



Commonwealth Authorities and Companies Act 1997

Act No. 153 of 1997 as amended

This compilation was prepared on 1 March 2011
taking into account amendments up to Act No. 148 of 2010

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

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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 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 and regulations.

Related legislation

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

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 various terms and provisions that are commonly used in Commonwealth Acts.

This list is not exhaustive. Acts other than those listed above might also affect the operation or interpretation of this Act.

Another related Act is the *Financial Management and Accountability Act 1997*. Its main purpose 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 that act on behalf of the Commonwealth.

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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

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:

- (i) makes, or participates in making, decisions that affect the whole, or a substantial part, of the operations of the authority; or
 - (ii) has the capacity to affect significantly the authority's financial standing; and
- (b) in relation to a Commonwealth company—a person (other than a director or secretary of the company, a Minister, or an APS employee engaged as an employee for the purposes of an Agency other than the company) who:
- (i) makes, or participates in making, decisions that affect the whole, or a substantial part, of the operations of the company; or
 - (ii) has the capacity to affect significantly the company's financial standing.

SMA or **statutory marketing authority** means a Commonwealth authority that is prescribed by the regulations for the purpose of this definition.

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

subsidiary, in relation to a Commonwealth authority or Commonwealth company, means an entity that is controlled by the Commonwealth authority or Commonwealth company. For this purpose, **entity** and **control** have the same meanings as in the accounting standard that applies for the purpose of deciding whether a company has to prepare consolidated financial statements under the *Corporations Act 2001*.

wholly-owned Commonwealth company has the meaning given by section 34.

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.

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:
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- (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:

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:

relevant 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.

- (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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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 in 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 the following matters (so far as they are applicable):
 - (a) the objectives of the authority;
 - (b) assumptions about the business environment in which the authority operates;
 - (c) the business strategies of the authority;
 - (d) the investment and financing programs of the authority, including strategies for managing financial risk;
 - (e) financial targets and projections for the authority;
 - (f) the dividend policy of the authority;

- (g) non-financial performance measures for the authority;
 - (h) community service obligations of the authority and the strategies and policies the authority is to follow to carry out those obligations;
 - (i) review of performance against previous corporate plans and targets;
 - (j) analysis of factors likely to affect achievement of targets or create significant financial risk for the authority or for the Commonwealth;
 - (k) price control and quality control strategies for goods or services supplied by the authority under a monopoly;
 - (l) human resource strategies and industrial relations strategies.
- (7) The plan must also cover any other matters required by the responsible Minister (which may include further details about the matters in 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

- (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).

Part 3 Reporting and other obligations for Commonwealth authorities

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.

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).

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:

- (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).

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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*.

- (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;

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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.

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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- (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.

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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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*.

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

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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.

Note: Paragraph (c)—This includes proceedings by the Finance Minister for an order under section 27C (disqualification order) or clause 3 or 4 of Schedule 2 (civil penalties).

- (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.

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*.

- (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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- (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

- (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.

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
-

- (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 in 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 the following matters (so far as they are applicable):
 - (a) the objectives of the company;
 - (b) assumptions about the business environment in which the company operates;
 - (c) the business strategies of the company;
 - (d) the investment and financing programs of the company, including strategies for managing financial risk;
 - (e) financial targets and projections for the company;
 - (f) the dividend policy of the company;
 - (g) non-financial performance measures for the company;
 - (h) community service obligations of the company and the strategies and policies the company is to follow to carry out those obligations;

- (i) review of performance against previous corporate plans and targets;
 - (j) analysis of factors likely to affect achievement of targets or create significant financial risk for the company or for the Commonwealth;
 - (k) price control and quality control strategies for goods or services supplied by the company under a monopoly;
 - (l) human resource strategies and industrial relations strategies.
- (7) The plan must also cover any other matters required by the responsible Minister (which may include further details about the matters in 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).

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.

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General Policy Orders not subject to disallowance or sunseting

- (5) A General Policy Order is a legislative instrument, but neither section 42 (disallowance) nor Part 6 (sunseting) 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:

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).

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.

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.

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.

Clause 13

- (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.

Clause 4

Transitional arrangements		
	If...	then, after commencement...
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	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.
2	before commencement, the Board of a Commonwealth authority made a determination under subsection 21(3) of the old Law	the determination is taken to be a resolution passed in accordance with subsection 27J(2) of the new Law.
3	before commencement, the responsible Minister for a Commonwealth authority made a determination under subsection 21(3) of the old Law	the determination has effect as if it were a determination under section 27K of the new Law.
4	before commencement, an officer of a Commonwealth authority incurred a liability	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.
5	before commencement, an application for a civil penalty order was made and not dealt with under Schedule 2 to the old Law	Schedule 2 to the old Law continues to apply in relation to the application
6	before commencement, a person was granted leave under subclause 8(2) of Schedule 2 to the old Law	the leave has effect as if it were granted under subsection 27C(4A) of the new Law

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.

Table of Acts**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.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Commonwealth Authorities and Companies Act 1997</i>	153, 1997	24 Oct 1997	1 Jan 1998 (see <i>Gazette</i> 1997, No. GN49)	
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (item 299): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (a)	—
<i>Corporate Law Economic Reform Program Act 1999</i>	156, 1999	24 Nov 1999	Schedule 5 (items 2–12): 13 Mar 2000 (see <i>Gazette</i> 2000, No. S114) (b)	—
as amended by				
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	24 Nov 1999	Schedule 1 (item 339): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (c)	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
as amended by				
<i>Statute Law Revision Act 2002</i>	63, 2002	3 July 2002	Schedule 2 (items 21, 22): (d)	—
<i>Corporations (Repeals, Consequential and Transitional) Act 2001</i>	55, 2001	28 June 2001	Ss. 4–14 and Schedule 3 (items 103–120): 15 July 2001 (see <i>Gazette</i> 2001, No. S285) (e)	Ss. 4–14 [see Note 1]
<i>Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002</i>	105, 2002	14 Nov 2002	Schedule 3 (item 33): 12 May 2003 (see s. 2 and <i>Gazette</i> 2002, No. GN49)	—
<i>US Free Trade Agreement Implementation Act 2004</i>	120, 2004	16 Aug 2004	Schedule 6: Royal Assent	—
<i>Financial Framework Legislation Amendment Act 2005</i>	8, 2005	22 Feb 2005	Schedule 2 (items 72–78, 174): Royal Assent	Sch. 2 (item 174)
<i>Corporations (Aboriginal and Torres Strait Islander) Consequential, Transitional and Other Measures Act 2006</i>	125, 2006	4 Nov 2006	Schedules 1–3: 1 July 2007 (see s. 2(1)) Remainder: Royal Assent	—
<i>Commonwealth Authorities and Companies Amendment Act 2008</i>	20, 2008	26 May 2008	Schedule 1 (items 1–41, 43–50, 53–74): 1 July 2008 Schedule 1 (item 42): 1 July 2009 (see F2009L01781 and <i>Gazette</i> 2009, No. GN19) Schedule 1 (items 51, 52): (f)	Sch. 1 (items 70–74)
<i>Fair Work (State Referral and Consequential and Other Amendments) Act 2009</i>	54, 2009	25 June 2009	Schedule 10 (item 3): (g)	—
<i>Financial Framework Legislation Amendment Act 2010</i>	148, 2010	17 Dec 2010	Schedule 5: 1 Mar 2011 (see F2011L00245)	—

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:

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
50. Schedule 2, item 21	Immediately after the time specified in the <i>Public Employment (Consequential and Transitional) Amendment Act 1999</i> for the commencement of item 339 of Schedule 1 to that Act	5 December 1999
51. Schedule 2, item 22	Immediately after the time specified in the <i>Public Employment (Consequential and Transitional) Amendment Act 1999</i> for the commencement of item 339 of Schedule 1 to that Act	5 December 1999

- (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

Provision(s)	Commencement	Date/Details
5. Schedule 1, items 51 and 52	Immediately after the commencement of section 3 of the <i>Legislative Instruments Act 2003</i> .	1 January 2005
(g) Subsection 2(1) (item 32) of the <i>Fair Work (State Referral and Consequential and Other Amendments) Act 2009</i> 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.	
Provision(s)	Commencement	Date/Details
32. Schedule 10	Immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009</i> .	1 July 2009

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Reader's Guide	am. No. 55, 2001
Part 2	
S. 5	am. No. 156, 1999; No. 55, 2001; No. 20, 2008; No. 148, 2010
Heading to s. 6	rs. No. 20, 2008
S. 6	am. No. 156, 1999; No. 8, 2005; No. 20, 2008
Part 3	
Division 1	
S. 7	am. No. 55, 2001; No. 105, 2002; No. 125, 2006; No. 54, 2009
Division 2	
Subdivision A	
S. 9	am. No. 20, 2008
Note to s. 9(1)	rs. No. 20, 2008
Note to s. 9(2)(a)	ad. No. 148, 2010
S. 11	am. No. 20, 2008
S. 12	am. No. 55, 2001; No. 20, 2008
Subdivision B	
S. 15	am. No. 148, 2010
Division 3	
S. 18	am. No. 8, 2005; No. 20, 2008; No. 148, 2010
Ss. 19, 20	am. No. 20, 2008
Division 4	
Div. 4 of Part 3	rs. No. 156, 1999
S. 21	rs. No. 156, 1999 am. No. 20, 2008
Subdivision A	
S. 22	rs. No. 156, 1999 am. No. 148, 2010
Note to s. 22(2)	am. No. 148, 2010
S. 23	am. Statutory Rules 1999 No. 301 (as am. by Statutory Rules 2000 No. 332) rs. No. 156, 1999
Note 2 to s. 23(1)	am. No. 55, 2001
Note 3 to s. 23(1)	ad. No. 20, 2008
Note 3 to s. 23(2)	ad. No. 20, 2008
S. 24	rs. No. 156, 1999
Note 1 to s. 24(1)	rs. No. 20, 2008
S. 25	rs. No. 156, 1999
Note 1 to s. 25(1)	rs. No. 20, 2008

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Subhead. to s. 26(2)	ad. No. 20, 2008
S. 26	rs. No. 156, 1999 am. No. 20, 2008
Note to s. 26(1)	am. No. 55, 2001
S. 27	rep. No. 156, 1999
S. 27A	ad. No. 156, 1999 (as am. by No.146, 1999 (as am. by No. 63, 2002)) am. Statutory Rules 1999 No. 301 (as am. by Statutory Rules 2000 No. 332) rs. No. 20, 2008
S. 27B	ad. No. 156, 1999 am. No. 148, 2010
S. 27C	ad. No. 156, 1999 am. No. 8, 2005; No. 20, 2008
S. 27D	ad. No. 156, 1999 am. No. 20, 2008
Heading to s. 27E	am. No. 148, 2010
S. 27E	ad. No. 156, 1999
Subdivision B	
S. 27F	ad. No. 156, 1999 am. No. 20, 2008
Ss. 27G, 27H	ad. No. 156, 1999
S. 27J	ad. No. 156, 1999 am. No. 20, 2008
Ss. 27K, 27L	ad. No. 156, 1999
Division 4A	
Div. 4A of Part 3	ad. No. 156, 1999
S. 27M	ad. No. 156, 1999
S. 27N	ad. No. 156, 1999 am. No. 20, 2008
S. 27P	ad. No. 156, 1999
Division 5	
S. 28	rs. No. 20, 2008
S. 28A	ad. No. 20, 2008
S. 28B	ad. No. 20, 2008
S. 30	am. No. 20, 2008
S. 31	am. No. 55, 2001
Part 3A	
Part 3A	ad. No. 148, 2010
S. 33A	ad. No. 148, 2010

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part 4	
Division 1	
Heading to s. 34	am. No. 20, 2008
Subhead. to s. 34(2)	ad. No. 20, 2008
S. 34	am. No. 55, 2001; No. 20, 2008
Note to s. 34(2)	ad. No. 20, 2008
S. 35	am. No. 55, 2001
Division 2	
Subdivision A	
Ss. 36, 37	am. No. 55, 2001; No. 20, 2008
Subdivision B	
S. 40	am. No. 148, 2010
Subdivision C	
S. 43	rs. No. 20, 2008
S. 44	am. No. 55, 2001
Part 5	
S. 45	am. No. 55, 2001 rep. No. 148, 2010
S. 47A	ad. No. 120, 2004 am. No. 148, 2010
S. 48	am. No. 20, 2008
S. 48A	ad. No. 20, 2008 am. No. 148, 2010
S. 48B	ad. No. 148, 2010
S. 49	am. No. 20, 2008
Schedule 2	
Schedule 2	rs. No. 156, 1999
Heading to Part 1	rep. No. 156, 1999
C. 1	rs. No. 156, 1999 am. No. 20, 2008
C. 2	rs. No. 156, 1999
C. 3	rs. No. 156, 1999 am. No. 20, 2008
Heading to Part 2	rep. No. 156, 1999
Cc. 4, 5	rs. No. 156, 1999 am. No. 20, 2008
Subhead. to c. 6(2)	am. No. 20, 2008
C. 6	rs. No. 156, 1999 am. No. 20, 2008
Cc. 7–10	rs. No. 156, 1999
Heading to Part 3	rep. No. 156, 1999
Cc. 11, 12	rs. No. 156, 1999
C. 13	rs. No. 156, 1999 am. No. 20, 2008

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Heading to Part 4	rep. No. 156, 1999
Cc. 14, 15.....	rs. No. 156, 1999
Cc. 16–24.....	rep. No. 156, 1999
Heading to Part 5	rep. No. 156, 1999
Cc. 25–30.....	rep. No. 156, 1999
Heading to Part 6	rep. No. 156, 1999
Cc. 31, 32.....	rep. No. 156, 1999
Schedule 3	
Schedule 3.....	ad. No. 156, 1999
Cc. 1, 2.....	ad. No. 156, 1999
C. 3	ad. No. 156, 1999 am. No. 20, 2008
Cc. 4, 5.....	ad. No. 156, 1999

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.

Table A

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.

Finance Minister means the Minister who administers the *Financial Management and Accountability Act 1997*.

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.

Table A

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 ceases 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.