



Commonwealth Authorities and Companies Act 1997

No. 153, 1997



Commonwealth Authorities and Companies Act 1997

No. 153, 1997

**An Act to provide reporting, accountability and
other rules for Commonwealth authorities and
Commonwealth companies, and for related
purposes**

Reader's Guide

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

Overview of this Act

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

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

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

Summary of this Act

- Part 1 **Preliminary:** This Part deals with the commencement of this Act, its application to things outside Australia and its application to the Crown.
- Part 2 **General provisions about definitions, offences and civil penalties:** This Part contains definitions of terms that are frequently used throughout this Act and general provisions about offences and civil penalty provisions. Schedule 2 sets out the civil and criminal consequences of contravening a civil penalty provision.
- Part 3 **Reporting and other obligations for Commonwealth authorities:** This Part sets out reporting and accountability rules for Commonwealth authorities. It also deals with matters such as banking, investment and the conduct of officers. Schedule 1 deals

with the content of the annual report, financial statements and auditor's report.

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

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

Related legislation

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

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

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

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

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

Contents

Part 1—Preliminary	2
1 Short title	2
2 Commencement	2
3 This Act binds the Crown	2
4 This Act extends to things outside Australia	2
Part 2—General provisions about definitions, offences and civil penalties	3
5 Definitions	3
6 Offences and civil penalties	5
Part 3—Reporting and other obligations for Commonwealth authorities	7
Division 1—Preliminary	7
7 Meaning of <i>Commonwealth authority</i>	7
8 Role of Auditor-General	7
Division 2—Reporting obligations	9
Subdivision A—Annual report and related obligations	9
9 Directors must prepare annual report	9
10 Modified requirements for first year of existence	9
11 Contravention of annual report rules by directors	10
12 Audit of relevant subsidiary's financial statements	10
Subdivision B—Other reporting obligations	11
13 Interim reports	11
14 Estimates	12
15 Responsible Minister to be notified of significant events	12
16 Keeping responsible Minister and Finance Minister informed	13
17 Corporate plan for GBE	13
Division 3—Banking, investment etc.	15
18 Banking and investment (authorities other than GBEs and SMAs)	15
19 Banking and investment (GBEs and SMAs)	15
20 Accounting records	16
Division 4—Conduct of officers	18
21 Directors must disclose material personal interests	18
22 General obligations on officers	18

23	Officers must not make improper use of inside information or position.....	19
24	Effect of civil penalty disqualification on being a director.....	19
25	Other obligations and remedies not affected.....	20
26	Indemnifying officers	20
27	Insurance premiums for indemnity insurance of officers.....	21
Division 5—Miscellaneous		23
28	Compliance with general policies of the Government	23
29	Activities of subsidiaries	23
30	Aligning accounting periods of subsidiaries	23
31	Exemption from requirement to align accounting periods of subsidiaries	24
32	Audit committee	25
33	Special rules for Commonwealth authorities established by regulations etc.....	25
Part 4—Reporting and other obligations for Commonwealth companies		26
Division 1—Preliminary		26
34	Meaning of <i>Commonwealth company</i> and <i>wholly-owned Commonwealth company</i>	26
35	Role of Auditor-General	26
Division 2—Reporting obligations		27
Subdivision A—Annual report and related obligations		27
36	Annual Report	27
37	Audit of relevant subsidiary’s financial statements	28
Subdivision B—Other reporting obligations		29
38	Interim reports	29
39	Estimates	30
40	Responsible Minister to be notified of significant events	30
41	Keeping responsible Minister and Finance Minister informed	31
42	Corporate plan for GBE.....	31
Subdivision C—Miscellaneous		32
43	Compliance with general policies of the Government	32
44	Audit committee	33
Part 5—Miscellaneous		34
45	Ministers must inform Parliament of share acquisitions etc.	34

46	Companies conducted for the purposes of intelligence or security agencies.....	34
47	Regulations may deal with how this Act applies if body stops being a Commonwealth authority.....	35
48	Finance Minister's Orders	35
49	Regulations.....	35
Schedule 1—Annual Report for Commonwealth Authority		36
Part 1—Contents of annual report		36
1	Summary of contents	36
2	Financial statements	36
Part 2—Auditor's report on financial statements		38
3	Whether the statements comply with the Finance Minister's Orders	38
4	Proper accounting records not kept	38
5	Inadequate information and explanations	38
6	Subsidiaries' financial statements.....	38
7	Deficiencies in consolidation.....	39
Schedule 2—Civil and criminal consequences of contravening civil penalty provisions		40
Part 1—Preliminary		40
1	Interpretation	40
2	Civil penalty provisions.....	41
3	Person involved in contravening a provision taken to have contravened the provision.....	41
Part 2—Civil penalty orders		42
4	Court may make civil penalty orders.....	42
5	Who may apply for civil penalty order.....	43
6	Time limit for application.....	43
7	Application for civil penalty order is a civil proceeding.....	43
8	Person must comply with order not to be a director of a Commonwealth authority	43
9	Enforcement of order to pay pecuniary penalty	44
10	Finance Minister may require a person to give assistance in connection with application for civil penalty order	44

Part 3—Criminal proceedings	46
11 When contravention of civil penalty provision is an offence.....	46
12 Person convicted of clause 11 offence not to be a director of a Commonwealth authority	46
13 Application for civil penalty order precludes later criminal proceedings.....	47
Part 4—Effect of criminal proceedings on application for civil penalty order	48
14 When Part applies.....	48
15 Effect during criminal proceedings.....	48
16 Final outcome precluding application for civil penalty order	48
17 Final outcome not precluding application for civil penalty order	49
18 After unsuccessful committal proceeding, court may preclude application for civil penalty order	50
19 Application for civil penalty order based on alternative verdict at jury trial	50
20 Application for civil penalty order based on alternative finding by court of summary jurisdiction	51
21 Application for civil penalty order based on alternative finding by appeal court	51
22 After setting aside declaration, court may preclude application for civil penalty order.....	52
23 On unsuccessful appeal against declaration, Court may make civil penalty orders	52
24 Appeals under this Part.....	53
Part 5—Compensation for loss suffered by Commonwealth authority	54
25 On application for civil penalty order, Court may order compensation.....	54
26 Criminal court may order compensation.....	54
27 Enforcement of order under clause 25 or 26.....	55
28 Recovery of profits, and compensation for loss, resulting from contravention	55
29 Effect of clauses 25, 26 and 28.....	56
30 Certificates evidencing contravention	56
Part 6—Miscellaneous	58
31 Relief from liability for contravention of civil penalty provision.....	58

32	Schedule does not limit power to award punitive damages	59
----	---	----



Commonwealth Authorities and Companies Act 1997

No. 153, 1997

**An Act to provide reporting, accountability and
other rules for Commonwealth authorities and
Commonwealth companies, and for related
purposes**

[Assented to 24 October 1997]

The Parliament of Australia enacts:

Section 1

Part 1—Preliminary

1 Short title

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

2 Commencement

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

3 This Act binds the Crown

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

4 This Act extends to things outside Australia

This Act extends to acts, omissions, matters and things outside Australia (unless the contrary intention appears).

Part 2—General provisions about definitions, offences and civil penalties

5 Definitions

In this Act, unless the contrary intention appears:

bank means:

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

Commonwealth authority has the meaning given by section 7.

Commonwealth company has the meaning given by section 34.

consolidated financial statements, in relation to a Commonwealth authority or Commonwealth company, means financial statements for the group consisting of:

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

Corporations Law has the same meaning as in the *Corporations Act 1989*.

Corporations Law company means a body corporate that is incorporated, or taken to be incorporated, under the Corporations Law of a State or Territory.

director means:

- (a) for a Commonwealth authority that has a council or other governing body—a member of the governing body; or

Section 5

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

Finance Minister means the Minister who administers this Act.

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

financial statements includes consolidated financial statements.

financial year:

- (a) means, for a Commonwealth authority:
 - (i) a period of 12 months commencing on 1 July; or
 - (ii) if the incorporating law specifies another period of 12 months as the financial year for the authority for the purpose of this Act—a period of 12 months as so specified; and
- (b) means, for a Commonwealth company, the company's annual accounting period.

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

incorporating law, in relation to a Commonwealth authority, means the Act, regulations or Ordinance by which the authority is incorporated.

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

officer, in relation to a Commonwealth authority, means:

- (a) a director of the authority; or
- (b) any other person who is concerned in, or takes part in, the management of the authority.

responsible Minister means:

- (a) for a Commonwealth authority—the Minister who is responsible for the authority; or

Section 6

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

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

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

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

6 Offences and civil penalties

- (1) Chapter 2 of the *Criminal Code* applies to all offences against this Act, other than offences against provisions of Schedule 2.
- (2) Schedule 2 deals with the civil and criminal consequences of contravening civil penalty provisions.
- (3) A maximum penalty that is specified:
 - (a) at the foot of a section of this Act (other than a section that is divided into subsections); or
 - (b) at the foot of a subsection of this Act;indicates that a person who contravenes the section or subsection is guilty of an offence against the section or subsection that is punishable, on conviction, by a penalty up to that maximum.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Section 6

Note 2: If the specified penalty is imprisonment only, section 4B of the *Crimes Act 1914* allows the court to impose a fine instead of imprisonment or in addition to imprisonment.

Part 3—Reporting and other obligations for Commonwealth authorities

Division 1—Preliminary

7 Meaning of *Commonwealth authority*

- (1) In this Act, ***Commonwealth authority*** means either of the following kinds of body that holds money on its own account:
 - (a) a body corporate that is incorporated for a public purpose by an Act;
 - (b) a body corporate that is incorporated for a public purpose by:
 - (i) regulations under an Act; or
 - (ii) an Ordinance of an external Territory (other than Norfolk Island) or regulations under such an Ordinance;and is prescribed for the purposes of this paragraph by regulations under this Act.
- (2) None of the following are ***Commonwealth authorities***:
 - (a) Corporations Law companies;
 - (b) Aboriginal associations incorporated under Part IV of the *Aboriginal Councils and Associations Act 1976*;
 - (c) associations of employees that are organisations within the meaning of the *Workplace Relations Act 1996*.
- (3) For the purposes of subsection (1), all money that a body holds is taken to be held by it on its own account, unless the money is public money as defined in section 5 of the *Financial Management and Accountability Act 1997*.

8 Role of Auditor-General

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

Section 8

- (2) The Auditor-General is to audit the financial statements of each subsidiary of a Commonwealth authority (there are exceptions to this—see subsection 12(4)).

Note: If the Auditor-General is not the subsidiary's auditor, this means that the Auditor-General has to do an audit of the statements in addition to that done by the subsidiary's auditor.

Division 2—Reporting obligations

Subdivision A—Annual report and related obligations

9 Directors must prepare annual report

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

The deadline is the 15th day of the 4th month after the end of the financial year.

Note: The deadline will be 15 October if the financial year ends on 30 June.
Financial year is defined in section 5.

- (2) The responsible Minister may grant an extension of time in special circumstances.
- (3) The responsible Minister must table the report in each House of the Parliament as soon as practicable.

10 Modified requirements for first year of existence

- (1) If a Commonwealth authority is established during the last 3 months of a financial year:
 - (a) the directors are not required to prepare an annual report for that financial year; and
 - (b) the period from the time of establishment to the end of the financial year must be dealt with in the next annual report.
- (2) If a Commonwealth authority is established during the first 9 months of a financial year, the annual report for the financial year must cover the period from the time of establishment to the end of the financial year.

Section 11

11 Contravention of annual report rules by directors

- (1) If a directors reporting rule is contravened, each director who:
- (a) caused the contravention; or
 - (b) failed to take all reasonable steps to comply with the rule, or secure compliance with the rule;
- contravenes this subsection.

Note: This is a civil penalty provision and Schedule 2 sets out the civil and criminal consequences of contravening it.

- (2) If a contravention of a directors reporting rule consists of an omission from the financial statements, it is a defence if the defendant proves that the information omitted was immaterial and did not affect the giving of a true and fair view of the matters required by the Finance Minister's Orders to be included in the statements.
- (3) In this section:
- directors reporting rule* means subsection 9(1) or any of the requirements of Schedule 1 that impose obligations on the directors.

12 Audit of relevant subsidiary's financial statements

- (1) Subject to subsection (4), the directors of a Commonwealth authority must do whatever is necessary to ensure that all relevant subsidiary's financial statements are audited by the Auditor-General.
- (2) For a subsidiary that is a Corporations Law company that, under the Corporations Law, 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 Law. Those rules must also be used for other subsidiaries, so far as is practicable.
- (3) The Auditor-General must give the report to the responsible Minister, together with a copy of the relevant subsidiary's financial statements.

Section 13

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

- (5) In this section:

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

Subdivision B—Other reporting obligations

13 Interim reports

- (1) The Finance Minister may, by notice in the *Gazette*, require particular Commonwealth authorities or a class of Commonwealth authorities to give the responsible Minister either:
 - (a) an interim report for the first 6 months of a financial year; or
 - (b) an interim report for each of the following periods:
 - (i) the first 3 months of each financial year;
 - (ii) the first 6 months of each financial year;
 - (iii) the first 9 months of each financial year.
- (2) The interim report must include:
 - (a) a report of operations, prepared by the directors in accordance with the Finance Minister's Orders; and
 - (b) financial statements, prepared by the directors in accordance with the Finance Minister's Orders; and

Section 14

- (c) a report prepared by the Auditor-General in accordance with the regulations.
- (3) The directors must give the interim report to the responsible Minister within 2 months after the end of the period to which the report relates.
- (4) The responsible Minister may grant an extension of time in special circumstances.
- (5) The responsible Minister must table the interim report in each House of the Parliament as soon as practicable.

14 Estimates

- (1) The directors of a Commonwealth authority (other than a GBE) must prepare budget estimates for each financial year, and for any other periods directed by the responsible Minister.
- (2) The estimates:
 - (a) must be in the form required by the responsible Minister; and
 - (b) must be given to the responsible Minister within the time required by the responsible Minister.

15 Responsible Minister to be notified of significant events

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

Section 16

- (f) make a significant change in the nature or extent of its interest in a significant partnership, trust, unincorporated joint venture or similar arrangement.
- (2) The responsible Minister may in writing exempt the directors of a Commonwealth authority from the requirement to notify matters covered by paragraph (1)(a). The exemption may be granted subject to conditions.
- (3) The responsible Minister may give written guidelines to the directors that are to be used by the directors in deciding whether a proposal is covered by paragraph (1)(b), (c), (d), (e) or (f).

16 Keeping responsible Minister and Finance Minister informed

- (1) The directors of a Commonwealth authority must:
 - (a) keep the responsible Minister informed of the operations of the authority and its subsidiaries; and
 - (b) give the responsible Minister such reports, documents and information in relation to those operations as the responsible Minister requires; and
 - (c) give the Finance Minister such reports, documents and information in relation to those operations as the Finance Minister requires.
- (2) The directors must comply with requirements under paragraphs (1)(b) and (c) within the time limits set by the Minister concerned.

17 Corporate plan for GBE

- (1) This section applies to a Commonwealth authority that is a GBE.
- (2) The directors must prepare a corporate plan at least once a year and give it to the responsible Minister.
- (3) The plan must cover a period of at least 3 years.
- (4) If the Commonwealth authority has subsidiaries, the plan must cover both the authority and its subsidiaries. In particular, for each

Section 17

subsidiary the plan must include details of the matters in subsection (6), so far as they are applicable.

- (5) The directors must keep the responsible Minister informed about:
 - (a) significant changes to the plan; and
 - (b) matters that arise that might significantly affect the achievement of the objectives in the plan.
- (6) The plan must include details of the following matters (so far as they are applicable):
 - (a) the objectives of the authority;
 - (b) assumptions about the business environment in which the authority operates;
 - (c) the business strategies of the authority;
 - (d) the investment and financing programs of the authority, including strategies for managing financial risk;
 - (e) financial targets and projections for the authority;
 - (f) the dividend policy of the authority;
 - (g) non-financial performance measures for the authority;
 - (h) community service obligations of the authority and the strategies and policies the authority is to follow to carry out those obligations;
 - (i) review of performance against previous corporate plans and targets;
 - (j) analysis of factors likely to affect achievement of targets or create significant financial risk for the authority or for the Commonwealth;
 - (k) price control and quality control strategies for goods or services supplied by the authority under a monopoly;
 - (l) human resource strategies and industrial relations strategies.
- (7) The plan must also cover any other matters required by the responsible Minister (which may include further details about the matters in subsection (6)).
- (8) The responsible Minister may give written guidelines to the directors that are to be used by the directors in deciding which matters are covered by subsection (5).

Division 3—Banking, investment etc.

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

- (1) This section applies to a Commonwealth authority that is not a GBE or SMA.
- (2) The authority must pay all money received by it into an account maintained by it with a bank.
- (3) The authority may invest surplus money:
 - (a) on deposit with a bank; or
 - (b) in securities of the Commonwealth or of a State or Territory;
or
 - (c) in securities guaranteed by the Commonwealth, a State or a Territory; or
 - (d) in any other manner approved by the Treasurer.
- (4) A provision in the authority's incorporating law to the effect that the authority must not enter into a contract involving the expenditure or payment of more than a specified amount of money without the approval of a specified person does not apply to a contract for the investment of money under subsection (3), unless the provision expressly states that it applies to such a contract.
- (5) In this section:

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

19 Banking and investment (GBEs and SMAs)

- (1) This section applies to a Commonwealth authority that is a GBE or SMA.
- (2) The authority must pay all money received by it into an account maintained by it with a bank.

Section 20

- (3) The authority may invest surplus money:
 - (a) on deposit with any bank; or
 - (b) in securities of the Commonwealth or of a State or Territory;
or
 - (c) in securities guaranteed by the Commonwealth, a State or a Territory; or
 - (d) in any other manner that is consistent with sound commercial practice.
- (4) A provision in the authority's incorporating law to the effect that the authority must not enter into a contract involving the expenditure or payment of more than a specified amount of money without the approval of a specified person does not apply to a contract for the investment of money under subsection (3), unless the provision expressly states that it applies to such a contract.
- (5) In this section:

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

20 Accounting records

- (1) A Commonwealth authority must keep accounting records that properly record and explain its transactions and financial position and must keep those records in a way that:
 - (a) enables the preparation of the financial statements required by this Act; and
 - (b) allows those financial statements to be conveniently and properly audited in accordance with this Act.
- (2) The authority must retain the records for at least 7 years after completion of the transactions to which they relate.
- (3) The authority must make the records available at all reasonable times for inspection by any director of the authority.
- (4) If a requirement of this section is contravened, each officer of the authority who:

Section 20

- (a) caused the contravention; or
 - (b) failed to take all reasonable steps to comply with the requirement, or secure compliance with the requirement;
- is guilty of an offence.

Maximum penalty: Imprisonment for 6 months.

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

Section 21

Division 4—Conduct of officers

21 Directors must disclose material personal interests

- (1) A director of a Commonwealth authority who has a material personal interest in a matter that is being considered, or is about to be considered, by the Board must disclose the nature of the interest at a meeting of the Board.
- (2) The disclosure must be made as soon as possible after the relevant facts have come to the director's knowledge, and must be recorded in the minutes of the meeting.
- (3) Unless the Board or the responsible Minister otherwise determines, the director:
 - (a) must not be present during any deliberation by the Board on the matter; and
 - (b) must not take part in any decision of the Board on the matter.
- (4) For the purpose of a determination being made under subsection (3), any director who has a material personal interest in the matter to which the disclosure relates:
 - (a) must not be present during any deliberation by the Board on whether to make the determination; and
 - (b) must not take part in making the determination.
- (5) In this section:

Board means the directors of the authority.

Note: In some cases, the members of the authority will be the directors. See the definition of **director** in section 5.

22 General obligations on officers

- (1) An officer of a Commonwealth authority must at all times act honestly in the exercise of his or her powers and the discharge of his or her duties as an officer.

Section 23

Note: This is a civil penalty provision and Schedule 2 sets out the civil and criminal consequences of contravening it.

- (2) An officer of a Commonwealth authority must, in the exercise of his or her powers and the discharge of his or her duties as an officer, exercise the degree of care and diligence that a reasonable person in a like position in a Commonwealth authority would exercise in the authority's circumstances.

Note: This is a civil penalty provision and Schedule 2 sets out the civil and criminal consequences of contravening it.

23 Officers must not make improper use of inside information or position

- (1) An officer (or former officer) of a Commonwealth authority must not make improper use of inside information or of his or her position as an officer in order to:
- (a) gain an advantage, either directly or indirectly, for himself or herself or for another person; or
 - (b) cause detriment to the authority or to another person.

Note: This is a civil penalty provision and Schedule 2 sets out the civil and criminal consequences of contravening it.

- (2) If an officer is also a public servant, nothing done by the officer in the normal course of the performance of his or her duties as a public servant is to be regarded as improper for the purposes of subsection (1). For this purpose, **public servant** means an officer or employee within the meaning of the *Public Service Act 1922*.
- (3) In this section:

inside information means information obtained because of the person's position as an officer.

24 Effect of civil penalty disqualification on being a director

- (1) The office of a director of a Commonwealth authority is, by force of this section, vacated if the person holding the office:
- (a) becomes subject to a civil penalty disqualification; or

Section 25

- (b) is convicted of an offence of which he or she is guilty because of clause 11 of Schedule 2.
- (2) A person whose office is vacated because of paragraph (1)(a) cannot, without leave granted under clause 8 of Schedule 2, be reappointed as a director until the end of the period specified in the disqualification.
- (3) A person whose office is vacated because of paragraph (1)(b) cannot, without leave granted under clause 12 of Schedule 2, be reappointed as a director until the end of the period of 5 years referred to in subclause 12(1) of that Schedule.
- (4) For the purposes of this section, a person is or becomes subject to a ***civil penalty disqualification*** if, and only if, an order relating to the person is in force, or is made, under paragraph 4(3)(a) of Schedule 2.

25 Other obligations and remedies not affected

This Division:

- (a) does not detract from any rule of law relating to the duty or liability that a person has because of the person's office or employment in relation to a Commonwealth authority; and
- (b) does not prevent civil proceedings being instituted for breach of such a duty or in respect of such a liability.

26 Indemnifying officers

- (1) A Commonwealth authority or a subsidiary of a Commonwealth authority must not indemnify a person who is or has been an officer of the authority against either of the following liabilities incurred by the person as an officer of the authority:
 - (a) a liability to the authority or to any subsidiary of the authority;
 - (b) a liability to another person (other than the authority or a subsidiary of the authority) arising out of conduct involving a lack of good faith.

Section 27

- (2) Subsection (1) does not prevent a person from being indemnified against either of the following liabilities:
 - (a) a liability for costs or expenses incurred by the person in defending civil proceedings in which judgment is given in favour of the person;
 - (b) a liability for costs or expenses incurred by the person in defending criminal proceedings in which the person is acquitted.
- (3) Subject to this section, a Commonwealth authority may indemnify a person who is or has been an officer of the authority against liabilities incurred by the person as an officer of the authority.
- (4) A Commonwealth authority (or a subsidiary of a Commonwealth authority) must not exempt a person who is or has been an officer of the authority from any liability incurred by the person as an officer of the authority.
- (5) In this section:
indemnify includes indemnify indirectly through one or more interposed entities.

27 Insurance premiums for indemnity insurance of officers

- (1) A Commonwealth authority or a subsidiary of a Commonwealth authority must not pay, or agree to pay, a premium on a contract that insures a person who is or has been an officer of the authority against a liability:
 - (a) incurred by the person as an officer of the authority; and
 - (b) arising out of conduct that involves a contravention of section 23 or a wilful breach of duty in relation to the authority.
- (2) If subsection (1) is contravened, the contract is void in so far as it insures the person against such a liability.
- (3) Subsections (1) and (2) do not apply to a liability for costs and expenses incurred by a person in defending civil or criminal proceedings, whatever their outcome.

Section 27

(4) Subject to this section, a Commonwealth authority may insure a person who is or has been an officer against liabilities incurred by the person as an officer.

(5) In this section:

pay includes pay indirectly through one or more interposed entities.

Division 5—Miscellaneous

28 Compliance with general policies of the Government

- (1) The responsible Minister may notify the directors of a Commonwealth authority in writing of general policies of the Commonwealth Government that are to apply to the authority. The responsible Minister must consult the directors before notifying them of the policies.
- (2) The directors must ensure that the policies are carried out in relation to the authority.
- (3) The directors must also ensure, as far as practicable, that the policies are carried out in relation to the subsidiaries of the authority.
- (4) The responsible Minister may, in writing, exempt the directors of a Commonwealth authority from subsection (2) or (3) in relation to specified activities.

29 Activities of subsidiaries

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

30 Aligning accounting periods of subsidiaries

- (1) If the annual accounting period of a subsidiary of a Commonwealth authority is not the same as the financial year of the authority, the directors of the authority must do whatever is necessary to ensure that the annual accounting period of the subsidiary becomes the same as the authority's financial year:
 - (a) within 12 months after the subsidiary becomes a subsidiary;
or
 - (b) within 12 months after the commencement of this Act;

Section 31

whichever is later.

- (2) If the annual accounting period of a subsidiary is already the same as the authority's financial year, the directors must do whatever is necessary to ensure that it continues to be the same.
- (3) If this section is contravened, each director who:
 - (a) caused the contravention; or
 - (b) failed to take all reasonable steps to comply with this section, or secure compliance with this section;is guilty of an offence.

Maximum penalty: 50 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: Section 4AA of the *Crimes Act 1914* sets the current value of a penalty unit.

31 Exemption from requirement to align accounting periods of subsidiaries

- (1) The Finance Minister may grant a written exemption to the directors of a Commonwealth authority from the requirements of section 30, either generally or in relation to one or more subsidiaries.
- (2) The exemption may be granted subject to conditions.
- (3) The Finance Minister may, on behalf of the Commonwealth, engage a registered company auditor to investigate and report on an exemption application. For this purpose, **registered company auditor** means a person who is registered, or taken to be registered, as an auditor under the Corporations Law of a State or Territory.
- (4) The authority is liable to reimburse the Commonwealth for the costs of the investigation and report.

Section 32

32 Audit committee

- (1) The directors of a Commonwealth authority must establish and maintain an audit committee with functions that include:
 - (a) helping the authority and its directors to comply with obligations under this Act; and
 - (b) providing a forum for communication between the directors, the senior managers of the authority and the internal and external auditors of the authority.
- (2) If the regulations state how the committee is to be constituted, it must be constituted in accordance with the regulations.

33 Special rules for Commonwealth authorities established by regulations etc.

- (1) The application of this Act to Commonwealth authorities covered by paragraph 7(1)(b) is subject to any modifications that are prescribed by the regulations.
- (2) In this section:
modifications includes additions, omissions and substitutions.

Section 34

Part 4—Reporting and other obligations for Commonwealth companies

Division 1—Preliminary

34 Meaning of *Commonwealth company* and *wholly-owned Commonwealth company*

- (1) In this Act, *Commonwealth company* means a Corporations Law company in which the Commonwealth has a controlling interest. However, it does not include a company in which the Commonwealth has a controlling interest through one or more interposed Commonwealth authorities or Commonwealth companies.
- (2) In this Act, *wholly-owned Commonwealth company* means any Commonwealth company, other than a company any of the shares in which are beneficially owned by a person other than the Commonwealth.

35 Role of Auditor-General

- (1) The Auditor-General is, in relation to each Commonwealth company, either:
 - (a) to be the auditor of the company under the Corporations Law; or
 - (b) if someone else is the company's auditor—to give a report on the company's financial statements (see subsection 36(2)).
- (2) The Auditor-General is to audit the financial statements of each subsidiary of a Commonwealth company (there are exceptions to this—see subsection 37(4)).

Note: If the Auditor-General is not the subsidiary's auditor, this means that the Auditor-General has to do an audit of the statements in addition to that done by the subsidiary's auditor.

Division 2—Reporting obligations

Subdivision A—Annual report and related obligations

36 Annual Report

- (1) At least 14 days before each annual general meeting, a Commonwealth company must give the responsible Minister:
 - (a) a copy of the company's annual report that includes the company's annual general meeting documents (or, if there is no such annual report, a copy of the company's annual general meeting documents); and
 - (b) any additional report under subsection (2).

For this purpose, ***annual general meeting documents*** means the documents relating to a financial year that the company is required by the Corporations Law to lay before its annual general meeting.

Maximum penalty: 50 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: Section 4AA of the *Crimes Act 1914* sets the current value of a penalty unit.

- (2) If the auditor's report required by the Corporations Law was prepared by an auditor other than the Auditor-General, subsection (1) also requires the company to give a report by the Auditor-General on the financial statements.
- (3) In preparing a report for the purposes of subsection (2), the Auditor-General must use the same Corporations Law rules as applied to the report by the other auditor.
- (4) If the Commonwealth company is a wholly-owned Commonwealth company, the responsible Minister must table the documents in each House of the Parliament as soon as practicable after receiving them. In all other cases, the Minister must table the documents in each House of the Parliament as soon as practicable after the annual general meeting of the company.

Section 37

- (5) The regulations may make provision dealing with how this section applies to a Commonwealth company that is not required to hold an annual general meeting or in relation to which an auditor's report is not required to be prepared.
- (6) Without limiting the generality of subsection (5), regulations for the purposes of that subsection may provide that this section applies with specified modifications.

37 Audit of relevant subsidiary's financial statements

- (1) Subject to subsection (4), the directors of a Commonwealth company must do whatever is necessary to ensure that all relevant subsidiary's financial statements are audited by the Auditor-General.
- (2) For a subsidiary that is a Corporations Law company that, under the Corporations Law, is required to have financial statements audited, the Auditor-General's report must be prepared using the relevant rules in the Corporations Law. Those rules must also be used for other subsidiaries, so far as is practicable.
- (3) The Auditor-General must give the report to the responsible Minister, together with a copy of the relevant subsidiary's financial statements.
- (4) Relevant financial statements of a subsidiary do not have to be audited by the Auditor-General if:
 - (a) the subsidiary is incorporated or formed in a place outside Australia; and
 - (b) either:
 - (i) under the law applying to the subsidiary in that place, the Auditor-General cannot be appointed as auditor of the subsidiary; or
 - (ii) in the Auditor-General's opinion, it is impracticable or unreasonable for the Auditor-General to audit, or to be required to audit, the statements.
- (5) In this section:

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

Subdivision B—Other reporting obligations

38 Interim reports

- (1) The Finance Minister may, by notice in the *Gazette*, require particular wholly-owned Commonwealth companies or a class of wholly-owned Commonwealth companies to give the responsible Minister either:
 - (a) an interim report for the first 6 months of a financial year; or
 - (b) an interim report for each of the following periods:
 - (i) the first 3 months of each financial year;
 - (ii) the first 6 months of each financial year;
 - (iii) the first 9 months of each financial year.
- (2) The interim report must include:
 - (a) a report of operations, prepared by the directors in accordance with the Finance Minister's Orders; and
 - (b) financial statements, prepared by the directors in accordance with the Finance Minister's Orders; and
 - (c) a report prepared by the Auditor-General in accordance with the regulations.
- (3) The directors must give the interim report to the responsible Minister within 2 months after the end of the period to which the report relates.
- (4) The responsible Minister may grant an extension of time in special circumstances.
- (5) The responsible Minister must table the interim report in each House of the Parliament as soon as practicable.

Section 39

39 Estimates

- (1) The directors of a wholly-owned Commonwealth company (other than a GBE) must prepare budget estimates for each financial year, and for any other periods directed by the responsible Minister.
- (2) The estimates:
 - (a) must be in the form required by the responsible Minister; and
 - (b) must be given to the responsible Minister within the time required by the responsible Minister.

40 Responsible Minister to be notified of significant events

- (1) If a wholly-owned Commonwealth company, or any of its subsidiaries, proposes to do any of the following things, the directors of the Commonwealth company must immediately give the responsible Minister written particulars of the proposal:
 - (a) form a company or participate in the formation of a company;
 - (b) participate in a significant partnership, trust, unincorporated joint venture or similar arrangement;
 - (c) acquire or dispose of a significant shareholding in a company;
 - (d) acquire or dispose of a significant business;
 - (e) commence or cease a significant business activity;
 - (f) make a significant change in the nature or extent of its interest in a significant partnership, trust, unincorporated joint venture or similar arrangement.
- (2) The responsible Minister may in writing exempt the directors of a Commonwealth company from the requirement to notify matters covered by paragraph (1)(a). The exemption may be granted subject to conditions.
- (3) The responsible Minister may give written guidelines to the directors that are to be used by the directors in deciding whether a proposal is covered by paragraph (1)(b), (c), (d), (e) or (f).

41 Keeping responsible Minister and Finance Minister informed

- (1) The directors of a wholly-owned Commonwealth company must:
 - (a) keep the responsible Minister informed of the operations of the Commonwealth company and its subsidiaries; and
 - (b) give the responsible Minister such reports, documents and information in relation to those operations as the responsible Minister requires; and
 - (c) give the Finance Minister such reports, documents and information in relation to those operations as the Finance Minister requires.
- (2) The directors must comply with requirements under paragraphs (1)(b) and (c) within the time limits set by the Minister concerned.

42 Corporate plan for GBE

- (1) This section applies to a wholly-owned Commonwealth company that is a GBE.
- (2) The directors must prepare a corporate plan at least once a year and give it to the responsible Minister.
- (3) The plan must cover a period of at least 3 years.
- (4) If the Commonwealth company has subsidiaries, the plan must cover both the Commonwealth company and its subsidiaries. In particular, for each subsidiary the plan must include details of the matters in subsection (6), so far as they are applicable.
- (5) The directors must keep the responsible Minister informed about:
 - (a) significant changes to the plan; and
 - (b) matters that arise that might significantly affect the achievement of the objectives in the plan.
- (6) The plan must include details of the following matters (so far as they are applicable):
 - (a) the objectives of the company;
 - (b) assumptions about the business environment in which the company operates;

Section 43

- (c) the business strategies of the company;
 - (d) the investment and financing programs of the company, including strategies for managing financial risk;
 - (e) financial targets and projections for the company;
 - (f) the dividend policy of the company;
 - (g) non-financial performance measures for the company;
 - (h) community service obligations of the company and the strategies and policies the company is to follow to carry out those obligations;
 - (i) review of performance against previous corporate plans and targets;
 - (j) analysis of factors likely to affect achievement of targets or create significant financial risk for the company or for the Commonwealth;
 - (k) price control and quality control strategies for goods or services supplied by the company under a monopoly;
 - (l) human resource strategies and industrial relations strategies.
- (7) The plan must also cover any other matters required by the responsible Minister (which may include further details about the matters in subsection (6)).
- (8) The responsible Minister may give written guidelines to the directors that are to be used by the directors in deciding which matters are covered by subsection (5).

Subdivision C—Miscellaneous

43 Compliance with general policies of the Government

- (1) The responsible Minister may notify the directors of a wholly-owned Commonwealth company in writing of general policies of the Commonwealth Government that are to apply to the company. The responsible Minister must consult the directors before notifying them of the policies.
- (2) The directors must ensure that the policies are carried out in relation to the company.

Section 44

- (3) The directors must also ensure, as far as practicable, that the policies are carried out in relation to the subsidiaries of the company.
- (4) The responsible Minister may, in writing, exempt the directors of a wholly-owned Commonwealth company from subsection (2) or (3) in relation to specified activities.

44 Audit committee

- (1) The directors of a wholly-owned Commonwealth company must establish and maintain an audit committee with functions that include:
 - (a) helping the company and its directors to comply with obligations under this Act and the Corporations Law; and
 - (b) providing a forum for communication between the directors, the senior managers of the company and the internal and external auditors of the company.
- (2) If the regulations state how the committee is to be constituted, it must be constituted in accordance with the regulations.

Section 45

Part 5—Miscellaneous

45 Ministers must inform Parliament of share acquisitions etc.

- (1) The Minister who has the responsibility for any of the following events must table a notice of the event in each House of the Parliament as soon as practicable after the event happens:
 - (a) the Commonwealth forms, or participates in forming, a company;
 - (b) the Commonwealth acquires shares in a company (either by purchase or subscription) or disposes of shares in a company;
 - (c) the Commonwealth becomes a member of a company;
 - (d) a variation occurs in the rights attaching to company shares held by the Commonwealth;
 - (e) a variation occurs in the Commonwealth's rights as a member of a company;
 - (f) the Commonwealth ceases to be a member of a company.
- (2) The notice must include the particulars required by the regulations.
- (3) This section does not apply to 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 Law.

46 Companies conducted for the purposes of intelligence or security agencies

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

intelligence or security agency has the meaning given by section 85ZL of the *Crimes Act 1914*;

modifications includes additions, omissions and substitutions.

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

- (1) The regulations may make provision dealing with how this Act applies in relation to a financial year of a body that ceases to be a Commonwealth authority during the financial year.
- (2) Without limiting the generality of subsection (1), regulations for the purposes of that subsection may provide that this Act applies with specified modifications.

48 Finance Minister's Orders

- (1) The Finance Minister may make Orders on any matter on which this Act requires or permits Finance Minister's Orders to be made.
- (2) An Order cannot create offences or impose penalties.
- (3) An Order is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

49 Regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may require the provision of financial statements, estimates or other information by overseas corporations in which the Commonwealth has a controlling interest. For this purpose, ***overseas corporation*** means a body corporate that is incorporated by or under the law of an external Territory or overseas country.
- (3) The regulations may make provision for penalties for offences against the regulations by way of fines of up to 10 penalty units.

Note: Section 4AA of the *Crimes Act 1914* sets the current value of a penalty unit.

Clause 1

Schedule 1—Annual Report for Commonwealth Authority

Note: See section 9.

Part 1—Contents of annual report

1 Summary of contents

The annual report must include:

- (a) a report of operations, prepared by the directors in accordance with the Finance Minister's Orders; and
- (b) financial statements, prepared by the directors under clause 2 of this Schedule; and
- (c) the Auditor-General's report on those financial statements, prepared under Part 2 of this Schedule and addressed to the responsible Minister.

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

2 Financial statements

- (1) The financial statements must be prepared in accordance with the Finance Minister's Orders and must give a true and fair view of the matters that those Orders require to be included in the statements.
- (2) If financial statements prepared in accordance with the Finance Minister's Orders would not otherwise give a true and fair view of the matters required by those Orders, the directors must add such information and explanations as will give a true and fair view of those matters.
- (3) In the financial statements, the directors must state whether, in their opinion, the financial statements give a true and fair view of the matters required by the Finance Minister's Orders.

Clause 2

- (4) If the Commonwealth authority is a GBE or SMA, the directors must state whether or not, in their opinion, there are, when the statement is made, reasonable grounds to believe that the authority will be able to pay its debts as and when they fall due.

Clause 3

Part 2—Auditor's report on financial statements

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

- (1) The Auditor-General must state whether, in the Auditor-General's opinion, the financial statements:
 - (a) have been prepared in accordance with the Finance Minister's Orders; and
 - (b) give a true and fair view of the matters required by those Orders.
- (2) If the Auditor-General is not of that opinion, the Auditor-General must state the reasons.
- (3) If the Auditor-General is of the opinion that failing to prepare the financial statements in accordance with the Finance Minister's Orders has a quantifiable financial effect, the Auditor-General must quantify that financial effect and state the amount.

4 Proper accounting records not kept

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

5 Inadequate information and explanations

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

6 Subsidiaries' financial statements

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

Clause 7

- (2) The Auditor-General must state the name of each entity (if any) that satisfies the following description:
 - (a) the entity was a subsidiary of the authority at any time during the financial year; and
 - (b) the Auditor-General has not:
 - (i) acted as auditor of the entity for the financial year; or
 - (ii) audited the entity's financial statements for the financial year.
- (3) If the consolidated financial statements include information derived from financial statements of an entity of a kind referred to in subclause (2), then:
 - (a) if the Auditor-General has not examined those financial statements and the auditor's report (if any) on them, the Auditor-General must state that fact; and
 - (b) if an auditor's report on any of those financial statements included any qualification, the Auditor-General must state the name of the subsidiary and particulars of the qualification.

7 Deficiencies in consolidation

If the Auditor-General is of the opinion that:

- (a) any of the financial statements that were used in preparing consolidated financial statements were not appropriate and proper, in both form and content, to be used in that way; or
- (b) there was any deficiency in the procedures and methods used in arriving at the amounts taken in to consolidated financial statements;

the Auditor-General must state particulars of the deficiency.

Clause 1

Schedule 2—Civil and criminal consequences of contravening civil penalty provisions

Note: See section 6.

Part 1—Preliminary

1 Interpretation

- (1) In this Schedule:

civil penalty order means a declaration or order under clause 4.

civil penalty provision has the meaning given by clause 2.

court means any court, when exercising jurisdiction under this Act.

Court means the Federal Court of Australia or the Supreme Court of a State or Territory.

- (2) For the purposes of this Schedule, an Australian court finds a person ***guilty of an offence*** if, and only if:
- (a) the court convicts the person of the offence; or
 - (b) the person is charged before the court with the offence and is found in the court to have committed the offence, but the court does not proceed to convict the person of the offence.
- (3) A maximum penalty that is specified:
- (a) at the foot of a clause of this Schedule (other than a clause that is divided into subclauses); or
 - (b) at the foot of a subclause of this Schedule;
- indicates that a person who contravenes the clause or subclause is guilty of an offence against the clause or subclause that is punishable, on conviction, by a penalty up to that maximum.

Clause 2

Note: If the specified penalty is imprisonment only, section 4B of the *Crimes Act 1914* allows the court to impose a fine instead of imprisonment or in addition to imprisonment.

2 Civil penalty provisions

Each of the following provisions of this Act is a civil penalty provision:

- (a) subsection 11(1);
- (b) subsection 22(1);
- (c) subsection 22(2);
- (d) subsection 23(1).

3 Person involved in contravening a provision taken to have contravened the provision

- (1) For the purposes of this Schedule, a person who is involved in a contravention of a particular provision of this Act is taken to have contravened that provision.
- (2) For the purposes of this clause, a person is *involved* in a contravention if, and only if, the person:
 - (a) has aided, abetted, counselled or procured the contravention; or
 - (b) has induced the contravention, whether by threats or promises or otherwise; or
 - (c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the contravention; or
 - (d) has conspired with others to effect the contravention.

Part 2—Civil penalty orders

4 Court may make civil penalty orders

- (1) This clause applies if the Court is satisfied that a person has contravened a civil penalty provision, whether or not the contravention also constitutes an offence because of clause 11.

Note: Clause 30 provides that a certificate by a court that the court has declared a person to have contravened a civil penalty provision is conclusive evidence of the contravention.

- (2) The Court is to declare that the person has, by a specified act or omission, contravened that provision in relation to a specified Commonwealth authority, but need not so declare if such a declaration is already in force under Part 4.
- (3) The Court may also make against the person either or both of the following orders in relation to the contravention:
- (a) an order prohibiting the person, for such period as is specified in the order, from being a director of a Commonwealth authority;
 - (b) an order that the person pay to the Commonwealth a pecuniary penalty of an amount so specified that does not exceed 2,000 penalty units.

Note: Section 4AA of the *Crimes Act 1914* sets the current value of a penalty unit.

- (4) The Court is not to make an order under paragraph (3)(a) if it is satisfied that, despite the contravention, the person is a fit and proper person to be a director of a Commonwealth authority.
- (5) The Court is not to make an order under paragraph (3)(b) unless it is satisfied that the contravention is a serious one.
- (6) The Court is not to make an order under paragraph (3)(b) if it is satisfied that an Australian court has ordered the person to pay

Clause 5

damages in the nature of punitive damages because of the act or omission constituting the contravention.

5 Who may apply for civil penalty order

- (1) An application for a civil penalty order may be made by:
 - (a) the Finance Minister; or
 - (b) some other person authorised in writing by the Finance Minister, under this paragraph, to make the application.
- (2) An authorisation for the purposes of paragraph (1)(b) may relate to applications in relation to specified contraventions, or all contraventions, of civil penalty provisions.
- (3) Nothing in this clause affects the operation of the *Director of Public Prosecutions Act 1983*.

6 Time limit for application

An application for a civil penalty order may be made within 6 years after the contravention.

7 Application for civil penalty order is a civil proceeding

- (1) In hearing and determining an application for a civil penalty order, the Court is to apply the rules of evidence and procedure that it applies in hearing and determining civil matters.
- (2) Subclause (1) has effect subject to the rules of the Court.

8 Person must comply with order not to be a director of a Commonwealth authority

- (1) A person who is subject to a civil penalty disqualification must not be a director of a Commonwealth authority except with the leave of the Court.

Maximum penalty: Imprisonment for 1 year.

Clause 9

- (2) When granting leave under subclause (1), the Court may impose such conditions or restrictions as it thinks appropriate.
- (3) A person must not contravene a condition or restriction imposed under subclause (2).

Maximum penalty: Imprisonment for 1 year.
- (4) A person may only apply for leave under subclause (1) if he or she has given the Finance Minister at least 21 days notice of the application.
- (5) On the application of the Finance Minister, the Court may revoke leave granted under subclause (1).
- (6) For the purposes of this clause, a person is subject to a ***civil penalty disqualification*** if, and only if, an order relating to the person is in force under paragraph 4(3)(a).

9 Enforcement of order to pay pecuniary penalty

Where the Court makes under paragraph 4(3)(b) an order that a person pay a pecuniary penalty:

- (a) the penalty is payable to the Commonwealth; and
- (b) the Commonwealth may enforce the order as if it were a judgment of the Court.

10 Finance Minister may require a person to give assistance in connection with application for civil penalty order

- (1) This clause applies where it appears to the Finance Minister that a person may have contravened a civil penalty provision.
- (2) If the Finance Minister, on reasonable grounds, suspects or believes that a person can give information relevant to an application for a civil penalty order in relation to the contravention, whether or not such an application has been made, the Finance Minister may, by writing given to the person, require the person to give all reasonable assistance in connection with such an application.

Clause 10

- (3) Subclause (2) does not apply in relation to:
 - (a) the person referred to in subclause (1); or
 - (b) a person who is or has been that person's lawyer.
- (4) Where a person fails to give assistance as required under subclause (2):
 - (a) the person contravenes this subclause; and
 - (b) the Court may, on the application of the Finance Minister, order the person to comply with the requirement as specified in the order.
- (5) Nothing in paragraph (4)(b) affects any penalty for a contravention of subclause (4).
- (6) In this clause:
lawyer means a duly qualified legal practitioner.

Clause 11

Part 3—Criminal proceedings

11 When contravention of civil penalty provision is an offence

- (1) A person is guilty of an offence if the person contravenes a civil penalty provision:
- (a) knowingly, intentionally or recklessly; and
 - (b) either:
 - (i) dishonestly and intending to gain, whether directly or indirectly, an advantage for that or any other person; or
 - (ii) intending to deceive or defraud someone.

Maximum penalty: Imprisonment for 5 years.

- (2) A person who contravenes a civil penalty provision is not guilty of an offence except as provided by subclause (1).

12 Person convicted of clause 11 offence not to be a director of a Commonwealth authority

- (1) A person who has been convicted of an offence of which he or she is guilty because of subclause 11(1) must not be a director of a Commonwealth authority except with the leave of the Court:
- (a) unless paragraph (b) applies—within 5 years after the conviction; or
 - (b) if the person was sentenced to imprisonment—within 5 years after release from prison.

Maximum penalty: Imprisonment for 1 year.

- (2) In any proceedings for a contravention of subclause (1), a certificate by a prescribed authority stating that a person was released from prison on a specified date is prima facie evidence that the person was released from prison on that date.
- (3) When granting leave under subclause (1), the Court may impose such conditions or restrictions as it thinks appropriate.
-

Clause 13

- (4) A person must not contravene a condition or restriction imposed under subclause (3).

Maximum penalty: Imprisonment for 1 year.

- (5) A person may only apply for leave under subclause (1) if he or she has given the Finance Minister at least 21 days notice of the application.

- (6) On the application of the Finance Minister, the Court may revoke leave granted under subclause (1).

13 Application for civil penalty order precludes later criminal proceedings

Criminal proceedings for an offence constituted by a contravention of a civil penalty provision cannot be begun if a person has already applied for a civil penalty order in relation to the same contravention, even if the application has been finally determined or otherwise disposed of.

Clause 14

Part 4—Effect of criminal proceedings on application for civil penalty order

14 When Part applies

This Part applies if criminal proceedings are begun against a person for an offence constituted by a contravention of a civil penalty provision.

15 Effect during criminal proceedings

- (1) An application may be made for a civil penalty order against the person in relation to the same contravention.
- (2) However, an application is stayed, because of this subclause, until:
 - (a) the criminal proceedings; and
 - (b) all appeals and applications for review (including appeals and applications for review under this Part) arising out of the criminal proceedings;have been finally determined or otherwise disposed of.

16 Final outcome precluding application for civil penalty order

When the criminal proceedings, appeals and applications for review are finally determined or otherwise disposed of:

- (a) an application for a civil penalty order in relation to the same contravention cannot be made (except under this Part); and
- (b) such an application that was stayed because of subclause 15(2) is, because of this clause, dismissed:

if the result of the criminal proceedings, appeals and applications for review is:

- (c) a court finding the person guilty of the offence; or
- (d) the person being acquitted of the offence, unless there is in force a declaration that the person committed the contravention; or

Clause 17

Note: This kind of declaration is made under clause 19, 20 or 21.

- (e) a declaration by a court that the evidence in a committal proceeding for the offence could not satisfy the Court, on an application for a civil penalty order, that the person committed the contravention; or

Note: This kind of declaration is made under clause 18.

- (f) a declaration by the Court that the person committed the contravention; or

Note: This kind of declaration is made under clause 19 or 21.

- (g) an order by a court prohibiting an application for a civil penalty order in relation to the contravention from being made or from proceeding; or

Note: This kind of order is made under clause 22.

- (h) the Court, on an appeal or review, affirming, varying or substituting a declaration that the person committed the contravention.

Note: Clause 23 applies in this case.

17 Final outcome not precluding application for civil penalty order

If the result of the criminal proceedings, appeals and applications for review being finally determined or otherwise disposed of is:

- (a) a declaration by a court (other than the Court) that the person committed the contravention; or

Note: This kind of declaration is made under clause 19, 20 or 21.

- (b) none of the results referred to in clause 16;

then:

- (c) if an application for a civil penalty order in relation to the contravention was stayed because of subclause 15(2)—the application may proceed; or

- (d) otherwise—such an application may be made and may proceed;

as if the criminal proceedings had never begun.

Clause 18

18 After unsuccessful committal proceeding, court may preclude application for civil penalty order

- (1) If:
 - (a) a proceeding in a court for the commitment of the person for trial for the offence is finally determined or otherwise disposed of without the person being committed for trial for the offence; and
 - (b) the court is satisfied that the evidence in the proceeding could not satisfy the Court, on an application for a civil penalty order in relation to the contravention, that the person committed the contravention;the court may declare that it is so satisfied.
- (2) A declaration under subclause (1) is subject to appeal or review in the same way as any other order or decision made in the proceeding.

19 Application for civil penalty order based on alternative verdict at jury trial

- (1) This clause applies if the person is tried on indictment for the offence and the jury is satisfied beyond reasonable doubt that the person committed the contravention, but is not satisfied beyond reasonable doubt that the person did so as mentioned in subclause 11(1).
 - (2) The jury may find the person not guilty of the offence, but guilty of the contravention.
 - (3) If the jury does so, the court is to declare that the person has, by a specified act or omission, contravened the civil penalty provision in relation to a specified Commonwealth authority.
 - (4) If the court is the Court, it may then proceed to make orders under subclause 4(3) on the application of the prosecutor or someone else who has power under clause 5 to apply for a civil penalty order in relation to the contravention.
 - (5) Subclause (4) has effect despite clause 6.
-

Clause 20

- (6) A declaration under subclause (3) is subject to appeal or review as if it were a conviction by the court for an offence constituted by the contravention.

20 Application for civil penalty order based on alternative finding by court of summary jurisdiction

- (1) This clause applies if, on the hearing of a proceeding for the summary conviction of the person for the offence, the court is satisfied beyond reasonable doubt that the person committed the contravention but is not satisfied beyond reasonable doubt that the person did so as mentioned in subclause 11(1).
- (2) The court may find the person not guilty of the offence, but guilty of the contravention.
- (3) If the court does so, it is to declare that the person has, by a specified act or omission, contravened the civil penalty provision in relation to a specified Commonwealth authority.
- (4) A declaration under subclause (3) is subject to appeal or review as if it were a conviction by the court for an offence constituted by the contravention.

21 Application for civil penalty order based on alternative finding by appeal court

- (1) This clause applies if:
- (a) a court finds the person guilty of the offence; and
 - (b) on appeal or review, a court makes an order determining the criminal proceedings for the offence in a way that does not involve convicting the person of that or any other offence; and
 - (c) the court is satisfied beyond reasonable doubt that the person committed the contravention.
- (2) The court may declare that the person has, by a specified act or omission, contravened the civil penalty provision in relation to a specified Commonwealth authority.

Clause 22

- (3) If the court is the Court, it may then proceed to make orders under subclause 4(3) on the application of the prosecutor or someone else who has power under clause 5 to apply for a civil penalty order in relation to the contravention.
- (4) Subclause (3) has effect despite clause 6.
- (5) A declaration under subclause (2) is subject to appeal or review in the same way as any other order or decision that was made on the appeal or review or might have been made.

22 After setting aside declaration, court may preclude application for civil penalty order

If a court sets aside a declaration made under clause 19, 20 or 21, the court may, by order, prohibit an application for a civil penalty order in relation to the contravention from being made or from proceeding.

23 On unsuccessful appeal against declaration, Court may make civil penalty orders

- (1) This clause applies if, on an appeal from, or review of, a declaration made under clause 19, 20 or 21 by a court other than the Court, the Court determines the appeal or review by:
 - (a) affirming or varying the declaration; or
 - (b) substituting another declaration for the first-mentioned declaration.
- (2) The Court may then proceed to make orders under subclause 4(3) on the application of the prosecutor or someone else who has power under clause 5 to apply for a civil penalty order in relation to the contravention.
- (3) Subclause (2) has effect despite clause 6.

24 Appeals under this Part

For the purposes of an appeal or review under subclause 18(2), 19(6), 20(4) or 21(5), a law about appeals or review has effect with such modifications as the circumstances require.

Clause 25

Part 5—Compensation for loss suffered by Commonwealth authority

25 On application for civil penalty order, Court may order compensation

- (1) Where, on an application for a civil penalty order against a person in relation to a contravention, the Court is satisfied that:
 - (a) the person committed the contravention; and
 - (b) the Commonwealth authority in relation to which the contravention was committed has suffered loss or damage as a result of the act or omission constituting the contravention;the Court may (whether or not it makes an order under subclause 4(3)) order the person to pay to the Commonwealth authority compensation of such amount as the order specifies.
- (2) A Commonwealth authority may intervene in an application for a civil penalty order against a person in relation to a contravention, unless the application was made under Part 4.
- (3) A Commonwealth authority that so intervenes is entitled to be heard:
 - (a) only if the Court is satisfied that the person committed the contravention in relation to that Commonwealth authority; and
 - (b) only on the question whether the Court should order the person to pay compensation to the Commonwealth authority because of the contravention.

26 Criminal court may order compensation

- (1) If:
 - (a) a court finds a person guilty of an offence constituted by a contravention of a civil penalty provision in relation to a Commonwealth authority; and

Clause 27

- (b) the court is satisfied that the Commonwealth authority has suffered loss or damage as a result of the act or omission constituting the contravention;

the court may (whether or not it imposes a penalty) order the person to pay to the Commonwealth authority compensation of such amount as the order specifies.

(2) If:

- (a) a court declares under Part 4 that a person has, by an act or omission, contravened a civil penalty provision in relation to a Commonwealth authority; and

- (b) the court is satisfied that the Commonwealth authority has suffered loss or damage as a result of that act or omission;

the court may (whether or not it makes an order under subclause 4(3)) order the person to pay to the Commonwealth authority compensation of such amount as the order specifies.

27 Enforcement of order under clause 25 or 26

An order to pay compensation that a court makes under clause 25 or 26 may be enforced as if it were a judgment of the court.

28 Recovery of profits, and compensation for loss, resulting from contravention

- (1) Where a person contravenes a civil penalty provision in relation to a Commonwealth authority, the Commonwealth authority may recover from the person, as a debt due to the Commonwealth authority:

- (a) if that or another person has made a profit because of the act or omission constituting the contravention—an amount equal to the amount of that profit; and

- (b) if the Commonwealth authority has suffered loss or damage as a result of that act or omission—an amount equal to the amount of that loss or damage;

whether or not:

- (c) the first-mentioned person has been convicted of an offence in relation to the contravention; or

Clause 29

- (d) a civil penalty order has been made against the first-mentioned person in relation to the contravention.
- (2) Proceedings under this clause may only be begun within 6 years after the contravention.

29 Effect of clauses 25, 26 and 28

Clauses 25, 26 and 28:

- (a) have effect in addition to, and not in derogation of, any rule of law about the duty or liability of a person because of the person's office or employment in relation to a Commonwealth authority; and
- (b) do not prevent proceedings from being instituted in respect of a breach of such a duty or in respect of such a liability.

30 Certificates evidencing contravention

For the purposes of this Schedule, a certificate that:

- (a) purports to be signed by the Registrar or other proper officer of an Australian court; and
- (b) states:
 - (i) that that court has declared that a specified person has, by a specified act or omission, contravened a specified civil penalty provision in relation to a specified Commonwealth authority; or
 - (ii) that a specified person was convicted by that court of an offence constituted by a specified contravention of a civil penalty provision in relation to a specified Commonwealth authority; or
 - (iii) that a specified person charged before that court with such an offence was found in that court to have committed the offence but that the court did not proceed to convict the person of the offence;

is, unless it is proved that the declaration, conviction or finding was set aside, quashed or reversed, conclusive evidence:

Clause 30

-
- (c) that the declaration was made, that the person was convicted of the offence, or that the person was so found, as the case may be; and
 - (d) that the person committed the contravention.

Clause 31

Part 6—Miscellaneous

31 Relief from liability for contravention of civil penalty provision

- (1) In this clause:

eligible proceedings means proceedings for a contravention of a civil penalty provision (including proceedings under clause 28 but does not include proceedings for an offence), except so far as the proceedings relate to the question whether the court should make an order under clause 26.

- (2) Where, in eligible proceedings against a person, it appears to the court that the person has, or may have, contravened a civil penalty provision but that:
- (a) the person has acted honestly; and
 - (b) having regard to all the circumstances of the case (including, where applicable, those connected with the person's appointment as an officer of a Commonwealth authority), the person ought fairly to be excused for the contravention;
- the court may relieve the person either wholly or partly from a liability to which the person would otherwise be subject, or that might otherwise be imposed on the person, because of the contravention.
- (3) Where a person thinks that eligible proceedings will or may be begun against him or her, he or she may apply to the Court for relief.
- (4) On an application under subclause (3), the Court may grant relief under subclause (2) as if the eligible proceedings had been begun in the Court.
- (5) For the purposes of subclause (2) as applying for the purposes of a case tried by a judge with a jury:
- (a) a reference in that subclause to the court is a reference to the judge; and

Clause 32

-
- (b) the relief that may be granted includes withdrawing the case in whole or in part from the jury and directing judgment to be entered for the defendant on such terms as to costs as the judge thinks appropriate.

32 Schedule does not limit power to award punitive damages

Nothing in this Schedule limits a court's power to order someone to pay damages in the nature of punitive damages because of an act or omission constituting a contravention of a civil penalty provision.

[Minister's second reading speech made in—
House of Representatives on 12 December 1996
Senate on 15 March 1997]

(218/96)

