for a GBE must include:

a. an assessment of:
   i. significant changes in its overall financial structure and condition over the financial year; and
   ii. any events or risks that could cause reported financial information not to be indicative of future operations or financial condition; and
b. dividends paid or recommended in relation to the financial year; and
c. details of any community service obligations the GBE has, including:
   i. an outline of actions the GBE has taken to achieve those obligations; and
   ii. an assessment of the cost of fulfilling those obligations.

Information that is commercially prejudicial

However, information required by this clause 20 can be excluded if the directors believe, on reasonable grounds, that the information is commercially sensitive and would likely result in unreasonable commercial prejudice to the GBE. The annual report must state whether such information has been excluded.

21 Index of annual report requirements

To assist readers to locate the information required by the CAC Act (including these Orders) or other applicable legislation, the Annual Report of Operations must provide an index of annual report requirements, identifying where relevant information can be found in the annual report.²

² This requirement arose out of Recommendation 1 of the Senate Standing Committee on Finance and Public Administration’s report: Annual Reports (No.1 of 2009) issued in March 2009.
22 Definitions

In these Orders:

- **annual report** means the reports the directors of a Commonwealth authority are required to give to their responsible Minister after the end of the financial year, in accordance with section 9 of the CAC Act.

- **CAC Act** means the *Commonwealth Authorities and Companies Act 1997*

- **due on 15 October** includes any later date resulting from an extension granted by a Minister under section 34C of the *Acts Interpretation Act 1901*.

- **Finance Minister** means the Minister responsible for the Finance portfolio.

- **financial statements requirement** the annual report must include financial statements prepared by the directors (clause 2 of Schedule 1 to the CAC Act) and the Auditor-General’s report on those financial statements.

- **financial year** means the period of a year being reported upon (typically commencing on 1 July and ending on 30 June).

- **Responsible Minister** means the Minister with portfolio responsibility for the Commonwealth authority.

Unless the contrary intention appears, an expression that is used in these Orders and in the CAC Act generally, or in a particular provision of the CAC Act mentioned in the relevant part of these Orders, has the same meaning in these Orders as in the CAC Act.
Commonwealth Companies (Annual Reporting) Orders 2011
Commonwealth Companies
(Annual Reporting) Orders 2011

I, Penelope Ying Yen Wong, Minister for Finance and Deregulation, make these Orders under section 48 of the Commonwealth Authorities and Companies Act 1997.

PENELOPE YING YEN WONG

Dated 22-9-11

Reader’s Guide

These Orders require the directors of a wholly-owned Commonwealth company to provide additional information in the company’s annual report to that required by the Corporations Act 2001. The Commonwealth Authorities and Companies Act 1997 (CAC Act) allows the Finance Minister to require a wholly-owned Commonwealth company to include such additional information (paragraph 36(1)(c)).

These Orders require reporting on matters such as:

- Governance of the company;
- Key events affecting the wholly-owned Commonwealth company during the reporting period;
- Ministerial directions and Australian Government policies;
- Judicial decisions and reviews by outside bodies; and
- Disclosure requirements for a wholly-owned Commonwealth company that is a Government Business Enterprise (GBE).

A wholly-owned Commonwealth company can integrate the additional information into the standard directors’ report required under section 298 of the Corporations Act 2001.

These Orders form Finance Minister’s Orders for the purposes of section 48 of the CAC Act, and are a legislative instrument which is disallowable under the Legislative Instruments Act 2003.
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1 Name of Orders
These Orders are the *Commonwealth Companies (Annual Reporting) Orders 2011.*

Preliminary

2 Commencement
These Orders commence on the day after they are registered on the Federal Register of Legislative Instruments.

3 Application of Orders
3.1 Subject to subclause 3.2, these Orders apply to wholly-owned Commonwealth companies in relation to each financial year ending on or after 30 June 2012. The first report under these Orders will encompass the 2011-2012 financial year.
3.2 Clause 13 (related entity transactions) applies to annual reports for each financial year ending on or after 30 June 2013.

Note: The Orders, apart from clause 13, will relate to the financial year 2011-2012, and to the annual reports due on 15 October 2012 and onwards. More time is provided for the application of clause 13 (related entity transactions) which is to apply for the financial year 2012-2013, and to the annual reports that fall due on 15 October 2013 and onwards.

4 Purpose
These Orders prescribe additional information that must be included in a wholly-owned Commonwealth company’s annual report.

The CAC Act requires the directors of a Commonwealth company to submit an annual report each year. The report is required to be prepared in accordance with subsection 36(1) and given to the company’s responsible Minister within a specified timeframe prescribed in subsection 36(1A) of the CAC Act for tabling in Parliament.

5 Approval by directors
An annual report must be approved by a resolution of the directors of a wholly-owned Commonwealth company. The annual report must be signed by a director and include details of how and when approval was given.

6 Exemptions
The Finance Minister may grant an exemption to the directors of a wholly-owned Commonwealth company from any requirement of these Orders. An exemption must be in writing and may be subject to conditions.

Details of an exemption must be included in the annual report.
7 **Parliamentary standards of presentation**

The annual report of a wholly-owned Commonwealth company is tabled in Parliament by the responsible Minister in accordance with subsection 36(4) of the CAC Act. Once tabled in Parliament, the annual report becomes part of the Parliamentary Papers series and as such, the report must comply with the presentation and printing standards for documents presented to the Parliament.


8 **Plain English and clear design**

The annual report must be constructed having regard to the interests of the Parliament and other users. Information included in the report must be relevant, reliable, concise, understandable and balanced. For example, to the extent practicable:

a. use clear design, including through headings and adequate spacing;

b. define acronyms and technical terms (such as through a glossary);

c. use tables, graphs, diagrams and charts; and

d. include any additional matters that may be appropriate.

9 **Responsible Minister**

The annual report must specify the name of the current responsible Minister and the names of any other responsible Ministers during the financial year.
10 Ministerial directions and other statutory requirements

Directions and Government policies

Wholly-owned Commonwealth companies can be made, through a variety of processes, to comply with additional requirements that may not appear to be in the best interests of the company. To assist readers to understand why companies may have acted in such a way, the annual report must provide details of:

a. directions issued to the company by the responsible Minister, or other Minister under the company’s constitution, or under legislation; and

b. general policies of the Australian Government that were notified to the Commonwealth company before 1 July 2008 under section 43 of the CAC Act (as in force before 1 July 2008) and which continue to apply to the Commonwealth company; and

c. General Policy Orders that apply to the Commonwealth company under section 43 of the CAC Act.

This will assist readers to understand why companies acted in a particular way.

Where a direction, general policy or General Policy Order has not been fully complied with, the annual report must include an explanation of the non-compliance.

Other legislation

Other legislation can require reporting on additional matters in the annual report as well. For example, subsection 516A(4) of the *Environmental Protection and Biodiversity Conservation Act 1999* requires a Commonwealth company to report on environmental matters.


11 Information about directors

The annual report must include information on the directors of the wholly-owned Commonwealth company. This information includes directors’ names, qualifications, experience, attendance of board meetings, and whether the director is an executive or non-executive director.
12 Outline of organisational structure and statement on governance

Organisational structure

The annual report must include an outline of the organisational structure of the company (including subsidiaries) and the location of major activities and facilities.

Statement on governance

The annual report can assist a Commonwealth company to demonstrate that its governance is sound.

Consequently, the annual report must information on the main corporate governance practices that the Commonwealth company used during the financial year. For example, details should be provided on:

a. board committees of the company and their main responsibilities; and
b. education and performance review processes for directors; and
c. ethics and risk management policies; and

d. any legislation that specifically applies to the company, by name.

13 Related entity transactions

The annual report must disclose the decision-making process undertaken by the board of the wholly-owned Commonwealth company when:

a. it approves the wholly-owned Commonwealth company to pay for a good or service from another entity, or provide a grant to another entity; and
b. a director of the wholly-owned Commonwealth company is also a director of the other entity that provides the good or service or receives the grant; and

c. the value of the transaction, or if there is more than one transaction, the aggregate value of those transactions, exceeds $10,000 (GST inclusive).

If decision-making processes relate to multiple transactions to a single entity, with an aggregate value of more than $10,000 (GST inclusive), then a single report can be provided that explains the number of transactions and the aggregate of expenditure.

The aim is to improve transparency around potential conflicts of interests in the operations of Commonwealth companies.¹

¹ This requirement arose out of Recommendation 2 of the Senate Standing Committee on Finance and Public Administration’s report: Annual Reports (No. 2 of 2009) issued in September 2009. Consistent with clause 3, this applies to 2012-2013 and to annual reports due on 15 October 2013 and onwards.
14 **Key activities and changes affecting the company**

Highlighting key activities and changes that have affected the company can assist the reader to understand the company’s performance over the financial year. Consequently, the annual report must detail any key activities and changes that affected the operations or structure of the company during the financial year. This may include:

a. significant events under section 40 of the CAC Act; and  
b. amendments to the constitution of the company and to any relevant legislation; and  
c. changes to the membership structure of the company; and  
d. amendments to legislation that specifically applies to the company, by name (if applicable).

15 **Judicial decisions and reviews by outside bodies**

As entities of the Australian Government, wholly-owned Commonwealth companies are expected to have greater accountability and ethics than private sector companies. Part of demonstrating these qualities involve reporting on judicial decisions and reports by third parties. As such, the annual report must include details of:

a. judicial decisions and decisions of administrative tribunals that have had, or may have significant impact on the operations of company; and  
b. reports on the operations of the company by the Auditor-General, a Parliamentary committee, the Commonwealth Ombudsman, the Office of the Australian Information Commissioner, or the Australian Securities and Investment Commission.

16 **Obtaining information from subsidiaries**

Where the directors are unable to obtain information from a subsidiary that is required to be included in the annual report before the annual report is submitted under section 36 of the CAC Act, the directors must prepare the annual report explaining what information is missing and how this affects the annual report.
17   Disclosure requirements for GBEs

Changes in financial conditions and community service obligations

The annual report of a GBE must include:

a. an assessment of:
   i. significant changes in overall financial structure and condition over the financial year; and
   ii. any events or risks that could cause reported financial information not to be indicative of future operations or financial condition; and

b. details of any community service obligations the GBE has, including:
   i. an outline of actions the GBE has taken to achieve those obligations; and
   ii. an assessment of the cost of fulfilling those obligations.

Note: Details on dividends are already required by section 300 of the Corporations Act 2001.

Information that is commercially prejudicial

However, information required by this clause 17 can be excluded if the directors believe, on reasonable grounds, that the information is commercially sensitive and would likely result in unreasonable commercial prejudice to the GBE. The annual report must state whether such information has been excluded.

18   Index of annual report requirements

To assist readers to locate the information required by the Corporations Act, CAC Act (including these Orders) or other applicable legislation, the annual report must provide an index, identifying where relevant information can be found in the annual report.²

² This requirement arose out of Recommendation 1 of the Senate Standing Committee on Finance and Public Administration’s report: Annual Reports (No.1 of 2009) issued in March 2009.
19 Definitions

In these Orders:

annual report means the reports and government information the directors of a wholly-owned Commonwealth company are required to give their responsible Minister after the end of the financial year in accordance with section 36 of the CAC Act.

due on 15 October includes any later date resulting from an extension granted by a Minister under section 34C of the Acts Interpretation Act 1901.


Finance Minister means the Minister responsible for the Finance portfolio.

financial year means the period of a year being reported upon (typically commencing on 1 July and ending on 30 June).

Responsible Minister means the Minister with portfolio responsibility for the Commonwealth authority.

Unless the contrary intention appears, an expression that is used in these Orders and in the CAC Act generally, or in a particular provision of the CAC Act mentioned in the relevant part of these Orders, has the same meaning in these Orders as in the CAC Act.
Finance Minister’s (CAC Act Procurement) Directions 2009

I, LINDSAY TANNER, Minister for Finance and Deregulation, make these Directions under subsection 47A (2) of the Commonwealth Authorities and Companies Act 1997.

Dated 17 December 2009

[SIGNED]

LINDSAY TANNER
Minister for Finance and Deregulation

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Reader’s Guide

- These Directions:
  - require relevant CAC Act bodies to apply all of the Commonwealth Procurement Guidelines (CPGs) when undertaking a “covered procurement”, but do not require them to apply any of the CPGs for non-covered procurement; and
  - allow relevant CAC Act bodies to choose to use coordinated procurement contracting arrangements under the CPGs.

- These Directions modify six concepts from the Financial Management and Accountability Act 1997, as used in the CPGs, to allow them to be replaced with concepts that can apply to the relevant CAC Act bodies. For example, references in the CPGs to “an agency” are to be read as references to “the relevant CAC Act body”: refer clauses 5 and 6.

- The Directions apply to the relevant CAC Act bodies listed in Schedule 1 to the Commonwealth Authorities and Companies Regulations 1997.
Part 1 Preliminary

1 Name of Directions

These Directions are the Finance Minister’s (CAC Act Procurement) Directions 2009.

2 Commencement

These Directions commence on 1 January 2010.

3 Revocation of previous Directions

The Finance Minister’s (CAC Procurement) Directions of 1 December 2004 are revoked.

4 Application of Directions

These Directions are given to the directors of a relevant CAC Act body.

Note 1 Defined terms for these Directions are set out in clause 7.

Note 2 Subsection 47A (5) of the CAC Act requires the directors of a relevant CAC Act body to ensure that the Directions are complied with by the body, and subsection 47A (6) provides that the directors must also ensure, as far as practicable, that the Directions are complied with by the subsidiaries of the relevant CAC Act body.

Part 2 Directions

5 Applying the CPGs

Covered procurement - applicable

(1) The CPGs, as modified by clause 6, must be applied by a relevant CAC Act body when the body is undertaking a covered procurement.

Note With respect to applying the CPGs, obligations which must be complied with, in all circumstances, are denoted by the use of the term must in the CPGs. These obligations include compliance with the Mandatory Procurement Procedures as set out in Division 2 of the CPGs. The use of the term should in the CPGs denotes matters of sound practice.

Coordinated procurement – not applicable

(2) Notwithstanding subclause 5 (1), a relevant CAC Act body is not required to apply those provisions of the CPGs that relate to coordinated procurement contracting arrangements when undertaking a covered procurement.

Australian War Memorial telecommunications exemption

(3) Notwithstanding subclause 5 (1), these Directions do not apply to the Australian War Memorial when undertaking a covered procurement of telecommunication services.
Summary

(4) To avoid doubt, these Directions apply to a relevant CAC Act body only in relation to covered procurements.

Note At the time of making this instrument, “covered procurements” are defined for relevant CAC Act bodies in Division 2 of the CPGs.

6 Modification of the CPGs

The CPGs apply for the purposes of these Directions, subject to the following modifications:

<table>
<thead>
<tr>
<th>A reference in the CPGs to …</th>
<th>Is to be read as a reference to …</th>
</tr>
</thead>
<tbody>
<tr>
<td>an agency</td>
<td>the relevant CAC Act body</td>
</tr>
<tr>
<td>Chief Executive’s Instructions, or CEIs</td>
<td>directions or instructions issued by the relevant CAC Act body relating to procurement by the body</td>
</tr>
<tr>
<td>a Chief Executive</td>
<td>the director(s) of the relevant CAC Act body</td>
</tr>
<tr>
<td>an official</td>
<td>any of the following:</td>
</tr>
<tr>
<td></td>
<td>(a) a director of the relevant CAC Act body;</td>
</tr>
<tr>
<td></td>
<td>(b) an employee of the relevant CAC Act body;</td>
</tr>
<tr>
<td></td>
<td>(c) a person who conducts a procurement function for, or on behalf of, the relevant CAC Act body</td>
</tr>
<tr>
<td>public money</td>
<td>money held by the relevant CAC Act body, whether on its own account or as public money under the FMA Act</td>
</tr>
</tbody>
</table>

Part 3 Definitions

7 Definitions

In these Directions:

**CAC Act** means the *Commonwealth Authorities and Companies Act 1997*.

**coordinated procurement contracting arrangements** has the same meaning that the term has in the CPGs.

*Note* A coordinated procurement contracting arrangement includes, for example, the Microsoft Volume Sourcing Arrangement.

**covered procurement** has the same meaning that the term has in relation to relevant CAC Act bodies in the CPGs and, to avoid doubt, does not include a procurement that is exempt in accordance with Appendix A to the CPGs.

*Note* A covered procurement, for example, would include a procurement of printing services for publications with an estimated value of over $400,000.

**CPGs** means the *Commonwealth Procurement Guidelines*:

(a) issued by the Finance Minister under the *Financial Management and Accountability Regulations 1997*; and

(b) as in force from time to time.
procurement has the same meaning as in the CPGs.

relevant CAC Act body means a Commonwealth authority or a wholly-owned Commonwealth company specified in the Commonwealth Authorities and Companies Regulations 1997 for the purposes of section 47A of the CAC Act.

Note By virtue of paragraph 46 (1) (b) of the Acts Interpretation Act 1901, subject to any contrary intention, an expression used in the Directions will have the same meaning as in the CAC Act.