

# **Inquiry into the Public Service Amendment (Payments in Special Circumstances) Bill 2011**

## **Submission to the Standing Committee on Finance and Public Administration**

by the Department of Finance and Deregulation

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## 1 INTRODUCTION

- 1.1. Australians rightly expect that their interactions with government should be just, fair and not leave them in a worse position than they would otherwise have been. The Australian Government responds appropriately to address unintended, anomalous, inequitable or otherwise unacceptable outcomes for people affected by Commonwealth policies, programs or legislation.
- 1.2. In view of the diversity and complexity of legislation and Commonwealth administration, general principles, rather than prescriptive rules, underlie the discretionary compensation remedies. A key feature of the discretionary compensation avenues is that there is no automatic entitlement to a payment or financial relief. A decision under any of these avenues is therefore at the discretion of the decision maker. The Australian Government does not compensate for matters that lie outside its jurisdictional responsibility.
- 1.3. The private Member's Bill introduced by Senator Nick Xenophon, Senator for South Australia, the Public Service Amendment (Payments in Special Circumstances) Bill 2011 (the Bill),<sup>1</sup> is focussed on removing the authorisation limit of \$100,000 on payments under section 73 of the *Public Service Act 1999* (PS Act). The Department of Finance and Deregulation (Finance) recognises from Senator Xenophon's Explanatory Memorandum and Second Reading speech that he is seeking options to compensate one individual, Mr B, in an amount of more than \$100,000.
- 1.4. Senator Xenophon also refers to recommendations of the Commonwealth Ombudsman in 2010<sup>2</sup> to establish a scheme similar to the *Scheme for Compensation for Detriment caused by Defective Administration* (CDDA Scheme) and refers to agencies that fall outside the mechanism in order to 'ensure that fair payments can be made through other means'.<sup>3</sup> Consequently, Finance notes that the Senate Legislation Committee on Finance and Public Administration (the Committee) has expanded its consideration of the Bill to include the CDDA Scheme and compensation for administrative errors by Government agencies not covered by the CDDA Scheme. Therefore, Finance will first clarify the definition of Government agencies.

### GOVERNMENT AGENCIES - DEFINED

- 1.5. Australian Government bodies comprise agencies governed by the *Financial Management and Accountability Act 1997* (FMA Act) and bodies governed by the *Commonwealth Authorities and Companies Act 1997* (CAC Act). FMA Act agencies are financially part of the Commonwealth, holding public money that can only be spent under the authority of an appropriation from the Australian Parliament. CAC Act bodies are legally and financially separate from the Commonwealth.

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<sup>1</sup> Senator N Xenophon 2011, 'Public Service Amendment (Payments in Special Circumstances) Bill 2011', Bills, in Australia, Senate 2011, *Parliamentary Debates*, Hansard, No. 4, 12 May 2011, the Senate, Canberra, at <http://www.aph.gov.au/hansard/senate/dailys/ds120511.pdf> on 13 July 2011, pp. 2426-8.

<sup>2</sup> Commonwealth Ombudsman 2010, *Comcare and Department of Finance and Deregulation: Discretionary Payments of Compensation*, Report No. 4, (R Brent, Acting Commonwealth Ombudsman), Commonwealth Ombudsman, Canberra, at [http://www.ombudsman.gov.au/files/comcare\\_dofd\\_discretionary\\_compensation\\_payments.pdf](http://www.ombudsman.gov.au/files/comcare_dofd_discretionary_compensation_payments.pdf) on 12 July 2011.

<sup>3</sup> Senator N Xenophon, above n. 1, p. 2427.

- 1.6. The Financial Management and Accountability Bill 1996 and the Commonwealth Authorities and Companies Bill 1996 were part of a package of four Bills,<sup>4</sup> which replaced and repealed the *Audit Act 1901*.<sup>5</sup> All four Bills received Royal Assent on 24 October 1997. The FMA Act, the CAC Act and the other Acts all commenced on 1 January 1998. Comcare was prescribed under the CAC Act rather than the FMA Act at the time.
- 1.7. For the purposes of the CAC Act, Commonwealth authorities are bodies corporate that are established by legislation for a public purpose, and which hold money on their own account, such as Comcare. Commonwealth companies are companies incorporated under the *Corporations Act 2001* (Corporations Act) that the Commonwealth controls. CAC Act directors and officers are subject to a range of directors' duties.
- 1.8. CAC Act government business enterprises (GBEs) are prescribed under regulation 4 of the *Commonwealth Authorities and Companies Regulations 1997*. 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.
- 1.9. In accordance with the *Governance Arrangements for Australian Government Bodies*,<sup>6</sup> CAC Act bodies are generally more commercial and entrepreneurial in nature than FMA Act bodies, typically managed by a board and hold money on their own account. CAC Act bodies do not receive appropriations.<sup>7</sup> Appropriations for CAC Act bodies are made to their portfolio Department and then paid to the CAC Act body. When money is received by a CAC Act body, as a result of an appropriation, it becomes money belonging to that CAC Act body and is not public money.
- 1.10. The extent of Government control over a CAC authority, such as Comcare, depends on its establishing legislation and any other policies under the CAC Act. Bodies subject to the CAC Act can therefore be sued in their own right (not as the Commonwealth) and control their own funds through their own bank accounts. They can make arrangements for compensation in a particular case to the extent their enabling legislation allows. However, this is a matter for the board of the relevant body. Finance considers that it would be inappropriate for public money to fund compensation for administrative errors by CAC Act bodies, including GBEs.

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<sup>4</sup> Including the Auditor-General Bill 1996 and the Audit (Transitional and Miscellaneous) Amendment Bill 1996.

<sup>5</sup> Explanatory Memorandum, Financial Management and Accountability Bill 1996, at [http://www.austlii.edu.au/au/legis/cth/bill\\_em/fmaab1996331/memo1.html](http://www.austlii.edu.au/au/legis/cth/bill_em/fmaab1996331/memo1.html) on 13 July 2011.

<sup>6</sup> Department of Finance and Administration 2005, *Governance Arrangements for Australian Government Bodies*, Financial Management Reference Material No. 2, Commonwealth of Australia, Canberra, at <http://www.finance.gov.au/financial-framework/governance/docs/Governance-Arrangements-for-Australian-Government-Bodies.pdf> on 12 July 2011.

<sup>7</sup> Department of Finance and Deregulation 2008, *Finance Circular No. 2008/09: Appropriations for Payment to CAC Act bodies*, Financial Management Group, prepared by M Loudon, 26 June 2008, at <http://www.finance.gov.au/publications/finance-circulars/2008/09.html> on 12 July 2011.

## 2 MR B'S CLAIM FOR COMPENSATION

- 2.1. The Commonwealth Ombudsman released an investigation report in March 2010 titled *Comcare and the Department of Finance and Deregulation: Discretionary Payments of Compensation*<sup>8</sup> (Ombudsman's Report) which related to two individuals, including Mr B.
- 2.2. When Finance requests or receives information from any source in the investigation of a request under the FMA Act, it undertakes to protect this information in accordance with section 14 of the *Privacy Act 1988*, in that the information is to be used for the purpose of the request. This matter relates to the circumstances of Mr B and it would be inappropriate to comment on the specific details of his claim, beyond the information that is publicly available.
- 2.3. In the 1980s, Mr B was employed by the then Department of Transport (Transport), now the Department of Infrastructure and Transport. In 1988, Mr B suffered a workplace injury and was unable to work again. He filed a workers' compensation claim, which was accepted by Comcare. However, Mr B disputed the level of workers' compensation he received.
- 2.4. From 1988 to 2001, Mr B regularly pursued his claim with Comcare for underpayment of his workers' compensation for the same period. By 2003, Comcare had paid Mr B lump sum back payments for the shortfall from Comcare, but these did not cover interest or indexation on the shortfall, nor compensation for the claimed consequential loss. Mr B unsuccessfully sought redress for these through the act of grace mechanism.
- 2.5. As Comcare is a statutory authority governed by the CAC Act and not an agency governed by the FMA Act, the act of grace mechanism and the CDDA Scheme are not available to provide remedy to Mr B.

## 3 RECOMMENDATIONS OF THE COMMONWEALTH OMBUDSMAN

- 3.1. Finance has been consulting with Comcare and the Department of Education, Employment and Workplace Relations (DEEWR) in implementing the recommendations in the Ombudsman's Report.<sup>9</sup> Comcare wrote to Mr B, proposing to compensate him under section 73 of the PS Act. As compensation under section 73 of the PS Act is limited to \$100,000, Finance recognises that Senator Xenophon is seeking further compensation for Mr B.<sup>10</sup>

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<sup>8</sup> Commonwealth Ombudsman, above n. 2.

<sup>9</sup> The Commonwealth Ombudsman recommended that 'Comcare and Finance develop a proposal for establishing a scheme, similar to the CDDA scheme, whereby people adversely affected by poor administration of the SRC Act can seek compensation' at *ibid*, p. 7.

<sup>10</sup> Senator N Xenophon, above n. 1, p. 2427.

## 4 AVENUES OF DISCRETIONARY COMMONWEALTH ASSISTANCE

- 4.1. Since 1901, the Parliament of Australia and successive Australian Governments have faced challenges in developing legislation which covers all circumstances likely to arise in its operation. As well, challenges associated with the administration of legislation sometimes lead to defective administration. The Parliament of Australia and successive Australian Governments have therefore recognised the need for flexibility in providing compensation for unintended outcomes and unforeseen events, while ensuring that such avenues should not provide a means to circumvent Parliamentary intent.
- 4.2. The avenues for compensation include:
- act of grace payments under section 33 of the FMA Act;
  - the CDDA Scheme - a non-statutory administrative scheme obtaining its authority under section 61 of the Australian Constitution;
  - ex gratia payments - a non-statutory administrative mechanism that also relies on section 61 of the Constitution, and requires decisions by the Prime Minister and/or the Cabinet, with the Finance Minister consulted about budget aspects;
  - Australian Public Service (APS) employment payments under section 73 of the PS Act;
  - Parliamentary Service employment payments under section 66 of the *Parliamentary Service Act 1999*;
  - compensation for workplace injuries under the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act); and
  - settlement of monetary claims against the Commonwealth (legal liability) authorised by section 55ZF of the *Judiciary Act 1903*.
- 4.3. Finance administers and provides policy guidance on act of grace payments. It also provides policy advice on the CDDA Scheme. Finance has issued updated guidance, *Finance Circular No. 2009/09: Discretionary Compensation and Waiver of Debt Mechanisms*,<sup>11</sup> which sets out the current guidelines for the avenues of obtaining financial relief and compensation under its mechanisms.
- 4.4. The Department of the Prime Minister and Cabinet (PM&C) is responsible for the policy and administration of ex gratia payments and has policy responsibility for the PS Act. The Australian Public Service Commission (APSC) has issued advice for APS agencies on section 73 of the PS Act,<sup>12</sup> which notes the act of grace mechanism under section 33 of the FMA Act.

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<sup>11</sup> Department of Finance and Deregulation 2009, *Finance Circular No. 2009/09: Discretionary Compensation and Waiver of Debt Mechanisms*, Asset Management Group, prepared by Dr G Verney, 25 November 2009, at <http://www.finance.gov.au/publications/finance-circulars/2009/09.html> on 13 July 2011.

<sup>12</sup> Australian Public Service Commission 2009, *Payments in special circumstances under section 73 of the Public Service Act 1999*, Employment Policy Advice, 24 December 2009, at <http://www.apsc.gov.au/employmentpolicy/payments73.htm> on 13 July 2011.

## **SCHEME FOR COMPENSATION FOR DETRIMENT CAUSED BY DEFECTIVE ADMINISTRATION (CDDA SCHEME)**

- 4.5. The CDDA Scheme was established in 1995 and enables portfolio Ministers and authorised officials to compensate individuals or other bodies that have suffered detriment (quantifiable financial loss) caused by an agency's defective administration. The CDDA Scheme is flexible, accessible and provides an opportunity for an agency to examine and address systemic issues arising from its administration. The authority to make CDDA payments comes from the Executive Power under section 61 of the Constitution and can be made from either departmental or administered appropriations.
- 4.6. Compensation is payable only where an applicant is found to have suffered detriment as a direct cause of the defective administration. There is no financial ceiling on payments, which are generally approved on the basis that there is a moral, rather than legal, obligation to the claimant. The CDDA Scheme excludes CAC Act bodies.
- 4.7. Reviews of the CDDA Scheme have been conducted by the Commonwealth Ombudsman in 1999,<sup>13</sup> the Australian National Audit Office (ANAO) in 2003-04,<sup>14</sup> Finance in 2005<sup>15</sup> and the Commonwealth Ombudsman in 2009.<sup>16</sup> The ANAO noted in its 2003-04 Report, that agencies operating under the CAC Act 'may make similar-type payments as a matter of business judgement'.<sup>17</sup>
- 4.8. In its report on a *Review of Government Compensation Arrangements*,<sup>18</sup> the Senate Legal and Constitutional Affairs References Committee (SLCARC) recommended that Finance consider the extension of the CDDA Scheme to bodies covered by the CAC Act and to third parties performing functions or providing services on behalf of the Australian Government. Finance advised that it was considering this recommendation.<sup>19</sup>

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<sup>13</sup> Commonwealth Ombudsman 1999, *To compensate or not to compensate?: Own motion investigation of Commonwealth arrangements for providing financial redress for maladministration*, Report under section 35A of the *Ombudsman Act 1976*, September 1999, at

[http://www.ombudsman.gov.au/files/investigation\\_1999\\_02.pdf](http://www.ombudsman.gov.au/files/investigation_1999_02.pdf) on 13 July 2011.

<sup>14</sup> Australian National Audit Office 2004, *Compensation Payment and Debt Relief in Special Circumstances*, Audit Report No. 35, Business Support Process Audit, 2003-04, (O Winder, Acting Auditor-General), Department of Communications, Information Technology and the Arts, Canberra, 24 March 2004, at <http://www.anao.gov.au/Publications/Audit-Reports/2003-2004/Compensation-Payment-and-Debt-Relief-in-Special-Circumstances> on 13 July 2011.

<sup>15</sup> An unpublished review was undertaken by Finance in 2005.

<sup>16</sup> Commonwealth Ombudsman 2009, *Putting things right: compensating for defective administration: Administration of decision-making under the Scheme for Compensation for Detriment Caused by Defective Administration*, Report No. 11, August 2009, (Professor J McMillan, Commonwealth Ombudsman), Commonwealth Ombudsman, Canberra, at [http://www.ombudsman.gov.au/files/investigation\\_2009\\_11.pdf](http://www.ombudsman.gov.au/files/investigation_2009_11.pdf) on 13 July 2011, and Commonwealth Ombudsman 2009, *Executive schemes*, Report No. 12, August 2009, (Professor J McMillan, Commonwealth Ombudsman), Commonwealth Ombudsman, Canberra, at [http://www.ombudsman.gov.au/files/investigation\\_2009\\_12.pdf](http://www.ombudsman.gov.au/files/investigation_2009_12.pdf) on 13 July 2011.

<sup>17</sup> Australian National Audit Office, above n 9, p. 43.

<sup>18</sup> Senate Legal and Constitutional Affairs References Committee 2010, *Review of Government Compensation Payments*, the Senate, Canberra, at [http://www.aph.gov.au/senate/committee/legcon\\_ctte/govt\\_comp/report/report.pdf](http://www.aph.gov.au/senate/committee/legcon_ctte/govt_comp/report/report.pdf) on 12 July 2011.

<sup>19</sup> Department of Finance and Deregulation 2010, *Answers to Questions on Notice*, Senate Legal and Constitutional Affairs Committee, Review of Government Compensation Payments, Public Hearing, Canberra, 29 October 2010, provided on 10 November 2010, at [http://www.aph.gov.au/senate/committee/legcon\\_ctte/govt\\_comp/submissions.htm](http://www.aph.gov.au/senate/committee/legcon_ctte/govt_comp/submissions.htm) on 13 July 2011.



- 4.9. There may be mechanisms for compensation available to CAC Act bodies under their enabling legislation, the CAC Act and the *Corporations Act 2001*. Finance provided advice to this effect to the SLCARC in an answer to a Question on Notice at Attachment 1.<sup>20</sup> Finance considers that it is unnecessary and inappropriate to expand the scope of the CDDA Scheme to encompass bodies that are financially and legally separate from the Commonwealth.

### **SECTION 73 OF THE PUBLIC SERVICE ACT 1999**

- 4.10. The PS Act falls within the policy responsibilities of the Prime Minister and Cabinet portfolio. Section 73 of the PS Act enables the Public Service Minister to make payments in special circumstances that arise out of a person's employment with the Commonwealth. However, Finance notes that section 73 of the PS Act notes that payments 'must be made from money appropriated by the Parliament'.<sup>21</sup> APSC's website (at <http://www.apsc.gov.au/employmentpolicy/payments73.htm>) provides further information on this discretionary compensation mechanism.
- 4.11. Finance recognises the synergy and previous relationship section 73 had with section 33 of the FMA Act and there is an equivalent provision in the *Parliamentary Service Act 1999*.<sup>22</sup> Recently, the FMA Act was amended to increase the limit on authorised act of grace payments to \$250,000 before an Advisory Committee considers a proposed payment.<sup>23</sup> This increase reflected the need to update the amount from \$100,000 to \$250,000 to reflect the time lapse between 1997 and this change in 2008.<sup>24</sup>
- 4.12. Finance considers it would be inappropriate to completely remove the threshold of \$100,000 under section 73 of the PS Act. The PS Act and *Parliamentary Service Act 1999* have a financial limit of \$100,000, the FMA Act has increased its authorisation limit to \$250,000 before the consideration of an Advisory Committee report and Finance considers there is a need for consistency in the financial limitations that exist in the discretionary compensation mechanisms.

### **ACT OF GRACE PAYMENTS**

- 4.13. The act of grace power is a discretionary compensation mechanism that enables the consideration of claims and the making of payments for matters relating to agencies governed by the FMA Act, such as Transport and DEEWR and their successors, as well as the application of Commonwealth legislation and broader policy implications.
- 4.14. Comcare is an independent statutory agency established under the SRC Act, and governed by the CAC Act. The act of grace mechanism is not available as a discretionary compensation mechanism in relation to the administrative activities of Comcare.

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<sup>20</sup> Ibid, Hansard p17-18.

<sup>21</sup> Section 73, PS Act, where it states: 'Note: Payments under this section must be made from money appropriated by the Parliament. Generally, a payment can be debited against an Agency's annual appropriation, providing that it relates to some matter that has arisen in the course of its administration.'

<sup>22</sup> Section 66.

<sup>23</sup> Regulation 29(1), *Financial Management and Accountability Regulations 1997*.

<sup>24</sup> Explanatory Memorandum, Financial Framework Legislation Amendment Bill 2008, p.5.



## EX GRATIA PAYMENTS

- 4.15. The authority for ex gratia payments comes from the Executive Power under section 61 of the Constitution. The Government can call upon the ex gratia power to deliver financial relief quickly at short notice. For this reason, it is the most appropriate response for groups of people affected by a common set of circumstances and for unexpected events.
- 4.16. The ex gratia power is managed by PM&C. Ex gratia payments are part of Australia's emergency response measures that are recognised as best practice internationally. When disasters or national emergencies occur, the lead agency asked to coordinate the whole of government response must be in the best position to advise the government immediately or very quickly on the need for payments, the amounts to be paid and the criteria for payment. PM&C is best placed to do this.
- 4.17. Approval of ex gratia payments is sought from the Prime Minister and/or Cabinet and the Finance Minister (in relation to funding) after all other possible alternative avenues for redress have been explored. Funding of ex gratia payments is made from the most relevant appropriation. Further information on the administration of ex gratia payments can be sought from PM&C.

## 5 COMPENSATION TO MR B

- 5.1. Finance considers that a compensation payment under the CDDA Scheme for a non-FMA agency for reasons purely relating to the administrative actions of the agency could be considered to be circumventing the intention of Parliament. The CDDA Scheme is not available to Comcare and there may be alternative avenues available to CAC Act bodies that would allow for individuals to be compensated. Finance is working with Comcare and DEEWR on this matter.

## 6 CONCLUSION

- 6.1. In summary, Finance believes that the suite of mechanisms for Commonwealth discretionary compensation works effectively to deliver assistance where appropriate, and meets Australians' expectations of government in this regard.
- 6.2. Finance's response to the issues being considered by the Committee are as follows:

### **1. The lack of proper compensation scheme for claimants who have been disadvantaged as a result of administrative errors by Government agencies not included under the CDDA Scheme**

- 6.3. The CDDA Scheme enables FMA Act agencies to compensate individuals for administrative errors using public money. CAC Act bodies are legally and financially separate from the Commonwealth and hold money on their own account. Subject to its enabling legislation, a CAC Act body may be able to compensate a person for its administrative errors via the CAC Act, the Corporations Act or other arrangement.

## **2. The recommendations of the Commonwealth Ombudsman in the Ombudsman's Report No 4 of 2010 in relation to discretionary payments of compensation**

- 6.4. Finance continues to work with Comcare and DEEWR to develop a proposal addressing the recommendations of the Commonwealth Ombudsman.

## **3. The losses caused to claimants because of administrative errors within Government agencies not covered by the CDDA Scheme**

- 6.5. See Finance's response above, at 6.3.
- 6.6. Finance requires any agency to have appropriate scrutiny and regard for any losses claimed by individuals to ensure that a proposed payment of compensation complies with the FMA Act (or CAC Act). While not necessary on every occasion, this may involve the use of an independent actuary, loss assessor, or other appropriately qualified person rather than acceptance of unsubstantiated claimed and potentially speculative losses of an individual.

## **4. The limited ability for claimants to seek compensation if the Government agency in question is not covered by the CDDA Scheme**

- 6.7. It would be inappropriate for public money to fund administrative errors of bodies that are not FMA Act agencies. CAC Act bodies may be able to make voluntary payments to claimants where it is appropriate to do so; this is a matter for the Board of the relevant body. The current framework provides adequate mechanisms to provide compensation where appropriate. This may include reviewing the statutory arrangements relevant to that entity that prevent appropriate payments being made to claimants.

## **5. The limitations of discretionary payments in the *Public Service Act 1999***

- 6.8. This is a matter for PM&C. Finance considers that discretionary payments under the PS Act should remain capped and there should be consistency between the various financial caps contained within the discretionary compensation avenues.

## REFERENCES

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## **Legislation**

*Administrative Decisions (Judicial Review) Act 1977* (Cth)

*Audit Act 1901* (Cth)

*Auditor-General Act 1997* (Cth)

*Australian Constitution*

*Commonwealth Authorities and Companies Act 1997* (Cth)

*Commonwealth Authorities and Companies Regulations 1997* (Cth)

*Corporations Act 2001* (Cth)

*Financial Management and Accountability Act 1997* (Cth)

*Financial Management and Accountability Regulations 1997* (Cth)

Explanatory Memorandum, Financial Framework Legislation Amendment Bill 2008.

*Judiciary Act 1903* (Cth)

*Ombudsman Act 1976* (Cth)

*Parliamentary Service Act 1999* (Cth)

**Public Service Amendment (Payments in Special Circumstances) Bill 2011**

*Privacy Act 1988 (Cth)*

*Safety, Rehabilitation and Compensation Act 1988 (Cth)*

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

<b>Infrastructure and Transport</b> <i>National Transport Commission</i> * [I] Sections 9, 18, 20 and Schedule 1
<b>Sustainability, Environment, Water, Population and Communities</b> <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
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#### 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
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#### 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
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### 9 limited by shares Corporations Act 2001

#### Broadband, Communications and the Digital Economy

NBN Co Limited [M]
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#### Families, Housing, Community Services and Indigenous Affairs

Outback Stores Pty Ltd
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#### 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]
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#### Innovation, Industry, Science and Research: 2

IIF Foundation Pty Limited
IIF Investments Pty Limited

#### Treasury

HIH Claims Support Limited
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### Key to Symbols

13 bodies encompass a Statutory Agency under the <i>Public Service Act 1999</i> (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 (*).	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.
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.	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.
3 Commonwealth authorities and 4 Commonwealth companies are also government business enterprises (GBEs) under section 5 of the CAC Act.	⊕ 18 Commonwealth authorities and 1 company are also subject to section 47A of the CAC Act, which allows for directions on procurement matters.
2 Commonwealth authorities are exempt from being notified of general policies of the Australian Government, under sections 28 and 48A of the CAC Act.	[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.
2 Commonwealth authorities are partially exempt from ss 28 and 48A of the CAC Act.	Σ 3 Commonwealth companies are mentioned in statute.
1 Commonwealth authority is a statutory marketing authority (SMA): Australian Wine and Brandy Corporation.	⊗ 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>	