



Finance Minister's (CAC Act Procurement) Directions 2012

I, PENELOPE YING YEN WONG, Minister for Finance and Deregulation, make these Directions under subsection 47A (2) of the *Commonwealth Authorities and Companies Act 1997*.

.....
PENELOPE YING YEN WONG
Minister for Finance and Deregulation

Dated 2nd July, 2012

Reader's Guide

- These Directions:
 - require relevant CAC Act bodies to apply all *Commonwealth Procurement Rules* (CPRs) when undertaking procurement at or above the relevant procurement threshold, but do not require relevant CAC Act bodies to apply the CPRs for procurement below the relevant threshold; and
 - allow relevant CAC Act bodies to choose to apply the CPRs for procurement below the relevant threshold.
- These Directions modify concepts from the *Financial Management and Accountability Act 1997*, as used in the CPRs, to allow them to be replaced with concepts that can apply to the relevant CAC Act bodies. For example, references in the CPRs to “an agency” are to be read as references to “the relevant CAC Act body” (refer to clauses 5 and 6).
- The Directions apply to the relevant CAC Act bodies listed in Schedule 1 to the *Commonwealth Authorities and Companies Regulations 1997*.
- These Directions are intended to apply the CPRs to the relevant CAC Act bodies to the same extent that the *Finance Minister's (CAC Act Procurement) Directions 2009* applied the former *Commonwealth Procurement Guidelines* to the relevant CAC Act bodies.

Part 1 Preliminary

1 Name of Directions

These Directions are the *Finance Minister's (CAC Act Procurement) Directions 2012*.

2 Commencement

These Directions commence on the day of registration (on the Federal Register of Legislative Instruments).

3 Revocation of previous Directions

The *Finance Minister's (CAC Act Procurement) Directions 2009* of 17 December 2009 are revoked.

Note These 2012 Directions effectively reinstate the 2009 Directions, to ensure that they apply to the Commonwealth Procurement Rules (CPRs) which replace the former *Commonwealth Procurement Guidelines* from 1 July 2012.

4 Application of Directions

These Directions are given to the directors of a relevant CAC Act body.

Note 1 Defined terms for these Directions are set out in clause 7.

Note 2 Subsection 47A (5) of the CAC Act requires the directors of a relevant CAC Act body to ensure that the Directions are complied with by the body, and subsection 47A (6) provides that the directors must also ensure, as far as practicable, that the Directions are complied with by the subsidiaries of the relevant CAC Act body.

Part 2 Directions

5 Applying the CPRs

Procurement at or above the relevant procurement threshold - applicable

- (1) The CPRs, as modified by clause 6, must be applied by a relevant CAC Act body when the body is undertaking a procurement at or above the relevant procurement threshold.

Note With respect to applying the CPRs, obligations which must be complied with, in all circumstances, are denoted by the use of the term *must* in the CPRs. These obligations include compliance with the *Additional rules for procurement at or above the relevant procurement threshold* as set out in Division 2 of the CPRs. The use of the term *should* in the CPRs denotes matters of sound practice.

- (2) The procurement threshold, other than for procurement of construction services, is \$400,000. The procurement threshold for procurement of constructions services is \$9 million.

Coordinated procurement – not applicable

- (2) Notwithstanding subclause 5 (1), a relevant CAC Act body is not required to apply those provisions of the CPRs that relate to coordinated procurement when undertaking a procurement at or above the relevant procurement threshold.

Note Although provisions of the CPRs relating to coordinated procurement are not mandatory, they do support best practice and may be useful to adopt where relevant.

Australian War Memorial telecommunications exemption

- (3) Notwithstanding subclause 5 (1), these Directions do not apply to the Australian War Memorial when undertaking a procurement of telecommunication services at or above the relevant procurement threshold.

Summary

- (4) To avoid doubt, these Directions apply to a relevant CAC Act body only in relation to procurement at or above the relevant procurement threshold.

6 Modification of the CPRs

The CPRs apply for the purposes of these Directions, subject to the following modifications:

A reference in the CPRs to ...	Is to be read as a reference to ...
an agency	the relevant CAC Act body
an approver	the director(s) of the relevant CAC Act body
Chief Executive's Instructions, or CEIs	directions or instructions issued by the director(s) of the relevant CAC Act body relating to procurement by the body
a Chief Executive	the director(s) of the relevant CAC Act body
a contract	an arrangement, including a contract or agreement, under which money is payable, or may become payable, for the procurement of goods and or services
an official	any of the following: (a) a director of the relevant CAC Act body; (b) an employee of the relevant CAC Act body; (c) a person who conducts a procurement function for, or on behalf of, the relevant CAC Act body
public money	money held by the relevant CAC Act body, whether on its own account or as public money under the FMA Act

Part 3 Definitions

7 Definitions

In these Directions:

CAC Act means the *Commonwealth Authorities and Companies Act 1997*.

coordinated procurement has the same meaning that the term has in the CPRs.

procurement at or above the relevant procurement threshold has the same meaning that the term has in relation to relevant CAC Act bodies in the CPRs and, to avoid doubt, does not include a procurement that is exempt in accordance with Appendix A to the CPRs.

Note A procurement at or above the relevant procurement threshold, for example, would include a procurement of printing services for publications with an estimated value of over \$400,000.

CPRs means the *Commonwealth Procurement Rules*:

- (a) issued by the Finance Minister under the *Financial Management and Accountability Regulations 1997*; and
- (b) as in force from time to time.

procurement has the same meaning as in the CPRs.

relevant CAC Act body means a Commonwealth authority or a wholly-owned Commonwealth company specified in the *Commonwealth Authorities and Companies Regulations 1997* for the purposes of section 47A of the CAC Act.

Note By virtue of paragraph 46 (1) (b) of the *Acts Interpretation Act 1901*, subject to any contrary intention, an expression used in the Directions will have the same meaning as in the CAC Act.