



# **Public Governance, Performance and Accountability Act 2013**

**No. 123, 2013**

**An Act about the governance, performance and  
accountability of, and the use and management of  
public resources by, the Commonwealth,  
Commonwealth entities and Commonwealth  
companies, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# **Public Governance, Performance and Accountability Act 2013**

**No. 123, 2013**

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**An Act about the governance, performance and  
accountability of, and the use and management of  
public resources by, the Commonwealth,  
Commonwealth entities and Commonwealth  
companies, and for related purposes**

*[Assented to 29 June 2013]*

The Parliament of Australia enacts:

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*Public Governance, Performance and Accountability Act 2013 No. 123, 2013 1*

# Chapter 1—Introduction

## Part 1-1—Introduction

### Division 1—Preliminary

#### 1 Short title

This Act may be cited as the *Public Governance, Performance and Accountability Act 2013*.

#### 2 Commencement

- (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.

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Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 5 and anything in this Act not elsewhere covered by this table	1 July 2013.	1 July 2013
2. Sections 6 to 112	A single day to be fixed by Proclamation. However, if the commencement of the provision(s) is not fixed by Proclamation before 1 July 2014, the provision(s) commence on 1 July 2014.	1 July 2014 (see F2014L00848)

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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.
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**3 This Act binds the Crown**

This Act binds the Crown in right of the Commonwealth.

**4 This Act extends to things outside Australia**

This Act extends to acts, omissions, matters and things outside Australia.

## **Division 2—Objects of this Act**

### **5 Objects of this Act**

The objects of this Act are:

- (a) to establish a coherent system of governance and accountability across Commonwealth entities; and
- (b) to establish a performance framework across Commonwealth entities; and
- (c) to require the Commonwealth and Commonwealth entities:
  - (i) to meet high standards of governance, performance and accountability; and
  - (ii) to provide meaningful information to the Parliament and the public; and
  - (iii) to use and manage public resources properly; and
  - (iv) to work cooperatively with others to achieve common objectives, where practicable; and
- (d) to require Commonwealth companies to meet high standards of governance, performance and accountability.

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## **Division 3—Guide to this Act**

### **6 Guide to this Act**

#### **Overview**

This Act is mainly about the governance, performance and accountability of Commonwealth entities.

It is also about:

- the use and management of public resources by the Commonwealth and Commonwealth entities; and
- the accountability of Commonwealth companies.

Many of the terms in this Act are defined. The Dictionary in section 8 contains a list of every term that is defined in this Act.

#### **Chapter 2—Commonwealth entities and the Commonwealth**

##### **Part 2-1—Core provisions for Chapter 2**

Part 2-1 has the core provisions for Chapter 2 (which is mainly about Commonwealth entities but does have some provisions relating to the Commonwealth specifically). It:

- defines what a Commonwealth entity is (see section 10); and
- defines what the 2 types of Commonwealth entities—corporate Commonwealth entities and non-corporate Commonwealth entities—are (see section 11); and
- defines who the accountable authority of the entity is (see section 12); and
- defines who the officials of the entity are (see section 13).

##### **Part 2-2—Accountable authorities and officials**

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Part 2-2 is about the accountable authorities and officials of Commonwealth entities. It mainly deals with the general duties that are imposed on accountable authorities and officials.

**Part 2-3—Planning, performance and accountability**

Part 2-3 is about planning by, and performance and accountability of, Commonwealth entities. It requires the accountable authority of a Commonwealth entity:

- to prepare a corporate plan, and budget estimates, for the entity; and
- to measure and assess the performance of the entity, and prepare annual performance statements for the entity; and
- to prepare annual financial statements for the entity; and
- to prepare an annual report for the entity.

It also requires the Finance Minister to publish monthly financial reports and table annual consolidated statements in the Parliament.

**Part 2-4—Use and management of public resources**

Part 2-4 is about the use and management of public resources by the Commonwealth and Commonwealth entities. It deals with:

- banking, borrowing, investments, indemnities, guarantees and warranties by the Commonwealth and corporate Commonwealth entities, and insurance obtained by corporate Commonwealth entities; and
- waivers, set-offs and act of grace payments by the Commonwealth.

It also has special provisions that apply to Ministers or officials of non-corporate Commonwealth entities (for example in relation to making gifts and liability for loss).



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**Part 2-5—Appropriations**

Part 2-5 has some specific provisions relating to appropriations of the CRF. In particular, it deals with special accounts.

**Part 2-6—Cooperating with other jurisdictions**

Part 2-6 is about the Commonwealth and Commonwealth entities cooperating with the States and Territories. It allows the rules to prescribe situations where the accountable authority of a Commonwealth entity is required to share information with the States and Territories. It also prohibits the Commonwealth from preventing State or Territory Auditors-General from conducting audits in certain situations.

**Part 2-7—Companies, subsidiaries and new corporate Commonwealth entities**

Part 2-7 has provisions relating to the Commonwealth's involvement in companies, the responsibility of corporate Commonwealth entities for their subsidiaries, and the creation of new corporate Commonwealth entities.

**Chapter 3—Commonwealth companies**

**Part 3-1—General**

Part 3-1 has the core provisions for Chapter 3 (which is about Commonwealth companies). It:

- defines what a Commonwealth company is (see subsection 89(1)); and
- defines what a wholly-owned Commonwealth company is (see section 90).

It also has some requirements that apply to the directors of wholly-owned Commonwealth companies.

**Part 3-2—Planning and accountability**

**Chapter 1** Introduction

**Part 1-1** Introduction

**Division 3** Guide to this Act

Section 6

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Part 3-2 is about planning by, and the accountability of, Commonwealth companies. It requires the directors of a Commonwealth company:

- to prepare a corporate plan and, in the case of a wholly-owned Commonwealth company, budget estimates for the company; and
- to prepare an annual report for the company.

**Chapter 4—Rules, delegations and independent review**

**Part 4-1—The rules**

Part 4-1 is about the rules. It provides the general power to make the rules and provides additional matters in relation to which rules can be made.

**Part 4-2—Delegations**

Part 4-2 is about delegations. It sets out when the Finance Minister, the Treasurer, the Finance Secretary and the accountable authority of a non-corporate Commonwealth entity may delegate a power, function or duty under this Act or the rules.

**Part 4-3—Independent review**

Part 4-3 requires the Finance Minister, in consultation with the Joint Committee of Public Accounts and Audit, to conduct an independent review of the operation of this Act and the rules.

## **Part 1-2—Definitions**

### **Division 1—Guide to this Part**

#### **7 Guide to this Part**

This Part is about the terms that are defined in this Act.

Division 2 has the Dictionary (see section 8). The Dictionary is a list of every term that is defined in this Act. A term will either be defined in the Dictionary itself, or in another provision of this Act. If another provision defines the term, the Dictionary will have a signpost to that definition.

## Division 2—The Dictionary

### 8 The Dictionary

In this Act:

**accountable authority**: see subsection 12(2).

**accounting standards** means the accounting standards issued by the Australian Accounting Standards Board, as in force or applicable from time to time.

**Agency Head** has the meaning given by section 7 of the *Public Service Act 1999*.

**arrangement**: see subsection 23(2).

**authorised investment**: see subsection 58(8).

**bank** means:

- (a) an authorised deposit-taking institution (within the meaning of the *Banking Act 1959*); or
- (b) the Reserve Bank of Australia; or
- (c) a person who carries on the business of banking outside Australia.

**Commonwealth company**: see subsection 89(1).

**Commonwealth entity**: see subsections 10(1) and (2).

**corporate Commonwealth entity**: see paragraph 11(a).

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

**CRF** (short for Consolidated Revenue Fund) means the Consolidated Revenue Fund referred to in section 81 of the Constitution.

**Department of State**:

- (a) includes any body (except a body corporate), organisation or group of persons that is prescribed by the rules in relation to a specified Department of State (within the ordinary meaning of the expression); and
- (b) excludes any part of a Department of State (within the ordinary meaning of the expression) that is a listed entity.

**director** of a Commonwealth company has the meaning given by the *Corporations Act 2001*.

**eligible delegate**: see subsection 108(2).

**enabling legislation** for a Commonwealth entity that is established by or under an Act or legislative instrument means that Act or legislative instrument.

**finance law** means:

- (a) this Act; or
- (b) the rules; or
- (c) any instrument made under this Act; or
- (d) an Appropriation Act.

**Finance Minister** means the Minister who administers this Act.

**Finance Secretary** means the Secretary of the Department.

**Future Fund Board of Guardians** means the Future Fund Board of Guardians established by section 34 of the *Future Fund Act 2006*.

**governing body** of a corporate Commonwealth entity means:

- (a) for a corporate Commonwealth entity that has a board, council or other governing body—that board, council or governing body; and
- (b) otherwise—all of the members of the entity.

**government business enterprise** means a Commonwealth entity or Commonwealth company that is prescribed by the rules.

**government policy order**: see subsections 22(1) and 93(1).

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***intelligence or security agency*** has the same meaning as in section 85ZL of the *Crimes Act 1914*.

***listed entity*** means any of the following that is prescribed by the rules:

- (a) any body (except a body corporate), person, group of persons or organisation;
- (b) any combination of bodies (except bodies corporate), persons, groups of persons or organisations;

whether or not part of a Department of State.

***listed law enforcement agency*** means a law enforcement agency (within the meaning of section 85ZL of the *Crimes Act 1914*) that is prescribed by the rules.

***Minister*** includes a Presiding Officer.

***money*** includes cheques and similar instruments.

***non-corporate Commonwealth entity***: see paragraph 11(b).

***official***: see subsections 13(2) and (3).

***other CRF money***: see subsection 105(2).

***Parliamentary Department*** means a Department of the Parliament established under the *Parliamentary Service Act 1999*.

***Presiding Officer*** means the President of the Senate or the Speaker of the House of Representatives.

***proper***, when used in relation to the use or management of public resources, means efficient, effective, economical and ethical.

***public resources*** means relevant money, relevant property, or appropriations.

***purposes*** of a Commonwealth entity or Commonwealth company includes the objectives, functions or role of the entity or company.

***relevant body***: see subsection 72(2).

***relevant company***: see subsection 85(2).

**relevant money** means:

- (a) money standing to the credit of any bank account of the Commonwealth or a corporate Commonwealth entity; or
- (b) money that is held by the Commonwealth or a corporate Commonwealth entity.

**relevant property** means:

- (a) property (other than relevant money) that is owned or held by the Commonwealth or a corporate Commonwealth entity; or
- (b) any other thing prescribed by the rules.

**reporting period** for a Commonwealth entity, a Commonwealth company, or a subsidiary of a Commonwealth entity or Commonwealth company, means:

- (a) the period of 12 months commencing on 1 July; or
- (b) any other period prescribed by the rules for the entity, company or subsidiary.

**responsible Minister** for a Commonwealth entity or Commonwealth company means the Minister who is responsible for the entity or company, unless otherwise prescribed by the rules.

**rules** means the rules made under section 101.

**special account** means:

- (a) a special account that is established by the Finance Minister under section 78; or
- (b) a special account that is established by any other Act.

**spending limit provision**: see subsection 59(3).

**subsidiary** of a corporate Commonwealth entity or a Commonwealth company means an entity that is controlled by the corporate Commonwealth entity 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**: see section 90.

**Chapter 2** Commonwealth entities and the Commonwealth

**Part 2-1** Core provisions for this Chapter

**Division 1** Guide to this Part

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**Chapter 2—Commonwealth entities and the  
Commonwealth**

**Part 2-1—Core provisions for this Chapter**

**Division 1—Guide to this Part**

**9 Guide to this Part**

This Part has the core provisions for this Chapter, which is mainly about Commonwealth entities.

It:

- defines what a Commonwealth entity is (see section 10); and
- defines what the 2 types of Commonwealth entities—corporate Commonwealth entities and non-corporate Commonwealth entities—are (see section 11); and
- defines who the accountable authority of the entity is (see section 12); and
- defines who the officials of the entity are (see section 13).



## Division 2—Core provisions for this Chapter

### 10 Commonwealth entities

- (1) A *Commonwealth entity* is:
- (a) a Department of State; or
  - (b) a Parliamentary Department; or
  - (c) a listed entity; or
  - (d) a body corporate established by a law of the Commonwealth.

Note: Paragraph (d) does not cover bodies corporate, such as Commonwealth companies, that are established under, but not by, a law of the Commonwealth.

- (2) However, the High Court and the Future Fund Board of Guardians are not *Commonwealth entities*.

### 11 Types of Commonwealth entities

There are 2 types of Commonwealth entities:

- (a) a *corporate Commonwealth entity*, which is a Commonwealth entity that is a body corporate; and
- (b) a *non-corporate Commonwealth entity*, which is a Commonwealth entity that is not a body corporate.

Note: Corporate Commonwealth entities are legally separate from the Commonwealth, whereas non-corporate Commonwealth entities are part of the Commonwealth.

### 12 Accountable authorities

- (1) Each Commonwealth entity has an accountable authority.
- (2) The following table sets out the person or body that is the *accountable authority* of a Commonwealth entity:

<b>Accountable authorities</b>		
<b>Item</b>	<b>If the Commonwealth entity is:</b>	<b>then the accountable authority of the entity is:</b>
1	a Department of State	the Secretary of the Department.

**Chapter 2** Commonwealth entities and the Commonwealth

**Part 2-1** Core provisions for this Chapter

**Division 2** Core provisions for this Chapter

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**Accountable authorities**

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<b>Item</b>	<b>If the Commonwealth entity is:</b>	<b>then the accountable authority of the entity is:</b>
2	a Parliamentary Department	the Secretary of the Department.
3	a listed entity	the person or group of persons prescribed by the rules as the accountable authority of the entity.
4	a body corporate established by a law of the Commonwealth	the governing body of the entity, unless otherwise prescribed by the rules.

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**13 Officials**

- (1) Each Commonwealth entity has officials.
- (2) An *official* of a Commonwealth entity is an individual who is in, or forms part of, the entity.
- (3) Without limiting subsection (2), an *official*:
  - (a) includes an individual who:
    - (i) is, or is a member of, the accountable authority of the entity; or
    - (ii) is an officer, employee or member of the entity; or
    - (iii) is an individual, or an individual in a class, prescribed by the rules; and
  - (b) does not include an individual who:
    - (i) is a Minister; or
    - (ii) is a judge; or
    - (iii) is a consultant or independent contractor of the entity (other than a consultant or independent contractor of a kind prescribed by the rules for the purposes of subparagraph (a)(iii)); or
    - (iv) is an individual, or an individual in a class, prescribed by the rules.

## **Part 2-2—Accountable authorities and officials**

### **Division 1—Guide to this Part**

#### **14 Guide to this Part**

This Part is about the accountable authorities and officials of Commonwealth entities.

Division 2 is about accountable authorities.

- Subdivision A has the general duties that apply to all accountable authorities.
- Subdivision B allows the rules to prescribe matters relating to discharging those general duties.
- Subdivision C deals with the application of government policy to Commonwealth entities. Different requirements apply to accountable authorities, depending on whether the entity is a non-corporate Commonwealth entity (see section 21) or a corporate Commonwealth entity (see section 22).
- Subdivision D confers certain powers on accountable authorities of non-corporate Commonwealth entities.

Division 3 is about officials.

- Subdivision A has the general duties that apply to all officials.
- Subdivision B has provisions that relate to those general duties.
- Subdivision C deals with the application of the Public Service Act or Parliamentary Service Act to officials to whom that Act applies.

## **Division 2—Accountable authorities**

### **Subdivision A—General duties of accountable authorities**

#### **15 Duty to govern the Commonwealth entity**

- (1) The accountable authority of a Commonwealth entity must govern the entity in a way that:
  - (a) promotes the proper use and management of public resources for which the authority is responsible; and
  - (b) promotes the achievement of the purposes of the entity; and
  - (c) promotes the financial sustainability of the entity.

Note: Section 21 (which is about the application of government policy) affects how this duty applies to accountable authorities of non-corporate Commonwealth entities.

- (2) In making decisions for the purposes of subsection (1), the accountable authority must take into account the effect of those decisions on public resources generally.

#### **16 Duty to establish and maintain systems relating to risk and control**

The accountable authority of a Commonwealth entity must establish and maintain:

- (a) an appropriate system of risk oversight and management for the entity; and
- (b) an appropriate system of internal control for the entity; including by implementing measures directed at ensuring officials of the entity comply with the finance law.

Note 1: An example of a measure directed at ensuring officials of the entity comply with the finance law is a measure:

- (a) requiring, as a condition of employment of an official of the entity, that the official complies with the finance law; and
- (b) specifying sanctions (such as termination) that apply to the official for contravening that condition.

Such a measure would not be needed for officials to whom the *Public Service Act 1999* or *Parliamentary Service Act 1999* applies because,

under that Act, sanctions may be imposed on those officials for contravening the finance law: see section 32 of this Act.

Note 2: This duty includes managing consultants and independent contractors who work for the entity, even if they are not officials of the entity.

### **17 Duty to encourage cooperation with others**

The accountable authority of a Commonwealth entity must encourage officials of the entity to cooperate with others to achieve common objectives, where practicable.

### **18 Duty in relation to requirements imposed on others**

When imposing requirements on others in relation to the use or management of public resources for which the accountable authority of a Commonwealth entity is responsible, the accountable authority must take into account:

- (a) the risks associated with that use or management; and
- (b) the effects of imposing those requirements.

### **19 Duty to keep responsible Minister and Finance Minister informed**

- (1) The accountable authority of a Commonwealth entity must do the following:
  - (a) keep the responsible Minister informed of the activities of the entity and any subsidiaries of the entity;
  - (b) give the responsible Minister or the Finance Minister any reports, documents and information in relation to those activities as that Minister requires;
  - (c) notify the responsible Minister as soon as practicable after the accountable authority makes a significant decision in relation to the entity or any of its subsidiaries;
  - (d) give the responsible Minister reasonable notice if the accountable authority becomes aware of any significant issue that may affect the entity or any of its subsidiaries;
  - (e) notify the responsible Minister as soon as practicable after the accountable authority becomes aware of any significant issue that has affected the entity or any of its subsidiaries.

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- (2) However, for a Commonwealth entity that is a court or tribunal, subsection (1) applies only to activities, reports, documents, information or notifications about matters of an administrative nature.
- (3) Without limiting subsection (1), the rules may prescribe matters to be taken into account in deciding whether a decision or issue is significant.
- (4) The accountable authority must comply with a requirement under paragraph (1)(b) within the time limits set by the Minister concerned.

*Relationship with other laws and powers*

- (4A) If a Commonwealth entity has enabling legislation, then subsection (1) applies only to the extent that compliance with that subsection is not inconsistent with compliance with that legislation.
- (4B) This section is subject to any Commonwealth law that prohibits disclosure of particular information.
- (5) This section does not limit any other power that a Minister has to require information from a Commonwealth entity.

**Subdivision B—Rules about general duties of accountable authorities**

**20 Rules about general duties of accountable authorities**

The rules may prescribe matters relating to discharging duties under Subdivision A.

**Subdivision C—Application of government policy**

**21 Non-corporate Commonwealth entities**

The accountable authority of a non-corporate Commonwealth entity must govern the entity in accordance with paragraph 15(1)(a) in a way that is not inconsistent with the policies of the Australian Government.

Note: Paragraph 15(1)(a) is about promoting the proper use and management of public resources for which the accountable authority is responsible.

## 22 Corporate Commonwealth entities

- (1) The Finance Minister may make an order (a **government policy order**) that specifies a policy of the Australian Government that is to apply in relation to one or more corporate Commonwealth entities.
- (2) Before making a government policy order that applies in relation to a corporate Commonwealth entity, the Finance Minister must be satisfied that the Minister responsible for the policy has consulted the entity on the application of the policy.
- (3) If a government policy order applies in relation to a corporate Commonwealth entity, the accountable authority of the entity must ensure that the order is complied with:
  - (a) in relation to the entity; and
  - (b) in relation to any subsidiary of the entity, so far as practicable.
- (4) A government policy order is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to it.

### Subdivision D—Special provisions applying to accountable authorities of non-corporate Commonwealth entities

## 23 Power in relation to arrangements

- (1) The accountable authority of a non-corporate Commonwealth entity may, on behalf of the Commonwealth:
  - (a) enter into arrangements relating to the affairs of the entity; and
  - (b) vary and administer those arrangements.
- (2) An **arrangement** includes a contract, agreement, deed or understanding.

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**24 Power to establish advisory boards**

- (1) The accountable authority of a non-corporate Commonwealth entity may establish an advisory board to assist the authority in governing the entity.
- (2) An advisory board for a non-corporate Commonwealth entity may include individuals who are not officials of the entity.



## **Division 3—Officials**

### **Subdivision A—General duties of officials**

#### **25 Duty of care and diligence**

- (1) An official of a Commonwealth entity must exercise his or her powers, perform his or her functions and discharge his or her duties with the degree of care and diligence that a reasonable person would exercise if the person:
  - (a) were an official of a Commonwealth entity in the Commonwealth entity's circumstances; and
  - (b) occupied the position held by, and had the same responsibilities within the Commonwealth entity as, the official.
- (2) The rules may prescribe circumstances in which the requirements of subsection (1) are taken to be met.

#### **26 Duty to act in good faith and for proper purpose**

An official of a Commonwealth entity must exercise his or her powers, perform his or her functions and discharge his or her duties in good faith and for a proper purpose.

#### **27 Duty in relation to use of position**

An official of a Commonwealth entity must not improperly use his or her position to:

- (a) gain an advantage for himself or herself or any other person;  
or
- (b) cause detriment to the entity, the Commonwealth or any other person.

#### **28 Duty in relation to use of information**

A person who obtains information because they are an official of a Commonwealth entity must not improperly use the information to:

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- (a) gain an advantage for himself or herself or any other person;  
or
- (b) cause detriment to the Commonwealth entity, the Commonwealth or any other person.

**29 Duty to disclose interests**

- (1) An official of a Commonwealth entity who has a material personal interest that relates to the affairs of the entity must disclose details of the interest.
- (2) The rules may do the following:
  - (a) prescribe circumstances in which subsection (1) does not apply;
  - (b) prescribe how and when an interest must be disclosed;
  - (c) prescribe the consequences of disclosing an interest (for example, that the official must not participate at a meeting about a matter or vote on the matter).

**Subdivision B—Provisions relating to general duties of officials**

**30 Termination of appointment for contravening general duties of officials**

- (1) A person (the *appointer*) may terminate the appointment of another person (the *appointee*) in relation to a corporate Commonwealth entity if:
  - (a) the appointer holds the position that is responsible for appointing the appointee; and
  - (b) the appointee is, or is a member of, the accountable authority of the entity; and
  - (c) the appointee contravenes Subdivision A in relation to the entity; and
  - (d) the termination is in accordance with any requirements prescribed by the rules.
- (2) The appointer terminates the appointment by giving the appointee a written notice signed by the appointer.

- (3) The notice must include a statement of reasons for the termination.
- (4) The appointer must cause a copy of the notice to be tabled before each House of the Parliament within 15 sitting days of that House after the day the appointer gives the notice to the appointee.
- (5) Without limiting paragraph (1)(d), the rules may prescribe positions in relation to which appointments must not be terminated under this section.
- (6) This section applies despite any provision in any enabling legislation for a corporate Commonwealth entity that provides for the termination of the appointment of a person in relation to the entity, but does not limit any such provision.

### **31 Interaction between Subdivision A and other laws**

Subdivision A does not limit:

- (a) a law of the Commonwealth, or any principles or rules of the common law or equity relating to:
  - (i) the duty or liability of a person because of his or her position or employment in relation to a Commonwealth entity; or
  - (ii) conflicts of interest; and
- (b) any provision in any enabling legislation for a Commonwealth entity that restricts an official of the entity 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 his or her duties or interests as an official.

**Subdivision C—Officials to whom the Public Service Act or  
Parliamentary Service Act applies**

**32 Officials to whom the Public Service Act or Parliamentary  
Service Act applies**

To avoid doubt, the finance law is an Australian law for the purposes of subsection 13(4) of the *Public Service Act 1999* and subsection 13(4) of the *Parliamentary Service Act 1999*.

- Note 1: If the *Public Service Act 1999* or *Parliamentary Service Act 1999* applies to an official of a Commonwealth entity, the official will be required under subsection 13(4) of that Act to comply with applicable Australian laws (which include the finance law). This means that if the official contravenes the finance law, sanctions (such as termination of employment) may be imposed on the official under section 15 of that Act.
- Note 2: For dealing with a contravention of the finance law by an official of a Commonwealth entity to whom the *Public Service Act 1999* or *Parliamentary Service Act 1999* does not apply, see section 16 of this Act (which requires the accountable authority of the entity to implement measures directed at ensuring officials of the entity comply with the finance law).

## **Part 2-3—Planning, performance and accountability**

### **Division 1—Guide to this Part**

#### **33 Guide to this Part**

This Part is about planning by, and performance and accountability of, Commonwealth entities.

Division 2 is about planning and budgeting. It requires the accountable authority of a Commonwealth entity to prepare a corporate plan, and budget estimates, for the entity.

Division 3 is about the performance of Commonwealth entities. It requires the accountable authority of a Commonwealth entity:

- to cause records to be kept about the entity's performance; and
- to measure and assess the entity's performance; and
- to prepare annual performance statements about the entity's performance for inclusion in the entity's annual report.

Division 4 is about financial reporting and auditing for Commonwealth entities. It requires the accountable authority of a Commonwealth entity:

- to cause accounts and records to be kept about the entity's transactions and financial position; and
- to prepare annual financial statements for the entity for inclusion in the entity's annual report.

It also requires the Auditor-General to audit those annual financial statements.

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Division 5 requires the accountable authority of a Commonwealth entity to ensure that the entity has an audit committee.

Division 6 requires the accountable authority of a Commonwealth entity to prepare annual reports for the entity.

Division 7 is about whole-of-government reporting by the Finance Minister. It requires the Finance Minister to publish monthly financial reports and table annual consolidated statements in the Parliament. It also requires the Auditor-General to audit those annual consolidated statements.

## **Division 2—Planning and budgeting**

### **34 Key priorities and objectives of the Australian Government**

The Australian Government may, from time to time, publish a statement setting out its key priorities and objectives.

### **35 Corporate plan for Commonwealth entities**

#### *Commonwealth entities*

- (1) The accountable authority of a Commonwealth entity must:
  - (a) prepare a corporate plan for the entity; and
  - (b) give the corporate plan to the responsible Minister and the Finance Minister in accordance with any requirements prescribed by the rules.
- (2) The corporate plan must comply with, and be published in accordance with, any requirements prescribed by the rules.
- (3) If:
  - (a) a statement of the Australian Government's key priorities and objectives is published under section 34; and
  - (b) the purposes of the Commonwealth entity relate to those priorities and objectives;then the corporate plan must set out how the activities of the entity will contribute to achieving those priorities and objectives.
- (4) However, if the Commonwealth entity has enabling legislation, then subsection (3) applies only to the extent that compliance with that subsection is not inconsistent with compliance with that legislation.

#### *Subsidiaries*

- (5) If the Commonwealth entity has subsidiaries, the corporate plan must cover both the entity and its subsidiaries. In particular, for each subsidiary the corporate plan must include details of any matters prescribed by the rules, so far as they are applicable.

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**36 Budget estimates for Commonwealth entities**

- (1) The accountable authority of a Commonwealth entity must:
  - (a) prepare the budget estimates covering the entity's activities for each reporting period for the entity, and for any other periods directed by the Finance Minister; and
  - (b) give the budget estimates to the Finance Secretary in accordance with any directions under subsection (3).
- (2) The budget estimates must:
  - (a) fairly present the estimated financial impacts of the entity's activities for the reporting period or other period; and
  - (b) comply with any directions under subsection (3); and
  - (c) be accompanied by any information relating to the budget estimates for the entity that is required by any direction under subsection (3).
- (3) The Finance Secretary may give written directions to the accountable authority of a Commonwealth entity for the purposes referred to in paragraph (1)(b) or subsection (2).
- (4) A direction made under subsection (3) is not a legislative instrument.



## **Division 3—Performance of Commonwealth entities**

### **37 Records about performance of Commonwealth entities**

- (1) The accountable authority of a Commonwealth entity must cause records to be kept that properly record and explain the entity's performance in achieving its purposes.
- (2) The accountable authority must ensure that the records are kept in a way that:
  - (a) complies with any requirements prescribed by the rules; and
  - (b) enables the preparation of the annual performance statements required by section 39.
- (3) The responsible Minister and the Finance Minister are entitled to full and free access to the records kept under this section. However, those Ministers' access is subject to any Commonwealth law that prohibits disclosure of particular information.

### **38 Measuring and assessing performance of Commonwealth entities**

- (1) The accountable authority of a Commonwealth entity must measure and assess the performance of the entity in achieving its purposes.
- (2) The measurement and assessment must comply with any requirements prescribed by the rules.

### **39 Annual performance statements for Commonwealth entities**

- (1) The accountable authority of a Commonwealth entity must:
  - (a) prepare annual performance statements for the entity as soon as practicable after the end of each reporting period for the entity; and
  - (b) include a copy of the annual performance statements in the entity's annual report that is tabled in the Parliament.

Note: See section 46 for the annual report.

- (2) The annual performance statements must:

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- (a) provide information about the entity's performance in achieving its purposes; and
- (b) comply with any requirements prescribed by the rules.

**40 Audit of annual performance statements for Commonwealth entities**

- (1) The responsible Minister for a Commonwealth entity or the Finance Minister (the *requesting Minister*) may request the Auditor-General to examine and report on the entity's annual performance statements.
- (2) If, under a request under subsection (1), the Auditor-General examines and reports on the entity's annual performance statements, the Auditor-General must give a copy of the report to the requesting Minister.
- (3) The requesting Minister must cause a copy of the Auditor-General's report to be tabled in each House of the Parliament as soon as practicable after receipt. The copy that is tabled must be accompanied by a copy of the entity's annual performance statements.

## **Division 4—Financial reporting and auditing for Commonwealth entities**

### **41 Accounts and records for Commonwealth entities**

- (1) The accountable authority of a Commonwealth entity must cause accounts and records to be kept that properly record and explain the entity's transactions and financial position.
- (2) The accountable authority must ensure that the accounts and records are kept in a way that:
  - (a) complies with any requirements prescribed by the rules; and
  - (b) enables the preparation of the annual financial statements required by sections 42 and 48; and
  - (c) allows those financial statements to be conveniently and properly audited in accordance with this Act.

Note: The Auditor-General audits the financial statements of Commonwealth entities (see section 43).

- (3) The Finance Minister and the responsible Minister are entitled to full and free access to the accounts and records kept under this section. However, those Ministers' access is subject to any Commonwealth law that prohibits disclosure of particular information.

### **42 Annual financial statements for Commonwealth entities**

- (1) The accountable authority of a Commonwealth entity must:
  - (a) prepare annual financial statements for the entity as soon as practicable after the end of each reporting period for the entity; and
  - (b) give the statements to the Auditor-General as soon as practicable after they are prepared.
- (2) The annual financial statements must:
  - (a) comply with the accounting standards and any other requirements prescribed by the rules; and

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- (b) present fairly the entity's financial position, financial performance and cash flows.

Note: If financial statements for a Commonwealth entity prepared in accordance with the accounting standards would not present fairly the entity's financial position, financial performance and cash flows, the accountable authority of the entity must add the information and explanations required to present fairly those matters.

- (3) In the annual financial statements, the accountable authority must state whether, in the authority's opinion, the statements comply with subsection (2).
- (4) If the Commonwealth entity is a government business enterprise, the accountable authority must state whether, in the authority's opinion, there are reasonable grounds to believe, when the statement is made, that the entity will be able to pay its debts as and when they fall due.

**43 Audit of annual financial statements for Commonwealth entities**

- (1) As soon as practicable after receiving annual financial statements under section 42 for a Commonwealth entity, the Auditor-General must:
  - (a) examine the statements and prepare an audit report; and
  - (b) give the report to the entity's responsible Minister as soon as practicable after it is prepared.
- (2) In the audit report, the Auditor-General must state whether, in the Auditor-General's opinion, the annual financial statements:
  - (a) comply with the accounting standards and any other requirements prescribed by the rules; and
  - (b) present fairly the entity's financial position, financial performance and cash flows.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 a failure of the annual financial statements to comply with:
  - (a) the accounting standards; or
  - (b) any other requirements prescribed by the rules;

has a quantifiable financial effect, then the Auditor-General must quantify that financial effect and state the amount, where practicable.

- (4) A copy of the annual financial statements and the Auditor-General's report must be included in the Commonwealth entity's annual report that is tabled in the Parliament.

Note: See section 46 for the annual report.

#### **44 Audit of subsidiary's financial statements**

- (1) This section applies in relation to a Commonwealth entity that has a subsidiary at the end of the subsidiary's reporting period.
- (2) The accountable authority of the Commonwealth entity must ensure that all the subsidiary's financial statements for a reporting period of the subsidiary are audited.
- (3) The subsidiary's financial statements must be audited by the Auditor-General unless:
- (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.

Note: If the Auditor-General is not the subsidiary's auditor, this subsection requires the Auditor-General to do an audit of the statements in addition to that done by the subsidiary's auditor, except in the circumstances referred to in paragraphs (3)(a) and (b).

- (4) 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.

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- (5) The accountable authority of the Commonwealth entity must give the report of the auditor to the responsible Minister (whether or not the auditor is the Auditor-General), together with a copy of the subsidiary's financial statements.

## **Division 5—Audit committee for Commonwealth entities**

### **45 Audit committee for Commonwealth entities**

- (1) The accountable authority of a Commonwealth entity must ensure that the entity has an audit committee.
- (2) The committee must be constituted, and perform functions, in accordance with any requirements prescribed by the rules.

## Division 6—Annual report for Commonwealth entities

### 46 Annual report for Commonwealth entities

- (1) After the end of each reporting period for a Commonwealth entity, the accountable authority of the entity must give an annual report to the entity's responsible Minister, for presentation to the Parliament, on the entity's activities during the period.

Note: A Commonwealth entity's annual report must include the entity's annual performance statements and annual financial statements (see paragraph 39(1)(b) and subsection 43(4)).

- (2) The annual report must be given to the responsible Minister by:
  - (a) the last day of the fourth month after the end of the reporting period for the entity; or
  - (b) the end of any further period granted under subsection 34C(5) of the *Acts Interpretation Act 1901*.
- (3) The annual report must comply with any requirements prescribed by the rules.
- (4) Before rules are made for the purposes of subsection (3), the rules must be approved on behalf of the Parliament by the Joint Committee of Public Accounts and Audit.



## **Division 7—Whole-of-government financial reporting**

### **47 Monthly financial reports**

- (1) As soon as practicable after the end of each month of a financial year, the Finance Minister must publish monthly financial reports in relation to that month.
- (2) The monthly financial reports:
  - (a) must be in a form that is consistent with the budget estimates for the financial year; and
  - (b) may include any additional information that the Finance Minister considers relevant.

### **48 Annual consolidated financial statements**

- (1) The Finance Minister must:
  - (a) prepare annual consolidated financial statements as soon as practicable after the end of each financial year; and
  - (b) give the statements to the Auditor-General as soon as practicable after they are prepared.
- (2) The annual consolidated financial statements must:
  - (a) comply with the accounting standards and any other requirements prescribed by the rules; and
  - (b) present fairly the consolidated financial position, financial performance and cash flows.
- (3) If the Finance Minister has not given the annual consolidated financial statements to the Auditor-General within 5 months after the end of the financial year, the Finance Minister must cause to be tabled in each House of the Parliament a statement of the reasons why the statements were not given to the Auditor-General within that period.

### **49 Audit of annual consolidated financial statements**

- (1) As soon as practicable after receiving the annual consolidated financial statements under section 48, the Auditor-General must:
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- (a) examine the statements and prepare an audit report; and
  - (b) give a copy of the report to the Finance Minister as soon as practicable after it is prepared.
- (2) In the audit report, the Auditor-General must state whether, in the Auditor-General's opinion, the annual consolidated financial statements:
  - (a) comply with the accounting standards and any other requirements prescribed by the rules; and
  - (b) present fairly the consolidated financial position, financial performance and cash flows.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 a failure of the annual consolidated financial statements to comply with:
  - (a) the accounting standards; or
  - (b) any other requirements prescribed by the rules;has a quantifiable financial effect, then the Auditor-General must quantify that financial effect and state the amount, where practicable.
- (4) The Finance Minister must cause a copy of the audit report to be tabled in each House of the Parliament as soon as practicable after receipt. The copy that is tabled must be accompanied by a copy of the annual consolidated financial statements.

## **Part 2-4—Use and management of public resources**

### **Division 1—Guide to this Part**

#### **50 Guide to this Part**

This Part is about the use and management of public resources by the Commonwealth and Commonwealth entities.

Many of the provisions in this Part apply to either the Commonwealth or corporate Commonwealth entities, and do not expressly refer to non-corporate Commonwealth entities. This is because non-corporate Commonwealth entities are legally part of the Commonwealth. Generally, the Finance Minister has the power to act on behalf of the Commonwealth for the purposes of the provisions of this Part.

Division 2 allows the Finance Minister to make available to Commonwealth entities amounts that have been appropriated by the Parliament for the entity. It also allows the rules to prescribe matters relating to the commitment or expenditure of relevant money by the Commonwealth or Commonwealth entities.

Division 3 is about banking for the Commonwealth and corporate Commonwealth entities. It also requires Ministers and officials to bank relevant money that they receive.

Division 4 is about borrowing by the Commonwealth and corporate Commonwealth entities.

Division 5 is about investment by the Commonwealth and corporate Commonwealth entities.

Division 6 is about indemnities, guarantees and warranties by the Commonwealth and corporate Commonwealth entities, and insurance obtained by corporate Commonwealth entities.

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Division 7 is about the Commonwealth. It deals with the Commonwealth:

- waiving amounts owed to it; and
- setting off amounts owed to, or by, it against another amount that is owed to, or by, another person; and
- granting act of grace payments to a person.

Division 8 has special provisions that apply to Ministers and officials of non-corporate Commonwealth entities.

- Subdivision A prohibits Ministers and those officials from making gifts of relevant property unless authorised as provided in section 66.
- Subdivision B makes Ministers and those officials liable to pay an amount to the Commonwealth if they make an unauthorised gift or are responsible for the loss of relevant money or relevant property.

Division 9 has requirements that apply to Ministers only.

Section 71 has requirements that apply to a Minister when the Minister is approving proposed expenditure. Section 72 requires a Minister who has responsibility for certain events (for example, the forming of a new company) to inform Parliament of the event.

## **Division 2—Funding and expenditure**

### **51 Making amounts appropriated available to Commonwealth entities**

- (1) If an amount is appropriated by the Parliament in relation to a Commonwealth entity, then the Finance Minister may, on behalf of the Commonwealth, make the appropriated amount available to the entity in such instalments, and at such times, as the Finance Minister considers appropriate.
- (2) However, the Finance Minister must make an amount available if:
  - (a) a law requires the payment of the amount; and
  - (b) the Finance Minister is satisfied that there is an available appropriation.

### **52 Commitment and expenditure of relevant money**

The rules may prescribe matters relating to the commitment or expenditure of relevant money by the Commonwealth or a Commonwealth entity.

Note: Rules made for the purposes of this section could prescribe measures to ensure that, to the greatest extent practicable, relevant money that is within the CRF is not paid out without an appropriation.

## **Division 3—Banking**

### **53 Banking by the Commonwealth**

- (1) The Finance Minister may, on behalf of the Commonwealth, enter into an agreement with a bank relating to the conduct of the banking business of the Commonwealth, including in relation to opening and maintaining bank accounts.
- (2) The agreement:
  - (a) must not provide for overdraft drawings by the Commonwealth unless it provides for each drawing to be repaid within 30 days; and
  - (b) must be in accordance with any requirements prescribed by the rules.

Note: An overdraft drawing consists of the bank meeting the payment of a cheque, or making an “electronic payment” to another account, and in each case debiting the payment against an account that has an insufficient balance.

- (3) The Finance Minister must, on behalf of the Commonwealth, open and maintain a central bank account with the Reserve Bank of Australia.
- (4) The rules may prescribe matters relating to banking by the Commonwealth, except in relation to the central bank account referred to in subsection (3).

### **54 Banking by corporate Commonwealth entities**

The rules may prescribe matters relating to banking by corporate Commonwealth entities.

### **55 Banking of relevant money by Ministers and officials**

A Minister, or an official of a Commonwealth entity, who receives relevant money (including money that becomes relevant money upon receipt) must:

- (a) cause the money to be banked promptly and in accordance with any requirements prescribed by the rules; or

(b) otherwise deal with it in accordance with the rules.

## **Division 4—Borrowing**

### **56 Borrowing by the Commonwealth**

- (1) An agreement for the borrowing of money by the Commonwealth (including by obtaining an advance on overdraft or obtaining credit by way of credit card or credit voucher) is of no effect unless the borrowing is expressly authorised by an Act.
- (2) The Finance Minister may, on behalf of the Commonwealth, enter into an agreement for borrowing money.
- (3) The agreement must:
  - (a) require the amount borrowed to be repaid by the Commonwealth within 90 days; and
  - (b) be in accordance with any requirements prescribed by the rules.

### **57 Borrowing by corporate Commonwealth entities**

An agreement for the borrowing of money by a corporate Commonwealth entity (including by obtaining an advance on overdraft or obtaining credit by way of credit card or credit voucher) is of no effect unless:

- (a) borrowing by the entity is expressly authorised by an Act; or
- (b) the borrowing is authorised by the Finance Minister in writing; or
- (c) the borrowing is authorised by the rules.



## **Division 5—Investment**

### **58 Investment by the Commonwealth**

- (1) The Finance Minister or the Treasurer may, on behalf of the Commonwealth, invest in any authorised investment.
- (2) For the purposes of investing under this section in securities of the Commonwealth, the Commonwealth is to be treated as if it were a separate legal entity to the entity issuing the securities.
- (3) An investment under this section must not be inconsistent with the terms of any trust that applies to the money concerned.
- (4) If an amount invested under this section was debited from a special account, then expenses of the investment may be debited from that special account.
- (5) The proceeds of an investment of an amount debited from a special account must be credited to the special account.
- (6) At any time before an investment matures, the Finance Minister or Treasurer, as the case requires, may, on behalf of the Commonwealth, authorise in writing the reinvestment of the proceeds upon maturity in an authorised investment with the same entity.
- (7) The CRF is appropriated as necessary for the purposes of this section.
- (8) Any of the following are an *authorised investment*:
  - (a) in relation to both the Finance Minister and the Treasurer:
    - (i) securities of, or securities guaranteed by, the Commonwealth, a State or a Territory; or
    - (ii) a deposit with a bank, including a deposit evidenced by a certificate of deposit; or
    - (iii) any other form of investment prescribed by the rules;
  - (b) in relation to the Treasurer—debt instruments with an investment grade credit rating that:

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- (i) are issued or guaranteed by the government of a foreign country; or
- (ii) are issued or guaranteed by a financial institution whose members consist of foreign countries (which may also include Australia); or
- (iii) are denominated in Australian currency.

**59 Investment by corporate Commonwealth entities**

- (1) A corporate Commonwealth entity must not invest relevant money for which the entity is responsible unless:
  - (a) the money is not immediately required for the purposes of the entity; and
  - (b) the money is invested:
    - (i) on deposit with a bank, including a deposit evidenced by a certificate of deposit; or
    - (ii) in securities of, or securities guaranteed by, the Commonwealth, a State or a Territory; or
    - (iii) in any other manner approved by the Finance Minister in writing; or
    - (iv) for a government business enterprise—in any other manner that is consistent with sound commercial practice.
- (2) A spending limit provision in the corporate Commonwealth entity's enabling legislation does not apply to a contract for the investment of money under subsection (1), unless the provision expressly states that it applies to such a contract.
- (3) A *spending limit provision* in a corporate Commonwealth entity's enabling legislation is a provision in that legislation to the effect that the entity 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.

## **Division 6—Indemnities, guarantees, warranties and insurance**

### **60 Indemnities, guarantees or warranties by the Commonwealth**

- (1) The Finance Minister may, on behalf of the Commonwealth, grant an indemnity, guarantee or warranty.
- (2) The grant of the indemnity, guarantee or warranty must be in accordance with any requirements prescribed by the rules.

### **61 Indemnities, guarantees or warranties by corporate Commonwealth entities**

The rules may prescribe requirements relating to the granting of indemnities, guarantees or warranties by corporate Commonwealth entities.

### **62 Insurance obtained by corporate Commonwealth entities**

The rules may prescribe requirements relating to the obtaining of insurance by corporate Commonwealth entities.

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## Division 7—Waivers, set-offs and act of grace payments

### 63 Waiver of amounts owing to the Commonwealth

- (1) The Finance Minister may, on behalf of the Commonwealth, waive an amount owing to the Commonwealth, or otherwise modify the terms and conditions on which an amount owing to the Commonwealth is to be paid to the Commonwealth.
- (2) The waiver or modification must be in accordance with any requirements prescribed by the rules.
- (3) To avoid doubt, an amount may be owing to the Commonwealth even if it is not yet due for payment.

### 64 Setting off amounts owed to, and by, the Commonwealth

- (1) If:
  - (a) an amount (the *first amount*) is owing to the Commonwealth by a person; and
  - (b) an amount (the *second amount*) is owing by the Commonwealth to the person;the Finance Minister may, on behalf of the Commonwealth, set off the whole or a part of the first amount against the whole or a part of the second amount.
- (2) Paragraph (1)(b) does not apply in relation to a payment if:
  - (a) a law of the Commonwealth provides that the payment is inalienable or absolutely inalienable; or
  - (b) a law of the Commonwealth provides that the payment, or the right to the payment, cannot be assigned.
- (3) To avoid doubt, an amount may be owing to, or by, the Commonwealth even if it is not yet due for payment.

### 65 Act of grace payments by the Commonwealth

- (1) The Finance Minister may, on behalf of the Commonwealth, authorise, in writing, one or more payments to be made to a person

if the Finance Minister considers it appropriate to do so because of special circumstances.

Note 1: A payment may be authorised even though the payment or payments would not otherwise be authorised by law or required to meet a legal liability.

Note 2: Act of grace payments under this section must be made from money appropriated by the Parliament. Generally, an act of grace payment can be debited against a non-corporate Commonwealth entity's annual appropriation, providing that it relates to some matter that has arisen in the course of the administration of the entity.

- (2) The authorisation of the payment must be in accordance with any requirements prescribed by the rules.

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**Division 8—Special provisions applying to Ministers and certain officials**

**Subdivision A—Gifts of relevant property**

**66 Gifts of relevant property**

A Minister or an official of a non-corporate Commonwealth entity must not make a gift of relevant property unless:

- (a) the property was acquired or produced to use as a gift; or
- (b) the making of the gift:
  - (i) is expressly authorised by law; or
  - (ii) is made in accordance with the rules.

**Subdivision B—Liability of Ministers and certain officials for unauthorised gifts and loss**

**67 Liability for unauthorised gifts of relevant property**

- (1) A Minister or an official of a non-corporate Commonwealth entity is liable to pay an amount to the Commonwealth if the Minister or official makes a gift of relevant property in contravention of section 66.
- (2) The amount the Minister or official is liable to pay under subsection (1) is the value of the relevant property.

**68 Liability for loss—custody**

- (1) A Minister or an official of a non-corporate Commonwealth entity is liable to pay an amount to the Commonwealth if all of the following apply:
  - (a) a loss of relevant money or relevant property occurs (including by way of deficiency, destruction or damage);
  - (b) at the time of the loss, the Minister or official had custody of the money or property as described in subsection (3) or (4);
  - (c) the Minister or official did not take reasonable steps in the circumstances to prevent the loss.

- (2) The amount the Minister or official is liable to pay under subsection (1) is:
  - (a) for a loss of relevant money—the amount of the loss; or
  - (b) for a loss of relevant property:
    - (i) if the property is damaged—the value of the property or the cost of repairing the property, whichever is less; or
    - (ii) otherwise—the value of the property.
- (3) For the purposes of paragraph (1)(b), a person has custody of relevant money if the person:
  - (a) holds the money by way of a petty cash advance, change float or other advance; or
  - (b) has received the money, but has not yet dealt with it as required by section 55 (which is about banking of relevant money).
- (4) For the purposes of paragraph (1)(b), a person has custody of relevant property if:
  - (a) the person has taken delivery of the property and has not returned it to another person entitled to receive the property on behalf of the Commonwealth; and
  - (b) when the person took delivery of the property the person signed a written acknowledgement that the property was delivered on the express condition that the person would at all times take strict care of the property.

### **69 Liability for loss—misconduct**

- (1) A Minister or an official of a non-corporate Commonwealth entity is liable to pay an amount to the Commonwealth if:
  - (a) a loss of relevant money or relevant property occurs (including by way of deficiency, destruction or damage); and
  - (b) the Minister or official caused or contributed to the loss by misconduct, or by a deliberate or serious disregard of reasonable standards of care.
- (2) The amount the Minister or official is liable to pay under subsection (1) is so much of the loss as is just and equitable having

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regard to the Minister's or official's share of the responsibility for the loss.

**70 Provisions relating to liability of Ministers and officials**

- (1) An amount payable to the Commonwealth under subsection 67(1), 68(1) or 69(1) is recoverable as a debt in a court of competent jurisdiction.
- (2) The Commonwealth is not entitled to recover amounts from the same person under subsection 68(1) or 69(1) for the same loss.
- (3) A person's liability under subsection 67(1), 68(1) or 69(1) is not avoided merely because the person has ceased to be a Minister or an official.



## **Division 9—Special provisions applying to Ministers only**

### **71 Approval of proposed expenditure by a Minister**

- (1) A Minister must not approve a proposed expenditure of relevant money unless the Minister is satisfied, after making reasonable inquiries, that the expenditure would be a proper use of relevant money.
- (2) For a Parliamentary Department, the references in subsection (1) to a Minister are references to:
  - (a) a Presiding Officer, for expenditure for which he or she alone is responsible; and
  - (b) the Presiding Officers jointly, for expenditure for which they are jointly responsible.
- (3) If a Minister approves a proposed expenditure of relevant money, the Minister must:
  - (a) record the terms of the approval in writing as soon as practicable after giving the approval; and
  - (b) comply with any other requirements prescribed by the rules in relation to the approval.

### **72 Minister to inform Parliament of certain events**

- (1) The Minister who has the responsibility for any of the following events must cause a notice of the event to be tabled in each House of the Parliament as soon as practicable after the event occurs:
  - (a) the Commonwealth or a corporate Commonwealth entity forms, or participates in forming, a company or a relevant body (see subsection (2));
  - (b) the Commonwealth or a corporate Commonwealth entity becomes, or ceases to be, a member of a company or a relevant body;
  - (c) a variation occurs in rights of the Commonwealth or a corporate Commonwealth entity as a member of a company or a relevant body;

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- (d) the Commonwealth or a corporate Commonwealth entity acquires shares (either by purchase or subscription) or disposes of shares in a company;
  - (e) a variation occurs in the rights attaching to shares held by the Commonwealth or a corporate Commonwealth entity in a company.
- (2) **Relevant body** means a body of a kind prescribed by the rules.
- (3) The notice must be in the form (if any), and contain the particulars (if any), prescribed by the rules.
- (4) This section does not apply to:
- (a) an event mentioned in paragraphs (1)(a) to (e) that occurs in relation to:
    - (i) an authorised investment made under section 58; or
    - (ii) an investment authorised under section 59; or
    - (iii) an investment made under the *Future Fund Act 2006* or any other Act that is prescribed by the rules; or
  - (b) anything that results from the transfer to a Minister of any property that is to be dealt with as unclaimed property under Part 9.7 of the *Corporations Act 2001*; or
  - (c) a company or relevant body that is conducted for the purposes of an intelligence or security agency or a listed law enforcement agency.

## **Part 2-5—Appropriations**

### **Division 1—Guide to this Part**

#### **73 Guide to this Part**

This Part has some specific provisions relating to appropriations of the CRF.

Division 2 is mainly about appropriations relating to non-corporate Commonwealth entities. It has provisions about:

- the effect on appropriations when those entities receive certain amounts; and
- the effect on appropriations when there is a transfer of functions between those entities; and
- payments within or between those entities.

Division 3 deals with special accounts. Special accounts can be established in 2 ways—by the Finance Minister under this Act (see sections 78 and 79), or under another Act (see section 80).

## **Division 2—Appropriations relating to non-corporate Commonwealth entities and the Commonwealth**

### **74 Receipts of amounts by non-corporate Commonwealth entities**

- (1) If a non-corporate Commonwealth entity receives an amount of a kind prescribed by the rules, then the amount may be credited to:
  - (a) the most recent departmental item for the entity in an Appropriation Act; or
  - (b) if the rules prescribe another item in an Appropriation Act, another appropriation or a special account—that item, appropriation or special account.
- (2) The crediting of an amount in accordance with subsection (1) takes effect at the time an entry recording the receipt of the amount is made in the accounts and records of the entity.

### **75 Transfers of functions between non-corporate Commonwealth entities**

#### *When this section applies*

- (1) This section applies if a function of a non-corporate Commonwealth entity (the ***transferring entity***) is transferred to another non-corporate Commonwealth entity, either because the transferring entity is abolished or for any other reason.

#### *Adjustments to appropriations*

- (2) The Finance Minister may determine that one or more Schedules to one or more Appropriation Acts are amended in a specified way. The amendment must be related to the transfer of function.
- (3) Each Appropriation Act concerned has effect as if the Schedule concerned were amended in accordance with the determination.

#### *No increase in overall appropriation etc.*

- (4) A determination under subsection (2) must not result in:

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- (a) a change in the total amount appropriated in relation to the financial year in which the determination is made; or
- (b) an increase in the total amount appropriated in relation to any previous financial year.

*Transfer of function between Parliamentary Departments*

- (5) If the transfer of function is between Parliamentary Departments, then the Finance Minister must not make a determination under subsection (2) unless it is in accordance with a written recommendation of the Presiding Officers.

*No extension of time limits*

- (6) A determination under subsection (2) does not have the effect of extending any time limit that applies to an appropriation.

*Legislative Instruments Act*

- (7) A determination under subsection (2) is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the determination.
- (8) A determination under subsection (2) may be expressed to take effect before the day it is registered under that Act (including before the day it is made).
- (9) Subsection (8):
  - (a) does not authorise expenditure under an appropriation that did not exist at the time of the expenditure; and
  - (b) applies despite subsection 12(2) of the *Legislative Instruments Act 2003*.

*Rules about transfers of functions*

- (10) The rules may make provision in relation to a transfer of function to which this section applies, including in relation to the exercise of a power, the performance of a function or the discharge of a duty delegated under this Act or the rules.

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**76 Notional payments and receipts by non-corporate Commonwealth entities**

If:

(a) either:

- (i) a non-corporate Commonwealth entity makes a notional payment to another non-corporate Commonwealth entity; or
- (ii) one part of a non-corporate Commonwealth entity makes a notional payment to another part of that entity; and

(b) the transaction would involve the debiting of an appropriation if the notional payment were a real payment;

then:

- (c) this Act and the rules apply in relation to the notional payment as if it were a real payment; and
- (d) this Act and the rules apply in relation to the notional receipt of the notional payment as if it were a real receipt.

Note: This section applies to transactions that do not actually involve payments or receipts, because the parties to the transaction (non-corporate Commonwealth entities) are merely parts of the Commonwealth.

**77 Repayments by the Commonwealth**

If:

(a) an amount is received by the Commonwealth; and

(b) some or all of the amount is required or permitted to be repaid; and

(c) the Finance Minister is satisfied that, apart from this section, there is no appropriation for the repayment;

then the CRF is appropriated for the repayment.

Note: For example, this section would apply:

- (a) to a law that requires an application fee to be refunded to an unsuccessful applicant; or
- (b) to a contractual obligation to repay a loan; or
- (c) as a result of section 76, to payments that are required or permitted between non-corporate Commonwealth entities.

## **Division 3—Special accounts**

### **78 Establishment of special accounts by the Finance Minister**

- (1) The Finance Minister may make a determination that does all of the following:
  - (a) establishes a special account;
  - (b) allows or requires amounts to be credited to the special account;
  - (c) specifies the purposes for which amounts are allowed or required to be debited from the special account;
  - (d) specifies the accountable authority of a Commonwealth entity responsible for the special account.
- (2) A determination under subsection (1) may specify that an amount may or must be debited from a special account established under subsection (1) otherwise than in relation to the making of a real or notional payment.
- (3) The Finance Minister may make a determination that revokes or varies a determination made under subsection (1).
- (4) The CRF is appropriated for expenditure for the purposes of a special account established under subsection (1), up to the balance for the time being of the special account.

Note: An Appropriation Act provides for amounts to be credited to a special account if any of the purposes of the account is a purpose that is covered by an item in the Appropriation Act.
- (5) If the Finance Minister makes a determination that allows an amount standing to the credit of a special account to be expended in making payments for a particular purpose, then, unless the contrary intention appears, the amount may also be applied in making notional payments for that purpose.
- (6) Whenever an amount is debited against the appropriation in subsection (4), the amount is taken to be also debited from the special account.

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- (7) The crediting of an amount to, or debiting of an amount from, a special account takes effect at the time an entry connected with the crediting or debiting is made in the accounts and records of the Commonwealth entity concerned.

**79 Disallowance of determinations relating to special accounts**

- (1) This section applies to a determination made by the Finance Minister under subsection 78(1) or (3).
- (2) The determination is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the determination.
- (3) The Finance Minister must cause a copy of the determination to be tabled in each House of the Parliament.
- (4) Either House may, following a motion upon notice, pass a resolution disallowing the determination. To be effective, the resolution must be passed in the period that:
  - (a) starts on the day the copy of the determination is tabled in the House (the *start day*); and
  - (b) ends on the fifth sitting day of the House after the start day.
- (5) If neither House passes such a resolution, the determination takes effect:
  - (a) on the day immediately after the last day upon which such a resolution could have been passed; or
  - (b) if a later day is specified in the determination—on that later day.

**80 Special accounts established by other Acts**

- (1) If another Act establishes a special account and identifies the purposes of the special account, then the CRF is appropriated for expenditure for those purposes, up to the balance for the time being of the special account.

Note 1: An Act that establishes a special account will identify the amounts that are to be credited to the special account.



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Note 2: An Appropriation Act provides for amounts to be credited to a special account if any of the purposes of the account is a purpose that is covered by an item in the Appropriation Act.

- (2) If an Act allows an amount standing to the credit of a special account to be applied, debited, paid or otherwise used for a particular purpose, then, unless the contrary intention appears, the amount may also be applied, debited, paid or otherwise used in making a notional payment for that purpose.
- (3) Whenever an amount is debited against the appropriation in subsection (1), the amount is taken to be also debited from the special account.
- (4) The crediting of an amount to, or debiting of an amount from, a special account takes effect at the time an entry connected with the crediting or debiting is made in the accounts and records of the Commonwealth entity concerned.

## **Part 2-6—Cooperating with other jurisdictions**

### **Division 1—Guide to this Part**

#### **81 Guide to this Part**

This Part allows the rules to prescribe situations where the accountable authority of a Commonwealth entity is required to share information with the States and Territories.

This Part also prohibits the Commonwealth from preventing State or Territory Auditors-General from conducting audits in certain situations.

## **Division 2—Cooperating with other jurisdictions**

### **82 Sharing information with other jurisdictions**

The rules may do the following:

- (a) prescribe a Commonwealth entity;
- (b) prescribe a Minister of a State or Territory as a State/Territory Minister for the entity;
- (c) prescribe kinds of reports, documents and information that relate to the entity's activities;
- (d) prescribe the circumstances in which the State/Territory Minister may request those reports, documents and information from the accountable authority of the entity;
- (e) require the accountable authority to give the State/Territory Minister any reports, documents and information requested in accordance with the rules, within the time limits prescribed by the rules.

### **83 Auditing by State and Territory Auditors-General**

- (1) This section applies if:
  - (a) the Commonwealth provides money to the following (the *partner*) for a particular purpose:
    - (i) a State or Territory;
    - (ii) a body of a State or Territory;
    - (iii) a body (including a Commonwealth entity or Commonwealth company) to which a State or Territory, or body of a State or Territory, also provides money; and
  - (b) the partner receives some or all of the money, whether directly or indirectly, because the partner:
    - (i) agrees to use the money in achieving that purpose; or
    - (ii) has entered into a contract that relates to that purpose.
- (2) The Commonwealth must not impose any restrictions in relation to the conduct of any audit of the partner by, or on behalf of, the Auditor-General of the State or Territory.

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Note: The money may also be audited under Division 2 of Part 4 of the *Auditor-General Act 1997*.

## **Part 2-7—Companies, subsidiaries and new corporate Commonwealth entities**

### **Division 1—Guide to this Part**

#### **84 Guide to this Part**

This Part has provisions relating to the Commonwealth's involvement in companies, the responsibility of corporate Commonwealth entities for their subsidiaries, and the creation of new corporate Commonwealth entities.

Division 2 authorises the Commonwealth to form, or participate in forming, certain companies, and to acquire shares in, or become a member of, certain companies. It also requires the accountable authority of a corporate Commonwealth entity to ensure that none of the entity's subsidiaries does anything outside of power.

Division 3 allows the rules to create new corporate Commonwealth entities.

## **Division 2—Companies and subsidiaries**

### **Subdivision A—The Commonwealth’s involvement in companies**

#### **85 The Commonwealth’s involvement in companies**

- (1) The Finance Minister may, on behalf of the Commonwealth:
  - (a) form, or participate in forming, a relevant company (see subsection (2)); or
  - (b) acquire shares (either by purchase or subscription) in a relevant company, or become a member of a relevant company, in circumstances that would result in the relevant company becoming a Commonwealth company.
- (2) A *relevant company* is a company of a kind prescribed by the rules whose objects or proposed activities are of a kind prescribed by the rules.

### **Subdivision B—Subsidiaries of corporate Commonwealth entities**

#### **86 Subsidiaries of corporate Commonwealth entities**

The accountable authority of a corporate Commonwealth entity must ensure, as far as practicable, that none of the entity’s subsidiaries does anything that the entity does not itself have power to do.

## **Division 3—New corporate Commonwealth entities**

### **87 Establishing new corporate Commonwealth entities**

The rules may do the following:

- (a) establish a body corporate;
- (b) name the body corporate;
- (c) provide for the composition of the body corporate;
- (d) specify the functions of the body corporate;
- (e) specify the powers of the body corporate, including the power of the body corporate to charge fees;
- (f) provide for the composition of the governing body of the body corporate;
- (g) deal with the appointment, and terms and conditions of appointment, of members of the governing body of the body corporate;
- (h) specify procedures relating to the operation of the governing body of the body corporate;
- (i) specify any requirements or prohibitions that apply to the body corporate or the governing body of the body corporate;
- (j) deal with the application of other Commonwealth laws to the body corporate;
- (k) provide for committees of the body corporate;
- (l) provide for the staff of, or any other person working for, the body corporate;
- (m) provide for the appointment, and terms and conditions of appointment, of any Chief Executive (however described) of the body corporate;
- (n) identify the Minister who is responsible for the body corporate;
- (o) identify any powers of a Minister in relation to the body corporate;
- (p) provide for matters of a transitional nature in relation to establishing or abolishing the body corporate;
- (q) provide for other matters relating to a matter referred to in any of the above paragraphs.

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Note: The body corporate may be abolished by revoking the rules that established the body corporate.



## **Chapter 3—Commonwealth companies**

### **Part 3-1—General**

#### **Division 1—Guide to this Part**

##### **88 Guide to this Part**

This Part has the core provisions for this Chapter (which is about Commonwealth companies) and special provisions applying to wholly-owned Commonwealth companies.

Division 2:

- defines what a Commonwealth company is (see subsection 89(1)); and
- defines what a wholly-owned Commonwealth company is (see section 90).

Division 3 requires the directors of a wholly-owned Commonwealth company to keep the responsible Minister and the Finance Minister informed about certain things, and ensure that the company has an audit committee. It also deals with the application of government policy to wholly-owned Commonwealth companies.

## Division 2—Core provisions for this Chapter

### 89 Commonwealth companies

- (1) A **Commonwealth company** is a Corporations Act company that the Commonwealth controls. However, it does not include a company that is a subsidiary of:
  - (a) a Commonwealth company; or
  - (b) a corporate Commonwealth entity; or
  - (c) the Future Fund Board of Guardians.
- (2) 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).
- (3) Without limiting paragraph (2)(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.
- (4) For the purposes of subsection (3), 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.

## **90 Wholly-owned Commonwealth companies**

A *wholly-owned Commonwealth company* is a Commonwealth company, other than a company any of the shares in which are beneficially owned by a person other than the Commonwealth.

## **Division 3—Special requirements for wholly-owned Commonwealth companies**

### **91 Duty to keep the responsible Minister and Finance Minister informed**

- (1) The directors of a wholly-owned Commonwealth company must do the following:
  - (a) keep the responsible Minister informed of the activities of the company and any subsidiaries of the company;
  - (b) give the responsible Minister or the Finance Minister any reports, documents and information in relation to those activities as that Minister requires;
  - (c) notify the responsible Minister as soon as practicable after the directors make a significant decision in relation to the company or any of its subsidiaries;
  - (d) give the responsible Minister reasonable notice if the directors become aware of any significant issue that may affect the company or any of its subsidiaries;
  - (e) notify the responsible Minister as soon as practicable after the directors become aware of any significant issue that has affected the company or any of its subsidiaries.
- (2) Without limiting subsection (1), the rules may prescribe:
  - (a) matters to be taken into account in deciding whether a decision or issue is significant; and
  - (b) matters relating to discharging duties under subsection (1).
- (3) The directors must comply with a requirement under paragraph (1)(b) within the time limits set by the Minister concerned.
- (4) This section does not limit any other power that a Minister has to require information from a Commonwealth company.

## **92 Audit committee**

- (1) The directors of a wholly-owned Commonwealth company must ensure that the company has an audit committee.
- (2) The committee must be constituted, and perform functions, in accordance with any requirements prescribed by the rules.

## **93 Application of government policy**

- (1) The Finance Minister may make an order (a **government policy order**) that specifies a policy of the Australian Government that is to apply to one or more wholly-owned Commonwealth companies.
- (2) Before making a government policy order that applies in relation to a wholly-owned Commonwealth company, the Finance Minister must be satisfied that the Minister responsible for the policy has consulted the company on the application of the policy.
- (3) If a government policy order applies in relation to a wholly-owned Commonwealth company, the directors of the company must ensure that the order is complied with:
  - (a) in relation to the company; and
  - (b) in relation to any subsidiary of the company, so far as practicable.
- (4) A government policy order is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to it.

## **Part 3-2—Planning and accountability**

### **Division 1—Guide to this Part**

#### **94 Guide to this Part**

This Part is about planning by, and the accountability of, Commonwealth companies.

Division 2 is about planning by Commonwealth companies. It requires the directors of a Commonwealth company to prepare a corporate plan for the company. It also requires the directors of a wholly-owned Commonwealth company to prepare budget estimates for the company.

Division 3 is about reporting by, and the accountability of, Commonwealth companies. It requires the directors of a Commonwealth company to prepare and give annual reports for the company to the responsible Minister. It also requires the directors to ensure that the financial statements of a subsidiary of the company are audited.

## **Division 2—Planning and budgeting**

### **95 Corporate plan for Commonwealth companies**

#### *Commonwealth companies*

- (1) The directors of a Commonwealth company must:
  - (a) prepare a corporate plan for the entity; and
  - (b) give the corporate plan to the responsible Minister and the Finance Minister in accordance with any requirements prescribed by the rules.
- (2) The corporate plan must comply with, and be published in accordance with, any requirements prescribed by the rules.
- (3) If:
  - (a) a statement of the Australian Government's key priorities and objectives is published under section 34; and
  - (b) the purposes of the Commonwealth company relate to those priorities and objectives;then the corporate plan must set out how the activities of the company will contribute to achieving those priorities and objectives.

#### *Subsidiaries*

- (4) If the Commonwealth company has subsidiaries, the corporate plan must cover both the company and its subsidiaries. In particular, for each subsidiary the corporate plan must include details of any matters prescribed by the rules, so far as they are applicable.

### **96 Budget estimates for wholly-owned Commonwealth companies**

- (1) The directors of a wholly-owned Commonwealth company must:
  - (a) prepare budget estimates covering the company's activities for each reporting period for the company, and for any other periods directed by the Finance Minister; and
  - (b) give the budget estimates to the Finance Secretary in accordance with any directions under subsection (3).

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- (2) The budget estimates must:
  - (a) fairly present the estimated financial impacts of the company's activities for the reporting period or other period; and
  - (b) comply with any directions under subsection (3); and
  - (c) be accompanied by any information relating to the budget estimates for the company that is required by any direction under subsection (3).
- (3) The Finance Secretary may give written directions to the directors of a Commonwealth company for the purposes referred to in paragraph (1)(b) or subsection (2).
- (4) A direction made under subsection (3) is not a legislative instrument.



## **Division 3—Reporting and accountability**

### **97 Annual reports for Commonwealth companies**

- (1) The directors of 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 reporting period for the company (or would be required by that Act to have if the company were a public company); and
  - (b) for a wholly-owned Commonwealth company—any additional information or report prescribed by the rules.
- (2) 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 reporting period for the company;
    - (ii) 4 months after the end of the reporting period for the company; and
  - (b) in any other case—4 months after the end of the reporting period for the company;or the end of such further period granted under subsection 34C(5) of the *Acts Interpretation Act 1901*.
- (3) 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.
- (4) In preparing a report for the purposes of subsection (3), the Auditor-General must use the same *Corporations Act 2001* rules as applied to the report by the other auditor.
- (5) 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

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the Parliament as soon as practicable after receiving them. In all other cases, the responsible Minister must table the documents in each House of the Parliament as soon as practicable after the annual general meeting of the company.

**98 Auditor of Commonwealth companies**

- (1) For each Commonwealth company, the Auditor-General is:
  - (a) to be the auditor of the company under the *Corporations Act 2001*; or
  - (b) if another person is the company's auditor—to give a report on the company's financial statements (see subsection 97(3)).
- (2) The Auditor-General is (subject to subsection 99(3)) to audit the financial statements of each subsidiary of a Commonwealth company.

**99 Audit of subsidiary's financial statements**

- (1) This section applies in relation to a Commonwealth company that has a subsidiary at the end of the reporting period for the subsidiary.
- (2) The directors of the Commonwealth company must ensure that all the subsidiary's financial statements for a reporting period of the subsidiary are audited.
- (3) The subsidiary's financial statements must be audited by the Auditor-General unless:
  - (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.

Note: If the Auditor-General is not the subsidiary's auditor, this subsection requires the Auditor-General to do an audit of the statements in

addition to that done by the subsidiary's auditor, except in the circumstances referred to in paragraphs (3)(a) and (b).

- (4) 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.
- (5) The directors of the Commonwealth company must give the report of the auditor to the responsible Minister (whether or not the auditor is the Auditor-General), together with a copy of the subsidiary's financial statements.

**Chapter 4** Rules, delegations and independent review

**Part 4-1** The rules

**Division 1** Guide to this Part

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**Chapter 4—Rules, delegations and  
independent review**

**Part 4-1—The rules**

**Division 1—Guide to this Part**

**100 Guide to this Part**

This Part is about the rules. It provides the general power to make the rules (see section 101) and provides additional matters in relation to which rules can be made (see sections 102 to 105).

## **Division 2—The rules**

### **101 The rules**

- (1) The Finance Minister may, by legislative instrument, make rules prescribing matters:
  - (a) required or permitted by this Act to be prescribed by the rules; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The rules may:
  - (a) prescribe matters in relation to a particular Commonwealth entity or Commonwealth company, or a class of Commonwealth entities or Commonwealth companies; or
  - (b) make different provision in relation to different Commonwealth entities or Commonwealth companies, or classes of Commonwealth entities or Commonwealth companies.
- (3) Subsection (2) does not limit subsection 33(3A) of the *Acts Interpretation Act 1901*.

### **102 Rules relating to the Commonwealth and Commonwealth entities**

The rules may make provision for the following in relation to the Commonwealth and Commonwealth entities:

- (a) ensuring or promoting the proper use and management of public resources;
- (b) ensuring or promoting proper accountability for the use and management of public resources;
- (c) grants and procurement;
- (d) risk oversight and management;
- (e) managing appropriations;
- (f) reporting periods;
- (g) performance.

**103 Rules relating to the Commonwealth and non-corporate Commonwealth entities**

The rules may make provision for the following:

- (a) the use, management or disposal of relevant property by the Commonwealth or a non-corporate Commonwealth entity;
- (b) the acquisition by the Commonwealth or a non-corporate Commonwealth entity of property that is to be relevant property;
- (c) the recovery of debts by the accountable authority of a non-corporate Commonwealth entity;
- (d) for the purposes of reporting and auditing:
  - (i) treating a part of a non-corporate Commonwealth entity as separate from the entity; and
  - (ii) treating that part instead as a separate non-corporate Commonwealth entity;
- (e) the preparation, auditing and giving of financial statements in relation to a non-corporate Commonwealth entity that has ceased to exist or whose functions have been transferred to another non-corporate Commonwealth entity;
- (f) the Finance Minister authorising payment of an amount if, at the time of a person's death, the Commonwealth owed that amount to the person (including authorising without requiring production of probate of the will of the person or letters of administration of the estate of the person).

**104 Rules modifying the application of this Act**

- (1) The rules may prescribe that all or specified provisions of this Act:
  - (a) do not apply in relation to a Commonwealth entity referred to in subsection (2); or
  - (b) apply in relation to a Commonwealth entity referred to in subsection (2), as if specified provisions were omitted or varied as prescribed by the rules.
- (2) For the purposes of subsection (1), the entities are as follows:
  - (a) an intelligence or security agency that is a Commonwealth entity;

- (b) a listed law enforcement agency;
  - (c) the Commonwealth Superannuation Corporation (within the meaning of the *Governance of Australian Government Superannuation Schemes Act 2011*).
- (3) If an intelligence or security agency is not itself a Commonwealth entity but is a part of a Commonwealth entity, the rules may prescribe that all or specified provisions of this Act that apply to the Commonwealth entity:
- (a) do not apply to the part of that entity that is the intelligence or security agency; or
  - (b) apply to that part as if specified provisions were omitted or varied as prescribed by the rules.

### **105 Rules in relation to other CRF money**

- (1) The rules may prescribe matters in relation to other CRF money.
- (2) **Other CRF money** is money that forms part of the CRF other than:
  - (a) relevant money; or
  - (b) any other money of a kind prescribed by the rules.
- (3) The CRF is appropriated for the purposes of the expenditure of other CRF money by a person other than the Commonwealth or a Commonwealth entity if:
  - (a) the expenditure is in accordance with any requirements prescribed by the rules; and
  - (b) the Finance Minister is satisfied that the expenditure is not authorised by another appropriation.

**Chapter 4** Rules, delegations and independent review

**Part 4-2** Delegations

**Division 1** Guide to this Part

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**Part 4-2—Delegations**

**Division 1—Guide to this Part**

**106 Guide to this Part**

This Part is about delegations.

Division 2 sets out when the Finance Minister, the Treasurer, the Finance Secretary and the accountable authority of a non-corporate Commonwealth entity may delegate a power, function or duty under this Act or the rules.



## **Division 2—Delegations**

### **107 Finance Minister**

*When Finance Minister may delegate*

- (1) The Finance Minister may, by written instrument, delegate to the Finance Secretary, or an accountable authority or an official of a non-corporate Commonwealth entity, any of the Finance Minister's powers, functions or duties under this Act or the rules.
- (2) However, the Finance Minister may not delegate (except as provided in subsection (3)) any of the Finance Minister's powers, functions or duties under:
  - (a) paragraph 57(b) (which is about authorising borrowing by corporate Commonwealth entities); or
  - (b) subsection 71(1) or (3) (which is about approving expenditure); or
  - (c) subsection 72(1) (which is about notifying Parliament about certain events); or
  - (d) section 75 (which is about transfers of functions between non-corporate Commonwealth entities); or
  - (e) section 78 (which is about special accounts); or
  - (f) section 85 (which is about the Commonwealth forming companies etc.); or
  - (g) section 87 (which is about establishing new corporate Commonwealth entities); or
  - (h) section 101 (which is about the rules).
- (3) The Finance Minister may, by written instrument, delegate to the Finance Secretary any of the Finance Minister's powers, functions or duties under:
  - (a) section 75 (which is about transfers of functions between non-corporate Commonwealth entities); or
  - (b) section 85 (which is about the Commonwealth forming companies etc.); or
  - (c) section 87 (which is about establishing new corporate Commonwealth entities).

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*Directions by the Finance Minister about delegation*

- (4) In exercising powers, performing functions or discharging duties under a delegation, the delegate must comply with any written direction given by the Finance Minister to the delegate.

**108 Treasurer**

*When Treasurer may delegate*

- (1) The Treasurer may, by written instrument, delegate to an eligible delegate (see subsection (2)) any of the Treasurer's powers, functions or duties under this Act or the rules.
- (2) An **eligible delegate** is an official of the Department of the Treasury, or a listed entity that is prescribed by the rules, who:
  - (a) is an SES employee; or
  - (b) is an APS employee who holds or performs the duties of an Executive Level 2, or equivalent, position; or
  - (c) occupies an office or position at an equivalent level to that of an SES employee, or an Executive Level 2.
- (3) However, the Treasurer may not delegate any of the Treasurer's powers, functions or duties under:
  - (a) subsection 71(1) or (3) (which is about approving expenditure); or
  - (b) subsection 72(1) (which is about notifying Parliament about certain events).

*Directions by the Treasurer about delegation*

- (4) The Treasurer may, by written instrument, give directions in relation to either or both of the following:
  - (a) the class or classes of authorised investment in which relevant money may be invested;
  - (b) matters of risk and return.
- (5) The Treasurer must not give a direction under subsection (4) that has the purpose, or has or is likely to have the effect, of directly or

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indirectly requiring an eligible delegate to allocate financial assets to a particular company, partnership, trust, body politic or business.

- (6) If, at any time, a delegation is in force under subsection (1), there must be at least one direction in force under subsection (4).
- (7) In exercising powers, performing functions or discharging duties under a delegation, an eligible delegate must comply with:
  - (a) a direction in force under subsection (4); and
  - (b) any other written direction given by the Treasurer to the eligible delegate.
- (8) The Treasurer must table a direction given under subsection (4) or paragraph (7)(b) in each House of the Parliament no later than 15 sitting days of that House after it is given.

**109 Finance Secretary***When the Finance Secretary may delegate*

- (1) The Finance Secretary may, by written instrument, delegate to an official of the Department any powers, functions or duties under this Act or the rules:
  - (a) including:
    - (i) this power to delegate in relation to powers, functions and duties conferred directly by this Act or the rules on the Finance Secretary; and
    - (ii) powers, functions or duties that have been delegated by the Finance Minister to the Finance Secretary under subsection 107(1) or paragraph 107(3)(a); but
  - (b) not including powers, functions or duties that have been delegated by the Finance Minister to the Finance Secretary under paragraph 107(3)(b) or (c).

*Directions by the Finance Secretary about delegation*

- (2) If:
  - (a) the Finance Secretary delegates a power, function or duty to a person (the *delegate*); and

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- (b) the power, function or duty is not one that has been delegated by the Finance Minister to the Finance Secretary under subsection 107(1) or (3);
- then the Finance Secretary may give written directions to the delegate in relation to the exercise of that power, the performance of that function or the discharge of that duty.
- (3) The delegate must comply with any directions given under subsection (2).

*Subdelegation of Finance Minister's delegation*

- (4) If the Finance Secretary delegates to a person (the **second delegate**) a power, function or duty that has been delegated by the Finance Minister to the Finance Secretary under subsection 107(1) or paragraph 107(3)(a), then that power, function or duty, when exercised, performed or discharged by the second delegate, is taken for the purposes of this Act to have been exercised, performed or discharged by the Finance Minister.
- (5) If the Finance Secretary is subject to directions in relation to the exercise of a power, the performance of a function or the discharge of a duty, delegated by the Finance Minister to the Finance Secretary under subsection 107(1) or paragraph 107(3)(a), then:
- (a) the Finance Secretary must give corresponding written directions to the second delegate; and
- (b) the Finance Secretary may give other written directions (not inconsistent with those corresponding directions) to the second delegate in relation to the exercise of that power, the performance of that function or the discharge of that duty.
- (6) The second delegate must comply with any directions of the Finance Secretary.

**110 Accountable authority**

*When accountable authority may delegate*

- (1) The accountable authority of a non-corporate Commonwealth entity may, by written instrument, delegate to an official of a

non-corporate Commonwealth entity any powers, functions or duties under this Act or the rules, including:

- (a) this power to delegate in relation to powers, functions and duties conferred directly by this Act or the rules on the accountable authority; and
  - (b) powers, functions or duties that have been delegated by the Finance Minister to the accountable authority under subsection 107(1).
- (2) However, the accountable authority of a non-corporate Commonwealth entity may not delegate any of the accountable authority's powers, functions or duties under:
- (a) Subdivision A of Division 2 of Part 2-2 (which is about the general duties of accountable authorities); or
  - (b) section 21 (which is about the application of government policy to non-corporate Commonwealth entities); or
  - (c) section 35 (which is about corporate plans for Commonwealth entities); or
  - (d) section 37, 38 or 39 (which has requirements relating to performance of Commonwealth entities); or
  - (e) section 41, 42 or 43 (which has requirements relating to accounts and financial statements of Commonwealth entities).

*Directions given by the accountable authority about delegation*

- (3) If:
- (a) the accountable authority of a non-corporate Commonwealth entity delegates a power, function or duty to a person (the **delegate**); and
  - (b) the power, function or duty is not one that has been delegated by the Finance Minister to the accountable authority under subsection 107(1);
- then the accountable authority may give written directions to the delegate in relation to the exercise of that power, the performance of that function or the discharge of that duty.
- (4) The delegate must comply with any directions given under subsection (3).
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*Subdelegation of Finance Minister's delegation*

- (5) If the accountable authority of a non-corporate Commonwealth entity delegates to a person (the *second delegate*) a power, function or duty that has been delegated by the Finance Minister to the accountable authority under subsection 107(1), then that power, function or duty, when exercised, performed or discharged by the second delegate, is taken for the purposes of this Act and the rules to have been exercised, performed or discharged by the Finance Minister.
- (6) If the accountable authority of a non-corporate Commonwealth entity is subject to directions in relation to the exercise of a power, the performance of a function or the discharge of a duty, delegated by the Finance Minister to the accountable authority under subsection 107(1), then:
  - (a) the accountable authority must give corresponding written directions to the second delegate; and
  - (b) the accountable authority may give other written directions (not inconsistent with those corresponding directions) to the second delegate in relation to the exercise of that power, the performance of that function or the discharge of that duty.
- (7) The second delegate must comply with any directions of the accountable authority.

## **Part 4-3—Independent review**

### **Division 1—Guide to this Part**

#### **111 Guide to this Part**

This Part requires the Finance Minister, in consultation with the Joint Committee of Public Accounts and Audit, to conduct an independent review of the operation of this Act and the rules.

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**Division 2—Independent review**

**112 Independent review**

- (1) The Finance Minister must, in consultation with the Joint Committee of Public Accounts and Audit, cause an independent review to be conducted of the operation of this Act and the rules.
- (2) The review must be conducted as soon as practicable after the end of 3 years after this section commences.
- (3) The persons who conduct the review must give the Finance Minister a written report of the review.
- (4) The Finance Minister must cause copies of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Finance Minister.

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*[Minister's second reading speech made in—  
House of Representatives on 16 May 2013  
Senate on 19 June 2013]*

(117/13)

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