

Public Management Reform Agenda – update

Joint Committee of Public Accounts and Audit

Submission by the Department of Finance

June 2017

Introduction

1. This submission to the Joint Committee of Public Accounts and Audit (Committee) is to provide information on matters relating to the Public Management Reform Agenda (PMRA), including the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and the *Public Governance, Performance and Accountability Rule 2014* (Rules) for the purpose of public release, as requested on 2 May 2017.
2. Over the last three years, the Department of Finance (Finance) has developed and implemented arrangements to operationalise the PGPA Act framework. With the introduction of the annual report requirements in the Rules earlier in 2016, the final legislative elements of the PGPA Act framework are in place. As a result, the Commonwealth now has enhanced coherence to its governance, performance and accountability arrangements.
3. This is the third resource management framework in the history of the Commonwealth, and it encapsulates many of the formal elements required to build a better performing, more efficient, effective, coherent and joined up public sector. Its design was informed by strong input from the parliament, key external stakeholders, and from Commonwealth entities and companies. An overview of the PGPA Act is provided at [Attachment A](#).

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4. Stage one of the PMRA was completed with the commencement of the PGPA Act on 1 July 2014.
5. The keystone of stage two of the PMRA was the enhanced Commonwealth Performance Framework, including annual reports. Stage two also involved the development of a differential regulation approach.

Enhanced Commonwealth Performance Framework

6. In April 2015, Rules were put in place to require Commonwealth entities to produce corporate plans and annual performance statements as part of their annual reports.
7. These new requirements for annual reports, introduced in 2016, replaced the annual report arrangements under the *Public Service Act 1999*, the *Parliamentary Service Act 1999* and the *Commonwealth Authorities and Companies Act 1997*. Together with the new requirements for corporate plans and annual performance statements introduced by the PGPA Act, they comprise the enhanced Commonwealth Performance Framework. Importantly, there is some flexibility in these requirements, recognising the varied circumstances that apply across the breadth of Commonwealth activities. The framework requires entities to put in place performance measurement and reporting arrangements to demonstrate how they are achieving their purposes.
8. Past attempts to improve the quality of performance information in the Commonwealth have had mixed results, in part because insufficient attention has been given to assisting and embedding change in the system. Under the enhanced Commonwealth Performance Framework, Finance has provided professional guidance and assistance to entities to help implement the reforms, including, for example, by publishing written guidance in the form of Resource Management Guides (RMGs), holding Community of Practice events in Canberra and interstate, reviewing draft corporate plans and annual performance statements on behalf of entities, and releasing regular PMRA newsletters and email broadcasts to keep entities informed of emerging better practice and other developments. This work was

reviewed by the Australian National Audit Office (ANAO) and in its report No.6, 2016-17, *Corporate Planning in the Australian Public Sector*¹ and found to be “effective” with “high levels of satisfaction” expressed by entities.

9. Finance continues to comment on draft corporate plans and annual performance statements and hold community of practice meetings, supported by the publication of Lessons Learned papers for each round of reporting. This informs our regular review of guidance documents to support the development of better performance information. Work in this area is continuing, and our judgement is that a better system is emerging, albeit slowly. Consistent with previous evidence to the Committee, we believe it will take three to five reporting cycles for mature practice to emerge.
10. On 3 March 2017, the Finance Secretary issued a revised Direction on Requirements for Performance Information included in Portfolio Budget Statements (PBS) to give effect to the Committee’s decision to no longer require entities to include their most recent Annual Performance Statements in their 2017-18 (and subsequent) PBS. As requested by the Committee, entities provided a web address (hard copy) and link (e-copy) for their most recent Annual Performance Statement in their 2017-18 PBS.
11. As requested by the Committee, Finance has developed a standard navigation tool that clearly communicates the key elements of the Commonwealth performance framework that was included in 2017-18 PBSs. It takes the form of a schematic, which details how the performance documents link to each other across the performance cycle and explains what performance information is available from which document.

Differential Regulation

12. The concept of what was first called earned autonomy, and which later evolved into the concept of differential regulation, appeared early in the PMRA process. Significant and structured consultation has now taken place with Commonwealth entities around differential regulation. While there is general support for the concept, the most common view is that many previously identified red tape concerns have been addressed through the PGPA Act, Rules and related guidance and recently reviewed policies like procurement and compliance reporting. A clear preference has emerged for Finance policy areas to independently pursue risk-based reductions to the regulation for which they are responsible without a central assessment of entity capacity and risks, noting that different entities represent different risks, for different reasons, for different types of regulation. There was a general concern to avoid any approach that would increase complexity for entities without significantly reducing regulation.
13. In response to this feedback, we are integrating the concepts of a differential regulation approach within Finance with the implementation of relevant recommendations in the 2015 Independent Review of Whole-of-Government Internal Regulation (Belcher Red Tape Review)². Our expectation is that Finance could model better regulatory behaviours to other entities who also impose internal controls and reporting requirements on Commonwealth entities. Finance policy owners differentiate the requirements on entities through a number of mechanisms. This differentiation is applied through one or more of the following characteristics. The type of entity (non-corporate Commonwealth entities, corporate Commonwealth entities and Commonwealth companies) financial thresholds and the risks associated with the activity being undertaken. Examples include the procurement

¹ Australian National Audit Office Report No.6 of 2016-17: [Corporate Planning in the Australian Public Sector](#), 31 August 2016.

² Ms Barbara Belcher, The Independent Review of Whole-of-Government Internal Regulation ([Belcher Red Tape Review](#)), August 2015.

and grants frameworks, and the Australian Government Charging Framework, which differentiate based on the above characteristics. Further, the Commonwealth Risk Management framework is a better practice example of a policy that is able to be tailored to reflect the requirements of entity, project or program risk based on the level of risk maturity that an entity adopts. Finance policy owners currently clarify the minimum and appropriate standards in each policy area that an entity are required to attain based on the characteristics above. Central to this is embedding the Belcher Principles for Internal Regulation, which require regulation to be:

- the minimum needed to achieve whole-of-government or entity outcomes
 - proportional to the risks to be managed and supportive of a risk-based approach
 - coherent across government and not duplicative
 - designed in consultation with stakeholders for clarity and simplicity in application, and
 - reviewed periodically to test relevance and impact.
14. This work is continuing through 2017, and we are co-ordinating at a high level with the Department of the Prime Minister and Cabinet, the Attorney-General's Department and the Australian Public Service Commission.
15. The purpose of Stage three of the PMRA was to further build on elements of the PGPA Act and enhanced Commonwealth Performance Framework, and explore specific elements of the resource management framework, including:
- Cooperation/Joining-up;
 - Cash management scoping study; and
 - Appropriations and entity resourcing.

Cooperation/Joining-up

16. In its Report 457, dated May 2016, the Committee noted that Finance had commenced internal work on scoping options for improving cooperation in government.
17. The PGPA Act, Rules and related guidance were developed to expressly recognise the need for better cooperation between Commonwealth entities, and by the Commonwealth with the private sector, not-for-profit sector and other stakeholders in achieving public policy objectives and improved outcomes for citizens³.
18. Express provisions in the PGPA Act are designed to help this happen: for example, accountable authority instructions (section 20A); the power to establish advisory boards (section 24); other CRF money (section 105); accountable authority delegations (section 110); and prescribing persons outside the Commonwealth as officials (PGPA Rule, item 1A, section 9(1)). The Act also provides legislative tools that can be used by an accountable authority to promote a culture of cooperation. For example, the accountable authority of a non-Corporate Commonwealth entity can provide delegations and instructions to officials in another entity to support a joint activity, or can delegate to a person outside the Commonwealth to perform certain functions under the PGPA Act.

³ See for example: section 5(c)(iv) PGPA Act, section 17 PGPA Act and section 18 PGPA Act.

19. This emphasis on cooperation is a new requirement in Commonwealth resource management legislation⁴.
20. Finance has improved our guidance on how the resource management framework can support and improve cooperation⁵, this includes a [new online guide](#) (RMG 003) with examples of good resource management practices. The purpose of this guide is to share examples of good cooperation, risk management and performance across the Commonwealth public sector. Entities have also been invited to share examples of practices that have helped their entity to operate more efficiently and effectively.

Cash Management scoping study

21. Finance has completed an internal scoping study on current practices in Commonwealth cash management and banking arrangements. The scoping study includes recommendations that are currently being implemented in business-as-usual mode by the responsible areas in Finance, including through updated guidance. It also recommends a watching brief on current and prospective developments in technology and practice in the banking sector, to ensure government is able to respond to a shifting environment and new opportunities.

Appropriations and entity resourcing

22. Finance continues to examine the appropriations, budget, and agency resourcing frameworks to encourage ongoing financial sustainability and flexibility and improvements to public sector productivity.

Other current activities

23. Finance is undertaking a range of activities to help entities utilise the scope offered by the PGPA Act to refine process and reduce compliance requirements.

Compliance

24. A revised compliance reporting approach, that streamlines and enhances the reporting of non-compliance with the finance law, is now in place.
25. The Belcher Red Tape Review recommended that ‘Finance cease centrally mandated compliance certification, monitoring and reporting.’ The review noted that the previous certificate of compliance process imposed burden without additional benefit and did not reflect the increased maturity of control and compliance systems in Commonwealth entities. Feedback from entities overwhelmingly supported its discontinuation.
26. The new approach, developed in consultation with the ANAO and the Committee, enhances the quality of compliance information to Ministers and the Parliament by focussing on substantive non-compliance matters rather than minor administrative issues. Information is now reported to Ministers at the time significant non-compliance issues are

⁴ The previous legislative underpinnings of the resource management framework – the *Financial Management and Accountability Act 1997* and the *Commonwealth Authorities and Companies Act 1997* – both focused on a ‘siloes’, entity specific approach to management with little regard for the Commonwealth as a whole or cooperation with others.

⁵ This guidance is available on the Finance website: www.finance.gov.au. Amongst various guidance materials available the “Resource Management Guide” or “RMG” series covers the largest range of topics.

identified and also reported to the Parliament by entities in annual reports. The key features are:

- entities monitoring compliance with internal and legislative requirements and government policies as an integral part of their internal control systems;
- significant non-compliance issues reported to entities' responsible Ministers and the Finance Minister under section 19 of the PGPA Act, focusing on remedial action;
- significant issues reported and disclosed in entities' annual reports;
- Finance surveying entities to obtain feedback on issues they may have in applying the resource management framework and briefing the Finance Minister on the results of that survey; and
- Finance providing guidance to support entities in monitoring and reporting significant non-compliance issues (RMG 214).

PMRA CFO Survey

27. The 2016 PMRA CFO survey was conducted in October-November 2016 by an independent market and social research firm, on behalf of Finance. The survey objectives were to enhance our understanding of the impact of the PGPA Act and to inform the future focus of the PMRA. It also aims to meet Finance's commitment to the Government and the Committee to survey entities annually in relation to compliance issues with the framework, following the removal of the certificate of compliance process. The survey will also provide information to support the independent statutory review of the PGPA Act and Rule.

28. Responses were received from 106 entities and the results indicated that:

- CFOs perceive the PGPA framework is easier or substantially easier to understand and comply with than FMA/CAC, reported by fifty-one per cent (51%) of respondents in 2016, up from thirty-seven per cent (37%) in 2015;
- the respondents also reported that fifty-six per cent (56%) have streamlined controls in 2016, an improvement on thirty-eight per cent (38%) reported in 2015; and
- entities also reported an improvement in both the culture for managing risk and practice of risk management, and satisfaction in Finance's support for the enhanced Commonwealth performance framework.

New PGPA rules

29. Since the start of 2016 the Finance Minister has amended the PGPA Rule to:

- clarify the banking powers of the Commonwealth Superannuation Corporation (CSC) (April 2016);
- prescribe annual reporting requirements for Commonwealth companies (May 2016);
- remove Old Parliament House as a listed non corporate Commonwealth entity (July 2016);
- amend the listed entity, the Digital Transformation Office changing to the Digital Transformation Agency (December 2016);
- amend the listed entity, the Office of the Fair Work Building Industry Inspectorate changing to the Australian Building and Construction Commission (March 2017); and
- list the executive agency, the Independent Parliamentary Expenses Authority, as a non-corporate Commonwealth entity (April 2017).

30. In addition to amendments to the PGPA Rule, the Finance Minister also made several other rules under the PGPA Act:

- rules to establish two new corporate Commonwealth entities under section 87 of the PGPA Act:
 - the [PGPA \(Establishing the Australian Digital Health Agency\) Rule 2016](#) to establish the Australian Digital Health Agency (January 2016); and
 - the [PGPA \(Establishing Old Parliament House\) Rule 2016](#), to change Old Parliament House to a corporate Commonwealth entity (July 2016).
- the [PGPA \(Relevant Company\) Rule 2016](#) to establish legislative authority for the purposes of section 85 of the PGPA Act for the Commonwealth to form, or participate in the forming of certain prescribed companies (October 2016).

Guidance material

31. We are continuing to update and improve resource management guidance material to support officials discharging their duties and other obligations under the PGPA Act. In 2014, Finance issued a comprehensive set of resource management guidance on the Finance website - www.finance.gov.au/resource-management/. A series of [eLearning modules, brochures, posters and videos](#) were also published to help officials understand their duties and responsibilities under the PGPA Act. In 2015, Finance developed the [online PGPA Act](#), [online PGPA Rule](#) and [Resource Management Glossary](#), to better link the requirements in the Act to the relevant guidance.
32. Throughout 2016 we reviewed RMG material, informed by the first two years of operation of the PGPA Act and Rules, to assess how it can be better targeted to meet user needs; be more accessible; provide a more complete view of the Commonwealth resource management framework; and address the recommendations of the Belcher Red Tape Review.
33. Two new guides have been published specifically for particular users:
- In December 2016, we released the new [guide to the PGPA Act for Secretaries, Chief Executives and governing boards \(accountable authorities\)](#) (RMG 200). This guide is designed to assist accountability authorities to meet their duties and responsibilities under the PGPA Act by governing their entity and contributing to the priorities and objectives of the government.
 - In May 2017, we released new guidance to [introduce officials to the PGPA Act](#) (RMG 002). This guidance summarises the basic duties and responsibilities of officials in all Commonwealth entities under the PGPA Act. This new RMG also provides links to other relevant resources and guidance including eLearning modules, brochures and other RMGs.
34. Additionally, regular [PMRA Newsletters](#) have continued to be distributed and made available online to advise officials of the latest developments and seek questions or feedback.

Model Accountable Authority Instructions

35. Work has been undertaken to streamline the [Model Accountable Authority Instructions \(AAIs\)](#) (RMG 206) to support the development of fit-for-purpose instructions for individual entities. This work was completed by the end of 2016.

36. The Model AAIs help entities to develop instructions and operational guidance that meet their particular needs. The Model AAIs are not intended to be prescriptive or exhaustive, as individual entity requirements may differ. They are designed to help officials to understand and comply with the key requirements of the resource management framework and accountable authorities to develop instructions in line with their entity's needs and operating environment.

Independent Review

37. A key statutory requirement, under section 112 of the PGPA Act, is for an independent review to be conducted of the operation of the PGPA Act and Rules. Scoping for this to occur in the second half of 2017 is currently underway, with the review to be put in place by the Finance Minister, in consultation with the Committee (section 112(1) of the PGPA Act). The review report must be tabled in the Parliament.
38. We expect that the review will gather perspectives from the Parliament, Commonwealth entities and companies, and other stakeholders on the operation of the PGPA Act and Rules. Consultation with approximately 60 entities has been undertaken following analysis of the PMRA CFO survey conducted in October 2016.
39. It is anticipated that the review will make recommendations to amend and refine legislation and associated policy settings where required. The review will assess whether benefits have been realised, in line with the objects of the PGPA Act as outlined in section 5 of the Act, and may make recommendations about what should be done in the future.

Overview of the *Public Governance, Performance and Accountability Act 2013*

The *Public Governance, Performance and Accountability Act 2013* (PGPA Act) consolidates within one piece of legislation the governance, performance and accountability requirements of the Commonwealth. It sets out a regulatory framework for the Commonwealth management of public resources, and for the operation of Commonwealth entities and companies. The objects of the Act, set out in Section 5 are to:

- (a) to establish a coherent system of governance and accountability across Commonwealth entities; and
- (b) to establish a performance framework across Commonwealth entities; and
- (c) to require the Commonwealth and Commonwealth entities:
 - (i) to meet high standards of governance, performance and accountability; and
 - (ii) to provide meaningful information to the Parliament and the public; and
 - (iii) to use and manage public resources properly; and
 - (iv) to work cooperatively with others to achieve common objectives, where practicable; and
- (d) to require Commonwealth companies to meet high standards of governance, performance and accountability.

Commonwealth entities (departments of state, executive agencies and statutory authorities established by the Parliament) are divided into two broad categories: non-corporate and corporate. Non-corporate entities are legally part of the Commonwealth; corporate entities are legally separate from the Commonwealth, but are not companies, which form the third category of bodies within the framework.

In short, the financial and accountability controls placed on non-corporate Commonwealth entities are more detailed and intrusive than those placed on corporate Commonwealth entities, most of which have separate enabling legislation that provides a bespoke governance and accountability layer to their operations.

However, no matter whether a Commonwealth entity is non-corporate or corporate in its nature, there are particular requirements that go across both to bring cohesion to the operations of government. The key elements are:

- A single definition for public resources that applies to all money and property held by Commonwealth entities and a universal requirement that public resources must be used properly (efficiently, effectively, economically and ethically);
- A single concept of “official”, which applies to all person who are in or form part of an entity;
- A uniform set of duties on all officials, which are based on the fiduciary duties in the *Corporations Act 2001*;
- A uniform set of additional duties reflect the governance responsibilities of accountable authorities of all Commonwealth entities; and
- A common set of obligations on all entities in relation to planning and reporting on their performance.

Commonwealth companies are subject to the *Corporations Act 2001*, and the requirements that relate to them are dealt with in a separate chapter of the Act.

Other legislation like the *Auditor-General Act 1997* (Auditor-General Act), the *Public Service Act 1999* (Public Service Act) and the enabling legislation for Commonwealth entities and companies of a statutory nature are to be read alongside the PGPA Act. For example, both the Auditor-General Act and the PGPA Act contain provisions that give powers to the Commonwealth Auditor-General. Both the PGPA Act and the Public Service Act impose duties on people, although the reach of the Public Service Act (which covers around 50 per cent of all Commonwealth officials) is narrower than the reach of the PGPA Act. The Public Service Act contains other elements that go to defining the unique nature of the Australian Public Service, including the APS Values, the appointment, roles and responsibilities of Secretaries, and the role of the Secretaries Board.