

Legal and Constitutional Affairs Committee

ANSWER TO QUESTION ON NOTICE

Department of Finance and Deregulation

Review of Government Compensation Payments

Public Hearing – Canberra - 29/10/2010

Type of Question: Hansard p10

Senator CROSSIN asked:

Senator CROSSIN—Yes, I do want to continue. I want to take you to the Northern Territory again. I notice that in relation to the stolen generations Tasmania have of course instigated a scheme. I know we have had Senate inquiry after Senate inquiry into this, but if we got to a situation where the Tasmanian scheme was then taken to Queensland, South Australia or Victoria, even, again my question goes to whether or not FaHCSIA, or even Finance and Deregulation, have looked at who is in the position to compensate people from the Northern Territory if they are from the stolen generations.

Ms Essex—From the FaHCSIA perspective, I will need to take that on notice. It sits within another area of the department and I will need to check with them. But I am very happy to take that on notice and provide the committee with the relevant information.

Senator CROSSIN—That is not a question about policy; I am well aware of what the current government's policy is about compensation. But with respect to, again, Northern Territory people, because the Commonwealth has had responsibility for the Northern Territory prior to 1978, I am assuming the answer to your question must be that it would have to be the Commonwealth that would have any responsibility for an act of compensation or payment of compensation with respect to those people.

Ms Mason—Senator, I do not think that is a question that we have reflected on previously and I do not think it is one that, from the point of view of the Department of Finance and Deregulation, we are in a position to be able to answer today.

Senator CROSSIN—Can both of you take it on notice, please.

Answer:

The Department of Finance and Deregulation (Finance) cannot comment on the Government's policy regarding responsibility for compensation to people from the stolen generations, regardless of their state of origin, as this is a matter for the Department of Families, Housing, Community Services and Indigenous Affairs. However, Finance is able to assist in developing compensatory schemes should it be deemed appropriate to do so.

Legal and Constitutional Affairs Committee

ANSWER TO QUESTION ON NOTICE

Department of Finance and Deregulation

Review of Government Compensation Payments

Public Hearing – Canberra - 29/10/2010

Type of Question: Hansard p14

Senator Barnett asked:

Regarding the Compensation for Detriment caused by Defective Administrative Schemes, CDDA schemes, and the Ombudsman's report, which we have been talking about at some length, I understand that the Ombudsman's report made a number of recommendations. I understand that you have responded to those. Is there a document that you have in your possession which says, 'Yes, we agree with all of these recommendations but we don't agree with these; we are implementing these but we are not acting on these'? We do not have time today to go through all of this, but have you got some summary document?

Dr Verney—We can provide you with that, but I can tell you, Senator, that we agreed with all recommendations except the one I mentioned about the interagency panel. We saw that as subject to priorities and resources. As I mentioned, we are looking at that at the next meeting. We can give you what we have agreed to and what we have done.

CHAIR—You are telling us that you have complied with every recommendation and you have implemented or are implementing them?

Dr Verney—I would argue that we have implemented the recommendations.

CHAIR—Good. Could you, on notice, confirm that in writing. If it is implementing, I want you to tell us that. I would like you to give full and particulars regarding the lack of response to date in implementing the recommendation regarding setting up the interdepartmental advisory or review panel and you saying that it is coming up at the next meeting.

Dr Verney—Yes.

CHAIR—Can you, on notice, flesh out the reason for that? You talked about resourcing, and I guess that is a financial matter for the government, but just flesh that out for us, if you could.

Dr Verney—Yes.

Answer:

In August 2009, the Department of Finance and Deregulation (Finance) agreed to all recommendations put forth in the Ombudsman's report. Finance has implemented these recommendations to the extent that they relate to Finance's role, including assessing the merits of establishing an interdepartmental advisory or review panel for disputed or exceptional claims under the *Scheme for Compensation for Detriment caused by Defective Administration* (the CDDA Scheme). Details of Finance's actions in response to Recommendation 1 are detailed in the attached table, with two exceptions, which are discussed below.

In relation to Recommendation 1(a), reviewing publicly available information in relation to the CDDA Scheme, Finance updated its Finance Circular 2009/09, *Discretionary Compensation and Waiver of Debt Mechanisms*, to include up to date information on determining CDDA claims and this was provided to agencies in November 2009. Finance provides policy advice to agencies on the CDDA Scheme and responds to queries as needed; it does not monitor information available on agency websites.

Finance has information about the CDDA Scheme on its website. There are also links to other agencies' compensation webpages. Finance will request that agencies link directly to the Finance website. Finance has created a fact sheet which can be provided to claimants who do not have internet access; this fact sheet has been sent to agencies and non-government organisations, and will be available for download online. Finance is considering placing discretionary compensation links to the Finance website on australia.gov.au.

The Ombudsman's second recommendation involved three parts. Recommendation 2(a) was that Finance assess the merits of establishing an interdepartmental advisory or review panel.

Finance considered the advantages and disadvantages of creating a review panel in relation to agency's decisions under the CDDA Scheme. The Ombudsman considered that the establishment of an advisory or review panel would provide a modest though important addition to the CDDA Scheme and inject an element of fairness across government that is presently lacking.

The Ombudsman suggested the following model for the panel:

- the panel would be chaired by a representative of Finance and other members would be nominated by government agencies that are regularly involved in dealing with CDDA claims;
- when reviewing an individual case the panel would comprise three members, drawn from the larger pool of nominated members;
- the role of the panel would be to review individual cases on the papers. The panel would not meet with claimants or provide an oral hearing;
- the panel would provide a recommendation to the responsible agency;
- the final decision would rest with the responsible agency; it would not be bound to follow the panel's recommendation;
- cases would be referred to the panel by an agency, which could choose to make a referral either as a substitute for, or in addition to, an internal review mechanism;
- the Ombudsman could also recommend to an agency that a particular case be referred to the panel; and
- meetings of all nominated members would be held periodically. The meetings would review the recommendations made by the panel and any other issues raised for discussion by individual members.

Finance noted that the establishment of a panel may have the following advantages, in that it would:

- supplement the Ombudsman's 'limited oversight' of the CDDA Scheme;
- provide an opportunity for interagency discussion and collaboration which may result in greater consistency in CDDA decision making and capacity to identify whole-of-government improvements in public administration;
- introduce a 'stronger spirit of administrative justice to the CDDA Scheme';
- secure the right of review in the CDDA Scheme;
- provide an objective and independent view point; and
- provide an opportunity for a second opinion.

Finance noted the following disadvantages with the proposed model:

- the duplication of the role of the panel with that of the Ombudsman. In its report, the Ombudsman noted that the role of the panel would not be dissimilar to the current contribution it makes to the CDDA Scheme;
- while a panel would introduce an independent view point, it marks a departure from one intention of the CDDA Scheme, which is to provide agencies with an opportunity to assess their own administration and provide a remedy where appropriate;
- a failure to take into account that the CDDA Scheme is permissive and there is no obligation to make a payment. The CDDA Scheme operates to remedy situations where there is no legal obligation to the claimant and a merits review system might not be appropriate or within the scope of the administrative scheme;
- the panel would only be able to make recommendations on CDDA claims and could not substitute a decision to make payments;
- the authority to determine CDDA claims rests with each portfolio Minister. Ministers may authorise officials in their portfolio to determine CDDA decisions on their behalf. The proposed model is silent on whether all decisions, including those made by a Minister, would be referable to the panel, or just those made by authorised agency officials;
- could refer persistent (or vexatious) claimants to the panel, without necessarily reaching a suitable resolution, which could prolong ineffectual interactions with the claimant;
- it is silent on whether the recommendations of the panel would be subject to review by the Ombudsman;
- a nominated Finance official would be the permanent member of the panel. This presents an administrative and financial burden, which is subject to priorities and resources;
- the model would require increased funding for secretariat functions and associated administrative costs and would not be budget neutral; and
- the operational issues associated with establishing a panel include, but are not limited to, how the panel would interact with the specific secrecy and privacy provisions contained in the governing legislation of particular agencies (for example, the Australian Taxation Office, Department of

Defence, Child Support Agency, Customs and Border Protection Service).

This recommendation will be discussed in further detail at the 4th Interagency Forum on Discretionary Mechanisms on 3 December 2010.

**Table 1 – Finance’s Actions on the Recommendations arising from the Report by the Commonwealth Ombudsman:
*Putting things right: compensating for defective administration***

<p>Recommendation 1 The Ombudsman recommends that all agencies subject to the <i>Financial Management Accountability Act 1997</i> take note of this report, and in particular that agencies:</p>	
<p>a. <i>review publicly available information to ensure that information about the CDDA Scheme, including the Ombudsman’s role in review of decisions, is accessible on agency internet sites, and referred to in service charters, correspondence relating to decisions, and on fact sheets and similar material relating to complaints, review of decisions and appeals</i></p>	<p>Please see response above.</p>
<p>b. <i>review their claim forms to ensure that claimants are assisted to provide all required information</i></p>	<p>The Finance Circular 2009/09 provides a CDDA application form template which agencies may use. The application form sets out the types of information a claim may require as well as the evidence a claimant should provide.</p>
<p>c. <i>review their timeliness standards, increase monitoring of compliance with those standards, and consider whether the resources currently available to CDDA processing are adequate to meet appropriate timeliness standards; reporting against CDDA timeliness standards should be incorporated in agency annual reports</i></p>	<p>As Finance provides policy advice and receives limited requests for compensation under the CDDA Scheme for its own actions, Finance considers its timeliness standards which are used for act of grace and waiver of debt requests are adequate. Finance has not undertaken a role of monitoring agencies in this respect, as this would overlap with the Ombudsman’s current role.</p>

<p>d. <i>adopt a rigorous approach to records management, including by encouraging staff to maintain accurate records, providing staff with guidance on records-management processes, supporting an agency culture of compliance and applying effective quality assurance mechanisms</i></p>	<p>Finance currently undertakes this practice.</p>
<p>e. <i>implement and ensure compliance with procedures acknowledging the receipt of a CDDA claim within a set timeframe and that claimants are regularly advised of the progress of their claim, particularly if a matter is likely to exceed timeliness standards.</i></p>	<p>Finance currently has benchmarks for completed act of grace and waiver of debt claims, which are monitored on an internal database. However, as decisions under discretionary mechanisms may require extensive investigation, there is no set timeframe for responses. Finance advises claimants that investigation may be a lengthy process and provides updates to claimants as necessary of the progress of their case.</p>
<p>f. <i>consolidate all documentary instructional material on handling CDDA claims into a single coherent document, and consider formal training with a focus on administrative decision-making and report writing.</i></p>	<p>Finance released an updated Finance Circular 2009/09 in November 2009 which provides advice to agencies on handling CDDA claims. Further, the Interagency Forum has allowed agencies to discuss CDDA issues, which agencies can integrate into formal training.</p>
<p>g. <i>use decision-making templates to encourage consistent consideration of claims.</i></p>	<p>As agencies are responsible for CDDA claims, Finance does not consider it appropriate to create a template for distribution, as each agency has different processes and requirements.</p>
<p>h. <i>ensure that reasons for decisions are properly recorded and the reasons for rejected claims are clearly explained to claimants.</i></p>	<p>When making decisions for act of grace payments and waivers of debt, Finance sets out the reasons for a decision in correspondence to the claimant. In adverse decisions, Finance includes an information sheet with the decision, which informs claimants to their right to request a statement of reasons for the decision under the <i>Administrative Decisions (Judicial Review) Act 1977</i>.</p>

<p><i>i. agencies ensure that claimants have a full opportunity to comment on the agency's assessment of a claim prior to a decision being made</i></p>	<p>Finance ensures all claimants are afforded procedural fairness. Claimants are provided with information received from departments/agencies involved and given time to comment on the material.</p> <p>The information to agencies on procedural fairness has been expanded in the Finance Circular 2009/09.</p>
<p><i>j. implement formal processes by which CDDA claim processing areas are able to draw problems to the attention of relevant business lines or service areas within the agencies for systemic remedial action.</i></p>	<p>Though Finance does not generally receive claims under CDDA, it has been able to identify areas in other agencies where legislative or administrative change may be appropriate, due to the number of act of grace or waiver of debt requests that have been received. Finance communicates these areas of concern to the relevant agencies (see page 13 of Finance's submission).</p>
<p><i>k. review instructional and other decision-making support material and ensure that they place more emphasis on the merits of administrative decision-making consistent with the CDDA Scheme, and less reliant on legal precedent, doctrine and concepts.</i></p>	<p>Finance has emphasised these concepts in the updated Finance Circular 2009/09 and the Interagency Forum. As each agency is responsible for claims under the CDDA Scheme, Finance provides guidance on the procedures of processing CDDA claims.</p>
<p><i>l. provide clear training and ongoing guidance to staff on:</i></p> <ul style="list-style-type: none"> <i>• the purpose of the CDDA Scheme</i> <i>• deciding claims on their merits</i> <i>• the standard of evidence required to make a decision</i> <i>• who should provide the evidence.</i> 	<p>As in response to Recommendation 1(k), Finance has provided clearer information, which reflects agencies' experience in handling CDDA claims, in its updated Finance Circular 2009/09.</p>

<p>Recommendation 2</p> <p>The Ombudsman recommends that:</p>	
<p>a. <i>We recommend that the Australian government consider the merits of establishing an inter-departmental advisory or review panel to deal with disputed or exceptional CDDA claims.</i></p>	<p>Please see Finance’s response above.</p>
<p>b. <i>We recommend that the Department of Finance and Deregulation and relevant agencies consider strategies for greater sharing of information on best practice and whether there is merit in the creation of an inter-agency body to encourage a consistent, whole of government approach to CDDA claims.</i></p>	<p>Finance organised an interagency forum for Australian Government officials to discuss whole of government issues on all discretionary compensation claims, including the CDDA Scheme. The forum met in August 2009, November 2009 and May 2010; the next forum is scheduled for 3 December 2010.</p>
<p>c. <i>We recommend that the Department of Finance and Deregulation review the requirements in relation to deeds of release contained in the Finance Circular in order to address the issues raised in this report.</i></p>	<p>In November 2009, Finance released an entirely updated Circular 2009/09 (<i>Discretionary Compensation and Waiver of Debt Mechanisms</i>), after meeting with the Ombudsman’s Office and detailed internal consideration of the previous Circular. This included a review of the requirements of deeds of release. Finance provided a copy of the updated Circular to the heads of all departments/agencies governed by the FMA Act in November 2009.</p>

Legal and Constitutional Affairs Committee

ANSWER TO QUESTION ON NOTICE

Department of Finance and Deregulation

Review of Government Compensation Payments

Public Hearing – Canberra - 29/10/2010

Type of Question: Hansard p16

Senator Barnett asked:

On notice, could you give us an indication of the main reasons behind the variations in the figures that you put to us.

Answer:

Financial amounts sought by applicants often vary as individuals or entities artificially inflate or exaggerate the amounts they are seeking.

From year to year, the financial amounts approved vary depending on the circumstances of the claims received or whether the claims involve multiple individuals.

For example, during 2000-01, \$53.07m in interest owed by a company was waived. In 2008-09 an act of grace payment of approximately \$2m was paid to an agricultural company affected by an outbreak of disease in plants.

Legal and Constitutional Affairs Committee

ANSWER TO QUESTION ON NOTICE

Department of Finance and Deregulation

Review of Government Compensation Payments

Public Hearing – Canberra - 29/10/2010

Type of Question: Hansard p17

Senator Barnett asked:

CHAIR—Should we legislate to ensure that it covers all government agencies? What can we do to make that happen and be assured that this mechanism is available across the government?

Dr Verney—The Ombudsman’s submission raises the issue of a matter dealing with Comcare, a case which straddled both what they call the Commonwealth Authorities and Companies Act and the Financial Management and Accountability Act. We will have to consult Comcare to confirm this for you, but I can tell you that they have been working on this by putting a defective administration arrangement into Comcare. Some other Commonwealth companies bodies do have arrangements for dealing with these sorts of things while others do not. That will depend on their particular governance arrangements.

Answer:

The Department of Education, Employment and Workplace Relations (DEEWR) and Comcare are currently developing a scheme similar to the *Scheme for Compensation for Detriment caused by Defective Administration* within the *Safety, Rehabilitation and Compensation Act 1988* (the SRC Act) to enable payment of compensation when the administration of bodies under the SRC Act have been defective.

Comcare is established under the SRC Act and is a *Commonwealth Authorities and Companies Act 1997* body. The Department of Finance and Deregulation is providing assistance to DEEWR and Comcare as required. Any further questions should be directed to DEEWR as the responsible agency.

Legal and Constitutional Affairs Committee

ANSWER TO QUESTION ON NOTICE

Department of Finance and Deregulation

Review of Government Compensation Payments

Public Hearing – Canberra - 29/10/2010

Type of Question: Hansard p17-18

Senator Siewert asked:

Senator SIEWERT—Has how you would do that ever been looked into, besides the Ombudsman pointing it out? Did you take up the comments that the Ombudsman has made and look at how you would do that?

Dr Verney—The responsibility for that particular matter rests with Comcare, as I mentioned.

Senator SIEWERT—The particular one, yes, but I am now talking about this broader issue that we have been exploring. Have you ever looked at how you could effect the same outcomes that are part of that particular scheme for all these other agencies that we have just been talking about?

Ms Mason—I would need to take that on notice. From my point of view I am not aware that that has been looked at, but I am not able to give a definitive answer without checking with colleagues around the department.

Senator SIEWERT—That will be fine.

Answer:

No. The Department of Finance and Deregulation has not looked at how the outcomes of the *Scheme for Compensation caused by Defective Administration* could affect all Government agencies.

Legal and Constitutional Affairs Committee

ANSWER TO QUESTION ON NOTICE

Department of Finance and Deregulation

Review of Government Compensation Payments

Public Hearing – Canberra - 29/10/2010

Type of Question: Hansard p17-18

Senator Barnett asked:

CHAIR—Thank you for that. I ask you on notice to identify which agencies are covered, which ones are not and perhaps, in brief, the reasons why so that we can have a look at them. The question is why it should not apply across government. That is my question; that is what I would like to know.

Dr Verney—The defective administration scheme applies to the Financial Management and Accountability Act agencies and not the others. We will list them for you.

CHAIR—I am aware of that. You have just said that, but I am asking you to identify them and the others, the reasons why they are not, whether they have a scheme and, if they do not have a scheme, the reasons why.

Mr Edge—I will do that. The Commonwealth Authorities and Companies Act covers a very wide range of bodies. Many of them may not interact with the public in a way that could give rise to defective administration. Many are commercial entities that operate in a commercial market. So we will certainly go through that and help to—

CHAIR—I am sure there must be a sensible reason, but there is a chance there may not be, and we would like to know; that is what we are inquiring into.

Answer:

The list of bodies subject to the *Commonwealth Authorities and Companies Act 1997* (CAC Act) is attached.

The *Scheme for Compensation for Detriment caused by Defective Administration* is not available for Commonwealth companies and authorities that operate under the CAC Act. CAC Act bodies are different from other Commonwealth entities in that they are legally and financially separate from the Commonwealth and their directors and officers are subject to a range of directors' duties.

Both the *Corporations Act 2001* and the CAC Act include penalties for misconduct. It would be inappropriate for appropriations and taxpayers to fund administrative errors by CAC Act bodies, including Government Business Enterprises.

Due to the time available to respond, the Department of Finance and Deregulation has been unable to ascertain which CAC Act agencies have their own compensation arrangements. However, CAC Act bodies can make arrangements for compensation in a particular case to the extent their enabling legislation allows.

63 statutory authorities are Commonwealth authorities for CAC Act purposes

Agriculture, Fisheries and Forestry: 7

Australian Wine and Brandy Corporation (<i>Wine Australia</i>)
Cotton Research and Development Corporation
Fisheries Research and Development Corporation
Grains Research and Development Corporation [M] ⊕
Grape and Wine Research and Development Corporation
Rural Industries Research and Development Corporation
Sugar Research and Development Corporation

Attorney-General's: 4

Australian Government Solicitor [M] ⊕
Australian Institute of Criminology ⊕ [I]
Australian Law Reform Commission ⊕
Criminology Research Council [I]

Broadband, Communications and the Digital Economy: 3

Australian Broadcasting Corporation [M]
Australian Postal Corporation [M]
Special Broadcasting Service Corporation [M]

Defence: 7

Army and Air Force Canteen Service (<i>Frontline Defence Services</i>)
Australian Military Forces Relief Trust Fund (<i>Army Relief Trust Fund</i>)
Defence Housing Australia [M]
Royal Australian Air Force Veterans' Residences Trust Fund
Royal Australian Air Force Welfare Trust Fund
Royal Australian Navy Central Canteens Board
Royal Australian Navy Relief Trust Fund

Education, Employment and Workplace Relations: 4

Australian Curriculum, Assessment and Reporting Authority [I]
Australian National University
Coal Mining Industry (Long Service Leave Funding) Corporation [M]
Comcare [M] ⊕ ⊗ *

Families, Housing, Community Services and Indigenous Affairs: 8

Anindilyakwa Land Council
Central Land Council
Indigenous Business Australia [M]
Indigenous Land Corporation
Northern Land Council
Tiwi Land Council
Torres Strait Regional Authority
Wreck Bay Aboriginal Community Council

Finance and Deregulation: 2

Albury-Wodonga Development Corporation (<i>Albury-Wodonga Corporation</i>) [M] [I]
Australian Industry Development Corporation [M]

Foreign Affairs and Trade

Export Finance and Insurance Corporation [M] ⊕ ^
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Health and Ageing: 4

Australian Institute of Health and Welfare ⊕ *
Food Standards Australia New Zealand [I]
Health Workforce Australia [I]
Private Health Insurance Administration Council

Human Services

Australian Hearing Services (<i>Australian Hearing</i>) [M]

Infrastructure and Transport: 3

Airservices Australia [M]
Australian Maritime Safety Authority ⊕
Civil Aviation Safety Authority [M]

Innovation, Industry, Science and Research: 4

Australian Institute of Aboriginal and Torres Strait Islander Studies
Australian Institute of Marine Science ⊕ [I]
Australian Nuclear Science and Technology Organisation [M] ⊕
Commonwealth Scientific and Industrial Research Organisation [M] ⊕

Prime Minister and Cabinet: 9

Australia Council
Australian Film, Television and Radio School
Australian National Maritime Museum ⊕
Australian Sports Commission (<i>Australian Institute of Sport</i>) [M]
National Film and Sound Archive
National Gallery of Australia [M] ⊕
National Library of Australia [M]
National Museum of Australia [M] ⊕
Screen Australia *

Resources, Energy and Tourism

Tourism Australia [M] ⊕

Sustainability, Environment, Water, Population and Communities: 2

Director of National Parks ⊕ ⊗
Sydney Harbour Federation Trust ⊕ [I]

Treasury: 2

Australian Reinsurance Pool Corporation [M]
Reserve Bank of Australia [M] ⊕

Veterans' Affairs

Australian War Memorial [M] ⊕

There are 2 statutory corporations subject only to certain CAC Act provisions

Infrastructure and Transport <i>National Transport Commission</i> * [I] Sections 9, 18, 20 and Schedule 1
Sustainability, Environment, Water, Population and Communities <i>NEPC Service Corporation</i> * [I] Sections 9, 18, 20 and Schedule 1

24 Commonwealth companies under the CAC Act (ie. the Commonwealth controls the company)

15 limited by guarantee Corporations Act 2001

Climate Change and Energy Efficiency

Australian Carbon Trust Limited

Defence: 3

AAF Company
Australian Strategic Policy Institute Limited
RAAF Welfare Recreational Company

Education, Employment and Workplace Relations: 2

Australian Institute for Teaching and School Leadership Limited [I]
Australian Learning and Teaching Council Limited

Families, Housing, Community Services and Indigenous Affairs

Aboriginal Hostels Limited Σ

Health and Ageing: 3

Aged Care Standards and Accreditation Agency Ltd ⊕
General Practice Education and Training Limited
National Breast and Ovarian Cancer Centre

Prime Minister and Cabinet: 4

Australia Business Arts Foundation Ltd
Australian Sports Foundation Limited Σ
Bundanon Trust
National Australia Day Council Limited

Resources, Energy and Tourism

Australian Solar Institute Limited

9 limited by shares Corporations Act 2001

Broadband, Communications and the Digital Economy

NBN Co Limited [M]

Families, Housing, Community Services and Indigenous Affairs

Outback Stores Pty Ltd

Finance and Deregulation: 3

Australian River Co. Limited
ASC Pty Ltd [M]
Medibank Private Limited [M] Σ

Infrastructure and Transport

Australian Rail Track Corporation Limited [M]

Innovation, Industry, Science and Research: 2

IIF Foundation Pty Limited
IIF Investments Pty Limited

Treasury

HIH Claims Support Limited

Key to Symbols

13 bodies encompass a Statutory Agency under the *Public Service Act 1999* (PS Act). These comprise a Commonwealth company and 12 Commonwealth authorities, of which 3 are marked * as they can engage personnel under their enabling Act along with the PS Act. # There are also 2 statutory corporations, subject only to certain CAC Act provisions, that are Statutory Agencies under the PS Act and can also employ their own staff (*).

7 Commonwealth authorities are established by regulations: comprising 5 of the 6 research and development corporations, plus both the Army and Air Force Canteen Service and the Royal Australian Navy Central Canteens Board.

3 Commonwealth authorities and 4 Commonwealth companies are also government business enterprises (GBEs) under section 5 of the CAC Act.

2 Commonwealth authorities are exempt from being notified of general policies of the Australian Government, under sections 28 and 48A of the CAC Act.

2 Commonwealth authorities are partially exempt from ss 28 and 48A of the CAC Act.

1 Commonwealth authority is a statutory marketing authority (SMA): Australian Wine and Brandy Corporation.

70 General Government Sector (GGS) bodies. (The National Interest Account is also classified as GGS, but is administered by the Export Finance and Insurance Corporation (EFIC) ^ which is a Public Financial Corporation.

9 Public Non-financial Corporations (PNFC).

6 Public Financial Corporations (PFC) - ^ EFIC also administers the National Interest Account, which is classified as GGS.

2 Unclassified bodies (plus there are 2 statutory corporations # which are unclassified and subject only to certain CAC Act provisions).

[M] 29 CAC Act bodies are material entities (comprising 99% of revenues, expenses, assets and liabilities). 25 are Commonwealth authorities and 4 are Commonwealth companies, limited by shares.

⊕ 18 Commonwealth authorities and 1 company are also subject to section 47A of the CAC Act, which allows for directions on procurement matters.

[I] 8 Commonwealth authorities, 1 Commonwealth company and 2 statutory corporations are inter-jurisdictional in nature, e.g. involving the States or Territories or New Zealand in their governance structure or establishment.

Σ 3 Commonwealth companies are mentioned in statute.

⊗ 3 Commonwealth authorities have a single person at their apex, rather than a multi-member board.

2 statutory corporations are only subject to the provisions of the CAC Act mentioned beneath each entry.

Statutory authorities that are Commonwealth authorities for CAC Act purposes

Commonwealth authorities are statutory corporations. They are established in legislation as bodies corporate. A Commonwealth authority must satisfy the three criteria set out in section 7 of the CAC Act, namely:

- (a) that it be established by legislation for a public purpose;
- (b) that it be a body corporate; and
- (c) that it hold money on its own account.

Commonwealth authorities are governed both by their separate enabling legislation and by the CAC Act. The CAC Act imposes a single set of core reporting and auditing requirements on directors of these entities and sets out standards of conduct for officers of Commonwealth authorities that are equivalent to those applied to officers of companies by the *Corporations Act 2001*.

Subsection 7(2) of the CAC Act provides that none of the following are Commonwealth authorities: Corporations Act companies; corporations registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; and associations that are organisations within the meaning of the *Fair Work (Registered Organisations) Act 2009*.

What are CAC Act bodies?

The CAC Act covers bodies that are not legally or financially part of the Commonwealth. CAC Act bodies are bodies corporate which hold money on their own account. They include Commonwealth authorities and Commonwealth companies.

Other statutory corporations subject only to certain CAC Act provisions

Bodies in this box are statutory corporations established by an Act of Parliament that are not Commonwealth authorities but subject to selected CAC Act provisions.

Commonwealth companies (ie the Commonwealth controls the company for CAC Act purposes)

limited by guarantee under the *Corporations Act 2001*

limited by shares under the *Corporations Act 2001*

A **Commonwealth company** is a company registered under the *Corporations Act 2001* and which the Commonwealth “controls”. Section 34 of the CAC Act defines the Commonwealth as controlling a company if, and only if, it:

- a) controls the composition of the company’s board (including through a veto power); or
- b) has the ability to cast a majority of votes (more than one-half of the maximum number of votes) at a general meeting of the company’s members; or
- c) holds more than one-half of the issued share capital of the company.

A **Commonwealth company** may come into existence in one of two ways:

- a) where a company is registered under the *Corporations Act 2001* and which the Commonwealth controls; or
- b) where the Commonwealth acquires control of an existing company.

“**Company limited by guarantee**” means a company formed on the principle of having the liability of its members limited to the respective amounts that the members undertake to contribute to the property of the company if it is wound up (*Corporations Act 2001*, section 9). These companies typically have the letters “Ltd” after their name.

“**Company limited by shares**” means a company formed on the principle of having the liability of its members limited to the amount (if any) unpaid on the shares respectively held by them (*Corporations Act 2001*, section 9). Where it is a public company, the company has the suffix “Ltd” after its name, or when it is a proprietary company, the suffix “Pty Ltd”.

Key

<p>Denotes bodies that are identified in their enabling legislation as Statutory Agencies for the purposes of the <i>Public Service Act 1999</i>. The enabling legislation also sets out the arrangements for the appointment and termination of the Agency Head and their specific powers, responsibilities and accountability requirements. The <i>Public Service Act 1999</i> confers general employment powers on the Agency Heads of Statutory Agencies.</p>	<p>Bodies with a white coloured background are classified in Government Finance Statistics as General Government Sector (GGS) bodies. The primary function of this type of entity is to provide public services that are mainly non-market in nature, and for the collective consumption of the community, or that involve the transfer or redistribution of income. These services are largely government-funded, although user charging and external funding have increased in recent years.</p>
<p>Denotes Commonwealth authorities that are established by regulation (ie, secondary legislation).</p>	<p>Bodies with a blue coloured background are classified in Government Finance Statistics as Public non-Financial Corporations (PNFC). The primary function of entities in this sector is to provide goods and services which are mainly market, non-regulatory and non-financial in nature, financed predominately through sales to the consumers of the goods and services.</p>
<p>Denotes Commonwealth authorities and companies that are also CAC Act government business enterprises (GBEs). GBEs are prescribed under regulation 4 of the CAC Regulations. They have a commercial focus, prepare corporate plans and generally have wider investment powers, compared to other Commonwealth authorities and companies. The Finance Minister has a role in the oversight of these bodies.</p>	<p>Bodies with a green coloured background are classified in Government Finance Statistics as Public Financial Corporations (PFC). These entities are defined similarly to PNFCs except they trade in financial assets and liabilities. They are entities which perform central banking functions; accept demand, time or savings deposits; or have the authority to incur liabilities and acquire financial assets in the market on their own account.</p>
<p>Denotes Commonwealth authorities that are exempt from sections 28 and 48A of the CAC Act. Sections 28 and 48A of the CAC Act allow the responsible Minister to notify the directors of a Commonwealth authority of general policies of the Australian Government that are to apply to the authority.</p>	<p>Bodies with a grey colour background are unclassified. This means the body is not classified into the GGS, PNFC or PFC sectors because the body is not consolidated in the Commonwealth's consolidated financial statements. This is because the relationship it has with the Commonwealth does not meet the definition of control for accounting purposes. Universities are an example of unclassified bodies. Some unclassified bodies are, however, included in the Commonwealth's consolidated financial statements as "other investments".</p>
<p>Denotes Commonwealth authorities that are partially exempt from sections 28 and 48A of the CAC Act. Sections 28 and 48A of the CAC Act allow the responsible Minister to notify the directors of a Commonwealth authority of general policies of the Australian Government that are to apply to the authority.</p>	<p>The key also includes a number of symbols that are used on the chart to denote those agencies that are material in nature, those bodies that are interjurisdictional in nature, bodies that may be directed under section 47A of the CAC Act on procurement matters, Commonwealth companies that are mentioned in statute, Commonwealth authorities that have a single person at their apex, those that encompass a "body corporate" under statute, and statutory corporations only subject to provisions of the CAC Act mentioned beneath their entry.</p>
<p>Denotes Commonwealth authorities that are prescribed as statutory marketing authorities (SMAs) under regulation 5 of the CAC Regulations. SMAs generally also have wider investment powers compared to other Commonwealth authorities.</p>	
<p>Denotes Commonwealth companies that are in the process of winding down their affairs, involving voluntary deregistration or the appointment of a liquidator to manage the process of realising the company's assets, ceasing or sale of their operations, payment of its debts (if any) and distribution of surplus assets (if any) among members or shareholders.</p>	