Section/ Content	Issue	Response from DoFA
General Issues		
Guidelines for annual reports	Timeliness—guidelines should be provided before the end of the financial year to provide sufficient notice of additional requirements. (PHIAC, *Submissions*, p. S32.)	**Agreed**—The CAC Act commenced on 1 January 1998—transitional regulations enabled authorities to prepare annual reports for 1997–98 based on the requirements in force prior to 1 January 1998. (1.2.3) The 1998–99 financial year was the first year CAC authorities were obliged to prepare annual reports in accordance with the CAC Act FMOs. These were issued in August 1998. (1.3.2)
FMA Act—General Issues		
Accrual appropriations	Such appropriations by a high level description of outcomes has the potential to conceal payment activities/Executive actions from Parliament, eg act of grace payments. (Mr Kennedy, *Submissions*, p. S21.)	**Disagreed**—The Appropriation Bills are closely aligned with the Portfolio Budget Statements (PBS) and are intended to be read in conjunction with them. The PBS are outputs-based and illustrate clearly how each output contributes to each outcome. (2.2.2) The Minister for Finance and Administration approves all act of grace payments under s33, and details are reported in the annual reports of the agencies making the payments. (2.2.4)
Section 94, Australian Constitution—Distribution of surplus money to the States	Abolition of the fund accounting structure might reawaken the possibility of future Commonwealth surpluses being returned to the States. (Mr Kennedy, *Submissions*, pp. S21–2.)	The fund accounting structure was made redundant by the accrual framework. DoFA was aware of this potential problem. Both the AGS and the Solicitor-General considered that the existence of current accrual appropriations in excess of the balance of the Consolidated Revenue Fund would prevent the latter from being characterised as 'surplus revenue' for the purposes of section 94 of the Constitution. (3.2.3; 3.2.4)

Section/ Content	Issue	Response from DoFA
Received and drawn money	Abolition of received and drawn money might encourage unnecessary drawing against appropriations to accumulate hollow logs of surplus cash. (Mr Kennedy, *Submissions*, p. S23.)	**Disagreed** ❑ All public money is required to be held in an official account and must be banked promptly. It may only be drawn in accordance with the rules laid down in the FMOs. (4.2.1) ❑ This system regulates the flow of cash in line with the delivery of outputs and the precise timing of 'administered' payments. (4.3.1) ❑ The government's cash management arrangement incorporate incentives for any money received for accrued costs to be placed on term deposit with the Reserve bank. (4.3.2)
	Abolition might result in inadvertent mixing and using of received money for expenditure. This risks expenditure which is unsupported by an appropriation. (Mr Kennedy, *Submissions*, p. S23.)	**Disagreed—**The newly prescribed bank account structures require clear separation of 'departmental' money, 'drawn' administered money, and 'administered' receipts. (4.5.1) The Constitution recognises that all revenues or moneys raised by the Commonwealth form the Consolidated Revenue Fund and that no money may be drawn from the 'Treasury' except by appropriation irrespective of whether an account is styled 'Consolidated Revenue Fund'. (4.5.2)
Financial control	The legislation should contain a conceptual statement of financial control such as in *Auditing Standard AUS 402, Risk Assessment and Internal Control*. (DETYA, *Submissions*, p. S141.)	**Disagreed**—the FMA Act, Regulations and FMOs set out a framework of obligations on Chief executives and officials approving proposals to spend public money and exercising drawing rights. (5.2.1) These obligations include: ❑ keeping accounts and records to properly record and explain the Agency's transactions and financial position; ❑ establishing an audit committee; ❑ the system of drawing rights and associated accountabilities; and ❑ provision for Chief Executive Instructions and delegation. (5.2.2) The essential principles of good corporate governance relevant to the scope of the FMA Act are already encompassed by the legislation. (5.3.1)

Section/ Content	Issue	Response from DoFA
Financial control (cont.)	Provisions should specify the controls required for computerised payments systems, previously required by Finance regulation 45A(3)(b). The Regulations could provide best practice objectives. (DVA, *Submissions*, p. S203.)	**Disagreed**—Best practice should be promoted outside the formal framework of legislation and not prescribed. (5.3.2)
Access to contractor's records	Legislation should permit agencies access to agency records which are held by contractors. (Parliamentary Departments, *Submissions*, p. S150; *Transcript*, pp. 20-1.)	**Under consideration—**DoFA is currently considering a recommended legislative change to allow the Auditor-General to access contractor premises to carry out a performance audit. (6.2.1)
FMA Act—Specific Issues		
Section 5—Definitions	There should be consistency in terminology with the proposed Public Service Act, eg 'Chief Executive' vs 'Secretary', and 'official' vs 'officer/employee'. (Parliamentary Departments, *Submissions*, p. S151.)	**Supported**—The principle of consistent terminology to describe the Commonwealth's corporate governance framework is supported. (7.2.1) The issue is whether the standard terminology should be the traditional public service terminology in the Public Service Act or private sector terminology. (7.2.2)
Sections 26, 27—Drawing rights	In the absence of guidelines, there has been no consistency between agencies on the implementation of the system of drawing rights. (DETYA, *Submissions*, p. S140.)	**Disagreed—**The system of drawing rights established by the FMA Act confers a discretion on Chief Executives to allow and manage drawing rights consistent with the agency's operational needs and sound principles of financial risk management and control. (8.2.1) Consistency across agencies in structuring 'drawing rights' is unnecessary given differences in operational and control environments. (8.2.1)
Section 31—Agreements for net appropriations	Consultation arrangements between DoFA and FMA Act agencies should be broader than focusing on delivery. Legislation should incorporate provisions for consultative agreements designed to draw out a shared understanding of current or anticipated issues. (ATO, *Submissions*, p. S41, *Transcript*, pp. 72–3.)	**Disagreed**—A general principle under the FMA Act is that the legislation should not contain prescriptive consultative or administrative detail on issues that can be negotiated outside the framework. (9.2.1)

Section/ Content	Issue	Response from DoFA
Section 31—Annual reviews	Resource agreements effectively eliminate the need for s31 annual reviews. The section should become operational in exceptional circumstances where no resource agreement exists. (ATO, *Submissions*, p. S42, *Transcript*, p. 73.)	**Disagreed—**Section 31 allows the Finance Minister to enter into agreements for the purposes of 'net appropriations' or 'departmental' or 'administered' items in the Appropriations Acts. (10.2.1) DoFA may initiate a review of a specific Agreement at any time. (10.2.2)
Finance Minister may approve act of grace payments.	Is it lawful for such a payment from an appropriation that is not actually expressed to be for the purposes of s.33 of the FMA Act? (Mr Kennedy, *Submissions*, p. S22.) Responsibility for the administration of Act of Grace Payments and the Defective Administration Scheme should be devolved to the chief executive officer. (ACS, *Submissions*, p. S188.)	**Disagreed—**Outcome based appropriations are intended to permit the expenditure of moneys consistent with the stated broad purposes. (11.3.1) Appropriations themselves do not authorise expenditure of public money. Payments need to be approved pursuant to legislation—in the case of act of grace payments, by the Minister for Finance. (11.3.2) **Disagreed—**DoFA's responsibility is consistent with the Finance Minister's paramount authority over and responsibility for, the management of public moneys under the FMA Act. It enhances equity and consistency between the variety of claims. The issue, however, is being reviewed following a recent Ombudsman's recommendation. (11.5.1–3)
Section 36—Presiding Officers approval of expenditure	FMA regulations 7 to 13 and FMA Order 4.1 do not apply to the Presiding Officers. Separate FMA Regulations and Orders for the Parliamentary Departments should be considered. Section 36 should contain a sub-delegation provision.	**Disagreed—**Parliamentary Departments are already subject to the FMA. Power to approve expenditure is conferred by s44 by implication. Section 36 provides that Presiding Officers have the power to approve spending proposals for the Parliamentary Depts, and this may be delegated to officials. Regulations 7–13 therefore apply to these officials in respect of financial tasks. (12.2.1–4) Section 53 provides subdelegation powers. (12.2.3) Proposals for separate Regulations and Orders under the FMA Act would need to be addressed by Ministers as a policy matter — DoFA is happy to discuss this with the Parliamentary Depts. (12.2.5)

Section/ Content	Issue	Response from DoFA
Section 44, (Section 36, CAC Act)— Efficient effective and ethical use of Commonwealth resources	For both FMA and CAC bodies, chief executives and directors should disclose in their annual reports the corporate governance arrangements that are in place, similar to the Australian Stock Exchange Listing Rule 3C(3)(j). Matters to be disclosed could be detailed in subsidiary legislation. (ANAO, *Submissions*, pp. S56–7.)	**Disagreed—**The FMA Act does not cover annual report requirements, apart from the financial statements. Annual report requirements are covered by the Public Service Act. New requirements for 1999-2000 are being drafted by PM&C and include a reference to ASX listing rules and suggest some of the topics should be addressed in annual reports. (13.3.1) The CAC FMOs for annual reports incorporate a number of corporate governance practices, and will be reviewed after their first year of operation. The need for more explicit requirements will be assessed. (13.3.2) There should not be a general provision in the CAC Act—coverage in subsidiary legislation such as the FMOs facilitates flexibility in maintaining relevance to best practice developments. (13.3.3).
	While s44 specifies what the chief executive is responsible for, it could specify to whom the chief executive is accountable. (DETYA, *Submissions*, p. S142.)	**Disagreed—**It is not possible to specify in s44 the general office to which all chief executives are accountable as this varies in relation to activity and agencies. The head of an agency is generally accountable to a Minister, who in turn is accountable to Parliament. (13.5.2–3)
Audit of financial statements of agencies.	The Australian National Audit Office should provide a 'going concern' opinion on the operations of an agency. (ATO, *Submissions*, p. S43, *Transcript*, pp. 76–7.)	**Disagreed—**The 'going concern' concept is basically whether a reporting entity will be able to pay its debts as and when they fall due. As FMA agencies are legally and financially part of the Commonwealth. It would be nonsensical to ask the A-G to provide a statement as to whether the FMA agencies could pay their debts because it would amount to giving an opinion as to whether the Commonwealth was able to pay its debts when they fell due. (14.1.2)

Section/ Content	Issue	Response from DoFA
CAC Act—General Issues		
Definition of outcomes in FMOs	The definition refers to consequences of Commonwealth actions on the Australian community, whereas objectives for R&D corporations relate to their industry. (GR&DC, Exhibit 1, p. 5; *Transcript*, p. 94.)	**Comment—**R&D corporations are members of the General Government Sector and have responsibility to the Australian community—this includes their industry. Outcomes for an industry will flow on to the wider community. (15.2.2)
Coverage of CAC Act	Some Commonwealth CAC Act bodies which undertake a regulatory/advisory function should fall within the FMA Act because such functions are core government activities. (Mr Kennedy, *Submissions*, p. S20.) Companies which are formed under Corporations Law which are only partly owned by the Commonwealth: ❑ should not be subject to the CAC Act; and ❑ the Commonwealth should not be placed in a preferential position relative to private shareholders. (Telstra, *Submissions*, pp. S77–80; ARTC, *Submissions*, p. S172.) In relation to Commonwealth companies duties under the CAC Act should be subject or subordinate to other legislation which is more onerous in its requirements where the legislation conflicts. (Medibank Private, *Submissions*, p. S102.)	**Disagree**—The FMA Act is predicated on a governance structure with one person at its apex in contrast to the structure for a CAC body. Broad generalisations should not be the basis for determining which Act a particular entity should operate under. Some regulatory activities require governance by a board. The movement of an existing authority from the CAC Act to the FMA Act would entail a restructure of the authority concerned. (16.2.2–3; 16.3.2–3) **Disagree**—Obligations imposed on partly-owned Commonwealth controlled companies are not onerous, do not inhibit the efficiency of the companies concerned, or confer on the Commonwealth an advantage greater than that of any major shareholder. (16.6.1) The obligations in the CAC Act provide assurance to the Parliament. (16.6.2) **Comment**—The CAC Act is designed to build upon the requirements of Corp. Law rather than conflict with it. Regarding Medibank Private, amendments were made to the National Health Act to eliminate any conflicts when the CAC Act was implemented. (16.9.1) Future amendments to the National Health Act intended to have precedence over the CAC Act would be dealt with in the National Health Act. (16.9.2)

Section/ Content	Issue	Response from DoFA
Shareholder Ministers	Conflict of interest can arise because the shareholder minister of a regulatory authority has a vested interest in performance insofar as it affects their portfolio interests. Shareholder Ministers should be other than those with a regulatory compliance responsibility. (ARTC, *Submissions*, p. S173.) The model of the portfolio Minister being responsible for operational performance and the Finance Minister being responsible for financial matters may: ❑ confuse lines of reporting; ❑ dilute Ministerial responsibility; ❑ create uncertainty regarding legal liability; ❑ cause unnecessary reporting; and ❑ cause inappropriate intervention by officials. (Austrade, *Submissions*, p. S228.)	**Comment**—There are benefits in both the single and the joint shareholder models. The appropriate model will depend on the individual circumstance of each GBE. Where joint shareholder models exist, it is general practice for different areas of the portfolio Department to separately perform the regulatory role and the shareholder role. (17.2.1–3) **Comment**—The joint shareholder arrangement is operating well, providing balanced GBE oversight. (17.4.1) There is no unnecessary reporting, with GBEs providing identical reports to both shareholders. The shareholder Ministers focus their attention on areas relevant to their ministerial responsibilities. They work co-operatively and ensure that a single voice, reflecting Government policies and priorities, is conveyed to GBEs. (17.4.2)
Appointments of executive management	The CAC Act could be used to capture generic processes of appointment, termination and remuneration of chief executives, board directors and chairpersons. (DHAC, *Submissions*, p. S182.)	**Agreed**—Commonwealth companies are subject to the Corporations Law, which in turn provides for the appointment and termination of directors. For Commonwealth authorities, there is a wide diversity in the enabling legislation relating to the appointment of directors and chairpersons. There may be scope for consolidating into the CAC Act generic principles for appointment and termination of directors, chairpersons and chief executives. (18.2.1–3)
Performance of chief executives	The CAC Act needs to embrace and make clear the process and basic set of criteria for assessing the performance of the chief executive. (DHAC, *Submissions*, p. S183.)	**Disagree**—The philosophy of the CAC Act is the same as for Corporations Law, leaving day-to-day management issues to the directors. Sections 16 and 41 confer a power on the responsible Minister to monitor performance of directors and CEOs by obliging them to provide reports, documents and information which the Minister requests. (19.2.1-2)

Section/ Content	Issue	Response from DoFA
Review of authorities' enabling legislation	The enabling legislation of many authorities have similar though not identical provisions. Consolidation into one Act would provide long term savings. (CASA, *Submissions*, pp. S185-6.) There is duplication of offences for ATSIC Commissioners under the ATSIC, CAC, and Crimes Acts. The ATSIC Act should be amended. (ATSIC, *Submissions*, p. S262.) ATSIC has several additional administrative processes in place because of the ATSIC Act—the CAC Act was intended to apply consistent treatment of CAC bodies. The ATSIC Act should be amended. (ATSIC, *Submissions*, p. S262.)	**Response**—The CAC Act provides a single set of standard core requirements with respect to the financial, audit, accountability and corporate governance arrangements. (20.2.1) DoFA does not see the CAC Act as being static and recognises there will be potential for continuous improvement. (20.3.1) If there are particular parts of the ATSIC Act that require amending, such matters need to be dealt with by the PM&C portfolio. (20.8.1)
Rate of return targets	Rate of return targets and payments are not appropriate for R&D corporations. (GR&DC, Exhibit 1, p. 4.)	**Agreed**—There is no intention at this time of subjecting R&D corporations to rate of return target payments. (21.2.1)
Contract approval by the Minister	Ministerial approval has to be sought for contracts over $1m. As some 750 of these contracts have to be approved each year the requirement is wasteful. (CSIRO, *Transcript*, p. 118.)	**Agreed—**Ministerial approval for contracts over $1m is found in enabling Acts not the CAC Act and therefore any amendments should be discussed within the appropriate portfolio. Two alternative approaches are: ❑ remove the dollar limits from the enabling Acts and provide for them to be prescribed by regulation under enabling Acts; or ❑ remove the issue from the enabling Acts and include an alternative mechanism in the CAC Act. (22.2.3) DoFA intends to consult further with relevant agencies on these issues in the context of its current review of FMA &CAC Acts. (22.2.6)

Section/ Content	Issue	Response from DoFA
CAC Act— Specific Issues		
Section 5— Definition of 'officer'	Clarification is needed of officers who are deemed involved with management responsibilities as it impacts on liability insurance and disclosure of remuneration of officers in financial statements. (SBS, *Submissions,* p. S97.) Attorney-General's advice is that a high level adviser can be an 'officer of CSIRO'. This impacts on indemnification and liability insurance for Advisory Committee members. (CSIRO, *Submissions,* p. S213; *Transcript,* pp 111, 113.)	**Disagree**—The definition of 'officer' replicates Corporations Law regarding the definition of officers, indemnification and insurance of officers and the disclosure of the remuneration of officers in the financial statements. (23.3.1) **Comment**—High level advisers of the CSIRO are in the same position as high level advisers to any company in Australia. It is not unreasonable for senior management and directors of authorities to be placed in the same position as their counterparts in the private sector. (23.6.1)
Section 9— Annual reports to be prepared by 15 October with extensions granted in special circumstances	National Health Act registered organisations have to report to the Private Health Insurance Administration Council by 30 September. Logistics means that two reports are prepared with some overlap. A single report would be more efficient. (PHIAC, *Submissions,* p. S30.) Business partners have to provide audited financial statements by 30 September. This necessitates seeking an extension each year from the Minister and the tabling of reasons. A report deadline of 30 November is recommended. (ATSICDC, *Submissions,* pp. S69–72.)	**Disagree**—The issue was considered during preparation of the consequential amendments to the National Health Act following from the CAC Act. This issue was also considered in the context of the Health Insurance Commission Act 1997. It was decided that the 2 reports were not sufficiently similar to be included in the one report. (24.2.3) **Comment**—Commonwealth authorities such as Australia Post, which has far more subsidiaries and joint ventures than ATSICDA, have not raised any objection to the October 15 deadline. If this deadline was considered to be unreasonable, the ATSIC Act would need to be amended. (24.5.5)
Sections 12(3) and 37(3)— Auditor-General's audit of financial statements	Currently the Auditor-General provides the audit statement and authority financial statements to the Finance Minister. To be consistent with the Corporations Law, directors should provide the audit statement and financial statement to the Minister. (ANAO, *Submissions,* p. S57.)	**Agree**—DoFA has no objection to subsections 12(3) and 37 (3) being amended in the manner suggested by the ANAO. (25.3.1)

Section/ Content	Issue	Response from DoFA
Sections 18, 19—Investment of surplus money.	R&D corporations should have the same flexibility to invest, within limits of sound commercial practice, as entities covered by s19. (GR&DC, Exhibit 1, p. 4.) Definition of 'surplus money' in s18 ('not immediately required for purpose of authority') may conflict with that in the Explanatory Memorandum ('any money surplus to immediate requirements'). (ATSICDC, *Submissions*, pp. S73–4; *Transcript*, pp. 90–1.)	**Disagree**—R&D corporations are subject to s18 because they are funded partially by levies on primary producers and partially by the Budget. (26.4.1) **Disagree**—There is no conflict between s18 and the Explanatory Memorandum. Commonwealth authorities other than GBEs or SMAs, wishing to invest money must do it in a manner specified in ss18(3) unless its enabling legislation provides otherwise. (26.5.1) DoFA's view is that all of ATSICDA's money surplus to immediate operations is subject to ss18(3). (26.5.4)
Division 4—Conduct of officers	Needs expansion to address potential for non-material conflicts (or conflicts in duty) arising when departmental officers are Commonwealth nominees on boards of Commonwealth authorities and companies, especially where a purchaser/provider relationship exists between the entity and Commonwealth. (DHAC, *Submissions*, p. S181.) The Act and associated guidelines should address the balance between authority and accountability of public sector boards in relation to the standards of director's liability of private sector boards under Corporations Law. (FDS, *Submissions*, p. S194.) Clarification is needed regarding duties and obligations of nominee directors to the entity nominating them, as distinct from duties and obligations to the entities of which they are a director. (FDS, *Submissions*, p. S194.)	**Response**—DoFA noted that with respect to 'non-material conflicts' the nature of the problem was unclear from the information provided in the submission. (27.3.1) **Disagree**—As the FDS points out, the CAC Act is silent on the issue as it leaves it to be dealt with in the context of 'the conduct of officer' provisions. Those provisions are replicated in the CAC Act so that the situation of 'Nominee/Representative directors' of Commonwealth authorities is the same as their counterparts in the private sector. (27.6.1) **Disagree**—The issue is equivalent to that discussed above and DoFA's view is that no clarification is needed in the CAC Act.

Section/ Content	Issue	Response from DoFA
Section 23—Prohibition on improper use of inside information or position	It is anomalous that CSIRO officers serving alongside departmental officers on Commonwealth boards are not exempted under s23(2) because they are not public servants. (CSIRO, *Submissions*, p. S215; *Transcript*, p. 111.) Advice from the Australian Government Solicitor indicates there is some conflict with s25. The legislation has added complexity to the Government Director's role and may need amendment. (AFFA, *Submissions*, p. S244; *Transcript*, pp. 104–5.)	**Disagree**—It is important to note that subsection 23(2) does not 'exempt' departmental officers from subsection 23(1), it merely protects them to the extent that there is conflict between their role as a director and their role as a departmental officer. (28.3.2) **Comment**—DoFA does not agree that the legislation 'has added complexity to the Government Director's role, but it may not have succeeded in making it any less complex. DoFA believes the proposed new provisions will effectively protect a 'Government Director' from an action for breach of his/her general law duties. However, there may be merit in having the issue specifically addressed in Division 4 of Part 3 of the CAC Act. (28.6.4; 28.6.2)
Sections 26, 27—Indemnifying officers and indemnity insurance.	There is considerable difficulty in determining the level and type of insurance needed. Clarification of the legislation is needed. (PHIAC, *Submissions*, p. S31.) Officers cannot be indemnified for a 'lack of good faith'. It is unclear whether this is the same as the 'lack of good faith' under defamation legislation. (ABC, *Submissions*, p. S83; *Transcript*, pp. 83–4, 87–8.) In NSW, SA and NT, employees can be indemnified by their employer. This conflicts with s26(1)(a). It is unclear whether State indemnification laws apply to CSIRO staff. Staff of an authority should be treated equally by the law irrespective of where they reside. (CSIRO, *Submissions*, p. S214; *Transcript*, p. 111.)	**Comment**—The definition of officer and the provisions relating to indemnification and insurance of Commonwealth authorities officers replicates the provisions for companies under Corporations Law. (29.2.1) **Comment**—Officers of the ABC are placed in the same position as officers of media companies in the private sector with respect to indemnification and insurance (see above) and the laws of defamation. (29.4.1) **Comment**—The provisions relating to definition of officer and indemnity and insurance, replicate equivalent provisions in Corporations Law. Therefore, CSIRO officers are placed in the same position as officers of any large private sector company in Australia. (29.6.1)

Section/ Content	Issue	Response from DoFA
Section 28—Compliance with general policies of the Government	The section is superfluous and should be dispensed with. It is broad, subject to provisos, and is covered by provisions in other legislation. (GR&DC, Exhibit 1, pp. 3–4.) The Attorney-General is able to apply Legal Services Directions to Commonwealth authorities. The directions may be inappropriately applied to the ABC as the Commonwealth may occasionally be the prosecutor. Legislation should be amended. (ABC, *Submissions*, p. S85; *Transcript*, p. 86.) The section is unclear under s28(1): ❑ what form of notice is required? ❑ is the policy to be generally known and applicable across the Commonwealth or can it have a particular application? ❑ what form of consultation must occur before notification? (HIC, *Submissions*, p. S121.) General policy vs specific policy needs defining—the latter is not captured. (DHAC, *Submissions*, p. S182.)	**Comment—**Section 28 may not be of particular relevance to the GR&DC, but it is of relevance to a wide cross section of authorities and therefore, it should be retained. (30.2.2) **Comment**—This is not a CAC Act issue as it relates to the recent amendments made by the *Judiciary Amendment Act 1999*. (30.4.1) **Clarification** ❑ Section 28 requires the notice to be in writing. ❑ Policy is to be 'general' in the sense that they are applicable across the Commonwealth government sector. ❑ Section 28 provides that the responsible Minister must consult the directors before notifying them of the policies. (30.6.3) **Disagree—**It is not feasible to provide a precise definition of 'general policy'. DoFA is considering administrative mechanisms which might improve the potential effectiveness of s28 and s43. (30.8.1–2)
Section 29—Subsidiaries cannot do anything an authority cannot do	Section may restrict ability to enter into agreement with non-government organisations to set up commercial entities to commercialise R&D. (GR&DC, Exhibit 1, p. 4.) Conflicts with the intention of s187 of the ATSIC Act (ATSICDC, *Submissions*, pp. S67–9.)	**Comment**—Section 29 prevents Commonwealth authorities exceeding the functions and powers specified in their enabling legislation by acting through a subsidiary. If the GR &DC considers this inappropriate, it should be addressed in its enabling legislation. (31.3.1–2) **Comment**—The solution to any problems with s187 of the ATSIC Act lies in amending that section. As such, this is an issue for the PM&C portfolio. (31.6.1)

Section/ Content	Issue	Response from DoFA
Section 36—Provision of annual report	The Australian National University financial statements should follow the national guidelines for universities. (ANU, *Submissions*, p. S64.)	**Disagree**—The ANU is a Commonwealth authority for the purposes of the CAC Act and therefore should prepare financial statements in accordance with FMOs. FMOs ensure a consistent standard of financial reporting across all Commonwealth authorities. (32.3.2)
	Medibank Private's reporting includes quarterly reports against the corporate plan to shareholder Ministers, half yearly financial accounts and annual 'whole of government reports to DoFA. This places Medibank Private at a competitive disadvantage. (Medibank Private, *Submissions*, p. S101.)	**Disagree**—Similar requirements are invariably imposed by majority or 100% owners of private companies. Publicly listed companies also have continuous reporting requirements. DoFA does not believe that the Government's reporting requirements place Medibank Private at a cost disadvantage to its competitors. (32.6.4)
	Disclosure of information not normally disclosed in detail by a private organisation can create a commercial disadvantage to public sector bodies competing with the private sector. (Comcare, *Submissions*, p. S165.)	**Disagree**—The only information that the CAC Act currently requires a Commonwealth authority to disclose publicly is that contained in its annual report. (32.9.1) DoFA unaware of any FMO requirements which potentially place an authority at commercial disadvantage. (32.9.3)
	The FMOs specify content requirements for Annual Reports of Operations in some detail, yet do not reflect the standards required by the accrual budgeting framework. (NMA, *Submissions*, p. S168.)	**Disagree**—The CAC Act FMOs applying to annual reports for 1998/99 are sufficiently flexible to accommodate the accrual budgeting framework. However, DoFA intends to review the FMOs for 1999/2000 in the light of experiences in preparing 1998/99 annual reports. (32.11.2)
	If the Auditor-General does not prepare the audit report required by Corporations Law, the Auditor-General must provide a separate report—this duplicated process is wasteful. (ARTC, *Submissions*, p. S172.)	**Disagree**—The policy of the CAC Act is not to override or contradict any Corporations Law provisions. Therefore, shareholders may appoint a company's auditor, but that company must obtain a report by the Auditor-General. Duplication would be reduced by appointing the Auditor General as auditor. (32.13.4)
	Reporting requirements under the CAC Act should be no more onerous than the best practice requirements in the private sector. (FDS, *Submissions*, p. S195.)	**Agree**—The FMOs for annual reports of Commonwealth authorities closely follow the requirements for listed companies contained in the Corporations Law and the ASX Listing Rules. (32.15.1)

Section/ Content	Issue	Response from DoFA
Section 36—Provision of annual report (cont.)	The CAC Act should be expanded so it is a vehicle for coordination of all annual reporting obligations of Commonwealth entities. (CSIRO, *Transcript*, pp. 114–115.) There should be a reporting obligation to report environmental management, as is the case under Corporations Law. (CSIRO, *Transcript*, pp. 115–116.)	**Disagree**—The annual report is a general purpose report. In addition to the annual report, Commonwealth authorities are required by various other Acts to prepare numerous specialist reports for various departments. Consolidation of all reporting obligations could result in annual reports becoming cumbersome and of little interest to the general reader. (32.18.1–5) **Comment**—It was decided not to include the amendment to the Corporations Law relating to environmental management, pending the report by the JCPAA. (32.21.2)
Section 37—Audit of subsidiary's financial statement	Some companies/subsidiaries do not have to prepare financial statements under Corporations Law. Government policy needs clarification. (ANAO, *Submissions*, pp. S57–8.)	**Agree**—DoFA intends to consult with the ANAO in this regard as part of its review of the FMA and CAC Acts. (33.3.1)
Section 38—Interim reports	The content of an Australian Stock Exchange interim report could substitute for a CAC Act interim report. (ARTC, *Submissions*, p. S172.)	**Disagree**—Many of the Australian Stock Exchange Listing Rules with respect to half yearly reports are not appropriate for CAC bodies. (34.3.1)
Schedule 2—Civil and criminal consequences of contravening civil penalty provisions	ATSIC Commissioners are categorised as directors and a penalty regime is imposed for failure to exercise corporate governance. However, ATSIC Commissioners are **elected** for their indigenous and community leadership qualities rather than expertise in statutory authority management. (ATSIC, *Submissions*, p. S262.)	**Comment**—If the powers and duties allocated to the ATSIC Commissioners by the ATSIC Act are deemed inappropriate having regard to the Commissioners' qualities and expertise, the solution lies in amending the ATSIC Act rather than the CAC Act. (35.2.2)

Section/ Content	Issue	Response from DoFA
Other Specific Issues		
Appropriations to the Parliamentary Departments	Clauses similar to Sections 50 to 54 of the Auditor-General Act could be applied to the Presiding Officers. (Parliamentary Departments, *Transcript,* p. 61.)	**Comment**—Sections 50, 52 and 54 of the Auditor-General Act are intended to limit the power of the Finance Minister and also to safeguard the operational independence of the Auditor-General. Introducing similar provisions to reflect the Constitutional separation of the Parliament from the Executive is a policy matter. (36.2.1) Protocols are in place to advise the Presiding Officers of proposed Government decisions likely to impact financially on the Parliamentary Departments, and the FMA Act already provides authority to the Presiding Officers (under s36) and to Chief Executives of the Parliamentary Departments to spend money. (36.2.2–3)
Presiding Officers approval of expenditure	There should be a clearer distinction for those areas where, for parliamentary reasons, the policies of the executive government should not be applied to the Parliament. (Parliamentary Departments, *Submissions*,pp. S55–7; *Transcript,* p. 67.)	**Disagree**—Neither the Parliamentary Departments nor the Parliament itself can appropriate or spend outside of the "Treasury" of the Commonwealth. Whether the Parliamentary Departments should be subject to the policies of the Executive Government in relation to the expenditure of public money or be subject to separate Regulations and Orders made under the FMA Act is a matter of policy. (38.2.1–2)