



Public Governance, Performance and Accountability Act 2013

COMPENDIUM

**A description of legislative and other arrangements to support the
introduction of the Act**

Working Draft 1.0

This is a Working Draft of the Compendium as submitted to the
Joint Committee of Public Accounts and Audit
on 5 March 2014.

The Compendium is subject to amendment as arrangements are finalised.

Contents

| | |
|--|-----------|
| Abbreviations and acronyms | ii |
| Introduction | 1 |
| Part I: Overview of arrangements | 2 |
| Hierarchy of instruments and arrangements..... | 2 |
| Rationale for instruments to be used at or beyond 1 July 2014..... | 5 |
| Design principles for the rules | 9 |
| Consequential and transitional amendments to the PGPA Act and related legislation for 1 July 2014 | 10 |
| Timing for development of arrangements..... | 14 |
| Part II: Link between PGPA Act and other elements | 16 |
| Chapter 1—Introduction..... | 16 |
| Part 1-1—Introduction..... | 16 |
| Part 1-2—Definitions | 17 |
| Chapter 2—Commonwealth entities and the Commonwealth..... | 19 |
| Part 2-1—Core provisions for this Chapter..... | 19 |
| Part 2-2—Accountable authorities and officials..... | 30 |
| Part 2-3—Planning, performance and accountability | 47 |
| Part 2-4—Use and management of public resources..... | 75 |
| Part 2-5—Appropriations..... | 109 |
| Part 2-6—Cooperating with other jurisdictions..... | 120 |
| Part 2-7—Companies, subsidiaries and new corporate Commonwealth entities..... | 124 |
| Chapter 3—Commonwealth companies..... | 129 |
| Part 3-1—General | 129 |
| Part 3-2—Planning and accountability | 136 |
| Chapter 4—Rules, delegations and independent review | 145 |
| Part 4-1—The rules | 148 |
| Part 4-2—Delegations..... | 158 |
| Part 4-3—Independent review | 160 |

Abbreviations and acronyms

| | |
|---------------------------|--|
| AASB | Australian Accounting Standards Board |
| ANAO | Australian National Audit Office |
| APSC | Australian Public Service Commission |
| Auditor-General Act | <i>Auditor-General Act 1997</i> |
| CAC Act | <i>Commonwealth Authorities and Companies Act 1997</i> |
| C&T Bill | <i>Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Bill 2014</i> |
| Corporations Act | <i>Corporations Act 2001</i> |
| CRF | Consolidated Revenue Fund |
| Finance | Department of Finance |
| FMA Act | <i>Financial Management and Accountability Act 1997</i> |
| JCPAA | Joint Committee of Public Accounts and Audit |
| Parliamentary Service Act | <i>Parliamentary Service Act 1999</i> |
| PB Statements | Portfolio Budget Statements |
| PGPA Act | <i>Public Governance, Performance and Accountability Act 2013</i> |
| PM&C | Department of the Prime Minister and Cabinet |
| Public Service Act | <i>Public Service Act 1999</i> |

Introduction

The *Public Governance, Performance and Accountability Act 2013* (PGPA Act) received Royal Assent on 29 June 2013 and came into effect on 1 July 2013. The first five of its sections also came into effect on that date, and the balance (ss 6 to 112) will come into effect a year later on 1 July 2014.

The PGPA Act is the first significant milestone in a Public Management Reform Agenda which commenced in December 2010, involving extensive consultation across government and with other jurisdictions, the not-for-profit and private sectors, academics and the Australian Parliament through the Joint Committee of Public Accounts and Audit (JCPAA). The PGPA Act represents a halfway point in this multi-year reform agenda which seeks to re-examine the financial framework of the Commonwealth from first principles.

The following objectives underpinned the development of the PGPA Act and of the broader reform agenda:

- Government should operate as a coherent whole.
- A uniform set of duties should apply to all resources handled by Commonwealth entities.
- Engaging with risk is a necessary step in improving performance.
- Performance of the public sector is more than financial.
- A simple framework that avoids unnecessary regulation should be valued.

The arrangements seek to bring together under one coherent framework Commonwealth entities currently operating under the *Financial Management and Accountability Act 1997* (FMA Act) and the *Commonwealth Authorities and Companies Act 1997* (CAC Act). The PGPA Act will replace those Acts as the primary financial legislation of the Commonwealth from 1 July 2014.

The design of the framework is consciously directed towards reducing the level of direction to entities and supporting them to manage their obligations through the provision of guidance, templates and other forms of advice. This could be described as seeking to move Commonwealth entities closer to the CAC Act model and away from the prescriptive approaches associated with the FMA Act. As such, the imposition of any form of binding requirement must have a clear justification.

This Compendium describes the key instruments and arrangements that support the financial framework and how they will interact under the new PGPA Act. The first part of the document explains the hierarchy of these instruments, and the second part explains how these various instruments and arrangements flow, or should flow, from each of the provisions of the PGPA Act. Leading up to the commencement of the substantive provisions of the PGPA Act on 1 July 2014, this Compendium also identifies proposed approaches in key areas of policy and guidance as well as some proposed amendments to the PGPA Act.

Part I: Overview of arrangements

Hierarchy of instruments and arrangements

The PGPA Act represents the primary legislation of the Commonwealth financial framework and is supported by a range of subsidiary legislation, instruments and related arrangements that together explain the requirements of the legislation and how best to meet its obligations. These elements consist of:

- the PGPA Act
- the PGPA Rules
- other legislative instruments
- other binding requirements (that are not legislative instruments)
- guidance and advice.

It should be noted that the PGPA Act draws on the authority of the Australian Constitution and interacts with the Appropriations Acts through which Parliament authorises spending, the enabling legislation of entities and other related legislation (such as the *Lands Acquisition Act 1989*). For the purposes of this Compendium, any reference to guidelines or guidance is given its ordinary meaning, consistent with legislative drafting practice and judicial comment.¹

A brief explanation of each and their connections are provided below and in pictorial form on page 4.

PGPA Act

The Act provides the source of authority for matters covered by the Act and its supporting arrangements. It will replace the FMA and CAC Acts as the primary piece of financial legislation.

PGPA Rules

The rules are legislative instruments. They are similar in nature to regulations that represent subsidiary legislation and are generally subject to disallowance by the Parliament. The PGPA Act provides rule-making powers in relation to:

- general matters (in accordance with ss 101 to 105)
- establishing corporate Commonwealth entities (in accordance with ss 87 and 101)
- Commonwealth Procurement Rules (in accordance with ss 101 and 102) (not subject to disallowance)
- Commonwealth Grants Rules (in accordance with ss 101 and 102) (not subject to disallowance)
- Commonwealth Financial Reporting Rules (in accordance with ss 101 to 103).

¹ In *Smoker v Pharmacy Restructuring Authority* [1994] FCA 1487, Burchett J and Hill J noted that there was judicial authority for the proposition that 'guidelines' means guidance that is not binding. Hill J criticised a provision of the National Health Act that requires a decision maker to 'comply' with guidelines. He said that the mandatory language of that provision appears inconsistent with the ordinary usage of the expression 'guidelines' (paragraph 35 of his judgement as found at <http://www.austlii.edu.au/cases/cth/FCA/1994/1487.html>)

Other legislative instruments

The PGPA Act gives the Finance Minister the power to make determinations to adjust annual appropriations (s 75), and establish, vary or revoke a special account (s 78). The Finance Minister may also make government policy orders to apply Australian Government policies to corporate Commonwealth entities (s 22) or Commonwealth companies (s 93).

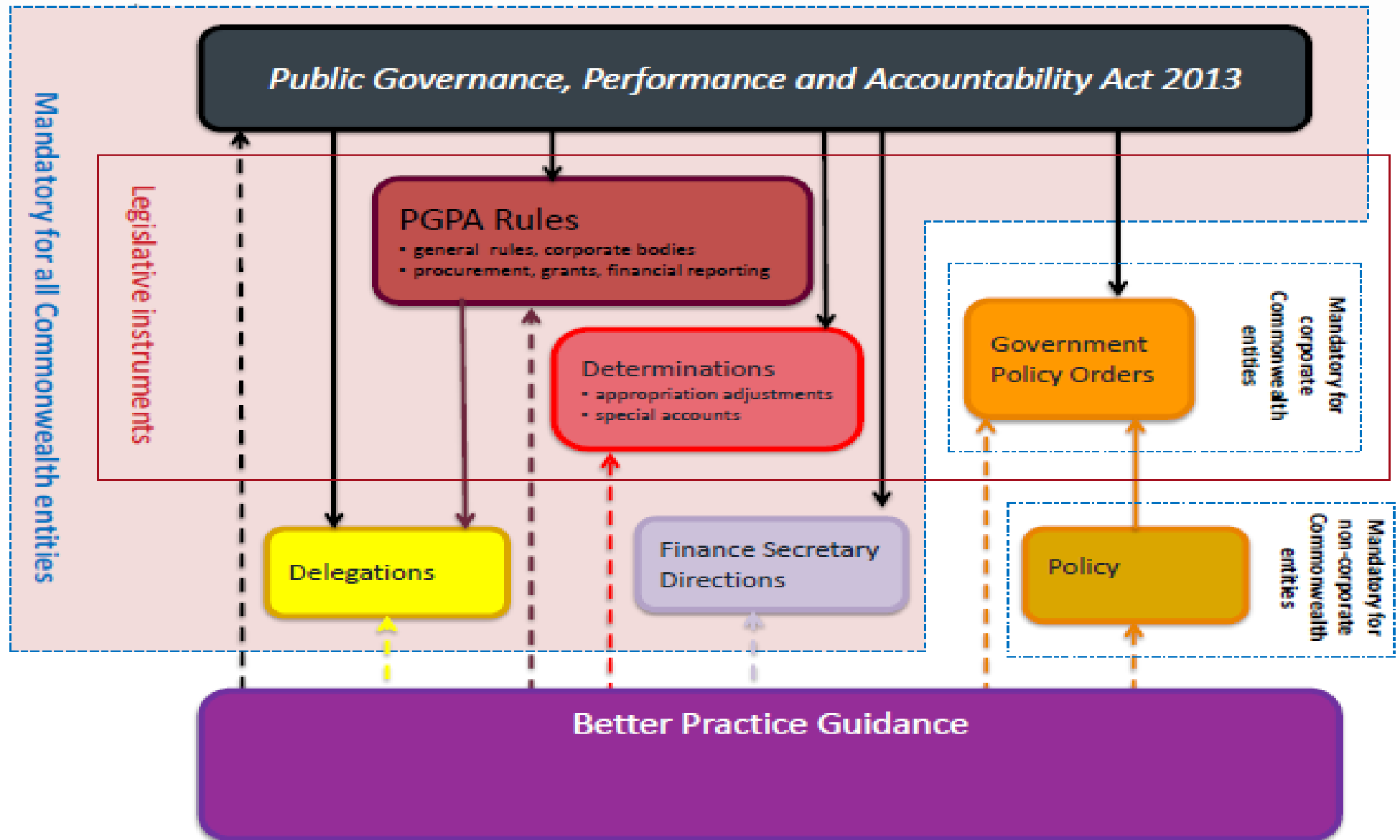
Other binding requirements

- Budget estimates—the Finance Secretary may give binding directions to Commonwealth entities (s 36) and Commonwealth companies (s 96).
- Delegation of powers—the Finance Minister, Treasurer, Finance Secretary and other accountable authorities may delegate powers in the PGPA Act or PGPA Rules (ss 107 to 110).
- Issuing of instructions—the ability of accountable authorities to issue instructions in relation to matters covered by the PGPA Act is found in enabling legislation for the entity. If an entity does not have enabling legislation, the PGPA Act provides this authority (s 23A).
- Policies of the Australian Government—
 - non-corporate Commonwealth entities must not use resources in a way that is inconsistent with these policies (ss 15 and 21)
 - corporate Commonwealth entities and companies are required to take account of these policies only with the declaration of a government policy order (ss 22 and 93).

Guidance and advice

Targeted guidance and templates are designed to explain the framework and assist users with ensuring the proper use of public resources. These documents are likely to be the first contact that most users have with the PGPA framework, and are therefore to be given prominence in supporting Commonwealth entities to implement the framework.

New Commonwealth resource management framework from 1 July 2014



Rationale for instruments to be used at or beyond 1 July 2014

Rules

The starting premise for whether a rule is established is that the Act provides for a rule and a rule is necessary for the operation of the framework. The basis for establishing a rule is that it is required for one of the categories described below. It should be noted that not all of these rules need to be in place for 1 July 2014, with those to come into effect after that date marked with an asterisk (*):

- listing (prescribing)
 - defining law enforcement agencies and listing government business enterprises
 - listing entities as being covered by the Act
 - identifying accountable authorities of entities where otherwise uncertain
 - identifying who is, or is not, an official of an entity
- matters specific to non-corporate Commonwealth entities and connected to the use of appropriations
 - processes in relation to waivers of amounts, setting off of payments and act of grace payments (ss 63 to 65)
 - payments pending probate and act of grace payments (ss 65 and 103)
 - retention of receipts by non-corporate Commonwealth entities (s 74)
 - other CRF money (s 105)
- governance of entities
 - disclosure of interests (s 29)
 - audit committees (ss 45 and 92)
 - insurance obtained by corporate Commonwealth entities (s 62)
 - establishing new corporate Commonwealth entities (s 87) *
 - fraud control (s 102)
 - debt recovery or write-off (s 103)
- the planning and accountability cycle
 - corporate planning (s 35) *
 - annual performance statements (s 39) *
 - financial statements (s 42) *
 - annual reports (s 46) *
- commitment and expenditure of resources
 - commitment of relevant money (s 52)
 - investments (s 58)
 - Minister to inform Parliament of certain events (s 71)
 - grants (s 102)
 - procurement (s 102)

** Denotes rules not required for 1 July 2014*

Rules that are not needed for 1 July 2014

Some of these rules do not need to be in effect on 1 July 2014 and will be introduced during the course of 2014–15 after consultation with stakeholders. The reasons for this course of action are explained below.

Establishing new corporate Commonwealth entities

The mechanism for establishing entities under s 87 of the Act is through the issuing of a rule detailing the core features of the corporate entity, with the specifics of each entity created, including additional or varied features, being included in a schedule to the rule.

A draft rule has been developed incorporating these arrangements and has been the subject of consultation within government.

As a result of feedback that the draft rule needs to be streamlined in terms of content and process, and taking into account that the need to apply the rule immediately from 1 July 2014 is unlikely, Finance has decided to delay formal introduction and to continue consultations with stakeholders during 2014 on how to improve the rule's design and application.

Corporate planning and annual performance statements

The first corporate plan to be published by entities will be for the period commencing 1 July 2015, with performance statements relating to the 2015–16 financial year.

A key focus of the introduction of the PGPA Act is on increasing the emphasis on, and improving the standard of, planning and reporting. As a result, Finance will work with key stakeholders, including Parliament (through the JCPAA and other committees), Commonwealth entities and other interested participants over the course of 2014 to finalise required rules, templates and guidance on better practice.

It should be noted that development of these arrangements does not absolve entities of the need to maintain proper records (s 37) or to measure and assess performance (s 38). Both provisions will become active on 1 July 2014 and will impose requirements on entities regardless of the final form in which the reporting of planned and actual performance is presented.

Financial statements

Existing practice in relation to the preparation of financial statements is for the Finance Minister's Orders (FMOs) to be released towards the middle of the financial year, taking into account any changes in accounting standards that may have been introduced for that financial year. Financial statements prepared in relation to the 2013–14 financial year will apply the 2013–14 FMOs regardless of the date that this process is completed.

The financial reporting rules to be released under s 42 of the PGPA Act need to have regard to changes in accounting standards for 2014–15. They will therefore be released at a similar time of year, having also taken into account the results of consultation with Commonwealth

entities and other interested parties, including the professional accounting bodies, the Australian Accounting Standards Board (AASB) and the Auditor-General.

Delegations

In accordance with accepted administrative practice, the Finance Minister may delegate his or her powers under the PGPA Act, with the extent to which that authority can be exercised to be specified in the delegations instrument. Delegations are prepared in relation to banking and borrowing, including the use of a general authorisation on the use of credit cards (which represent a form of borrowing), and indemnities. Accountable authorities also have the ability to delegate powers that they have under the PGPA Act.

Determinations

Determinations by the Finance Minister are provided under the PGPA Act for the transfer of appropriations between entities resulting from machinery of government changes and for the establishment of special accounts (a form of appropriation). Machinery of government changes and special accounts relate to non-corporate Commonwealth entities and represent a necessary continuation of existing arrangements.

Government policy and government policy orders

The accountable authority of a non-corporate Commonwealth entity must govern the entity in a manner not inconsistent with the policies of the Commonwealth. In recognition of their separate legal status, accountable authorities of corporate Commonwealth entities are not required to do so unless a legislative instrument in the form of a government policy order has been issued by the Finance Minister. In practice, many existing CAC Act bodies follow a number of government policies, even though they are not required to, and realise the benefits that arise from adoption of what are seen as well-designed policies or centralised processes.

Changes to other legislation

The enabling legislation for many entities will need to be amended to remove overlaps and inconsistencies with the PGPA Act and its supporting rules, unless specific policy reasons dictate the continuation of an existing arrangement. The proposed amendments will seek to ensure that there is a smooth transition to the PGPA Act. In addition to updating references to the new financial framework, a proposed consequential and transitional amendments Bill will simplify enabling legislation in cases where provisions of the PGPA Act cover an issue that is also dealt with in enabling legislation, and include provisions to ensure that an agreed policy position is properly reflected in the interaction between the PGPA Act and the enabling legislation.

Further information on these changes can be found below under 'Consequential and Transitional Amendments'.

Other requirements

Other requirements range from the interaction of other frameworks and legislation with the PGPA Act, to existing obligations and practices that influence or constrain the application of features of the financial framework.

One aspect of the arrangements not covered under the other general headings relates to written agreements of the Finance Minister. While not legislative instruments, the Finance Minister will continue to issue written approvals for a limited range of entities in relation to increasing the range of investment activities a corporate Commonwealth entity can undertake (comments in relation to s 59 of the Act later in this paper provide further information).

Guidance, training and support

Finance is undertaking a systematic review of its policy and guidance documents with the intention of streamlining and clarifying obligations for Commonwealth entities and advice on better practice.

Guidance

The first tranche of this exercise involves updating publications needed to support the introduction of the operative provisions of the PGPA Act, and will be followed by publications to support other aspects of the Public Management Reform Agenda as they are developed and implemented.

The guidance is being drafted using a range of standardised templates, including:

- Resource Management Guide template—short
 - for information on a particular topic that can be addressed in a few pages
 - may set out policy and provide guidance
 - may include attachments
- Resource Management Guide template—long
 - for multiple and/or complex topics that require more detailed guidance
 - may set out policy and provide guidance
 - may include attachments
- Question and Answer (Q&A) template
 - generally used to support short- or long-form Resource Management Guides
 - stand-alone documents that can be updated without the need to reissue a whole guide
- Fact sheet template
 - used to provide targeted summary advice to particular audiences in or beyond government
 - generally used to support short- or long-form guidance on a particular topic.

Guidance will be published on the Finance website. Finance will develop separate tools to assist users and support the guidance material, such as contract templates and checklists.

User focus

Rather than produce one or a small number of large documents that discourage use through their very size, the emphasis will be on designing guidance that is packaged into modules, tailored for the different types of users (for example, what staff in a finance team need is

not always the same as what staff working in a programme area need), ensuring that the individual parts fit into a broader coherent framework.

Finance will also be applying this approach in the longer term to the redevelopment of its website with design focused on different audiences and the nature of the information they require.

Training and support

A series of training modules will be developed and progressively released in the lead-up to and after 1 July 2014 to support staff in Commonwealth entities to understand the core requirements of the new arrangements. The first of these modules will be made available during March 2014, and will describe the origins of the PGPA Act, discuss its similarities and differences with the FMA and CAC Acts, and provide advice on implementation.

Subsequent training modules will cover specific aspects of the arrangements and will be progressively rolled out over the course of 2014 and beyond.

Design principles for the rules

The following six design principles have been established as a basis for determining whether a rule needs to be developed to support the operation of the PGPA Act.

1. Threshold justification

- A rule is to be made only where the Act specifies the making of a rule, or where it is necessary for administrative reasons to have a rule.
- A rule should not be created if the provision(s) within the Act already provide sufficient direction.
- In all cases it is necessary to assess whether the subject matter cannot be dealt with (or is inappropriate to deal with) through guidance or better practice for legal, accountability, or policy reasons.
- Rules should set principles and, as a general proposition, should be outcome focussed and not prescribe detailed requirements that are better addressed by an entity's internal controls.
- Entities should have the flexibility to adopt appropriate systems and practices to achieve diverse policy and statutory objectives.

2. Make clear the intent of a rule

- The purpose of a rule needs to be explained in non-technical language through a statement of objective in the explanatory statement and/or an introductory guide, as per the construct of the Act.

3. Minimises regulation and red tape

- All rules should be drafted with the objective of keeping to a minimum the level of regulation and red tape, including through a regular review mechanism—the emphasis of the new system is on encouraging prudent behaviour through the duties of accountable authorities and officials, not on overly prescriptive regulatory and compliance requirements.

- Compliance for compliance's sake is contrary to the objectives of the PGPA Act and to be avoided.
 - Where prescriptive provisions are deemed necessary for inclusion, they should be justifiable, clear, be easy to understand, and be able to be applied consistently.
- 4. Recognises and manages risk**
- The content of each rule will be dependent on the risk and consequences of non-compliance, and the nature and complexity of the subject matter.
 - The rules will focus on ensuring an entity's response to any non-compliance is appropriate and balanced, taking into account all the circumstances, including associated risks.
- 5. Avoids repetition and ambiguity**
- A rule should avoid repeating features already included in the Act or best dealt with in entity-level policy and/or guidance/instructions.
- 6. Supports the coherence of the Commonwealth framework**
- Rules will have general application unless there is a clear case for them to apply to one group or type of entity ('Commonwealth as a whole').
 - Some rules may need to be expressed in a form that meets particular legal requirements and circumstances that relate to particular entities.
 - The approach reflected in one rule should not be in conflict with or overlap with another rule or the provisions of the Act.

Consequential and transitional amendments to the PGPA Act and related legislation for 1 July 2014

The operative provisions of the PGPA Act come into effect from 1 July 2014, replacing the FMA Act and the CAC Act. Given the wide-ranging scope of the FMA Act and CAC Act, there are many references to those Acts throughout various other Commonwealth laws. A Bill will therefore need to be introduced into Parliament to align the statute book with the revised financial framework.

Finance, in collaboration with other entities, is developing the *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Bill 2014* (C&T Bill), which will seek to amend more than 260 laws to support the implementation of the PGPA Act.

The proposed amendments will aim to ensure that there is a smooth transition to the PGPA Act. In addition to updating references to the new financial framework, the proposed Bill will simplify enabling legislation in cases where provisions of the PGPA Act cover an issue that is also dealt with in enabling legislation, and include provisions to ensure that an agreed policy position is properly reflected in the interaction of the PGPA Act and the enabling legislation.

The major categories of amendments proposed for inclusion in the C&T Bill are summarised below.

Updates to FMA and CAC Act references

The FMA and CAC Acts are referenced across the statute book, given that they are Acts of broad application. The C&T Bill will update these references to reflect the commencement of the PGPA Act. In general, the amendments will do the following:

- define the 'Finance Minister' as the Minister administering the PGPA Act, rather than the FMA Act or the CAC Act
- replace cross-references to specific provisions in the FMA Act or the CAC Act with the equivalent provision in the PGPA Act. Common references include:
 - notes in the enabling legislation of CAC Act bodies explaining that the CAC Act applies, which will be updated to explain that the PGPA Act applies
 - s 9 of the CAC Act (relating to annual reports), which will be updated to s 46 of the PGPA Act
 - s 18 of the CAC Act (relating to investments), which will be updated to s 59 of the PGPA Act
 - s 28 of the CAC Act (relating to general policies of the Australian Government), which will be updated to s 22 of the PGPA Act
 - s 27J of the CAC Act (relating to directors' restrictions on voting), which will be updated to s 29 of the PGPA Act (and associated rules)
- update the language regarding special accounts established in primary legislation by:
 - specifying that a special account is a special account for the purposes of the PGPA Act, rather than the FMA Act
 - replacing references to s 21 of the FMA Act with references to s 80 of the PGPA Act
 - changing references to 'Special Account' (using upper case as per the FMA Act) to 'special account' (using lower case as per the PGPA Act).

Defining Commonwealth entities in enabling legislation

Finance proposes to insert amendments into bodies' enabling legislation specifying whether the body is a 'Commonwealth entity' for the purposes of the PGPA Act. The amendments would also identify who is the accountable authority for the entity.

Benefits in specifying a body's Commonwealth entity status in primary legislation include the following:

- For a statutory body proposed to be established in future, consideration can be given in the drafting process to the governance framework of the Commonwealth entity. The use of subsidiary legislation to prescribe the governance framework of the entity, as is currently the case, can result in practical difficulties in ensuring that the subsidiary legislation commences at the same time that the body comes into existence under its enabling legislation.
- For a body that is also a 'Statutory Agency' for the purposes of the *Public Service Act 1999* (PS Act), it is desirable to co-locate the relevant employment and financial frameworks in the enabling legislation for ease of reference.

For FMA Act bodies with some but not all of the characteristics of a body corporate, further consideration is being given as to the most appropriate amendments to enabling legislation.

Corporate planning

Corporate planning is addressed inconsistently across enabling legislation, ranging from no planning provisions through to detailed planning documentation that requires ministerial approval.

Finance's preference is to repeal, where possible, planning requirements in enabling legislation, given that the PGPA Act requires planning to be conducted. However, Finance also recognises that existing planning arrangements have often served individual entities well and that change may be unnecessarily disruptive. If an entity, for policy reasons, wishes to maintain its existing arrangements, Finance will seek to bring greater alignment between the PGPA Act and enabling legislation where practicable. Entities should discuss their preferences with Finance and consider how alignment can be improved without major disruption.

Conflicts of interest

Finance proposes to rationalise a number of conflict of interest provisions across enabling legislation through the C&T Bill. In general, enabling legislation requires the person (or persons) performing the role of an accountable authority to disclose their interests to someone else (ordinarily the responsible Minister or Chairperson if there is a Board). These requirements will overlap with the PGPA Act and associated rules relating to disclosure of interests once the PGPA Act commences.

To avoid duplication, it is proposed that the conflict of interest provisions in enabling legislation would be repealed, where possible, and that s 29 of the PGPA Act will be relied on instead for disclosure requirements. Generic disclosure of interest requirements have been a part of the CAC Act for a number of years, so these amendments would generally affect existing FMA Act agencies.

Termination of appointment provisions

Finance proposes to bring greater consistency to termination of appointment provisions. These provisions in enabling legislation generally permit an authority, such as a Minister or the Governor-General, to terminate the appointment of an office holder in certain circumstances or for certain behaviour.

In the case of existing CAC Act bodies, enabling legislation often includes a power to dismiss a director if they fail to comply with the disclosure of material personal interests provisions under the CAC Act. However, under the PGPA Act, a director would be a member of the accountable authority, and s 30 provides for a generic dismissal power for members of accountable authorities that breach the duties of officials in ss 25 to 29, including the duty to disclose material personal interests.² Consequently, there is no need for enabling legislation to continue to allow for dismissal specifically in relation to disclosure of interests—this will already be covered more broadly by s 30 of the PGPA Act. This arrangement would also cover a chief executive who sits on the board of a CAC Act body as a managing director because the chief executive would be a member of the accountable authority.

² Finance proposes to amend s 30 of the PGPA Act to apply the section to all accountable authorities, not just the accountable authorities of corporate Commonwealth entities.

A chief executive of a CAC Act body who is not a director would not normally be part of the body's accountable authority. In that case, s 30 of the PGPA Act will not apply. To ensure that such chief executives can still be dismissed for breaching their duties, Finance proposes to insert a provision in the enabling legislation permitting the chief executive's appointer (usually the board) to dismiss the chief executive for a breach of a duty under ss 25 to 29 of the PGPA Act.

Enabling legislation of existing statutory FMA Act agencies may include a power to dismiss the head of the agency for failing to comply with specific conflict of interest requirements. It is proposed to repeal these specific disclosure requirements (see 'Conflicts of interest' above) and related dismissal provisions. Instead, s 30 of the PGPA Act could be used if an accountable authority breaches the duties of officials under ss 25 to 29, including the duty to disclose material personal interests.

For statutory authorities with termination of appointment provisions in enabling legislation, it is proposed to include a note cross-referencing s 30 of the PGPA Act for readers' assistance.

In summary, termination of appointment provisions in enabling legislation would be simplified and regularised by relying on s 30 of the PGPA Act. This has the added advantage of ensuring that a breach of any general duty by an accountable authority could result in termination.

Appropriations

Finance proposes to repeal a number of provisions in enabling legislation that permit the Finance Minister to give directions about making amounts of appropriations available and the times at which money appropriated to a Commonwealth entity is to be paid.

This class of provisions can be repealed because an equivalent general power has been provided to the Finance Minister through s 51 of the PGPA Act. Maintaining the provisions in enabling legislation would be duplicative.

Annual reports

Finance proposes to simplify annual reporting provisions for non-corporate Commonwealth entities that are not subject to reporting requirements in the PS Act. These entities normally have a separate requirement for an annual report in their enabling legislation. However, s 46 of the PGPA Act requires all Commonwealth entities to prepare an annual report, which makes these separate requirements largely superfluous.

This approach will bring greater consistency to annual reporting requirements. For example, some enabling legislation requires annual reports to include the financial statements and audit report required under the FMA Act, whereas other annual report provisions are silent.

A number of non-corporate Commonwealth entities are required to report on specific matters in their annual reports. These requirements will be retained. However, they will be required in the context of the annual report prepared under s 46 of the PGPA Act. This

approach is consistent with that previously taken for CAC Act bodies, which involved generic annual report requirements in the CAC Act supplemented by specific requirements in enabling legislation.

Spending limits in relation to investments

The enabling legislation of some corporate Commonwealth entities includes provisions limiting the entity from entering into contracts above a certain value unless the entity has the approval of a third party (ordinarily the responsible Minister). However, these provisions often provide an exemption if a contract relates to investment of surplus money of the entity.

Finance proposes to repeal these exemption provisions in enabling legislation because a general exemption for investment contracts exists in s 59 of the PGPA Act.

Exemptions

Generally, Finance is not proposing to remove existing exemptions to either the FMA Act or CAC Act. That is, these exemptions will be carried forward as exemptions under the PGPA Act. However, in a limited number of cases the exemption may no longer be relevant, and Finance will discuss this with the affected entities.

Entity-specific amendments

The enabling legislation of many entities will also need to be amended to address other redundant or inconsistent requirements that become apparent as the C&T Bill is drafted. Entities will be given the opportunity to comment on all amendments relating to their enabling legislation, and Ministerial approval will be required for any amendments.

Timing for development of arrangements

Sections 6 to 112 of the PGPA Act, representing the Act's operational provisions, will come into effect on 1 July 2014. To support these provisions two streams of activity are occurring:

- Parliamentary review of the supporting rules by the JCPAA
- development of the supporting rules and the consequential amendments to related legislation, and replacement or updating of existing policies, guidance and delegations.

Consistent with undertakings to the previous Parliament during the passage of the PGPA Act in May and June 2013, the supporting rules have been subject to public consultation and are to be presented to the JCPAA to review before they are formally presented to Parliament.

Finance will submit the rules proposed for operation from 1 July 2014 to the JCPAA by 5 March 2014. Public hearings will be conducted in late March and early April before a report is prepared by the committee and tabled in Parliament. The recommendations of the committee will be considered by the government before the final form of the rules is determined. The rules will then be presented for the 15-day disallowance period in both Houses of Parliament.

Subject to the timing of the release of the JCPAA report, and Government consideration of the recommendations in the report, it is expected that the rules will be presented to Parliament during the Winter Sittings. This will represent the end of a process that has

involved extensive consultation within government over the development of the rules, as well as each rule being progressively released for public consultation for a minimum of 30 days over the November 2013 to February 2014 period.

The C&T Bill to amend more than 250 pieces of legislation across government has also been the subject of extensive consultation with Commonwealth entities, and will be introduced into Parliament in the Winter Sittings for passage during those sittings. A draft of the Bill will be circulated to entities in late March to confirm that proposed amendments have been properly reflected in the wording of the Bill, and to ensure it reflects positions agreed with entities. Consideration will be given to the JCPAA report on the rules to assess whether any consequential amendments are required, and if so, it is proposed that Government amendments will be introduced for incorporation into the Bill before Parliament.

Any changes to policy, guidance and delegation instruments necessary for 1 July 2014 are being developed by Finance and will be released starting in February 2014 for consultation with Commonwealth entities and other interested stakeholders. Subject to feedback on proposed arrangements, final versions will be released in May 2014.

Training and briefing sessions on all of these arrangements will be progressively rolled out and delivered to Commonwealth entities beginning in February 2014.

Part II: Link between PGPA Act and other elements

This part of the paper describes each provision of the PGPA Act and its interaction with current and proposed arrangements.

The information provided for each provision is based on the hierarchy of elements discussed in Part I of this paper, and it is provided in order to aid understanding of the proposed approach for implementing the provision. The information covers:

- the provision of the PGPA Act
- related provisions in the PGPA Act
- options to amend the PGPA Act
- related provisions in the enabling legislation of entities
- whether a rule will be established to support the provision
- any determinations that will be made by the Finance Minister under the provision
- any delegations that may be made by the Finance Minister (or Finance Secretary or accountable authority of an entity) under the provision
- any Finance Secretary directions
- any other requirements relating to the operation of the provision
- the application of policy to the operation of the provision
- guidance that applies to or needs to be developed to apply to the provision
- the proposed approach to implement the provision and its supporting elements

Chapter 1—Introduction

Part 1-1—Introduction

Sections 1 to 6 provide an introduction to the Act, including its name, when its provisions come into effect, its objects and a guide to how it is structured. There is no connection to other legislative instruments.

Part 1-2—Definitions

| Section 8: | Definitions |
|--|--|
| Related PGPA Act provisions | <ul style="list-style-type: none"> Commonwealth entities (s 10) Types of Commonwealth entities (s 11) Accountable authorities (s 12) Officials (s 13) Rules allowing for modifying the application of the Act (s 104)—allows for modifying of requirements of ‘listed law enforcement agencies’ as defined by s 8. |
| Options to amend the PGPA Act | The definition of ‘listed entity’ could be amended to allow for the listing of Indigenous land councils, which are established under, rather than by, an Act of the Commonwealth. The use of the listing function would allow formal recognition of such entities for the purposes of the PGPA Act as well as providing flexibility in nominating the accountable authorities for the entities. |
| Enabling legislation | Not applicable—s 8 provides definitions of terms that are used in the PGPA Act for the purposes of the Act. |
| PGPA Rule(s) | <p>Section 8 allows for the making of rules in relation to:</p> <ul style="list-style-type: none"> listed law enforcement agencies—to specify entities within this class of entities for use in modifying how parts of the Act are applied to such entities government business enterprises—to specify entities within this category for use in modifying how parts of the Act apply to such entities as well as any additional requirements with which they may need to comply. |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Not applicable |
| Policy | <p>The concept of public money has been replaced with the concept of relevant money in the definitions. Relevant money is money that is held by or in the bank account of a Commonwealth entity.</p> <p>Relevant money as a term underpins a key principle of the PGPA Act, namely that, regardless of the source of the funds, a consistent standard of governance in relation to the handling and management of those funds is expected of all Commonwealth entities and their officials.</p> |

| | |
|--------------------------|--|
| Guidance | The PGPA Act introduces a number of new terms, or applies terms in a different way to that of existing legislation, most notably the FMA Act. Explanation of these differences will be included in guidance to be issued by Finance as part of material on the relevant matter. |
| Proposed approach | <ul style="list-style-type: none">• Amend s 8 to allow for 'listed entity' to include entities created under an Act, such as Indigenous land councils.• Finance to include explanations of new terminology in guidance material to be issued for 1 July 2014. |

Chapter 2—Commonwealth entities and the Commonwealth

Part 2-1—Core provisions for this Chapter

PGPA Act provisions

- Section 9: Guide to this part
- Section 10: Commonwealth entities
- Section 11: Types of Commonwealth entities
- Section 12: Accountable authorities
- Section 13: Officials

This Part of the PGPA Act contains the core provisions and concepts upon which many aspects of the new arrangements are based, by:

- defining what a Commonwealth entity is (s 10) and the types of Commonwealth entities (s 11)
- introducing the concept of accountable authority (s 12)
- defining who is—and who is not—an official of an entity (s 13).

Commonwealth entity

‘Commonwealth entity’ means a Department of State, a Parliamentary Department, a listed entity (which will encompass most prescribed agencies under the FMA Act) or a body corporate established by a law of the Commonwealth. Bodies corporate encompass Commonwealth authorities under the CAC Act as well as the bodies corporate that currently operate under the FMA Act.

The PGPA Act identifies two types of Commonwealth entities: non-corporate (represented by the majority of bodies currently operating under the FMA Act) and corporate (mainly bodies currently operating under the CAC Act, but with some FMA agencies also to be included).

Importantly, Commonwealth companies are not Commonwealth entities for the purposes of the PGPA Act. Commonwealth companies are governed by Chapter 3 of the PGPA Act. This means, for example, that the duties imposed on accountable authorities and officials in Part 2-2 do not apply to Commonwealth companies. Rather, directors and officers of Commonwealth companies are subject to the duties in the *Corporations Act 2001*.

Accountable authority

The term ‘accountable authority’ encompasses both chief executives under the FMA Act and governing bodies under the CAC Act. Importantly, a listed entity or body corporate can have either a single person or a group of persons as its accountable authority. This is more flexible than existing arrangements.

For Departments of State and Parliamentary Departments, the accountable authority will be the Secretary of the Department. For listed entities, the rules will prescribe who the accountable authority is.

Generally, identifying the accountable authority of a corporate Commonwealth entity will be straightforward.

However, in cases where it is unclear, the rules can prescribe the accountable authority.

Official

An official is an individual who is in, or who forms part of, a Commonwealth entity. This definition encompasses officers, directors, members (such as members of a commission), employees and statutory office holders. It also includes members of a governing board. Subparagraph 13(3)(a)(i) clarifies that a member of an accountable authority is an official.

Ministers are not officials for the purposes of the Act. Nevertheless, some provisions in the Act apply to Ministers when they are performing certain functions, such as approving proposed expenditure of public resources (s 71).

Judges are excluded and will not be subject to the requirements in the PGPA Act. Nor is the PGPA Act intended to apply to registrars performing judicial functions. They can be excluded through the rules in accordance with subparagraph 13(3)(b)(iv). Similarly, the rules can be used to modify certain requirements (for example, keeping Ministers informed about the activities of the entity, and preparing corporate plans) to ensure that they do not impinge on judicial and similar activities of courts and tribunals. Modifications will also apply to other statutory entities as appropriate.

As in the case of accountable authorities, the rules allow, in cases where it is unclear who is a member of an entity, listing of membership. This arrangement was chosen to ensure that current complexities of the 'outsiders' provisions of the FMA Act did not continue. In particular, it removes the ambiguity surrounding contractors. Under the PGPA Act and Rules, contractors are managed through effective management of contracts rather than being unintentionally caught up in unnecessary prescription.

| | |
|--|---|
| Section 10: | Commonwealth entities |
| Related PGPA Act provisions | <ul style="list-style-type: none"> Accountable authorities (s 12) and officials (s 13) of an entity Establishing new corporate Commonwealth entities (s 87) |
| Options to amend the PGPA Act | No changes are proposed to this section of the PGPA Act, although changes could be made to the definition of 'listed entity' in s 8 to include entities established under an Act, to ensure s 8 and s 10 are aligned. |
| Enabling legislation | <p>For removal of doubt, enabling legislation for former CAC Act bodies will include a note specifying that the entities are covered by the PGPA Act.</p> <p>A number of entities covered by the FMA Act also have features of a body corporate. Finance is consulting with those entities on a case-by-case basis in considering whether to recommend that they be non-corporate or corporate entities under the PGPA Act.</p> |
| PGPA Rule(s) | <p>The current 67 prescribed agencies that also fall under the category of 'Statutory Agency' under the Public Service Act will be listed either under a rule or by amending their enabling legislation, as appropriate, to ensure coverage by the PGPA Act.</p> <p>Executive agencies and the small number of other prescribed entities currently included in Schedule 1 of the FMA Regulations will be listed in a rule since they would not otherwise have separate identities for the purposes of the PGPA Act.</p> |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | The Australian National Audit Office (ANAO) uses the current FMA and CAC Acts to distinguish between entities that are audited within the resources provided by Parliament (FMA Act agencies) and entities that are charged a fee for the cost of the audit work (CAC Act bodies). Those arrangements will be amended to broadly provide that non-corporate Commonwealth entities will not be charged and corporate Commonwealth entities will be. |

| | |
|------------------------|--|
| <p>Policy</p> | <p>Finance is developing a governance policy framework for 1 July 2014 in consultation with stakeholders as part of establishing an improved approach to the creation, governance and abolition of Commonwealth entities, including the form those entities may take, and the governance structures they adopt.</p> <p>Section 87 of the Act provides for a simpler pathway to the creation of fit-for-purpose entities in particular circumstances. While a draft rule has been developed to operationalise this provision, feedback from consultation indicates that a simpler model is required. Work on this will be progressed in the second half of 2014, once the policy has been settled.</p> |
| <p>Guidance</p> | <p><u>General governance arrangements</u></p> <p>The current <i>Governance Arrangements for Australian Government Bodies</i> guidance will be replaced by guidance that supports the revised legislative and policy arrangements.</p> <p>Draft guidance will be available for review in March, and the final version is expected to be available in May/June 2014. The document will be subject to ongoing review as the revised governance policy is implemented.</p> <p><u>Governance relationships</u></p> <p>The publication titled <i>List of Australian Government Bodies and Governance Relationships</i> needs to be reviewed and updated. The document gives a comprehensive description of the wide-ranging structures, committees and arrangements across the field of Commonwealth Government activity. The most recent edition was released in October 2009 and, at 666 pages, required intensive effort by Finance and entities over an extended period of time to produce.</p> <p>Given the importance of maintaining information for the Commonwealth Government and the Parliament on the governance structures and relationships involved in the use of public resources, a simpler approach is required.</p> <p>Finance will consult with stakeholders on options for how this document can be refreshed and maintained as an aid to understanding the range of governance arrangements operating across government.</p> <p><u>Listing entities</u></p> <p>Existing guidelines and publications that will be updated or replaced for 1 July 2014 include Finance Circular 2003/01: <i>Prescribing agencies under the FMA Act</i>, and the 'Flipchart—</p> |

| | |
|--------------------------|---|
| | List of bodies under the FMA and CAC Acts', which will be presented in a format recognising non-corporate and corporate Commonwealth entities. Both publications will be released in updated (draft) form in March and the final versions will be released in May 2014. |
| Proposed approach | <ul style="list-style-type: none"> • Finance to release a new policy on governance arrangements, supported by a replacement of the guidance in the current <i>Governance Arrangements for Australian Government Bodies</i>. • Finance to consult with entities on options to maintain the <i>List of Australian Government Bodies and Governance Relationships</i> in a form that enables it to be readily updated, such as on a website that departments can check and ensure is accurate. • <i>Auditor-General Act 1997</i> to be amended to reflect new basis for charging entities for audit services. |

| | |
|--|---|
| Section 11: | Types of Commonwealth entities |
| Related PGPA Act provisions | <ul style="list-style-type: none"> Commonwealth entities (s 10), accountable authorities (s 12) and officials (s 13) of an entity Establishing new corporate Commonwealth entities (s 87) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | <p>An entity may be established by or under separate legislation or under the Corporations Act.</p> <p>For removal of doubt, enabling legislation for former CAC Act bodies will include a note specifying that the entities are covered by the PGPA Act.</p> <p>A number of entities covered by the FMA Act also have features of a body corporate. Finance is consulting with those entities on a case-by-case basis in considering whether to recommend that they be non-corporate or corporate entities under the PGPA Act.</p> |
| PGPA Rule(s) | Not applicable |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Not applicable |
| Policy | <p>Greater consideration needs to be given to the treatment of entities with inter-jurisdictional activities and characteristics and how they meet their accountability obligations to the Commonwealth.</p> <p>This work should proceed in consultation with the Department of the Prime Minister and Cabinet (PM&C) and other key stakeholders including the Auditor-General.</p> |
| Guidance | <p><u>General governance arrangements</u></p> <p>The current <i>Governance Arrangements for Australian Government Bodies</i> guidance will be replaced by guidance that supports the revised legislative and policy arrangements.</p> <p>Draft guidance will be available for review in March, and the final version is expected to be available in May/June 2014. The document will be subject to ongoing review as the revised governance policy is implemented.</p> |

| | |
|---------------------------------|---|
| | <p><u>Governance relationships</u></p> <p>The publication titled <i>List of Australian Government Bodies and Governance Relationships</i> needs to be reviewed and updated. The document gives a comprehensive description of the wide-ranging structures, committees and arrangements across the field of Commonwealth Government activity. The most recent edition was released in October 2009 and, at 666 pages, required intensive effort by Finance and entities over an extended period of time to produce.</p> <p>Given the importance of maintaining information for the Commonwealth Government and the Parliament on the governance structures and relationships involved in the use of public resources, a simpler approach is required.</p> <p>Finance will consult with stakeholders on options for how this document can be refreshed and maintained as an aid to understanding the range of governance arrangements operating across government.</p> <p><u>Listing entities</u></p> <p>Existing guidelines and publications that will be updated or replaced for 1 July 2014 include Finance Circular 2003/01: <i>Prescribing agencies under the FMA Act</i>, and the 'Flipchart—List of bodies under the FMA and CAC Acts', which will be presented in a format recognising non-corporate and corporate Commonwealth entities. Both publications will be released in updated (draft) form in March, and the final versions will be released in May 2014.</p> |
| <p>Proposed approach</p> | <ul style="list-style-type: none"> • Finance to release a new policy on governance arrangements, supported by a replacement of the guidance in the current <i>Governance Arrangements for Australian Government Bodies</i>. • Finance to consult with entities on options to maintain the <i>List of Australian Government Bodies and Governance Relationships</i> in a form that enables it to be readily updated, such as on a website that departments can check and ensure is accurate. |

| | |
|--|---|
| Section 12: | Accountable authorities |
| Related PGPA Act provisions | <ul style="list-style-type: none"> • Commonwealth entities (s 10) • Officials (s 13) of an entity • Establishing new corporate Commonwealth entities (s 87) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | Entities with enabling legislation will need to have the legislation amended to identify the accountable authority in either a specific provision or a note. |
| PGPA Rule(s) | <p>Consistent with current arrangements for Schedule 1 of the FMA Regulations, the accountable authorities of listed entities will be identified in a rule.</p> <p>The current 67 prescribed agencies that also fall under the category of 'Statutory Agency' under the Public Service Act will be listed either under a rule or by amending their enabling legislation, as appropriate, to ensure coverage by the PGPA Act.</p> <p>Executive agencies and the small number of other prescribed entities currently included in Schedule 1 of the FMA Regulations will be listed in a rule since they would not otherwise have separate identities for the purposes of the PGPA Act.</p> |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Not applicable |
| Policy | Finance is developing a governance policy framework for 1 July 2014 in consultation with stakeholders as part of establishing an improved approach to the creation, governance and abolition of Commonwealth entities, including the form those entities may take and the governance structures they adopt. |
| Guidance | Finance Circular 2003/01: <i>Prescribing agencies under the FMA Act</i> will be replaced with guidance explaining how listing arrangements for accountable authorities (and entities and officials) will operate. A draft will be released in March and a final version will be released in May 2014. |

| | |
|--------------------------|--|
| | Issues relating to accountable authorities will be addressed in the replacement for the <i>Governance Arrangements for Australian Government Bodies</i> which will reflect revised legislative and policy arrangements from 1 July 2014. |
| Proposed approach | Finance to review policy and guidance with the aim of introducing more coherent governance arrangements. |

| | |
|--|---|
| Section 13: | Officials |
| Related PGPA Act provisions | <ul style="list-style-type: none"> • Commonwealth entities (s 10) • Accountable authorities (s 12) of an entity • Establishing new corporate Commonwealth entities (s 87) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | <p>An entity may be established by or under separate legislation or under the Corporations Act.</p> <p>The separate legislation may identify the persons who form part of the entity for the purposes of that Act, but they may differ from the group of persons identified for the purposes of the FMA Act or CAC Act at present or the PGPA Act in the future.</p> <p>The Courts are an example of this situation, where judges are the focus of the enabling legislation but the Registrar and administrative staff of the Court are covered by the FMA Act.</p> |
| PGPA Rule(s) | <p>The majority of officials in Commonwealth entities are readily identifiable as members of the entity. For example, persons employed under the Public Service Act are officials for the purposes of the PGPA Act and it can usually be determined for which entity they are officials.</p> <p>A rule will cover those cases where the membership of an entity is not apparent, or where it is unclear to which entity they belong. This will be accomplished in similar fashion to current arrangements for Schedule 1 of the FMA Regulations by listing classes of persons and offices that are (or are not) members of the relevant entity.</p> |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Not applicable |
| Policy | <p>The policy implications arising from this provision differ for those entities currently operating under the FMA and CAC Acts.</p> <p><u>FMA Act</u> The design of the PGPA Act aims to remove the difficulties</p> |

| | |
|--------------------------|--|
| | <p>that had arisen under the FMA Act in relation to ‘outsiders’ as described in s 12 of that Act.</p> <p>That provision had extended the concept of officials to parties engaged as contractors and those engaged in the administration of contracts and imposed a significant regulatory burden on those arrangements.</p> <p>Under s 13 of the PGPA Act, contractors and consultants are not classified as officials unless they are specifically fulfilling the duties and functions of officials.</p> <p>Obligations will be limited in the majority of cases to meeting contractual obligations, simplifying arrangements and reducing overheads on contract administration.</p> <p><u>CAC Act</u></p> <p>The CAC Act recognises three classes of person: directors, senior officers and employees. The PGPA Act removes this distinction and treats all officers, employees and members of an entity as officials.</p> <p>Section 25 of the PGPA Act imposes a duty of care and diligence on all officials, and the level of this duty is proportionate to the position occupied within the entity.</p> <p>Officials who are accountable authorities or members of accountable authorities have additional duties in relation to governing the entity, recognising the additional capacity of such persons to influence the activities of the entity and its use of resources.</p> |
| Guidance | <p>Existing guidance will be updated by Finance and other relevant parties before 1 July 2014 to take account of the passage of the PGPA Act and of any changes in policy or in entity structure and governance models.</p> <p>The guidance will include improved advice on the status of advisory boards, committees and parties who, while not part of an entity, contribute to its operations.</p> |
| Proposed approach | <p>Finance to review and update relevant policy and related guidance prior to 1 July 2014 with the aim of explaining to entities and other stakeholders who is and who is not a member of an entity and what this means in terms of discharging their obligations.</p> |

Part 2-2—Accountable authorities and officials

PGPA Act provisions

- Section 14: Guide to this part
- Section 15: Duty to govern the Commonwealth entity
- Section 16: Duty to establish and maintain systems relating to risk and control
- Section 17: Duty to encourage cooperation with others
- Section 18: Duty in relation to requirements imposed on others
- Section 19: Duty to keep responsible Minister and Finance Minister informed
- Section 20: Rules about general duties of accountable authorities
- Section 21: Application of government policy—non-corporate Commonwealth entities
- Section 22: Application of government policy—corporate Commonwealth entities
- Section 23: Power in relation to arrangements—non-corporate Commonwealth entities
- Section 24: Power to establish advisory boards—non-corporate Commonwealth entities
- Section 25: Duty of care and diligence
- Section 26: Duty to act in good faith and for a proper purpose
- Section 27: Duty in relation to use of position
- Section 28: Duty in relation to use of information
- Section 29: Duty to disclose interests
- Section 30: Termination of appointment for contravening general duties of officials
- Section 31: Interaction between Subdivision A (general duties of officials) and other laws
- Section 32: Officials to whom the Public Service Act or Parliamentary Service Act applies

The governance and funding arrangements of a Commonwealth entity do not change the public nature of the resources entrusted to their care. Regardless of whether resources are provided by the Parliament, generated by commercial operations or cost-recovered activities, or provided through donations and bequests, those resources have been entrusted to the custody of a Commonwealth entity.

The PGPA Act includes a uniform set of duties relating to Commonwealth entities. Some duties apply to *accountable authorities* because they govern and set the overall strategic direction of their entities. Other duties apply to *officials*, including the person or persons who comprise the accountable authority of a Commonwealth entity, reflecting the obligations of officials to act responsibly in carrying out their duties, including in relation to public resources.

The duties of officials are based on the fiduciary duties in the Corporations Act. Aligning duties in this way promotes consistency across the public, private and not-for-profit sectors. It may also help directors who serve in multiple sectors to be clearer about their responsibilities and obligations.

A number of the duties imposed on officials also align with requirements under the Code of Conduct set out in the Public Service Act. The duties in the PGPA Act sit alongside the Public Service Act duties, so a breach of the general duties in the PGPA Act can be the basis of action under the Public Service Act, including termination of employment.

| | |
|--|---|
| | General duties of an accountable authority |
| Section 15: Section 16: Section 17: Section 18: Section 19: Section 20: | <ul style="list-style-type: none"> • Duty to govern the Commonwealth entity • Duty to establish and maintain systems relating to risk and control • Duty to encourage cooperation with others • Duty in relation to requirements imposed on others • Duty to keep responsible Minister and Finance Minister informed • Rules about general duties of accountable authorities |
| Related PGPA Act provisions | <ul style="list-style-type: none"> • Officials (s 13) • Non-corporate and corporate Commonwealth entities, in relation to the application of government policy in discharging duties (ss 21 and 22) • Power to enter into arrangements for accountable authorities of non-corporate Commonwealth entities only (s 23) (see below for proposed revisions) • General duties of officials (ss 25 to 32) • Rules relating to the Commonwealth and Commonwealth entities in relation to resource management and accountability for resource management (ss 102(a) and 102(b)) |
| Options to amend the PGPA Act | <p>Section 23 gives the accountable authority of a non-corporate Commonwealth entity a power to enter into arrangements.</p> <p>It is proposed to broaden the scope of this provision to confirm the power of accountable authorities across all types of entity structures to make spending decisions as part of the general power to govern an entity consistent with duties under s 15 of the PGPA Act.</p> <p>It is also proposed to introduce a new provision (indicative s 23A), based on s 52 of the FMA Act, to confirm the power of accountable authorities across all types of entity structures to issue instructions to the members of the entity in relation to resource management and governance matters as part of the general power to govern an entity consistent with duties under s 15 of the PGPA Act.</p> |
| Enabling legislation | <p>A number of pieces of enabling legislation impose duties and functions on the chief executive or board of an entity. For example, s 57 of the Public Service Act (responsibilities of Secretaries) and s 8 of the Auditor-General Act (independence) indicate expectations and/or impose obligations in relation to how the roles are performed.</p> <p>If a review of legislation identifies potential overlaps with the general duties under the PGPA Act, Finance will work</p> |

| | |
|--|---|
| | with the relevant entity to ensure that no inconsistencies exist, including by proposing amendments to the enabling legislation in such a way as to not compromise the purposes of the entity or the statutory obligations of office holders. This may be achieved through the addition of notes to cross-reference the PGPA Act. |
| PGPA Rule(s) | <p>No rules are proposed under these provisions at this time. If a rule is considered and found necessary, it is more likely to be implemented using s 102 of the Act, for more general application beyond accountable authorities.</p> <p>A rule in relation to fraud will be issued under s 102 of the Act, but it will focus on the obligations of an accountable authority through s 16 of the Act to establish and maintain systems relating to risk and control.</p> <p>The rule will focus on the accountable authority taking all reasonable measures to prevent, detect and deal with fraud in the entity. The rule will replace FMA Regulation 16A for FMA Act bodies and a general policy order issued for CAC Act bodies in 2002.</p> |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Not applicable |
| Policy | The introduction of a fraud control rule will be complemented by the development of a whole-of-government approach to risk management to be articulated in a risk management policy to be issued by Finance for 1 July 2014. |
| Guidance | <p>Guidance on the duties of accountable authorities was issued in draft form in February 2014 and will be finalised to assist accountable authorities in meeting their core obligations from 1 July 2014.</p> <p>A template is being developed for internal control arrangements, similar in approach to the Model Chief Executive's Instructions provided to FMA Act bodies.</p> <p>Use of the template will not be mandatory, but entities may wish to adopt it or base their own internal control arrangements on it as a way of helping to ensure PGPA Act obligations have been addressed.</p> |

| | |
|--------------------------|---|
| Proposed approach | Guidance is to be developed and circulated ahead of the implementation date of 1 July 2014 to assist accountable authorities in meeting their core obligations. This will include model arrangements and templates to assist accountable authorities in assessing the balance to be set between risk and control of their operations. |
|--------------------------|---|

| | |
|--|--|
| | Application of government policy |
| Section 21: Section 22: | <ul style="list-style-type: none"> • Non-corporate Commonwealth entities • Corporate Commonwealth entities |
| Related PGPA Act provisions | Duty to govern a Commonwealth entity (s 15) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | Enabling legislation may include the ability for a responsible Minister to issue directions in relation to the operations of the entity and (as a consequence) the application of government policy. |
| PGPA Rule(s) | Not applicable |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Not applicable |
| Policy | <p><u>Non-corporate Commonwealth entities</u></p> <p>The requirement for an accountable authority to govern the entity in a way that promotes the proper use of resources is reflected in s 15 and represents a continuation of the existing policy approach. For a non-corporate entity governing the entity in relation to the proper use of resources, s 21 dictates that this cannot be done in a manner inconsistent with the policies of the Australian Government.</p> <p>The application of government policy to the financial framework causes confusion. Greater clarity is required in terms of which policies are applicable, and to which entities and officials.</p> <p>Procurement-related policies need to be reviewed. They impose red tape and represent an area where streamlining is warranted given the growth in the number of requirements imposed on entities over time.</p> <p>More broadly and consistent with the Government's red tape reduction agenda, policies incidental to, but linked with, the financial framework should be subject to ongoing review to assess their appropriateness and the benefits they bring to the financial framework and the activities of entities.</p> |

| | |
|--------------------------|---|
| | <p><u>Corporate Commonwealth entities</u></p> <p>The introduction of the PGPA Act will result in the cessation of any general policy orders released during the operation of the CAC Act. Policy orders are legislative instruments that extend the coverage of such a policy to CAC Act bodies (as without such a requirement they are under no obligation to comply).</p> <p>General policy orders under the CAC Act will be replaced by Government policy orders under the PGPA Act. Finance is seeking advice from departments on behalf of their portfolios about any existing policies that have a basis for continuing to apply to some or all corporate Commonwealth entities in the future.</p> <p>As with existing arrangements, any decision to impose government policy orders from 1 July 2014 will be made in consultation with entities that are likely to be affected.</p> <p>Any government policy orders issued under the PGPA Act by the Finance Minister will be legislative instruments and will be posted on the Finance website to help ensure appropriate and consistent disclosure of requirements and the entities to which they apply.</p> |
| Guidance | <p>Existing guidance on the application of government policy is presented in Finance Circular 2009/08: <i>Application of general policies to CAC bodies—General Policy Orders</i>. The guidance will be updated for 1 July 2014.</p> |
| Proposed approach | <ul style="list-style-type: none"> • Finance to liaise with the owners of existing government policy orders to assess ongoing requirements and justifications. • Discussions on potential new government policy orders to be conducted on the basis that additional compliance requirements need to be properly justified in value-added terms. • Red tape reduction efforts to be broadened to better understand both actual and perceived regulatory constraints imposed on the financial framework through the application of policies and their source. |

| | |
|--|---|
| Section 23: | Power in relation to arrangements (non-corporate Commonwealth entities) |
| Related PGPA Act provisions | <ul style="list-style-type: none"> • Commitment and expenditure of relevant money (s 52) • Borrowing (ss 56 to 57) • Investments (ss 58 to 59) • Indemnities (ss 60 to 61) |
| Options to amend the PGPA Act | Section 23 of the PGPA Act will need to be amended to broaden its scope to cover the authority to spend in addition to the authority to enter into arrangements. The amendment is needed to make explicit the ability of accountable authorities in certain non-corporate Commonwealth entities to make spending decisions. |
| Enabling legislation | This provision relates only to non-corporate Commonwealth entities. Corporate Commonwealth entities have the ability to enter into arrangements and spend money through their enabling legislation and body corporate status. |
| PGPA Rule(s) | Not applicable—a rule will be made under s 52 in relation to commitments of relevant money. |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | The power in relation to entering into arrangements, including commitments of expenditure will be delegated by the accountable authority to the officials of the Commonwealth entity. |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Not applicable |
| Policy | <p>Accountable authorities of non-corporate Commonwealth entities are required under s 21 to comply with s 23 in a manner not inconsistent with Commonwealth policies.</p> <p>Entities currently covered by the Commonwealth procurement and grant rules will continue to be covered in the same way after 1 July 2014. These rules will be reissued under the PGPA Act.</p> |
| Guidance | <p>Guidance has been developed on commitments to spend relevant money, which includes guidance on entering into arrangements. This largely replaces the information in Finance Circular 2011/01: <i>Commitments to spend public money (FMA Regulations 7 to 12)</i>.</p> <p>The Model Resource Management Instructions (based on the Model Chief Executive's Instructions used by FMA Act agencies and better practice features in internal control</p> |

| | |
|--------------------------|--|
| | <p>arrangements for CAC Act bodies) will be available as a template that entities may adopt or use as practical guidance in determining their own internal control arrangements.</p> <p>Drafts of both documents will be available in March 2014 for review by Commonwealth entities and other interested stakeholders. Final versions will be released in May 2014 taking into account feedback.</p> |
| Proposed approach | <p>Arrangements to provide legislative authority for certain spending have been made through amendments to the FMA Act and associated Regulations. These arrangements are reflected in s 32B to the FMA Act and regulation 16 and Schedules 1AA and 1AB to the FMA Regulations.</p> <p>The Government will continue to rely on these amended FMA Act and FMA Regulations to ensure appropriate legislative authority is provided for spending activities. Therefore, these provisions will be retained (along with FMA Act s 39B) when the other provisions of the FMA Act are repealed and/or transitioned.</p> |

| | |
|--|--|
| Section 23A (proposed): | Power to issue instructions (non-corporate Commonwealth entities) |
| Related PGPA Act provisions | <ul style="list-style-type: none"> • Duties of accountable authorities (ss 15 to 19) • General duties of officials (ss 25 to 29) |
| Options to amend the PGPA Act | While the majority of accountable authorities of non-corporate Commonwealth entities can draw on explicit legislative authority for the issuing of instructions in relation to governing and the use of resources, there are some prescribed entities for which the basis for doing so will be less clear as they move to the PGPA Act. The PGPA Act will need to be amended to provide certainty of legislative authority. |
| Enabling legislation | Enabling legislation for corporate Commonwealth entities includes specific provisions giving explicit authority to the Chief Executive or Board in relation to governing the entity, which would provide authority for the issuing of instructions covering the operation of the entity. |
| PGPA Rule(s) | Not applicable |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Not applicable |
| Policy | No changes in policy are proposed. Legislative amendments are intended to provide certainty that the existing power to issue instructions can continue for all entities as they move to coverage by the PGPA Act. |
| Guidance | The Model Resource Management Instructions (based on the Model Chief Executive's Instructions used by FMA Act agencies and better practice features in internal control arrangements for CAC Act bodies) will be available as a template that entities may adopt or use as practical guidance in determining their own internal control arrangements. A draft will be released in March for review by Commonwealth entities and other interested stakeholders, and a final version will released in May 2014 taking into account feedback. |

| | |
|--------------------------|---|
| Proposed approach | The PGPA Act will be amended to explicitly provide an accountable authority of a non-corporate Commonwealth entity with the ability to issue instructions, in a similar fashion to s 52 of the FMA Act. Accountable authorities may use the Model Resource Management Instructions to be issued by Finance as a basis for determining the level of instructions required. |
|--------------------------|---|

| | |
|--|--|
| Section 24: | Power to establish advisory boards |
| Related PGPA Act provisions | Not applicable |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | Not applicable |
| PGPA Rule(s) | Not applicable |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Not applicable |
| Policy | This section was included in the Act to provide authority for non-corporate Commonwealth entities to set up and use advisory boards when they require access to general or particular advice and expertise. |
| Guidance | Finance will develop guidance on the use of advisory boards in consultation with stakeholders during the course of 2014–15, taking into account policy and guidance developed in relation to governance arrangements (ss 10 to 13) and the duties of accountable authorities (ss 15 to 19), and how they may be applied to support more effective decision-making and governance arrangements within entities. |
| Proposed approach | Finance to develop guidance taking into account other changes to governance arrangements. |

| | |
|--|--|
| | General duties of officials |
| Section 25: Section 26: Section 27: Section 28: Section 29: | <ul style="list-style-type: none"> • Duty of care and diligence • Duty to act in good faith and for a proper purpose • Duty in relation to use of position • Duty in relation to use of information • Duty to disclose interests |
| Related PGPA Act provisions | <ul style="list-style-type: none"> • Accountable authorities (s 12) • General duties of accountable authorities (ss 15 to 19) |
| Options to amend the PGPA Act | No changes are proposed to these sections of the Act. |
| Enabling legislation | <p>A number of pieces of enabling legislation impose duties and functions on members of an entity; as does general legislation like the Public Service Act, the Parliamentary Service Act, the <i>Defence Act 1903</i> and the <i>Australian Federal Police Act 1979</i>.</p> <p>If a review of legislation identifies potential overlaps with the general duties under the PGPA Act, Finance will work with the relevant entity to help ensure no inconsistencies exist, including amending the enabling legislation in such a way as to not compromise the purposes of the entity. This may be done through the addition of notes to cross-reference the PGPA Act.</p> |
| PGPA Rule(s) | <p>The PGPA rules contain requirements in relation to disclosure of interest</p> <ul style="list-style-type: none"> • exemptions • mechanisms • consequences. <p>Complying with duties will also require general observance of the rules relevant to the entity.</p> |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | The interaction of these provisions and employment frameworks will need to be the subject of ongoing review. |
| Policy | No specific policies or guidance currently exists in relation to the general duties of officials (with the exception of the role of a Chief Finance Officer), although implicit assumptions in relation to the proper use of resources and the exercising of |

| | |
|--------------------------|--|
| | <p>care and diligence underpin a range of Finance Circulars, instructions and directions on governance and resource management matters.</p> <p>Officials of non-corporate Commonwealth entities are required under s 21 of the PGPA Act to comply with the provisions of the Act in a manner not inconsistent with Commonwealth policies.</p> <p>Officials of corporate Commonwealth entities are required to have regard to Commonwealth policies to the extent they are required to do so by a government policy order issued under s 22 of the Act or through other legislative directions.</p> |
| Guidance | <p>Finance has prepared guidance on the duties of accountable authorities and officials that will be released in draft form in March 2014, including to the JCPAA. The final form of the guidance will be released in May 2014 taking into account the views of stakeholders.</p> <p>The final guidance may include advice on systems and structures that could support the effective meeting of obligations by individual officials, drawing on better practice in the public and private sectors.</p> |
| Proposed approach | <p>Finance will develop guidance for 1 July 2014. In addition, to assist officials in meeting their core obligations, a training and awareness strategy is being developed to address the needs of different audiences within and outside Commonwealth entities.</p> |

| | |
|--|--|
| Section 30: | Termination of appointment (of members of accountable authorities) for contravening general duties of officials |
| Related PGPA Act provisions | General duties of officials (ss 25 to 29) |
| Options to amend the PGPA Act | <p>Section 30 is to be amended to be extended to cover all Commonwealth entities rather than just corporate Commonwealth entities.</p> <p>A breach of the duties in ss 25 to 29 would be cause for consideration of the accountable authority member's behaviour in relation to the relevant employment framework regardless of the type of entity involved.</p> |
| Enabling legislation | <p>This provision relates to members of accountable authorities who may also be covered by similar provisions in enabling legislation.</p> <p>It is proposed that this duplication be addressed by removing provisions from the enabling legislation where appropriate and relying on s 30 of the PGPA Act as the general scheme, with a note in enabling legislation that refers to the PGPA Act provision.</p> <p>However, it is recognised that a specific exemption may apply in particular cases for public policy and accountability reasons (for example, ex officio members on Boards, or parliamentary representatives on the Board of the National Library).</p> <p>A number of entities have legislation that can operate in conjunction with this provision and that will only require minor amendment to update references.</p> |
| PGPA Rule(s) | Failure of an accountable authority, or a member of an accountable authority, to comply with the rule under s 29 (duty to disclose interests) would represent grounds, depending on circumstances, to initiate action under s 30. |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Not applicable |
| Policy | Finance will work with key stakeholders, including the Australian Public Service Commission (APSC), to develop or supplement policy frameworks in relation to the matters covered by s 30. |

| | |
|--------------------------|---|
| Guidance | Finance has prepared guidance on the duties of accountable authorities and officials that will be released in draft form in March 2014, including to the JCPAA. The final form of the guidance will be released in May 2014 taking into account the views of stakeholders. |
| Proposed approach | <p>Finance will develop guidance for 1 July 2014. In addition, to assist officials in meeting their core obligations, a training and awareness strategy is being developed to address the needs of different audiences within and outside Commonwealth entities.</p> <p>The interaction of this provision with appointment arrangements and employment frameworks will need to be the subject of ongoing review, including with the APSC.</p> |

| | |
|--|--|
| Section 31: | Interaction between Subdivision A (general duties of officials) and other laws |
| Related PGPA Act provisions | General duties of officials (ss 25 to 29) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | Not applicable |
| PGPA Rule(s) | Not applicable |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Not applicable |
| Policy | This provision mirrors ss 27A, 27B and 27H of the CAC Act and represents a continuation of existing policy. |
| Guidance | Finance has prepared guidance on the duties of accountable authorities and officials that will be released in draft form in March 2014, including to the JCPAA. The final form of the guidance will be released in May 2014 taking into account the views of stakeholders. |
| Proposed approach | Explain the continuation of existing arrangements within an overall training and awareness strategy for Commonwealth entities and other stakeholders. |

| | |
|--|--|
| Section 32: | Officials to whom the Public Service Act or Parliamentary Service Act applies |
| Related PGPA Act provisions | Not applicable |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | Not applicable |
| PGPA Rule(s) | Not applicable |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Not applicable |
| Policy | No changes in policy are proposed. |
| Guidance | Finance has prepared guidance on the duties of accountable authorities and officials that will be released in draft form in March 2014, including to the JCPAA. The final form of the guidance will be released in May 2014 taking into account the views of stakeholders. |
| Proposed approach | Work with the APSC and within Finance to help ensure that overall training and awareness for Public Service Act and Parliamentary Service Act employees draws the link clearly to the PGPA Act. |

Part 2-3—Planning, performance and accountability

PGPA Act provisions

- Section 33: Guide to this Part
- Section 34: Key priorities and objectives of the Australian Government
- Section 35: Corporate plan for Commonwealth entities
- Section 36: Budget estimates for Commonwealth entities
- Section 37: Records about performance of Commonwealth entities
- Section 38: Measuring and assessing performance of Commonwealth entities
- Section 39: Annual performance statements for Commonwealth entities
- Section 40: Audit of annual performance statements for Commonwealth entities
- Section 41: Accounts and records for Commonwealth entities
- Section 42: Annual financial statements for Commonwealth entities
- Section 43: Audit of annual financial statements for Commonwealth entities
- Section 44: Audit of subsidiary's financial statements
- Section 45: Audit committee for Commonwealth entities
- Section 46: Annual report for Commonwealth entities
- Section 47: Monthly financial reports (whole of government)
- Section 48: Annual consolidated financial statements (whole of government)
- Section 49: Audit of annual consolidated financial statements (whole of government)

Part 2-3 of the PGPA Act focuses on one of the key areas of a Commonwealth entity's obligations, namely, to articulate how the purposes of the entity are to be progressed or achieved on behalf of the public and then to explain how those plans have been or continue to be implemented. This Part covers:

- planning the activities of an entity and estimating the level of resources to be deployed towards those activities (ss 34 to 36)
- measuring and assessing performance (ss 37 to 41)
- reporting on performance at the entity (ss 42 to 44 and s 46) and whole-of-government levels (ss 47 to 49).

Section 45 deals with audit committees, which are a key element of the control framework that accountable authorities should put in place to recognise and manage the risks associated with the resource cycle (planning, allocating, using and managing resources, and reporting and evaluating performance).

The sections in this Part can be read separately, but for a broader understanding of their operation they should be considered together. The introduction of the PGPA Act is intended to emphasise that measuring performance requires more than a financial focus. Public resources are allocated for a purpose and the recipients of those resources are obliged to report on how—and how well—the resources have been applied.

Performance planning and reporting cycle

Under the current framework, the information that is most readily available from Commonwealth entities and Commonwealth companies is financial in nature. But financial information, by itself, does not show whether publicly funded programmes and activities

are achieving their objectives and outcomes. Measuring performance in the public sector also requires adequate and relevant non-financial information.

The PGPA Act addresses the current imbalance between financial and non-financial performance information by placing obligations on officials for the quality and reliability of performance information. The benefits of this approach include:

- fostering a strong focus on performance management and reporting
- achieving a clear line of sight between the information in appropriation Bills, corporate plans, Portfolio Budget Statements and annual reports. Entities will need to define, structure and explain their purposes and achievements to create a clear read across these documents.

To support officials, Finance will play a stronger role in encouraging a more systematic approach to performance monitoring and evaluation. It is hoped that as performance information improves, so too will the value it can bring to strategic policy deliberations.

| | |
|--|---|
| Section 34: | Key priorities and objectives of the Australian Government |
| Related PGPA Act provisions | <ul style="list-style-type: none"> • Application of government policy: <ul style="list-style-type: none"> ○ non-corporate Commonwealth entities (s 21) ○ corporate Commonwealth entities (s 22) • Corporate plan for Commonwealth entities (s 35) • Annual performance statements (s39) • Annual report for Commonwealth entities (s 46) • Corporate plan for Commonwealth companies (s 95) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | The enabling legislation of a number of entities include restrictions on the level of Government direction that can occur and the matters for which these restrictions exist. These provisions need to be taken into account by entities in considering the extent to which they comply with sections 34 and 35 of the PGPA Act. |
| PGPA Rule(s) | Not applicable |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Not applicable |
| Policy | Section 34 recognises that Australian Governments, from time to time, publish statements setting out their key priorities and objectives for particular policy areas. Often those priorities and objectives give direction to entities in developing their plans for allocating and deploying resources, individually and together with other entities. |
| Guidance | Guidance on how a statement published under s 34 of the PGPA Act should be incorporated into entity priorities and objectives is to be developed for the end of 2014. |
| Proposed approach | Guidance will be issued on how to accommodate the requirements of s 34 in the preparation of corporate plans and reporting by entities. The guidance will explain how, consistent with exemption provisions in s 35, any degree of statutory independence from Government would affect the extent to which an entity would have regard to government priorities and objectives. |

| | |
|--|--|
| Section 35: | Corporate plan for Commonwealth entities |
| Related PGPA Act provisions | <ul style="list-style-type: none"> • Key priorities and objectives of the Australian Government (s 34) • Corporate plan for Commonwealth companies (s 95) • Annual performance statements for Commonwealth entities (s 39) • Annual reports for Commonwealth entities (s 46) |
| Options to amend the PGPA Act | Section 35 and 95 will be amended to make clear that a corporate plan must be prepared at least once each year, commencing with plans for the financial year 2015–16. |
| Enabling legislation | <p>Approximately 40 pieces of enabling legislation include corporate planning provisions. They cover the requirement to prepare a corporate plan, details of content, whether the plan needs to be approved by the responsible Minister, and how and when a plan may be varied.</p> <p>Where possible, Finance proposes to remove similar provisions in enabling legislation detailing requirements for corporate plans, since s 35 of the PGPA Act and the rule made under it set out the requirements. However, Finance proposes to retain any provisions that specify additional material the entity is required to include to meet accountability to Ministers and Parliament.</p> |
| PGPA Rule(s) | A draft rule has been released that includes details of the proposed contents of corporate plan and arrangements for publication. The rule is not intended to address matters specific to an entity that are dealt with in enabling legislation. The draft rule is subject to review and will be reissued for further comment. |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | <p><u>Portfolio Budget Statements (PB Statements)</u></p> <p>PB Statements are released on Budget night and cover many Commonwealth entities. They were originally developed to assist Parliament in understanding how the appropriations approved by the Parliament would be applied and for what purpose.</p> <p>The introduction of corporate plans is intended to bring an increased focus on the performance of entities and how they deploy their resources in the achievement of the</p> |

| | |
|--------------------------|--|
| | <p>purposes for which they were established.</p> <p>Currently, the content of a PB Statement duplicates to some extent the information required in a corporate plan. The content of PB Statements will need to be reviewed to eliminate or at least minimise this duplication.</p> <p><u>Annual reports, performance statements and accounting standards</u></p> <p>Annual reports will incorporate annual performance statements that use the objectives and targets within corporate plans as the basis for reviewing and assessing performance, starting with reports on the 2015–16 financial year.</p> <p>The form of reporting and comparison of planned and actual performance will need to take account of requirements in the rule for annual performance statements made under s 39 of the PGPA Act, as well as any financial reporting obligations that arise from the financial reporting rule and Australian Accounting Standards.</p> |
| Policy | <p>The introduction of the requirements for corporate plans and their interaction with PB Statements, the Budget Papers and annual reports has the potential to affect the manner and timing of reporting to Parliament. Decisions on the final nature of future Budget-related documents should be the subject of careful consideration and discussion with key stakeholders, including Parliamentary committees.</p> <p>The conduct of these discussions should also have regard to:</p> <ul style="list-style-type: none"> the sensitivity of information—corporate plans are to be released publicly, but the public form of a corporate plan must not include commercially or nationally sensitive material that would compromise the ability of the entity to meet its obligations providing the Parliament with a medium-term perspective of an entity’s activities and progress in achieving the purposes for which the entity was established and/or changes over time. |
| Guidance | <p>Guidance on corporate planning, including a revised draft rule, will be developed by the end of 2014 in consultation with stakeholders, and will be part of a suite of documents that explain the planning, performance and accountability cycle of Commonwealth entities. The requirements under this section need to be met for 2015–16.</p> |
| Proposed approach | <p><u>PGPA Rule</u></p> <ul style="list-style-type: none"> Use the draft rule on the proposed content of a corporate plan as a basis for discussion with |

| | |
|--|--|
| | <p>stakeholders during 2014 on the planning and reporting requirements for Commonwealth entities.</p> <p><u>Enabling legislation</u></p> <ul style="list-style-type: none"> • Where possible, remove provisions in enabling legislation detailing requirements for corporate plans, but retain any provisions that specify additional material an entity is required to include to meet accountability to Ministers and Parliament. • Amend enabling legislation as required or insert a note to confirm that compliance with the provisions also constitutes compliance with s 35 of the PGPA Act. <p><u>Budget documentation</u></p> <ul style="list-style-type: none"> • Consult with key stakeholders in relation to a proposal to refocus the PB Statements on supporting and explaining the appropriation Bills, possibly in combination with simplifying the Budget Papers, in a form that allows readers to understand broader government aims as well as how the entities contribute to them. • Consult parliamentary stakeholders on any proposed changes to the PB Statement and issues of timing for publication of corporate plans. |
|--|--|

| | |
|--|--|
| Section 36: | Budget estimates for Commonwealth entities |
| Related PGPA Act provisions | Budget estimates for wholly-owned Commonwealth companies (s 96) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | Enabling legislation requires some entities to prepare estimates and provide them to their responsible Minister. Existing practice is that these estimates are also provided to Finance to assist in the preparation of whole-of-government reports and statements and the consideration of any bids for resources through the Budget process. |
| PGPA Rule(s) | Not applicable |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Finance Secretary directions will be issued. The content will be consistent with existing requirements and provisions (for example, under FMA Regulation 22D). Requirements may be communicated by correspondence and through other means such as Estimates Memoranda. |
| Other requirements | Not applicable |
| Policy | No changes in policy are proposed. Government policies on the preparation of estimates and other Budget-related matters are communicated through Finance. |
| Guidance | Finance will review its guidance and training on the Budget cycle and the responsibilities of entities as part of updating its information on the overall financial framework for the introduction of the PGPA Act. |
| Proposed approach | <p>Estimates Memoranda allow Finance to issue advice and instructions on matters relating to Budget preparation and implementation matters. A single memorandum may contain requirements as well as policy and guidance.</p> <p>As part of broader efforts to streamline and simplify Finance publications and communications, consideration is being given to streamlining these documents to improve understanding by entities and to support broader efforts by Government to reduce internal-to-government regulation.</p> |

| | |
|--|---|
| Section 37: Section 38: | Records about performance of Commonwealth entities Measuring and assessing performance of Commonwealth entities |
| Related PGPA Act provisions | <ul style="list-style-type: none"> • Corporate plans for Commonwealth entities (s 35) • Annual performance statements for Commonwealth entities (s 39) • Annual reports for Commonwealth entities (s 46) |
| Options to amend the PGPA Act | No changes are proposed at this time to this section of the Act. The performance framework established in the PGPA Act is intended to promote the measuring and assessing of performance, including in delivering shared outcomes. Consideration is being given as to this can be more explicitly reflected in the framework. |
| Enabling legislation | Not applicable |
| PGPA Rule(s) | <p>While the PGPA Act provides a rule-making power, at this stage no rule is proposed.</p> <p>Sections 37 (records about performance) and 38 (measuring and assessing performance) relate to activities that the accountable authorities of entities should already be engaged in as part of managing a well-functioning organisation. The provisions will come into effect on 1 July 2014 and, subject to consultation with stakeholders, it is proposed that, at this stage, the requirements of the provisions be supported by guidance and promotion of better practice, rather than by a rule.</p> |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Finance will consult stakeholders, in particular the Auditor-General (noting responsibility in the Auditor-General Act for the conduct of performance audits) to determine other requirements if needed. |
| Policy | Policies on recording, reporting and evaluating performance information will be developed in consultation with key stakeholders by the end of 2014 as part of the broader performance framework. |
| Guidance | Guidance on maintaining records on the performance of an entity and on measuring and assessing of performance will be incorporated into documents to replace existing guidance |

| | |
|--------------------------|---|
| | on performance and evaluation (for example, <i>Performance Information and Indicators</i> , October 2010). Guidance will be developed by the end of 2014. |
| Proposed approach | <ul style="list-style-type: none"> • Reliance on the requirements in the PGPA Act and guidance rather than the issuing of a rule. • Annual performance statements represent the link between corporate plans and annual reports, and provide an opportunity to remove or reduce duplicative reporting in the Budget papers (for example, the Portfolio Budget Statements). Finance will consult with stakeholders on how best to reflect this intent in the new arrangements. |

| | |
|--|--|
| Section 39: | Annual performance statements for Commonwealth entities |
| Related PGPA Act provisions | <ul style="list-style-type: none"> • Corporate plans for Commonwealth entities (s 35) • Records about performance of Commonwealth entities (s 37) • Measuring and assessing performance of Commonwealth entities (s 38) • Annual report for Commonwealth entities (s 46) |
| Options to amend the PGPA Act | No change is proposed to this provision of the Act. |
| Enabling legislation | <p>The majority of entities with enabling legislation have annual reporting provisions that describe how operations and activities should be covered in annual reports. They also specify additional requirements that must be included and additional approval processes and deadlines for the submission of draft reports to responsible Ministers.</p> <p>Any consideration of performance statements and their requirements will need to take account of these additional obligations.</p> |
| PGPA Rule(s) | A draft rule has been released that includes details of the proposed contents of annual performance statements and arrangements for publication. The rule is not intended to address matters specific to an entity that are dealt with in enabling legislation. The draft rule is subject to review and will be reissued for further comment. |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | <p>Annual reports will incorporate performance statements from the 2015–16 financial year, drawing on the content of 2015–16 corporate plans.</p> <p>Requirements in any enabling legislation in relation to corporate plans in relation to additional statutory reporting obligations will need to be taken into account in the design of annual performance statement requirements.</p> |
| Policy | Policies on the recording, reporting and evaluating performance information will be developed in consultation with key stakeholders. |

| | |
|--------------------------|---|
| Guidance | Guidance on annual performance statements, including a revised draft rule, will be developed for the end of 2014 in consultation with stakeholders, and will be part of a suite of documents that cover the planning, performance and accountability cycle of Commonwealth entities. The first performance statements will be required for reports on the 2015–16 financial year. |
| Proposed approach | <p>Performance statements draw a link between corporate plans and annual reports, and their information provides an opportunity to remove or reduce duplicative reporting in the Budget papers (for example, the PB Statements).</p> <p>The first performance statements will be required for reports from the 2015–16 financial year.</p> |

| | |
|--|--|
| Section 40: | Audit of annual performance statements for Commonwealth entities |
| Related PGPA Act provisions | Annual performance statements for Commonwealth entities (s 39) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | The Auditor-General Act will need to be amended to refer to the Auditor-General's role in auditing the annual performance statements of Commonwealth entities. |
| PGPA Rule(s) | Not applicable |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | To be determined with stakeholders, in particular the JCPAA and the ANAO. |
| Policy | To be determined in consultation with stakeholders. |
| Guidance | Guidance on annual performance statements and their audit will be developed for the end of 2014 in consultation with stakeholders, and will be part of a suite of documents that cover the planning, performance and accountability cycle of Commonwealth. The requirements under this section need to be met for 2015–16. |
| Proposed approach | Finalise the form of annual performance statements and how they will be audited in consultation with key stakeholders, including the JCPAA, over the course of 2014. |

| | |
|--|---|
| Section 41: | Accounts and records for Commonwealth entities |
| Related PGPA Act provisions | <ul style="list-style-type: none"> • Annual financial statements for Commonwealth entities (s 42) • Audit of annual financial statements for Commonwealth entities (s 43) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | Not applicable |
| PGPA Rule(s) | <p>The current <i>Finance Minister's Orders (Financial Statements for reporting periods ending on or after 1 July 2013)</i> (the FMOs) contain general accounting requirements as well as specify requirements for the preparation of annual financial statements.</p> <p>The replacement arrangements for the FMOs for the 2014–15 financial year will be issued in late 2014, consistent with previous years' practice, and as a result no rule is required for 1 July 2014.</p> |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | <p>Financial statements are prepared on the basis of Australian Accounting Standards and any additional requirements imposed by the Finance Minister.</p> <p>These requirements, including any general accounting obligations, are included under current arrangements in the FMOs, and are issued each year.</p> <p>Requirements for general accounting could be issued separately through rules made under s 41 of the PGPA Act or, as currently occurs, as part of the requirements for the preparation of financial statements (which are covered under s 42 of the Act).</p> <p>A final decision on the form in which requirements are issued will be subject to review and consultation with stakeholders on any rules and related policy and guidance during the course of 2014.</p> |

| | |
|--------------------------|--|
| Policy | Financial policies associated with this provision will be reviewed, and revised as necessary, in preparation for implementation for reporting related to the 2014–15 financial year. |
| Guidance | Guidance on financial reporting and accounting requirements will be reviewed and revised in preparation for implementation for reporting related to the 2014–15 financial year. |
| Proposed approach | <ul style="list-style-type: none"> • Finance and stakeholders to consider how general accounting and disclosure requirements should be presented and applied. • Requirements in relation to s 41 to be considered in the second half of 2014 during the development of the new financial reporting rule. |

| | |
|--|---|
| Section 42: | Annual financial statements for Commonwealth entities |
| Related PGPA Act provisions | <ul style="list-style-type: none"> Accounts and records for Commonwealth entities (s 41) Audit of annual financial statements for Commonwealth entities (s 43) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | Not applicable |
| PGPA Rule(s) | <p>The current <i>Finance Minister's Orders (Financial Statements for reporting periods ending on or after 1 July 2013)</i> (the FMOs) contain general accounting requirements as well as specify requirements for the preparation of annual financial statements.</p> <p>The replacement arrangements for the FMOs for the 2014–15 financial year will be issued in late 2014, consistent with previous years' practice, and as a result no rule is required for 1 July 2014.</p> |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | <p>Financial statements are prepared on the basis of Australian Accounting Standards and any additional requirements imposed by the Finance Minister.</p> <p>These requirements, including any general accounting obligations, are included under current arrangements in the FMOs, and are issued each year.</p> <p>Requirements for general accounting could be issued separately through rules made under s 41 of the PGPA Act or, as currently occurs, as part of the requirements for the preparation of financial statements (which are covered under s 42 of the Act).</p> <p>A final decision on the form in which requirements are issued will be subject to review and consultation with stakeholders on the rules and related policy and guidance during the course of 2014.</p> |

| | |
|--------------------------|---|
| Policy | Financial policies associated with this provision will be reviewed, and revised as necessary, in preparation for implementation for reporting related to the 2014–15 financial year. |
| Guidance | Guidance on financial reporting and accounting requirements will be reviewed and revised in preparation for implementation for reporting related to the 2014–15 financial year. |
| Proposed approach | <p>Transitional arrangements for 2013–14 financial year reporting:</p> <ul style="list-style-type: none"> • Financial reporting obligations in relation to the 2013–14 financial year will be completed after the commencement of the PGPA Act provisions, consistent with current timing arrangements. • Arrangements to be included in the C&T Bill will, when given Royal Assent, allow for completion of the financial statements in accordance with the FMOs issued for 2013–14. <p>Arrangements for 2014–15 and beyond:</p> <ul style="list-style-type: none"> • Finance and stakeholders will consider how general accounting and disclosure requirements should be presented and applied, with requirements to be released in late 2014. • Rules and guidance issued under the new arrangements will be streamlined and simplified. • Any changes in accounting standards for 2014–15 will be included in accounting and reporting requirements. |

| | |
|--|---|
| Section 43: | Audit of annual financial statements for Commonwealth entities |
| Related PGPA Act provisions | <ul style="list-style-type: none"> • Accounts and records for Commonwealth entities (s 41) • Annual financial statements for Commonwealth entities (s 42) • Audit of subsidiary's financial statements (s 44) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | Not applicable |
| PGPA Rule(s) | <p>No rule is proposed for this section of the Act. The provision relates to the audit process undertaken by the Australian National Audit Office (ANAO), which is required to assess the financial statements of Commonwealth entities against the Australian Accounting Standards and any additional requirements issued by the Finance Minister through the rules made under s 42 of the Act.</p> <p>The ANAO, through the Auditor-General Act, is provided with direction on the auditing standards to be followed in assessing whether the accounting standards and financial reporting rules have been observed in the preparation of financial statements.</p> |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | <p>Requirements for audits of financial statements are in:</p> <ul style="list-style-type: none"> • the Auditor-General Act; • Australian Accounting Standards; • the Finance Minister's Orders (under current arrangements) for reporting on the 2013–14 financial year; and • the Financial Reporting Rules (to be issued under s 42 of the PGPA Act) for 2014–15 and beyond |

| | |
|--------------------------|---|
| Policy | <p>The ANAO uses the current FMA and CAC Acts to distinguish between entities that are audited within the resources provided by Parliament (FMA Act agencies) and entities that are charged a fee for the cost of the audit work (CAC Act bodies).</p> <p>Those arrangements will be amended to broadly provide that non-corporate Commonwealth entities will not be charged and corporate Commonwealth entities will be. Amendments to the Auditor-General Act may be required to be included in the C&T Bill.</p> <p>Any other changes to policies will be the subject of consultation with key stakeholders.</p> |
| Guidance | <p>Finance is responsible for issuing guidance on the preparation of financial statements in relation to s 42 of the PGPA Act. The responsibility for providing guidance on audit activities rests with the Auditor-General.</p> |
| Proposed approach | <p>No substantial changes to existing Finance administered arrangements are expected, apart from the need to amend the basis on which the ANAO charges for the conduct of audits.</p> |

| | |
|--|--|
| Section 44: | Audit of subsidiary's financial statements |
| Related PGPA Act provisions | <ul style="list-style-type: none"> • Accounts and records for Commonwealth entities (s 41) • Annual financial statements for Commonwealth entities (s 42) • Audit of annual financial statements for Commonwealth entities (s 43) • Audit of subsidiary's financial statements (s 99) (Commonwealth companies) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | Not applicable |
| PGPA Rule(s) | Not applicable |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Requirements for audits of financial statements are contained in the <i>Corporations Act</i> , the <i>Auditor-General Act</i> and Australian Accounting Standards. |
| Policy | Section 44 largely mirrors 37 of the CAC Act. It expresses in clearer language that the Auditor-General is the auditor of subsidiaries unless specific circumstances exist that justify otherwise. |
| Guidance | Finance is responsible for issuing guidance on the preparation of financial statements in relation to s 42 of the PGPA Act. The responsibility for providing guidance on audit activities rests with the Auditor-General. |
| Proposed approach | No substantial changes to existing arrangements are expected, apart from the need to amend the basis on which the ANAO charges for the conduct of audits (non-corporate Commonwealth entities will not be charged; corporate Commonwealth entities will be charged). |

| | |
|--|---|
| Section 45: | Audit committees for Commonwealth entities |
| Related PGPA Act provisions | <ul style="list-style-type: none"> • Duty to govern (s 15) • Duty to establish and maintain systems relating to risk and control (s 16) • Audit committees for Commonwealth companies (s 92) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | Not generally applicable |
| PGPA Rule(s) | A draft rule has been prepared to balance core obligations but limit imposition of prescriptive requirements. |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Not applicable |
| Policy | The introduction of s 16 of the PGPA Act and a duty for accountable authorities to establish and maintain systems relating to risk and control is to be complemented by the development of a whole-of-government approach to risk management. This will be articulated in a risk management policy to be issued by Finance for 1 July 2014. |
| Guidance | Guidance and better practice literature is widely available to support entities. Draft guidance to support the Audit Committee Rule will be released in March 2014. |
| Proposed approach | <p>Sections 15 and 16 impose explicit duties on accountable authorities in relation to governing the entity and establishing and maintaining systems of internal control and managing risk.</p> <p>Audit committees are a key element of this control system, providing assurance and advice to the accountable authority on the management of risks and the preparation of financial statements. The introduction of the PGPA Act and its obligations will lead to an increased emphasis on the role and contribution of audit committees.</p> |

| | |
|--------------------------------------|--|
| Section 46: | Annual report for Commonwealth entities |
| Related PGPA Act provisions | <ul style="list-style-type: none"> • Corporate plans for Commonwealth entities (s 35) • Records about performance of Commonwealth entities (s 37) • Measuring and assessing performance of Commonwealth entities (s 38) • Annual performance statements for Commonwealth entities (s 39) • Accounts and records for Commonwealth entities (s 41) • Annual financial statements for Commonwealth entities (s 42) • Audit of annual financial statements for Commonwealth entities (s 43) • Annual reports for Commonwealth companies (s 97) |
| Options to amend the PGPA Act | Amendments will be proposed to paragraph 46(2)(a) to require entities to provide their annual reports with sufficient time for Ministers to meet their Parliamentary obligations to table annual reports before the end of fourth month after the end of the reporting period. |
| Enabling legislation | <p>The majority of entities with enabling legislation have annual reporting provisions that describe how operations and activities should be covered in annual reports. They also specify additional requirements, which may extend to additional information that must be included and additional approval processes and deadlines for the submission of draft reports to responsible Ministers. The provisions specifying additional requirements will be retained and a note may be inserted to confirm that compliance with the provisions also constitutes compliance with s 46 of the PGPA Act.</p> <p>(An exception to the timing amendment proposed above relates to the Workplace Gender Equity Agency, which is required by its legislation to table its annual report by 30 November each year. This is to allow the agency time to review relevant matters in the annual reports of other Commonwealth entities before completing and tabling its report.)</p> |
| PGPA Rule(s) | <p>No rule is proposed for 1 July 2014 as there is no requirement for a rule to be in place at that time.</p> <p>The preparation of a rule for annual reporting will take into account the following:</p> <ul style="list-style-type: none"> • The PGPA Act requires that any rules issued by the Finance Minister in relation to annual reports must first have been approved by the JCPAA on behalf of the Parliament. |

| | |
|--|--|
| | <ul style="list-style-type: none"> Rules for annual performance statements (s 39) and financial statements (s 42) will provide detail on relevant content to be included in annual reports. Any rule for annual reports will need to recognise and interact with these rules. <p><u>Meeting 2013–14 obligations</u> Commonwealth entities will prepare, present to responsible Ministers, and table annual reports for 2013–14 on the basis of existing requirements. This will be confirmed in the transitional elements of the C&T Bill.</p> <p><u>Meeting 2014–15 obligations</u> CAC Act authorities are required to prepare annual reports in line with the Commonwealth Authorities (Annual Reporting) Orders made by the Finance Minister under s 48 of the CAC Act, as well as comply with any additional or varying requirements included in enabling legislation. CAC Act authorities will become corporate Commonwealth entities under the PGPA Act, and a rule will need to be in place for 2014–15 that covers these entities.</p> <p>If a rule is not in place that covers non-corporate Commonwealth entities, those entities will continue to apply the Annual Reporting Guidelines approved by the JCPAA for the 2014–15 reporting year.</p> <p>The reasons for and means of providing annual reporting requirements to entities for 2014–15 are discussed under ‘Proposed approach’.</p> <p><u>Obligations for 2015–16 and beyond</u> Annual reporting requirements will be further developed as part of a broader consideration of planning and reporting obligations, involving consultation with key stakeholders including the JCPAA.</p> |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | <p><u>Departments and executive agencies (26 agencies)</u> Annual Reporting Guidelines are issued by PM&C under the Public Service Act for departments (s 63) and executive</p> |

| | |
|--------------------------|---|
| | <p>agencies (s 70), with the approval of the JCPAA.</p> <p>Departments and executive agencies must prepare their annual reports in accordance with those guidelines.</p> <p><u>Other non-corporate Commonwealth entities</u></p> <p>While no legal obligation is imposed by the Public Service Act on other FMA Act agencies (generally non-corporate Commonwealth entities from 1 July 2014), standard practice has been to follow the Annual Reporting Guidelines, subject to any additional or varying requirements included in enabling legislation.</p> <p><u>Corporate Commonwealth entities</u></p> <p>CAC Act bodies that will become corporate Commonwealth entities under the PGPA Act from 1 July 2014 are currently required to prepare annual reports in line with the Commonwealth Authorities (Annual Reporting) Orders made by the Finance Minister under s 48 of the CAC Act, as well as additional or varying requirements included in enabling legislation.</p> <p><u>Commonwealth companies</u></p> <p>Commonwealth companies must comply with the annual reporting requirements of the Corporations Act.</p> |
| Policy | <p>The introduction of the PGPA Act provides an opportunity to introduce a more coherent and consistent approach to the purpose, timing and development of annual reports.</p> <p>Finance will work with key stakeholders, including the JCPAA and PM&C, on such arrangements during the course of 2014.</p> |
| Guidance | <p>Guidance on annual reports is currently given in the Annual Reporting Guidelines issued by PM&C and the Finance Minister's Orders issued in relation to CAC Act bodies.</p> <p>Any changes to guidance will take account of consultations with key stakeholders on overall arrangements as well as reforms to improve reporting on performance and evaluation.</p> |
| Proposed approach | <p>Annual reporting obligations under the PGPA Act commence on 1 July 2014, with the first annual report to be prepared by entities in relation to the 2014–15 financial year.</p> <p>As reporting obligations for 2013–14 will not have been completed at that time, two separate and distinct approaches are needed for completing obligations for 2013–14 and commencing obligations from 2014–15 under the PGPA Act.</p> |

| | |
|--|--|
| | <p><u>Requirements for 2013–14</u></p> <p>Commonwealth entities will meet annual reporting obligations for the 2013–14 financial year under existing FMA and CAC Act arrangements. The C&T Bill will include transitional provisions to allow for such arrangements to continue through to the completion of the 2013–14 reporting cycle, including discharging obligations to Parliament.</p> <p><u>Requirements for 2014–15</u></p> <p>Section 46 of the PGPA Act will be operative for the 2014–15 reporting period. Two separate but complementary streams of activity are required to implement arrangements for 2014–15.</p> <p><i>1. Enabling legislation</i></p> <p>Any provisions in enabling legislation detailing requirements to prepare annual reports will be repealed as s 46 of the PGPA Act will apply. Provisions that specify additional requirements for an entity in relation to annual reporting will be amended to retain features covering:</p> <ul style="list-style-type: none"> • additional material the entity is required to include as a result of the nature of the entity • approval processes and timing requirements that are required in addition to meeting the core obligations imposed by the PGPA Act. <p><i>2. Development of rules and goal of a consistent approach</i></p> <p>A rule needs to be developed for corporate Commonwealth entities to explain the minimum reporting obligations they must meet in relation to the 2014–15 financial year.</p> <p>Non-corporate Commonwealth entities could continue to use any Annual Reporting Guidelines that the JCPAA may wish to issue for 2014–15.</p> <p>Section 46 was developed to apply to all Commonwealth entities. Requirements for key reporting and accountability documents prepared by entities will be developed to allow for better linkages across all of the planning and accountability cycle (the various PB Statements, corporate plans and annual reports).</p> <p>Finance will work with key stakeholders including the JCPAA and PM&C to develop an annual reporting rule for application in 2014–15.</p> <p>This consultation will part of a broader consultation process during 2014 on the planning and accountability cycle encompassing Budget documents such as the PB Statements, corporate plans and performance statements</p> |
|--|--|

| | |
|--|---|
| | <p>and reporting to Parliament.</p> <p><u>Requirements for 2015–16</u></p> <p>Following on from consultations in 2014, the 2015–16 financial year will see the introduction of requirements for corporate planning (s 35) and annual performance statements (s 39). Any annual reporting rule will need to take account of these requirements.</p> <p>Ongoing consultation with stakeholders on options to improve the quality and comprehensiveness of reporting to Parliament may lead to further adjustments being agreed with stakeholders.</p> |
|--|---|

| | |
|--|---|
| Section 47: | Monthly financial reports (whole of government) |
| Related PGPA Act provisions | <ul style="list-style-type: none"> • Annual consolidated financial statements (s 48) • Audit of annual consolidated financial statements (s 49) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | Related provisions on government financial reporting are in the <i>Charter of Budget Honesty Act 1997</i> but section 47 provides authority for monthly reporting against Budget. |
| PGPA Rule(s) | Not applicable |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | <p><u>Accounting Standards</u> Australian Accounting Standard AASB 1049 applies.</p> <p><u>International obligations</u> The International Monetary Fund's Special Data Dissemination Standard (SDDS), to which the Commonwealth has subscribed, requires central governments to publish financial statements on a monthly basis; within one month of the period close; and on a basis consistent with that reported in the annual Budget.</p> <p>Under accrual accounting, the IMF has granted some flexibility in the release of June and July monthly statements to allow for the release of the Final Budget Outcome (FBO) report (which is produced in accordance with the requirements of s 18 of the Charter of Budget Honesty Act) by the end of September each year.</p> |
| Policy | No changes in policy are proposed. |
| Guidance | Finance guidance will be updated where necessary to reflect the introduction of the PGPA Act. |
| Proposed approach | Continuation of existing arrangements with revised guidance to be issued. |

| | |
|--|---|
| Section 48: | Annual consolidated financial statements (whole of government) |
| Related PGPA Act provisions | <ul style="list-style-type: none"> • Monthly financial reports (s 47) • Audit of annual consolidated financial statements (s 49) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | Related provisions on government financial reporting are in the <i>Charter of Budget Honesty Act</i> for the Final Budget Outcome (FBO) report, which relates to the General Government Sector (GGS). The Consolidated Financial Statements are prepared in relation to the total public sector and also include Public Financial Corporations and Public Non-Financial Corporations. |
| PGPA Rule(s) | Not applicable |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | The Australian Accounting Standard AASB 1049 applies. |
| Policy | No changes in policy are proposed. |
| Guidance | Finance guidance will be updated where necessary to reflect the introduction of the PGPA Act. |
| Proposed approach | Continuation of existing arrangements with revised guidance to be issued by 1 July 2014. |

| | |
|--|---|
| Section 49: | Audit of annual consolidated financial statements (whole of government) |
| Related PGPA Act provisions | <ul style="list-style-type: none"> • Monthly financial reports (s 47) • Annual consolidated financial statements (s 48) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | The Auditor-General Act does not mention the Consolidated Financial Statements prepared in relation to the Australian Government, since <i>auditing</i> of the statements commenced after the introduction of that Act. The inclusion of a provision formally recognising the activity will be discussed with the Auditor-General and if agreement is reached the Auditor-General Act may be amended as part of the C&T Bill. |
| PGPA Rule(s) | Not applicable |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | The Auditor-General Act includes a requirement to audit according to the standards or basis on which financial statements are prepared. |
| Policy | No changes in policy are proposed. |
| Guidance | Finance guidance will be updated where necessary to reflect the introduction of the PGPA Act. |
| Proposed approach | <p>Continuation of existing arrangements with revised guidance to be issued by 1 July 2014.</p> <p>Possible amendment of the Auditor-General Act to provide for the audit of the annual consolidated financial statements.</p> |

Part 2-4—Use and management of public resources

PGPA Act provisions

- Section 50: Guide to this Part
- Section 51: Making amounts appropriated available to Commonwealth entities
- Section 52: Commitment and expenditure of relevant money
- Section 53: Banking by the Commonwealth
- Section 54: Banking by corporate Commonwealth entities
- Section 55: Banking of relevant money by Ministers and officials
- Section 56: Borrowing by the Commonwealth
- Section 57: Borrowing by corporate Commonwealth entities
- Section 58: Investment by the Commonwealth
- Section 59: Investment by corporate Commonwealth entities
- Section 60: Indemnities, guarantees or warranties by the Commonwealth
- Section 61: Indemnities, guarantees or warranties by corporate Commonwealth entities
- Section 62: Insurance obtained by corporate Commonwealth entities
- Section 63: Waiver of amounts owing to the Commonwealth
- Section 64: Setting off amounts owing to, and by, the Commonwealth
- Section 65: Act of grace payments by the Commonwealth
- Section 66: Gifts of relevant property
- Section 67: Liability for unauthorised gifts of relevant property
- Section 68: Liability for loss—custody
- Section 69: Liability for loss—misconduct
- Section 70: Provisions relating to liability of Ministers and officials
- Section 71: Approval of proposed expenditure by a Minister
- Section 72: Minister to inform Parliament of certain events

This Part is about the use and management of public resources by the Commonwealth and Commonwealth entities. Many of the provisions in this Part apply to either the Commonwealth or corporate Commonwealth entities, and do not expressly refer to non-corporate Commonwealth entities. This is because non-corporate Commonwealth entities are legally part of the Commonwealth. Generally, the Finance Minister has the power to act on behalf of the Commonwealth for the purposes of the provisions of this Part.

| | |
|--|---|
| Section 51: | Making amounts appropriated available to Commonwealth entities |
| Related PGPA Act provisions | Not applicable |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | <p>Provisions on making amounts appropriated available to Commonwealth entities are also contained in various entity enabling legislation. Given that these provisions are now reflected in s 51 of the PGPA Act, they can be deleted for the majority of affected entities as part of the C&T Bill.</p> <p>The exceptions to this general approach will be preserved. They involve entities that are guaranteed to receive the <i>total</i> amount appropriated by Parliament (such as the ANAO), consistent with the timing and size of instalments agreed with the Finance Minister or delegate.</p> |
| PGPA Rule(s) | Not applicable |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | A Finance Minister delegation is proposed to be made for 1 July 2014 to relevant officials in the Department of Finance to approve schedules of payments proposed by Commonwealth entities. |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Commonwealth entities are required to prepare and submit schedules of payments in a format that can be accepted for upload into the Central Budget Management System (CBMS). |
| Policy | <p>No changes in policy are proposed in the short term (that is, over the course of 2014 and 2015).</p> <p>As part of the broader Public Management Reform Agenda, Finance will review the Commonwealth's banking and cash management policies during the course of 2014 and 2015 to examine opportunities for improvements in resource management practices.</p> |
| Guidance | <p>Finance will update the following appropriations, cash management and banking guidance where necessary to reflect the introduction of the PGPA Act:</p> <p><u>Banking</u></p> <ul style="list-style-type: none"> • <i>Agency Banking Framework Guidance Manual</i> (FC2003/07) |

| | |
|--------------------------|--|
| | <ul style="list-style-type: none"> • <i>Bank Accounts: Removal of Trust Accounts and Creation of Special Public Money (SPM) Accounts (FC2003/08)</i> • <i>Discounts for prepayment and early payment (FC2004/14)</i> • <i>Promissory Notes, Bills of Exchange, Commercial Bills and Other Securities of a Similar Nature (FC2004/03)</i> • <i>Estimation by agencies of their next-day drawdown cash requirements (FC2005/03)</i> • <i>Debits to Official Administered Receipts Accounts (FC2006/07)</i> <p><u>Investment</u></p> <ul style="list-style-type: none"> • <i>Investment of Surplus Money (FC2005/05)</i> • <i>Investment of public money (FC2005/11)</i> <p><u>Appropriations management</u></p> <ul style="list-style-type: none"> • <i>Appropriations Management: Responsibilities of Agencies (FC2004/16)</i> • <i>Appropriations for Payment to CAC Act bodies (FC2008/09)</i> • <i>Appropriations and the CRF (FC2004/06)</i> • <i>Allocation of responsibilities for special appropriations (FC2005/13).</i> |
| Proposed approach | <ul style="list-style-type: none"> • Amend specific enabling legislation to provide statutory assurance of receiving the total amount appropriated by Parliament (with the schedule agreed by the Finance Minister on the timing and size of instalments). • Issue revised guidance. |

| | |
|--|--|
| Section 52: | Commitment and expenditure of relevant money |
| Related PGPA Act provisions | <ul style="list-style-type: none"> • Power in relation to arrangements (s 23) • Rules relating to the Commonwealth and Commonwealth entities, including procurement and grants (s 102) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act, but s 23 will be amended to clarify that the accountable authorities of non-corporate Commonwealth entities have explicit authority to make spending decisions. |
| Enabling legislation | Not applicable |
| PGPA Rule(s) | A draft rule has been developed to require that an official approving a proposal to commit relevant money must act in accordance with instructions from the accountable authority and must record the approval in writing. |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Accountable authorities will be responsible for how they delegate powers internally, as well as the limitations they place on approval arrangements. |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Officials approving commitments will need to take account of provisions and rules relating to specific expenditure activities like procurements and grants, as well as any relevant policies of the Commonwealth (in the case of non-corporate Commonwealth entities). |
| Policy | <p>Officials of non-corporate Commonwealth entities are required under s 21 of the PGPA Act to comply with s 52 in a manner not inconsistent with Commonwealth policies.</p> <p>Entities currently covered by the Commonwealth procurement and grant rules will continue to be covered in the same way after 1 July 2014. These rules will be reissued under the PGPA Act.</p> |
| Guidance | <p>Draft guidance has been developed on commitments to spend relevant money and entering into arrangements. This updates the information in Finance Circular 2011/01: <i>Commitments to spend public money (FMA Regulations 7 to 12)</i>.</p> <p>The Model Resource Management Instructions (previously Model Chief Executive's Instructions) will provide further practical guidance.</p> |

| | |
|--------------------------|--|
| | <p>Drafts of both documents will be made available in March for review by Commonwealth entities and other interested stakeholders, and final versions will be released in May 2014 taking into account feedback.</p> <p>To assist officials of non-corporate Commonwealth entities, the guidance will also include an explanation of the note to this section of the Act and the need for a valid appropriation against which decisions to commit and spend funds can be made to ensure compliance with s 83 of the Australian Constitution. Officials of corporate Commonwealth entities are not subject to this requirement.</p> |
| Proposed approach | <p>Finance to develop guidance and provide ongoing assistance to entities in meeting their obligations in relation to the commitment and expenditure of relevant money.</p> |

| | |
|--|--|
| Section 53: | Banking by the Commonwealth |
| Related PGPA Act provisions | <ul style="list-style-type: none"> Banking by corporate Commonwealth entities (s 54) Banking of relevant money (s 55) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act, but changes are proposed to s 55. |
| Enabling legislation | The Reserve Bank of Australia is covered by the <i>Reserve Bank of Australia Act 1959</i> . |
| PGPA Rule(s) | No rule is proposed. See arrangements for delegations. |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | The authority to enter into banking arrangements for non-corporate Commonwealth entities will be provided through delegations issued by the Finance Minister, consistent with current arrangements under ss 8 and 9 of the FMA Act. |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Duties on accountable authorities under ss 15 and 16 of the PGPA Act require that arrangements entered into with banks must be consistent with managing the entity in a financially sustainable manner, including ensuring that appropriate controls are established to manage any associated risks. |
| Policy | <p>Consistent with the Government's deregulation reform agenda, delegation instruments should be appropriate to the risks involved and avoid unnecessary prescription.</p> <p>Current delegation instruments incorporate elements of policy and guidance that will be moved into separate guidance material.</p> <p>As part of the broader Public Management Reform Agenda, Finance will review the Commonwealth's banking and cash management policies during the course of 2014 and 2015 to examine opportunities for improvements in resource management practices.</p> |
| Guidance | Details of policy and guidance will be released in draft form for comment before final versions are in May 2014. |
| Proposed approach | Finance to prepare revised delegation instruments and related guidance material for circulation to entities, with final versions issued in May 2014. |

| | |
|--|---|
| Section 54: | Banking by corporate Commonwealth entities |
| Related PGPA Act provisions | <ul style="list-style-type: none"> • Banking by the Commonwealth (s 53) • Banking of relevant money by Ministers and officials (s 55) • Borrowing by corporate Commonwealth entities (s 57) • Investment by corporate Commonwealth entities (s 69) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act, but changes are proposed for s 55. |
| Enabling legislation | The Reserve Bank of Australia is covered by the <i>Reserve Bank Act 1959</i> . |
| PGPA Rule(s) | <p>No rule is proposed at this time given the obligations of entities under ss 55, 57 and 59 of the PGPA Act, which represent a continuation of existing arrangements for entities currently operating under the CAC Act.</p> <p>Accountable authorities also have an obligation under s 16 to establish and maintain systems relating to risk and control. Banking arrangements are integral to a well-functioning control system.</p> |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | <p>Accountable authorities will establish internal control arrangements and delegations in relation to the establishment and control of banking arrangements.</p> <p>The Model Resource Management Instructions (based on the previous Model Chief Executive's Instructions for FMA Act agencies and input from CAC Act bodies on their internal control arrangements) will provide further practical guidance.</p> <p>A draft of the Instructions will be available in March for entities to review, and a final version will be released in May 2014.</p> |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | <p>Section 15 of the PGPA Act imposes a duty on accountable authorities to govern the entity in a financially sustainable manner and to apply resources for a proper purpose.</p> <p>Any banking arrangements entered into by corporate entities will be subject to this requirement.</p> |
| Policy | No changes are proposed to banking policy as applied to corporate Commonwealth entities. |

| | |
|--------------------------|---|
| Guidance | <p>While any policy requirements are not mandatory for corporate Commonwealth entities, entities in reviewing their ongoing practices may have regard to features of better practice contained in guidance directed at non-corporate Commonwealth entities.</p> <p>This will be complemented by the release of the Model Resource Management Instructions, which accountable authorities may adopt or use as a source of advice in determining their internal control structures and processes.</p> |
| Proposed approach | <p>Provide updated guidance material, with drafts released for comment, with final versions in May 2014.</p> |

| | |
|--|---|
| Section 55: | Banking of relevant money by Ministers and officials |
| Related PGPA Act provisions | <ul style="list-style-type: none"> Banking by the Commonwealth (s 53) Banking by corporate Commonwealth entities (s 54) |
| Options to amend the PGPA Act | <p>Section 55 will be amended to provide greater clarity about the responsibilities of Ministers and officials and about the banking of money. The revised provisions will specify that:</p> <ul style="list-style-type: none"> A Minister who receives relevant money must give the money to an official of a non-corporate Commonwealth entity as soon as practicable. An official who receives relevant money (including from a Minister) that can be banked, must deposit the money in a bank as soon as practicable and/or deal with the money in accordance with requirements in the rules. If the money is non-bankable money, the rules can specify how such money is to be handled. |
| Enabling legislation | The Reserve Bank of Australia is exempt from this provision and is covered by the <i>Reserve Bank Act 1959</i> . |
| PGPA Rule(s) | <p>Section 55 generally has the same effect as s 10 of the FMA Act and s 18(2) of the CAC Act in terms of banking promptly.</p> <p>The amended form of s 55 will provide greater clarity on the responsibilities of Ministers or officials, allowing for the rule to be drafted in a form consistent with giving accountable authorities explicit responsibility for banking arrangements within their entities.</p> <p>The rule will specify that within the parameters of s 55, officials are to deal with money in accordance with any instructions issued by the accountable authority.</p> |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Section 16 of the PGPA Act imposes a duty on accountable authorities to establish and maintain systems relating to risk and control, while s 25 imposes a duty on officials to act with care and diligence in undertaking their responsibilities. |
| Policy | <p>Updated banking policy and guidance will be moved to a separate guidance document to be released in draft form in March, with the final version released in May 2014.</p> <p><u>Review of banking policy and practices</u></p> <p>Finance is conducting a review of policy and practices</p> |

| | |
|-----------------|--|
| | <p>relating to banking and cash management arrangements as part of the broader Public Management Reform Agenda</p> <p>The review will be conducted over the course of 2014 and 2015 with the aim of streamlining and simplifying existing banking arrangements and leveraging off changes in technology and banking practice that have taken place since the current arrangements were introduced in 2003.</p> |
| Guidance | <p>The review of banking arrangements is a longer term project and will not be completed before the banking-related provisions of the PGPA Act commence.</p> <p>To meet obligations for the introduction of the provisions, guidance will be reviewed and amended where necessary to replace references to the FMA or CAC Act and any resulting minor changes in approach to reflect the introduction of the PGPA Act:</p> <p><u>Banking</u></p> <ul style="list-style-type: none"> • <i>Agency Banking Framework Guidance Manual</i> (FC2003/07) • <i>Bank Accounts: Removal of Trust Accounts and Creation of Special Public Money (SPM) Accounts</i> (FC2003/08) • <i>Discounts for prepayment and early payment</i> (FC2004/14) • <i>Promissory Notes, Bills of Exchange, Commercial Bills and Other Securities of a Similar Nature</i> (FC2004/03) • <i>Estimation by agencies of their next-day drawdown cash requirements</i> (FC2005/03) • <i>Debits to Official Administered Receipts Accounts</i> (FC2006/07) <p><u>Investment</u></p> <ul style="list-style-type: none"> • <i>Investment of Surplus Money</i> (FC2005/05) • <i>Investment of public money</i> (FC2005/11) <p><u>Appropriations management</u></p> <ul style="list-style-type: none"> • <i>Appropriations Management: Responsibilities of Agencies</i> (FC2004/16) • <i>Appropriations for Payment to CAC Act bodies</i> (FC2008/09) • <i>Appropriations and the CRF</i> (FC2004/06) • <i>Allocation of responsibilities for special appropriations</i> (FC2005/13). |

| | |
|--------------------------|--|
| Proposed approach | <ul style="list-style-type: none">• Rule to be issued under s 55.• Finance to prepare revised delegation instruments and related guidance material, for 1 July 2014.• Finance to conduct a longer term review of banking arrangements. |
|--------------------------|--|

| | |
|--|---|
| Section 56: | Borrowing by the Commonwealth |
| Related PGPA Act provisions | Borrowing by corporate Commonwealth entities (s 57) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | <p>Section 56(1) places a clear limit on when the Commonwealth can borrow—it can only do so if expressly authorised by an Act.</p> <p>There are several Acts that authorise Commonwealth borrowing, including the <i>Commonwealth Inscribed Stock Act 1911</i>.</p> |
| PGPA Rule(s) | No rule is proposed at this time. |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Arrangements entered into by non-corporate Commonwealth entities in relation to credit cards and vouchers will be in accordance with delegations made by the Finance Minister. This represents a continuation of current arrangements. |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Section 16 of the PGPA Act imposes a duty on accountable authorities to establish and maintain systems relating to risk and control, while s 25 imposes a duty on officials to act with care and diligence in undertaking their responsibilities. |
| Policy | <p>Section 56 covers the same matters as ss 37 and 38 of the FMA Act and represents a continuation of existing policy.</p> <p>An agreement entered into under s 56(2) is only intended to cover credit card and charge card facilities and urgent or unforeseen short-term shortfalls in the Commonwealth's cash-flow requirements.</p> <p>This power to borrow in no way changes the Commonwealth's current overall monetary policy to fund the Commonwealth's debt through the issuing of securities.</p> |
| Guidance | <p>No separate guidance currently exists or is planned.</p> <p>However, the Model Resource Management Instructions (based on the Model Chief Executive's Instructions for FMA Act agencies and informed by a review of CAC Act bodies and their internal control documents) will provide a</p> |

| | |
|--------------------------|---|
| | <p>template against which to assess the appropriateness of internal controls as well as practical guidance.</p> <p>A draft of the instructions will be made available in March for review and comment, and a final version will be released in May 2014 taking into account feedback from stakeholders.</p> |
| Proposed approach | <p>The Finance Minister will be asked to issue delegations in relation to the use of credit cards. The Model Resource Management Instructions are to be released in final form in May 2014.</p> |

| | |
|--|---|
| Section 57: | Borrowing by corporate Commonwealth entities |
| Related PGPA Act provisions | Borrowing by the Commonwealth (s 56) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | <p>Enabling legislation for a number of entities includes provisions allowing for borrowing by the entity.</p> <p>Section 57 does not affect the Finance Minister's powers under these other pieces of legislation to approve borrowing by certain statutory authorities (for example, s 70B of the <i>Australian Broadcasting Corporation Act 1983</i>).</p> |
| PGPA Rule(s) | No rule is proposed at this time. |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | This provision provides the basis for use of credit cards, supported by a Finance Minister delegation where enabling legislation does not already provide for such arrangements. |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Section 16 of the PGPA Act imposes a duty on accountable authorities to establish and maintain systems relating to risk and control, while s 25 imposes a duty on officials to act with care and diligence in undertaking their responsibilities. |
| Policy | No changes in policy are proposed. |
| Guidance | <p>No separate guidance currently exists or is planned.</p> <p>However, the Model Resource Management Instructions (based on the Model Chief Executive's Instructions for FMA Act agencies and informed by a review of CAC Act bodies and their internal control documents) will provide a template against which to assess the appropriateness of internal controls as well as practical guidance. A draft will be made available in March for review and comment, and a final version will be released in May 2014.</p> |
| Proposed approach | <ul style="list-style-type: none"> • The Finance Minister will be asked to issue delegations in relation to the use of credit cards. • The Model Resource Management Instructions are to be released in final form in May 2014. |

| | |
|--|---|
| Section 58: | Investment by the Commonwealth |
| Related PGPA Act provisions | Investment by corporate Commonwealth entities (s 59) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | A small number of non-corporate Commonwealth entities (currently FMA Act agencies) have enabling legislation permitting investment activities (for example, the Future Fund Management Agency). This other legislation permits the entity to operate beyond the scope of section 58 of the PGPA Act. |
| PGPA Rule(s) | <p>A rule has been developed that adopts a similar approach to FMA Act s 39 and FMA regulation 22 and prescribes the kinds of investments that the Finance Minister, Treasurer and their delegates are authorised to make.</p> <p>The rule differs slightly from FMA regulation 22 as a result of advice from the Australian Office of Financial Management on a more effective description of current arrangements.</p> |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Authority for non-corporate Commonwealth entities under this provision will be allocated by delegation instruments issued by the Finance Minister or Treasurer to a limited number of entities that have a demonstrated need to invest. |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Section 15 of the PGPA Act imposes a duty on accountable authorities to govern the entity in a financial sustainable manner; s 16 requires the accountable authority to establish and maintain systems relating to risk and control; and s 25 imposes a duty on officials to act with care and diligence in undertaking their responsibilities. |
| Policy | No changes in policy are proposed. |
| Guidance | <p>Two pieces of existing guidance will be updated in relation to investment activities:</p> <ul style="list-style-type: none"> Finance Circular No. 2005/11: <i>Investment of public money—section 39 of the Financial Management and Accountability Act 1997</i>, which provides investment guidance to Chief Executive Officers of FMA Act agencies (generally the accountable authorities of non-corporate Commonwealth entities under the PGPA Act) |

| | |
|--------------------------|--|
| | <ul style="list-style-type: none"> Finance Circular 2005/05: <i>Investment of Surplus Money</i>. <p>Revised guidance will be released in draft form in March 2014 for review by Commonwealth entities and other interested stakeholders. A final version will be issued in May 2014 taking into account feedback on the draft.</p> <p>The Model Resource Management Instructions (based on the Model Chief Executive's Instructions for FMA Act agencies and informed by a review of CAC Act bodies and their internal control documents) will provide a template against which to assess the appropriateness of internal controls and practices in relation to investments as well as practical guidance. A draft of the instructions is to be made available in March for review and comment, and a final version will be released in May 2014.</p> |
| Proposed approach | <ul style="list-style-type: none"> Finance will update existing guidance, with draft versions to be made available in March and final versions in May 2014, taking into account feedback. Finance and Treasury will prepare revised delegation instruments for relevant entities to reflect revised arrangements. |

| | |
|--|---|
| Section 59: | Investment by corporate Commonwealth entities |
| Related PGPA Act provisions | Investment by the Commonwealth (s 58) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | <p>Section 59 has the same effect as ss 18(3) and (4) and s 19 of the CAC Act. It gives corporate Commonwealth entities the power to invest in certain instruments. They can only invest money that is 'not immediately required for the purposes of the entity'. This phrase is equivalent to the concept of surplus money in the CAC Act.</p> <p>The current enabling legislation of some corporate entities exempts them from the investment restrictions under the CAC Act. One example is s 193K of the <i>Aboriginal and Torres Strait Islander Act 2005</i> in relation to the Indigenous Land Corporation. Consequential amendments will be proposed to maintain these exemptions in relation to the PGPA Act.</p> |
| PGPA Rule(s) | Not applicable |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | <p><u>General requirements</u> Section 15 of the PGPA Act imposes a duty on accountable authorities to govern the entity in a financial sustainable manner; s 16 requires accountable authorities to establish and maintain systems relating to risk and control; and s 25 imposes a duty on officials to act with care and diligence in undertaking their responsibilities.</p> <p><u>Approving manner of investment</u> Subparagraph 59 (1)(b)(iii) provides for the Finance Minister to approve the manner in which money is invested that goes beyond the other features of this section of the Act. This represents a written agreement rather than a determination and is not disallowable.</p> <p>The existing form of this written agreement (<i>Commonwealth Authorities and Companies Act 1997—Approval of Manners of Investment 2008/01</i>) will be reissued by the Finance Minister in relation to:</p> <ul style="list-style-type: none"> • dematerialised equivalents • Air Services Australia |

| | |
|--------------------------|--|
| | <ul style="list-style-type: none"> • Australian Broadcasting Corporation • Australian Hearing Services • Australian Nuclear Science and Technology Organisation • Civil Aviation Safety Authority • Commonwealth Scientific and Industrial Research Organisation • Export Finance and Insurance Corporation • Grains Research and Development Corporation • Rural Industries Research and Development Corporation. |
| Policy | No changes in policy are proposed. |
| Guidance | <p>Two pieces of guidance will be updated in relation to investment activities:</p> <ul style="list-style-type: none"> • Finance Circular No. 2005/11: <i>Investment of public money—section 39 of the Financial Management and Accountability Act 1997</i>, which provides investment guidance to Chief Executive Officers of FMA Act agencies • Finance Circular 2005/05: <i>Investment of Surplus Money</i>. <p>Revised guidance will be released in draft form in March for review by Commonwealth entities and other interested stakeholders, and a final version will be issued in May 2014.</p> <p>The Model Resource Management Instructions (based on the Model Chief Executive’s Instructions for FMA Act agencies and informed by a review of CAC Act bodies and their internal control documents) will provide a template against which to assess the appropriateness of internal controls and practices in relation to investments as well as practical guidance. A draft of the instructions will be made available in March for review and comment, and a final version will be released in May 2014.</p> |
| Proposed approach | <ul style="list-style-type: none"> • Existing guidance will be amended. • The Finance Minister will provide written agreement to relevant entities in relation to the manner of their investment activities. |

| | |
|--|---|
| Section 60: | Indemnities, guarantees or warranties by the Commonwealth |
| Related PGPA Act provisions | <ul style="list-style-type: none"> • Commitments and expenditure (s 52) • Indemnities, guarantees or warranties by corporate Commonwealth entities (s 61) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | <p>The enabling legislation of a number of Commonwealth entities allows for the Finance Minister to provide indemnities and guarantees.</p> <p>As part of the process of reviewing enabling legislation in developing the C&T Bill, consideration will be given to whether these provisions should be retained or can be deleted in reliance on s 60.</p> |
| PGPA Rule(s) | No rule is proposed at this time. |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | <p>Section 60 authorises the Finance Minister to provide an indemnity, guarantee or warranty on behalf of the Commonwealth in accordance with the rules.</p> <p>By implication, no other person may grant an indemnity, guarantee or warranty on behalf of the Commonwealth, unless expressly authorised by legislation or delegation.</p> <p>The Finance Minister will be asked to delegate this power to accountable authorities with conditions. This is consistent with the approach under current arrangements, although the opportunity will be taken to lift thresholds in a modest fashion in line with movements over time in the cost of activities.</p> <p>A draft delegation instrument will be made available for Commonwealth entities to review in March, and the final form of the instrument will be issued in May 2014. The Finance Minister will consider all necessary instruments as required for implementation from 1 July 2014.</p> |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | <p>This section clarifies the role of the Finance Minister in relation to contingent liabilities, which up until now has been mainly based on policy and practice.</p> <p>While accountable authorities may delegate their power in relation to this provision, any decision to do so must have</p> |

| | |
|--------------------------|--|
| | regard to the duty to govern under s 15, including the financial sustainability of the entity's activities and the effect on public resources generally. |
| Policy | The Commonwealth's longstanding policy is that a contingent liability should only be accepted if the expected benefits, financial or otherwise, are sufficient to outweigh the level and cost of the risk the Commonwealth would be assuming. No changes to that policy are proposed. |
| Guidance | <p>Guidance will be updated to reflect the transition to the PGPA Act and replacement of the FMA Regulation 10 and 10A arrangements. This will be addressed by updating FMG6: <i>Guidelines for Issuing and Managing Indemnities, Guarantees, Warranties and Letters of Comfort</i>. The draft of the revised document will be released for review in March and the final version will be released in May 2014.</p> <p>The Model Resource Management Instructions (based on the Model Chief Executive Instructions for FMA Act agencies and informed by a review of CAC Act bodies and their internal control documents) will provide a template against which to assess the appropriateness of internal controls and practices in relation to indemnities and other arrangements as well as practical guidance. A draft of the instructions will be made available in March for review and comment, and a final version will be released in May 2014.</p> |
| Proposed approach | <ul style="list-style-type: none"> • Subject to explicit provisions in enabling legislation, application of s 60 will be accomplished through delegations by the Finance Minister to accountable authorities. • Guidance will be updated. |

| | |
|--|---|
| Section 61: | Indemnities, guarantees or warranties by corporate Commonwealth entities |
| Related PGPA Act provisions | <ul style="list-style-type: none"> • Commitments and expenditure (s 52) • Indemnities, guarantees or warranties by the Commonwealth (s 60) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | <p>The enabling legislation of some corporate Commonwealth entities permits them to give certain indemnities or guarantees.</p> <p>Entities may also generally indemnify officials in the course of performing statutory functions.</p> |
| PGPA Rule(s) | No rule is proposed at this time. Actions under this section will be accomplished through the directions of accountable authorities based on their ability to do so under enabling legislation. |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | While accountable authorities may delegate their powers in relation to this provision, any decision to do so must have regard to the duty to govern under s 15 of the PGPA Act, including the financial sustainability of the entity's activities and the effect on public resources generally. |
| Policy | The Commonwealth's longstanding policy is that a contingent liability should only be accepted if the expected benefits, financial or otherwise, are sufficient to outweigh the level and cost of the risk the Commonwealth would be assuming. No changes to that policy are proposed. |
| Guidance | <p>Guidance for non-corporate entities is being prepared based on Finance Circular 2003/02: <i>Guidelines for Indemnities, Guarantees, Warranties and Letters of Comfort</i>. While that circular does not apply to corporate Commonwealth entities, it covers many of the issues that any accountable authority would need to take into account in managing the operations of the entity.</p> <p>Consideration may be given covering both types of entity in the new guidance or developing a companion document for</p> |

| | |
|--------------------------|--|
| | <p>corporate Commonwealth entities.</p> <p>The Model Resource Management Instructions (based on the Model Chief Executive’s Instructions for FMA Act agencies and informed by a review of CAC Act bodies and their internal control documents) will provide a template against which to assess the appropriateness of internal controls and practices in relation to indemnities and other arrangements as well as practical guidance. A draft of the instructions will be made available in March for review and comment, and a final version will be released in May 2014.</p> |
| Proposed approach | Amend guidance and provide training and ongoing support for entities. |

| | |
|--|--|
| Section 62: | Insurance obtained by corporate Commonwealth entities |
| Related PGPA Act provisions | Not applicable |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | Not applicable |
| PGPA Rule(s) | <p>The proposed rule provides that corporate Commonwealth entities, that are not members of the Comcover fund, may seek commercial insurance to insure an official or former official against liabilities incurred by that person as an official, subject to the insurance:</p> <ul style="list-style-type: none"> • not including coverage for liability (other than for legal costs) arising out of conduct involving a wilful breach of duty or • not including coverage for improper use of position (s 27) or information (s 28). <p>These exceptions are consistent with s 27N of the CAC Act.</p> |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Not applicable |
| Policy | No change is proposed to the existing Comcover Insurance Policy apart from a need to update it with references to the PGPA Act. |
| Guidance | The Comcover <i>Statement of Cover 2014–15</i> and Comcover <i>Insurance Policy 2014–15</i> to be released on 1 July 2014 will incorporate amendments to reflect the change from FMA Act and CAC Act to the PGPA Act, together with related information bulletins. |
| Proposed approach | Release amended insurance policies and documents for 1 July 2014. |

| | |
|--|--|
| Section 63: | Waiver of amounts owing to the Commonwealth |
| Related PGPA Act provisions | <ul style="list-style-type: none"> • Setting off amounts owed to, and by, the Commonwealth (s 64) • Act of grace payments by the Commonwealth (s 65) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | While no specific legislation relates to this provision, debts arising from the application of other legislation may lead to circumstances in which s 63 is utilised. |
| PGPA Rule(s) | A rule in relation to the Finance Minister receiving advice before authorising a waiver of amounts has been developed consistent with the current approach of FMA Regulation 29. |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Authority for officials of non-corporate Commonwealth entities to be delegated powers under this provision is proposed through a delegation instrument issued by the Finance Minister. A draft delegation instrument will be made available in March for review by Commonwealth entities and other interested stakeholders and a final form will be considered in May 2014. |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Not applicable |
| Policy | No changes in policy are proposed. Waivers of the Commonwealth's right to payment of amounts owed to it may be authorised by the Finance Minister if the debt arose as a direct result of the involvement of a Commonwealth agency or if repayment would be inequitable or cause severe ongoing financial hardship. The Finance Minister may also modify the terms and conditions of repayment. Currency waivers are currently authorised under FMA Act s 34 and FMA regulation 29. |
| Guidance | <p>Finance Circular 2009/09: <i>Discretionary Compensation and Waiver of Debt Mechanisms</i> provides guidance on discretionary compensation (including act of grace payments) and waiver of debt.</p> <p>Draft revised guidance based on this circular will be released in March for review by stakeholders and then released as a final version in May 2014 taking into account feedback from stakeholders.</p> <p>The Model Resource Management Instructions (based on the Model Chief Executive's Instructions for FMA Act</p> |

| | |
|--------------------------|---|
| | agencies and informed by a review of CAC Act bodies and their internal control documents) will provide a template against which to assess the appropriateness of internal controls and practices in relation to waivers as well as practical guidance. A draft of the instructions will be made available in March for review and comment, and a final version will be released in May 2014 taking into account feedback from stakeholders. |
| Proposed approach | Finance to prepare delegation instruments for signature by the Finance Minister and amend guidance to reflect PGPA Act provisions. |

| | |
|--|--|
| Section 64: | Setting off of amounts owed to, and by, the Commonwealth |
| Related PGPA Act provisions | <ul style="list-style-type: none"> • Waiver of amounts owing to the Commonwealth (s 63) • Act of grace payments by the Commonwealth (s 65) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | While no specific legislation relates to this provision, debts arising from the application of other legislation may lead to circumstances in which s 64 is utilised. |
| PGPA Rule(s) | No rule is proposed. |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Authority for non-corporate Commonwealth entities under this provision will be considered through a delegations instrument issued by the Finance Minister. |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Not applicable |
| Policy | No changes in policy are proposed. A provision was introduced into the FMA Act (s 35) in 2012 to provide the Finance Minister with the discretion to set off amounts owed to the Commonwealth by a person with amounts payable by the Commonwealth to that same person as a cost-effective mechanism to handle debts. |
| Guidance | <p>Finance Circular 2009/09: <i>Discretionary Compensation and Waiver of Debt Mechanisms</i> provides guidance on discretionary compensation (including act of grace payments) and waiver of debt.</p> <p>Draft revised guidance based on this circular will be released in March for review by stakeholders and then released as a final version in May 2014 taking into account feedback from stakeholders.</p> <p>The Model Resource Management Instructions (based on the Model Chief Executive's Instructions for FMA Act agencies and informed by a review of CAC Act bodies and their internal control documents) will provide a template against which to assess the appropriateness of internal controls and practices in relation to waivers as well as practical guidance. A draft of the instructions will be made available in March for review and comment, and a final version will be released in May 2014 taking into account</p> |

| | |
|--------------------------|--|
| | feedback from stakeholders. |
| Proposed approach | Finance to prepare delegation instruments for signature by the Finance Minister and amend guidance to reflect PGPA Act provisions. |

| | |
|--|--|
| Section 65: | Act of grace payments by the Commonwealth |
| Related PGPA Act provisions | <ul style="list-style-type: none"> • Waiver of amounts owing to the Commonwealth (s 63) • Setting off amounts owed to, and by, the Commonwealth (s 64) |
| Options to amend the PGPA Act | <p>Section 65 of the PGPA is based on s 33 of the FMA Act and its supporting arrangements. There is no corresponding provision in the CAC Act as the Finance Minister is required to make decisions on behalf of the Commonwealth rather than on behalf of an entity.</p> <p>Section 65 does not make provision for the setting of terms and conditions in relation to a payment or payments, unlike s 33(3) of the FMA Act. As part of reviewing requirements for the implementation of the provision, a specific reference to setting terms and conditions may be included in an amended form of s 65 (rather than in a rule).</p> |
| Enabling legislation | While no specific legislation relates to this provision, conditions may be imposed where, for example, an act of grace payment is made in lieu of another legislated payment, such as Newstart Allowance. If so, the conditions attached to the legislative payment may be transferred to the act of grace payment. |
| PGPA Rule(s) | <p>No rule is proposed in relation to setting terms and conditions as authority for doing so is proposed for inclusion the Act.</p> <p>A rule relating to advice to the Finance Minister on authorising such payments (and related matters covered under ss 63 and 64) has been developed based on FMA regulation 29.</p> |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Authority for non-corporate Commonwealth entities under this provision may be allocated by a delegation instrument issued by the Finance Minister. |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Act of grace payments can only be made from amounts appropriated by Parliament. This provision does not represent a separate source of appropriation. |
| Policy | No changes in policy are proposed. |
| Guidance | Finance Circular 2009/09: <i>Discretionary Compensation and Waiver of Debt Mechanisms</i> will be updated to include information on set-offs and the role of advisory committees |

| | |
|--------------------------|--|
| | in the context of the PGPA Act. A draft of the revised guidance will be released in March for review before a final version is released in May 2014. |
| Proposed approach | <ul style="list-style-type: none">• Amend s 65 of the Act.• Update Finance guidance to reflect PGPA Act provisions and rules. |

| | |
|--|---|
| Section 66: | Gifts of relevant property (Ministers and officials of non-corporate Commonwealth entities) |
| Related PGPA Act provisions | Liability for unauthorised gifts of relevant property (s 67) |
| Options to amend the PGPA Act | An amendment to this provision is proposed in order to insert a power for the Finance Minister to authorise in writing a gift of relevant property. |
| Enabling legislation | Not applicable |
| PGPA Rule(s) | No rule is proposed. However, consideration of the likely content of a rule has led to a position that such requirements would be more appropriately contained within the primary legislation. The provision would be proposed for amendment through the C&T Bill. |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Authority for non-corporate Commonwealth entities under this provision, with conditions, will be allocated by a delegations instrument issued by the Finance Minister. A draft delegations instrument will be released for review in March, and a final version will be released in May 2014 taking into account feedback from stakeholders. |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | <p>It would ordinarily be difficult to reconcile an official fulfilling their duties in ss 25 to 29 with the giving of gifts. Situations where it may be appropriate to give a gift include in the context of protocol requirements or where the Commonwealth is disposing of surplus relevant property. Therefore, limitations on when gifts can be made are appropriate.</p> <p>This section does not apply to officials of corporate Commonwealth entities. Nevertheless, these officials must still consider whether making a gift of relevant property would be compatible with fulfilling their general duties.</p> |
| Policy | <p>No changes in policy are proposed.</p> <p>Section 66 generally has the same effect as s 43 of the FMA Act regarding gifts. It sets limits on when officials of non-corporate Commonwealth entities or Ministers can give gifts, including where expressly authorised by a law.</p> |
| Guidance | The Model Resource Management Instructions (based on the Model Chief Executive's Instructions used by FMA Act |

| | |
|--------------------------|--|
| | <p>agencies and better practice features in internal control arrangements for CAC Act bodies) will be available as a template entities may wish to adopt or use as practical guidance in determining their own internal control arrangements.</p> <p>A draft of the document will be made available in March 2014 for review by Commonwealth entities and other interested stakeholders. The final version will be released in May 2014 taking into account feedback on the draft.</p> |
| Proposed approach | <ul style="list-style-type: none"> • Finance to amend guidance. • Section 66 to be amended to bring requirements for authorisation of gifting activities into the Act. |

| | |
|--|--|
| Section 67: Section 68: Section 69: Section 70: | <ul style="list-style-type: none"> • Liability for unauthorised gifts of relevant property • Liability for loss—custody • Liability for loss—misconduct • Provisions relating to liability of Ministers and officials |
| Related PGPA Act provisions | Gifts of relevant property (s 66) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | Not applicable |
| PGPA Rule(s) | Not applicable |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Not applicable |
| Policy | <p>Sections 67 to 70 are a group of related provisions that deal with the liability of Ministers and officials of non-corporate entities for unauthorised gifts and loss. They are based on similar FMA Act provisions.</p> <p>Existing policy settings will continue.</p> |
| Guidance | <p>The Model Resource Management Instructions (based on the Model Chief Executive's Instructions used by FMA Act agencies and better practice features in internal control arrangements for CAC Act bodies) will be available as a template entities may wish to adopt or use as practical guidance in determining their own internal control arrangements.</p> <p>A draft of the document will be made available in March 2014 for review by Commonwealth entities and other interested stakeholders. The final version will be released in May 2014 taking into account feedback on the draft.</p> |
| Proposed approach | Continuation of existing arrangements. |

| | |
|--|--|
| Section 71: | Approval of proposed expenditure by a Minister |
| Related PGPA Act provisions | Commitment and expenditure of relevant money (covering decisions by the Commonwealth or Commonwealth entities) (s 52) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | Ministers may approve expenditure of relevant money through their Executive role or through specific provisions in legislation (as in the case of grants programmes, for example). |
| PGPA Rule(s) | Not applicable |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Not applicable |
| Policy | Requirements in relation to approving expenditure have been explicitly included in the PGPA Act for Ministers rather than in the rules as it is considered more appropriate for Parliament to set such arrangements rather than for another Minister (i.e. the Finance Minister) to do so. The provision largely replicates FMA Regulation 9 and existing obligations for Ministers in relation to approving expenditure. |
| Guidance | <p>Guidance has been developed covering commitments to spend relevant money, which includes guidance on entering into arrangements. This largely replaces the information in Finance Circular 2011/01: <i>Commitments to spend public money (FMA Regulations 7 to 12)</i>.</p> <p>A draft will be made available in March for review by Commonwealth entities and other interested stakeholders, and a final version will be released in May 2014.</p> |
| Proposed approach | Continuation of existing arrangements with updated guidance. |

| | |
|--|--|
| Section 72: | Minister to inform Parliament of certain events |
| Related PGPA Act provisions | The Commonwealth's involvement with companies (s 85) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | The enabling legislation of specific investment-focused entities may dictate alternative means of complying with obligations for entities and their Ministers to keep Parliament informed in relation to the acquisition and disposal of interests in companies and other relevant bodies. |
| PGPA Rule(s) | A rule has been drafted outlining the form and particulars of complying with this provision. |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Not applicable |
| Policy | No changes in policy are proposed. |
| Guidance | <p>Section 72 replicates s 39A of the FMA Act, which is supported by a template for use in reporting but no guidance.</p> <p>No changes to practice are expected, but guidance will be issued including the current standard template in the FMA Act, modified and updated to reflect the introduction of the PGPA Act. A draft of the guidance will be released in March for comment, and the final version will be released in May 2014.</p> |
| Proposed approach | Continuation of existing arrangements with updated guidance. |

Part 2-5—Appropriations

Provisions in Part 2-5

- Section 73: Guide to this Part
- Section 74: Receipts of amounts by non-corporate Commonwealth entities
- Section 75: Transfers of functions between non-corporate Commonwealth entities
- Section 76: Notional payments and receipts by non-corporate Commonwealth entities
- Section 77: Repayments by the Commonwealth
- Section 78: Establishment of special accounts by the Finance Minister
- Section 79: Disallowance of determinations relating to special accounts
- Section 80: Special accounts established by other Acts

This Part of the Act has specific provisions relating to the appropriations of money that forms the Consolidated Revenue Fund (CRF). This Part applies only to non-corporate Commonwealth entities, because for the purposes of appropriation law they are legally part of the Commonwealth and need a valid appropriation to spend money represented in the CRF.

Sections 74 to 77 deal with:

- the effect on appropriations when entities receive certain amounts
- the effect on appropriations when there is a transfer of functions between entities
- payments within or between entities.

Sections 78 to 80 provide authority in relation to a special account, which is an appropriation mechanism that provides a limited special appropriation up the balance of the special account at any given time. A special account may be established under section 78 by the Finance Minister making a determination (a disallowable legislative instrument) or under section 80 by the passing of an Act (other than the FMA or PGPA Act).

| | |
|--|---|
| Section 74: | Receipts of amounts by non-corporate Commonwealth entities |
| Related PGPA Act provisions | Repayments by the Commonwealth (s 77) |
| Options to amend the PGPA Act | Section 74 may be amended to exclude reference to amounts received in relation to GST. Finance proposes that an appropriation to pay GST and amounts in relation to may be included in a new section of the PGPA Act listed after s76 (Notional payments and receipts by non-corporate Commonwealth entities). |
| Enabling legislation | The enabling legislation of some entities may include a capacity to charge for the provision of services. The retention of amounts collected as charges by non-corporate Commonwealth entities may operate in conjunction with section 74. |
| PGPA Rule(s) | A rule is being developed that draws on similar arrangements under FMA ss 30 and 31 and Regulation 15. |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Not applicable |
| Policy | <p>Section 74 was originally drafted with the intention of replacing FMA Act ss 30 (Repayments to the Commonwealth), 30A (GST recoveries) and 31 (Retention of receipts). It is now proposed to be restricted to coverage of ss 30 and 31 of the FMA Act.</p> <p>Detailed examination of legal requirements and business practices across Commonwealth entities has indicated that continuation of arrangements under s 30A of the FMA Act would be inconsistent with the intention of simplifying and streamlining administration. (See the comments on proposed s 76A for more information.)</p> <p>A review of the Cost Recovery Guidelines is close to finalisation. Revised guidance will be issued clarifying that cost-recovered activities are undertaken on an ongoing basis on behalf of the Government. This means that cost-recovered activities should not generally utilise these (s 74) arrangements to retain receipts.</p> |

| | |
|--------------------------|---|
| Guidance | Finance Circular 2012/01: <i>Retained Agency Receipts</i> and Finance Circular 2011/04: <i>Repayments by and to the Commonwealth</i> will be replaced with guidance covering arrangements to operate under s 74 of the PGPA Act. A draft of the guidance will be released in March for comment from non-corporate Commonwealth entities and other interested stakeholders, and a final version will be released in May 2014 taking into account feedback. |
| Proposed approach | <ul style="list-style-type: none"> • Release a rule covering retention of receipts. • Review potential impacts on Cost Recovery Policy as well as any need for changes in the enabling legislation of affected entities. |

| | |
|--|--|
| Section 75: | Transfers of functions between non-corporate Commonwealth entities |
| Related PGPA Act provisions | <ul style="list-style-type: none"> Accounts and records for Commonwealth entities (s 41) Annual financial statements for Commonwealth entities (s 42) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | Not applicable |
| PGPA Rule(s) | No rule is proposed at this time. |
| Determinations (disallowable) | As under s 32 of the FMA Act, non-disallowable determinations can be made on the transfer of functions and the related appropriations. No changes are proposed at this time to these arrangements. |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Not applicable |
| Policy | The Public Management Reform Agenda will include an exploration of appropriations arrangements during the course of 2014 and 2015. Current arrangements for the transfer of functions and personnel as a result of machinery of government changes are the subject of ongoing discussion. |
| Guidance | <p>No substantive changes to guidance are proposed at this time, noting the intended review of appropriations arrangements. The following guidance will be updated by May 2014:</p> <ul style="list-style-type: none"> Finance Circular 2010/01: <i>Section 32 of the FMA Act—Transfer of Agency Functions</i> Finance Brief 6: <i>Adjustment of Appropriations on Change of Agency Functions</i>. |
| Proposed approach | Continuation of existing arrangements pending consideration of changes to appropriations arrangements. |

| | |
|--|---|
| Section 76: | Notional receipts and payments by non-corporate Commonwealth entities |
| Related PGPA Act provisions | <ul style="list-style-type: none"> Accounts and records for Commonwealth entities (s 41) Annual financial statements for Commonwealth entities (s 42) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | Not applicable |
| PGPA Rule(s) | Not applicable |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Not applicable |
| Policy | <p>This provision mirrors s 6 of the FMA Act and represents a continuation of existing policy.</p> <p>Recordkeeping requirements in relation to notional receipts and payments are currently specified in the Finance Minister's Orders. Future arrangements on such requirements are discussed in this paper under the comments on ss 41 and 42.</p> |
| Guidance | Guidance on financial reporting and accounting requirements will be updated to reflect the introduction of the PGPA Act and released in late 2014 to support the release of the proposed financial reporting rules. |
| Proposed approach | Continuation of existing arrangements with updated guidance. |

| | |
|--|---|
| [Section 76A (proposed)] | GST-related payments |
| Related PGPA Act provisions | <ul style="list-style-type: none"> • Receipts of amounts by non-corporate Commonwealth entities (s 74) • Notional receipts and payments by non-corporate Commonwealth entities (s 76) |
| Options to amend the PGPA Act | <p>A new section to the Act is proposed.</p> <p>A review of the application of s 30A of the FMA Act has identified inconsistent practices across government leading to concerns over the efficacy of arrangements for the retention of GST amounts. Section 74 of the PGPA Act was originally intended to deal with GST recovered amounts as well as other receipts and the ability of entities to retain and use those amounts. An examination of both legal requirements and business practices found that while s 74 may address one aspect of the process, outstanding issues in relation to payments still needed addressing.</p> <p>The proposed approach involves establishing a special appropriation to cover the GST-related aspect of any payments. GST related receivables (from the Australian Taxation Office or as part of a sales receipt) will be transferred by the non-corporate Commonwealth entity to the Official Public Account.</p> |
| Enabling legislation | Not applicable |
| PGPA Rule(s) | No rule is proposed. |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | The <i>Finance Minister's (A New Tax System) Directions 2005</i> will be amended to reflect the introduction of the PGPA Act. |
| Policy | <p>The introduction of this provision represents a change in policy from existing arrangements under s 30A of the FMA Act.</p> <p>Annual appropriations are provided by Parliament net of GST, meaning that each time a GST-related payment is made either this leads to an additional reduction in appropriation or another source of appropriation is needed to cover the GST-related amount. Section 30A of the FMA Act enables payments made with limited appropriations to be 'grossed up' for most GST payable amounts. Agencies have tended to use section 30A for most payments made with administered</p> |

| | |
|--------------------------|---|
| | <p>appropriations.</p> <p>Departmental appropriations have tended to operate on the basis of paying for items inclusive of GST and then increasing the departmental appropriation with GST recovered amounts to return to a net of GST position.</p> <p>Rather than have two separate approaches for managing GST payments in relation to administered and departmental appropriations, it is intended to have one consistent approach.</p> |
| Guidance | <p>Finance Circular 2005/01: <i>Finance Minister's (A New Tax System) Directions 2005</i> will be amended to reflect the introduction of the PGPA Act. A draft will be prepared and released in March 2014 for review, and a final version will be released in May 2014.</p> |
| Proposed approach | <p>Introduce the new section to the Act and amend related guidance.</p> |

| | |
|--|---|
| Section 77: | Repayments by the Commonwealth |
| Related PGPA Act provisions | Receipts of amounts by non-corporate Commonwealth entities (s 74) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | Not applicable |
| PGPA Rule(s) | Not applicable |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Not applicable |
| Policy | This provision mirrors s 28 of the FMA Act and represents a continuation of existing policy. |
| Guidance | Finance Circular 2011/04: <i>Repayments by and to the Commonwealth</i> will be updated to cover arrangements under ss 74 and 77 of the PGPA Act. A draft of the guidance will be released in March for comment, and a final version will be released in May 2014. |
| Proposed approach | Continuation of existing arrangements with updated guidance. |

| | |
|--|--|
| Section 78: | Establishment of special accounts by the Finance Minister |
| Related PGPA Act provisions | <ul style="list-style-type: none"> Disallowance of determinations relating to special accounts (s 79) Establishment of special accounts by other Acts (s 80) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | Not applicable |
| PGPA Rule(s) | Not applicable |
| Determinations (disallowable) | Special accounts established by the Finance Minister are subject to specific disallowance provisions under the <i>Legislative Instruments Act 2003</i> , with a disallowance period of 6 sitting days rather than the usual 15 sitting days. |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Not applicable |
| Policy | Section 78 includes an additional requirement for a determination to specify the accountable authority responsible for the particular special account. This would require amending or remaking the determination whenever the accountable authority changes. |
| Guidance | <p>Guidance for special accounts is being reviewed. The following guidance will be replaced in May 2014 with guidance that references the PGPA Act arrangements:</p> <ul style="list-style-type: none"> Finance Circular 2009/01: <i>Introduction to Special Accounts</i> <i>Guidelines for the Management of Special Accounts</i> (FMG7). |
| Proposed approach | Continuation of existing arrangements with updated guidance. |

| | |
|--|---|
| Section 79: | Disallowance of determinations relating to special accounts |
| Related PGPA Act provisions | <ul style="list-style-type: none"> Establishment of special accounts by the Finance Minister (s 78) Establishment of special accounts by other Acts (s 80) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | Not applicable |
| PGPA Rule(s) | Not applicable |
| Determinations (disallowable) | Special accounts established by the Finance Minister under this provision are subject to specific disallowance provisions under the <i>Legislative Instruments Act 2003</i> , with a disallowance period of six sitting days rather than the usual 15 sitting days. |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Not applicable |
| Policy | No changes in policy are proposed. |
| Guidance | <p>The following guidance will be replaced in May 2014 with guidance that references the PGPA Act arrangements:</p> <ul style="list-style-type: none"> Finance Circular 2009/01: <i>Introduction to Special Accounts</i> <i>Guidelines for the Management of Special Accounts</i> (FMG7). |
| Proposed approach | Continuation of existing arrangements with updated guidance. |

| | |
|--|--|
| Section 80: | Special accounts established by other Acts |
| Related PGPA Act provisions | <ul style="list-style-type: none"> Establishment of special accounts by the Finance Minister (s 78) Disallowance of determinations relating to special accounts (s 79) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | Special accounts may be established in other Acts such as the <i>Social Security Act 1991</i> . The C&T Bill will update references to s 21 of the FMA Act in enabling legislation to s 80 of the PGPA Act. |
| PGPA Rule(s) | Not applicable |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Not applicable |
| Policy | No changes in policy are proposed. |
| Guidance | <p>The following guidance will be replaced with guidance by May 2014 that reflects PGPA Act arrangements:</p> <ul style="list-style-type: none"> Finance Circular 2009/01: <i>Introduction to Special Accounts</i> <i>Guidelines for the Management of Special Accounts</i> (FMG7) |
| Proposed approach | Continuation of current arrangements. The C&T Bill will amend references to s 21 of the FMA Act to s 80 of the PGPA Act for enabling legislation (where applicable). |

Part 2-6—Cooperating with other jurisdictions

Provisions in Part 2-6

- Section 81: Guide to this Part
- Section 82: Sharing information with other jurisdictions
- Section 83: Auditing by State and Territory Auditors-General

The PGPA Act seeks to encourage greater cooperation between Commonwealth entities themselves, and between Commonwealth entities and their partners, including States and Territories and the private and not-for-profit sectors.

The Act places an obligation on accountable authorities to encourage officials within their entities to cooperate with partners, and to consider how compliance burdens affect their partners (ss 17 and 18). These positive duties are not designed to force entities to cooperate with others, but they do send a message that cooperation needs to be seriously considered, and that the financial framework will not impede effective partnering.

This Part of the Act is consistent with this intent, allowing for rules to prescribe situations where the accountable authority of a Commonwealth entity is required to share information with the States and Territories, and prohibiting the Commonwealth from preventing State or Territory Auditors-General from conducting audits in certain situations.

| | |
|--|---|
| Section 82: | Sharing information with other jurisdictions |
| Related PGPA Act provisions | <ul style="list-style-type: none"> • Duty on accountable authorities to encourage cooperation (s 17) • Auditing by State and Territory Auditors-General (s 83) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | <p>Commonwealth entities are increasingly involving other jurisdictions in their governance structures. This can include giving other jurisdictions the power to appoint members of governing boards, requirements for the Commonwealth to consult with other jurisdictions, or joint funding of inter-jurisdictional bodies.</p> <p>Recent examples are the Australian Commission on Safety and Quality in Health Care and the National Health Performance Authority, both of which reflect aspects of these inter-jurisdictional relationships in their enabling legislation.</p> |
| PGPA Rule(s) | This section replicates s 43A of the FMA Act and s 33A of the CAC Act. No rule is proposed for 1 July 2014 as existing arrangements for entities provide sufficient opportunity for receipt of information. |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Information-sharing arrangements may also be covered in inter-governmental agreements rather than having a legislative basis. |
| Policy | This provision represents a continuation of existing policy, but it may be supplemented in the medium term as further reform in relation to cooperation and joint activities is developed. |

| | |
|--------------------------|---|
| Guidance | <p>Current guidance relates to arrangements for facilitating trans-Tasman government institutional cooperation and does not need to be amended this time.</p> <p>Two streams of work and guidance will need to evolve over the course of 2014 and 2015 taking into account this section of the Act:</p> <ul style="list-style-type: none"> • Draft guidance on the duties of accountable authorities refers to the duty to cooperate (s 17) and a duty in relation to requirements imposed on others (s 18) • Guidance on a governance policy framework will be developed for 1 July 2014 as part of establishing an improved approach to the creation, governance and abolition of Commonwealth entities, including the form entities may take and the governance structures they may adopt. |
| Proposed approach | Continuation of existing arrangements and approaches in the short term pending further work on governance models. |

| | |
|--|---|
| Section 83: | Auditing by State and Territory Auditors-General |
| Related PGPA Act provisions | <ul style="list-style-type: none"> • Duty on accountable authorities to encourage cooperation (s 17) • Audit of annual financial statements for Commonwealth entities (s 43) • Audit of subsidiary's financial statements (s 44) • Sharing information with other jurisdictions (s 82) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | The Auditor-General Act and its 'follow the money' provisions provide a similar ability to the Commonwealth Auditor-General. |
| PGPA Rule(s) | Not applicable |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Not applicable |
| Policy | Section 83 is designed to facilitate the auditing role of a State or Territory Auditor-General in cases when the Commonwealth has provided money to the Auditor-General's State or Territory, a body of the State or Territory or a body to which the State or Territory has also provided money. While the provision is new, it reflects an existing cooperative approach between Auditors-General across jurisdictions. |
| Guidance | Guidance issued in relation to this provision will be prepared by or with the assistance of the Commonwealth Auditor-General. |
| Proposed approach | Development of guidance. |

Part 2-7—Companies, subsidiaries and new corporate Commonwealth entities

Provisions in Part 2-7

- Section 84: Guide to this Part
- Section 85: The Commonwealth's involvement with companies
- Section 86: Subsidiaries of corporate Commonwealth entities
- Section 87: Establishing new corporate Commonwealth entities

This Part has provisions relating to the Commonwealth's involvement in companies, the responsibility of corporate Commonwealth entities for their subsidiaries, and the creation of new corporate Commonwealth entities.

Section 85 replicates in a prospective form s 39B of the FMA Act (s 39B is a savings provision confirming validity of Commonwealth companies already in existence). The reason for providing such an explicit provision can be found in the following quote from the Explanatory Memorandum to the *Financial Framework Legislation Amendment Act (No. 2) 2013* that introduced s 39B, which states at paragraph 21:

The Commonwealth has always believed and still believes that it may, without legislative authority, form or participate in the formation of a company and acquire shares in or become a member of a company to carry out activities within a head of legislative power. However, in the interests of abundant caution following the High Court's decision in *Williams v Commonwealth* [2012] HCA 23 (which involved argument about the outer limits of Commonwealth executive power), the proposed amendments are designed to put beyond any argument the capacity of the Executive Government to form or participate in the formation of companies.

| | |
|--|---|
| Section 85: | The Commonwealth's involvement in companies |
| Related PGPA Act provisions | <ul style="list-style-type: none"> Subsidiaries of corporate Commonwealth entities (s 86) Establishing new corporate Commonwealth entities (s 87) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | Involvement of the Commonwealth may be accomplished under the Corporations Law or may be supported through enabling legislation (for example, the <i>National Broadband Network Companies Act 2011</i>). |
| PGPA Rule(s) | No rule is proposed at this time, but it will be considered along with a possible rule under s 87 of the Act. |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Not applicable |
| Policy | This provision represents a continuation of existing policy, but it may be subject to change as a result of matters currently being considered by the High Court of Australia. |
| Guidance | Guidance in relation to Commonwealth companies will be considered as part of a broader review of Finance publications. |
| Proposed approach | <p><u>Application of s 39B of the FMA Act</u></p> <p>Arrangements to provide legislative authority for certain spending have been made through amendments to the FMA Act and associated regulations. These arrangements are reflected in s 32B to the FMA Act and regulation 16 and Schedule 1AA and 1AB to the FMA Regulations.</p> <p>The Government will continue to rely on these amended provisions of the FMA Act and FMA Regulations to ensure appropriate legislative authority is provided for spending activities. Therefore, these provisions will be retained (along with FMA s 39B) when the other provisions of the FMA Act</p> |

| | |
|--|--|
| | <p>are repealed and/or transitioned.</p> <p>Section 85 of the PGPA Act is a prospective provision and will apply to future instances in which the Commonwealth forms or participates in forming a company and acquires shares in or becomes a member of a company to carry out activities within a constitutional head of power.</p> |
|--|--|

| | |
|--|--|
| Section 86: | Subsidiaries of corporate Commonwealth entities |
| Related PGPA Act provisions | <ul style="list-style-type: none"> • Duty to govern the Commonwealth entity (s 15) • Duty to establish and maintain systems relating to risk and control (s 16) • The Commonwealth's involvement in companies (s 85) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | Enabling legislation may specify activities an entity is unable to undertake. |
| PGPA Rule(s) | Not applicable |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | <p>Corporate Commonwealth entities are given specific limited powers and functions by the Parliament (as set out in enabling legislation). A subsidiary is subject to the same limitations as its parent.</p> <p>The only exception to this is where legislation specifically permits a subsidiary to do things its parent cannot. The Australian National University is an example, but few (if any) other entities have this power.</p> |
| Policy | <p>This section mirrors s 29 of the CAC Act and represents a continuation of existing policy. It requires the accountable authority of a corporate Commonwealth entity to ensure that its subsidiaries are aware of this limitation, and act in accordance with it.</p> <p>This principle is important when a Commonwealth entity sets up a company under the Corporations Act or a joint venture. The accountable authority must be clear with partners about limitations on the subsidiary's powers.</p> |
| Guidance | Guidance in relation to Commonwealth companies will be considered as part of a broader review of publications. |
| Proposed approach | Continuation of existing arrangements. |

| | |
|--|--|
| Section 87: | Establishing new corporate Commonwealth entities |
| Related PGPA Act provisions | <ul style="list-style-type: none"> • Commonwealth entities (s 10) • Accountable authorities (s 12) • Officials (s 13) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | Not applicable. However, it should be noted that the design of this provision was based on the <i>Primary Industries and Energy Research and Development Act 1989</i> (PIERD Act) and the ability to establish research and development corporations through regulation. |
| PGPA Rule(s) | <p>A draft rule has been developed based on an approach involving core provisions covering all such entities being contained in the rule and the establishment of any entities and any enhancement or variation of the core provisions for that entity being listed in a schedule to the rule.</p> <p>Feedback from consultation on the draft rule is that its content is too prescriptive and may produce unnecessary complication. As no such entities can be created before 1 July 2014, Finance will seek further feedback before presenting a rule to Parliament.</p> |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Not applicable |
| Policy | Policy and guidance will be developed taking into account consultation on the development of a rule that gains broader acceptance, as well as incorporating lessons from the operation of the PIERD Act. |
| Guidance | See above. |
| Proposed approach | It is not proposed to have a rule in place for 1 July 2014 but to ensure that wide consultation occurs on the form and content of a rule as well as how such arrangements should be administered. |

Chapter 3—Commonwealth companies

Part 3-1—General

Provisions in Part 3-1

- Section 88: Guide to this Part
- Section 89: Commonwealth companies
- Section 90: Wholly-owned Commonwealth companies
- Section 91: Duty to keep the responsible Minister and Finance Minister informed
- Section 92: Audit committee
- Section 93: Application of government policy

This Part has the core provisions for this Chapter (which is about Commonwealth companies) and special provisions applying to wholly-owned Commonwealth companies.

The Corporations Act is the primary regulatory framework for Commonwealth companies, and the preceding provisions of the PGPA Act generally do not apply to them.³ Chapter 3 of the Act sets out requirements that Commonwealth companies have to comply with in addition to the requirements of the Corporations Act in order to meet appropriate standards of public sector accountability, as the Commonwealth company has been established through the actions of the Commonwealth and its resources.

³ Provisions relating to whole-of-government reporting and consolidated financial statements and general machinery provisions will apply to a Commonwealth company.

| | |
|--|--|
| Section 89: | Commonwealth companies |
| Related PGPA Act provisions | Wholly-owned Commonwealth companies (s 90) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | Companies are established in accordance with the provisions of the Corporations Act and may operate in conjunction with enabling legislation. |
| PGPA Rule(s) | Not applicable |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | <p>Section 89 is based on ss 34(1) to (1C) of the CAC Act. It defines when a company is a Commonwealth company by determining whether the Commonwealth controls the company.</p> <p>The three tests for ‘control’ under s 89(2) are similar to the tests under ss 46 and 47 of the Corporations Act that are used to determine whether a body corporate is a subsidiary of another body corporate.</p> <p>The first test is clarified by ss 89(3) and (4). It covers the situation where, for example, the Commonwealth is not a member of a company, but has the power to appoint and remove a majority of its directors. The second test is a traditional general law test of control, and the third test applies when the Commonwealth holds a majority of shares in a company. These tests of control are not the same as determining control for the purposes of consolidated financial statements.</p> <p>The definition of ‘Commonwealth company’ excludes a company that is a subsidiary of a Commonwealth company, of a corporate Commonwealth entity or of the Future Fund Board of Guardians.</p> |

| | |
|--------------------------|--|
| Policy | This provision is based on s 34 of the CAC Act and represents a continuation of existing policy. |
| Guidance | Guidance in relation to Commonwealth companies will be considered as part of a broader review of Finance publications, but will complement existing Corporations Law publications. |
| Proposed approach | Continuation of existing arrangements. |

| | |
|--|--|
| Section 90: | Wholly-owned Commonwealth companies |
| Related PGPA Act provisions | Commonwealth companies (s 89) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | Companies are established in accordance with the provisions of the Corporations Act and may operate in conjunction with enabling legislation. |
| PGPA Rule(s) | Not applicable |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Not applicable |
| Policy | The definition of 'wholly-owned Commonwealth company' is identical to the definition in s 34(2) of the CAC Act. If a company limited by guarantee falls under the definition of 'Commonwealth company', it is automatically a wholly-owned Commonwealth company. |
| Guidance | Guidance in relation to Commonwealth companies will be considered as part of a broader review of Finance publications, but will complement existing Corporations Law publications. |
| Proposed approach | Continuation of existing arrangements. |

| | |
|--|---|
| Section 91: | Duty to keep the responsible Minister and Finance Minister informed |
| Related PGPA Act provisions | Duty to keep responsible Minister and Finance Minister informed (s 19) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | Companies are established in accordance with the provisions of the Corporations Act and may (or may not) operate in conjunction with enabling legislation. |
| PGPA Rule(s) | No rule is proposed. |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Not applicable |
| Policy | <p>Section 91 generally reflects the substance of ss 40 and 41 of the CAC Act and requires the directors of a Commonwealth company to:</p> <ul style="list-style-type: none"> • keep the responsible Minister informed about the activities of the company and its subsidiaries • give the responsible Minister and the Finance Minister any reports, documents and information they require on the activities of a company or subsidiary • notify the responsible Minister of any significant decisions or significant issues that have affected the company or its subsidiaries • give the responsible Minister reasonable notice of a significant issue that may affect the company or its subsidiaries. |
| Guidance | Guidance in relation to Commonwealth companies will be considered as part of a broader review of Finance publications, but will complement existing Corporations Law publications. |
| Proposed approach | Continuation of existing arrangements. |

| | |
|--|--|
| Section 92: | Audit committee |
| Related PGPA Act provisions | Audit committee for Commonwealth entities (s 45) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | Companies are established in accordance with the provisions of the Corporations Act and may (or may not) operate in conjunction with enabling legislation. |
| PGPA Rule(s) | A draft rule has been prepared to balance core obligations but limit imposition of prescriptive requirements. |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Not applicable |
| Policy | The requirement for audit committees is a continuation of existing arrangements under the CAC Act and does not represent a change in policy. |
| Guidance | <p>The Australian Stock Exchange (ASX) Corporate Governance Principles (including reference to Listing Rule 12.7) provide comprehensive guidance on corporate governance arrangements as they apply to the operation of audit committees, and provide a source of information for the development of Finance guidance.</p> <p>Guidance on the rule will be issued for 1 July 2014.</p> |
| Proposed approach | Audit committees are a key element of the control system, providing assurance and advice to the Board of a Commonwealth company on the management of risks and the preparation of financial statements. The introduction of the PGPA Act and its obligations will lead to an increased emphasis on the role and contribution of audit committees. |

| | |
|--|---|
| Section 93: | Application of government policy |
| Related PGPA Act provisions | Application of government policy—corporate Commonwealth entities (s 22) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | Enabling legislation may include an ability for a responsible Minister to issue directions in relation to the operations of the entity and (as a consequence) the application of government policy. |
| PGPA Rule(s) | Not applicable |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | The ability to issue a general (government) policy order exists under the CAC Act and will continue to be available under the PGPA Act. |
| Policy | No changes in policy are proposed. |
| Guidance | Existing guidance on the application of government policy is presented in Finance Circular 2009/08: <i>Application of general policies to CAC bodies—General Policy Orders</i> . The guidance will be updated for 1 July 2014. |
| Proposed approach | <ul style="list-style-type: none"> • Finance to liaise with the owners of existing government policy orders to assess ongoing requirements. • Discussions on potential new government policy orders to be conducted on the basis that additional compliance requirements need to be properly justified in value-added terms. • Red tape reduction efforts to be broadened to better understand both actual and perceived regulatory constraints imposed on the financial framework through the application of policies and their source. |

Part 3-2—Planning and accountability

Provisions in Part 3-2

- Section 94: Guide to this Part
- Section 95: Corporate plan for Commonwealth companies
- Section 96: Budget estimates for wholly-owned Commonwealth companies
- Section 97: Annual reports for Commonwealth companies
- Section 98: Auditor of Commonwealth companies
- Section 99: Audit of subsidiary's financial statements

This Part is about planning by, and the accountability of, Commonwealth companies. While the main focus of Commonwealth companies is on compliance with the Corporations Act and any enabling legislation that may cover their activities, the establishment of Commonwealth companies with or through the use of public resources demands a high level of scrutiny to the government and the public.

As a result, this Part replicates a number of key accountability elements that Commonwealth entities are obliged to fulfil including requiring:

- the directors of a Commonwealth company to prepare a corporate plan for the company
- the directors of a wholly-owned Commonwealth company to prepare budget estimates for the company when required
- the directors of a Commonwealth company to prepare and give annual reports for the company to the responsible Minister
- the directors to ensure that the financial statements of a subsidiary of the company are audited.

| | |
|--|--|
| Section 95: | Corporate plan for Commonwealth companies |
| Related PGPA Act provisions | <ul style="list-style-type: none"> • Corporate plans for Commonwealth entities (s 35) • Annual performance statements for Commonwealth entities (s 39) • Annual report for Commonwealth entities (s 46) |
| Options to amend the PGPA Act | Section 95 will be amended to make clear that a corporate plan must be prepared at least once each year. |
| Enabling legislation | <p>Approximately 40 pieces of enabling legislation include corporate planning provisions (including legislation for Commonwealth companies). They cover the requirement to prepare a corporate plan, details of content, whether the plan needs to be approved by the responsible Minister, and how and when a plan may be varied.</p> <p>Where possible, Finance proposes to remove similar provisions in enabling legislation detailing requirements for corporate plans, since s 35 of the PGPA Act and the rule made under it set out the requirements. However, Finance proposes to retain any provisions that specify additional material the company is required to include to meet accountability to Ministers and Parliament.</p> |
| PGPA Rule(s) | A draft rule has been released that includes details of the proposed contents of corporate plans and arrangements for publication. The rule is not intended to address matters specific to a company that are dealt with in enabling legislation. The draft rule is subject to review and will be reissued for further comment. |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | <p><u>PB Statements and the Budget process</u></p> <p>While Commonwealth companies are not normally required to contribute to the preparation of PB Statements, since they are not usually recipients of funding from annual appropriations, they can be required to appear before Senate Estimates Committees to explain planned activities and how resources will be allocated.</p> <p><u>Annual reports, performance statements and accounting standards</u></p> <p>Annual reports for 2015–16 will use the objectives and targets in corporate plans as the basis for reviewing and</p> |

| | |
|--------------------------|---|
| | <p>assessing performance.</p> <p>Companies should have regard to the requirements in the rule for annual performance statements made under s 39 of the PGPA Act, even if not compelled to do so, as well as any financial reporting obligations that arise from the introduction of Australian Accounting Standard AASB 1055 <i>Budgetary Reporting</i>.</p> |
| Policy | <p>The introduction of the requirements for corporate plans and their interaction with PB Statements, the budget papers and annual reports has the potential to affect the manner and timing of reporting to Parliament. The final nature of Budget-related papers will be the subject of consultation with key stakeholders, including Parliamentary committees.</p> <p>The conduct of these discussions should also have regard to:</p> <ul style="list-style-type: none"> the sensitivity of information—corporate plans are intended to be released publicly, but the public form of a corporate plan must not include commercially or nationally sensitive material that would compromise the ability of the company to meet its obligations. providing the Parliament with a medium-term perspective of a company’s activities and progress in achieving the purposes for which the company was established or changes over time. |
| Guidance | <p>Guidance on corporate planning, including a revised draft rule, will be developed for the end of 2014 in consultation with stakeholders, and will be part of a suite of documents that cover the planning, performance and accountability cycle of Commonwealth entities. The requirements under this section need to be met for 2015–16.</p> |
| Proposed approach | <p><u>PGPA Rule</u></p> <p>A draft rule has been released which includes details of plan contents and arrangements for publication. The rule is not intended to address matters specific to an entity or company that are dealt with in enabling legislation. The draft rule is subject to review and will be the subject of consultation with stakeholders during 2014.</p> <p><u>Enabling legislation</u></p> <ul style="list-style-type: none"> Where possible, remove provisions in enabling legislation detailing the requirement for corporate plans, but retain any provisions that specify additional material the company is required to include as a result of its nature and its relationship with its responsible Minister. |

| | |
|--|--|
| | <ul style="list-style-type: none">• Where this is not possible or appropriate it may be necessary to amend the enabling legislation as required or insert a note to confirm that compliance with the provisions also constitutes compliance with s 95 of the PGPA Act. |
|--|--|

| | |
|--|--|
| Section 96: | Budget estimates for wholly-owned Commonwealth companies |
| Related PGPA Act provisions | Budget estimates for Commonwealth entities (s 36) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | Enabling legislation requires some companies to prepare estimates and provide them estimates to their responsible Minister. Existing practice is that these estimates are also provided to Finance to assist in the preparation of whole-of-government financial reports and statements. |
| PGPA Rule(s) | Not applicable |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Finance Secretary directions will be issued. The content will be consistent with existing provisions (for example, under FMA regulation 22D). Requirements may be communicated by correspondence and through other means such as Estimates Memoranda. |
| Other requirements | Not applicable |
| Policy | No changes in policy are proposed. This provision regularises existing practice across FMA and CAC Act bodies. Government policies on the preparation of estimates and other Budget related matters are communicated through Finance. |
| Guidance | Finance will review its guidance and training on the Budget cycle and the responsibilities of entities as part of updating its information on the overall financial framework for the introduction of the PGPA Act. |
| Proposed approach | As part of broader efforts to streamline and simplify Finance publications and communications, consideration is being given to streamlining these documents to improve understanding by entities and to support broader efforts by Government to reduce internal-to-government regulation. |

| | |
|--|---|
| Section 97: | Annual reports for Commonwealth companies |
| Related PGPA Act provisions | <ul style="list-style-type: none"> • Corporate plan for Commonwealth entities (s 35) • Records about performance of Commonwealth entities (s 37) • Measuring and assessing performance of Commonwealth entities (s 38) • Annual performance statements for Commonwealth entities (s 39) • Accounts and records for Commonwealth entities (s 41) • Annual financial statements for Commonwealth entities (s 42) • Audit of annual financial statements for Commonwealth entities (s 43) • Annual report for Commonwealth entities (s 46) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | The majority of companies with enabling legislation have annual reporting provisions that describe how operations and activities should be covered in annual reports. They also specify additional requirements, which may extend to additional information that must be included and additional approval processes and deadlines for the submission of draft reports to responsible Ministers. The provisions specifying additional requirements will be retained and a note may be inserted to confirm that compliance with the provisions also constitutes compliance with s 97 of the PGPA Act. |
| PGPA Rule(s) | No rule is proposed for annual reports at this time. Commonwealth companies are required to meet annual reporting obligations under the Corporations Act. |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Not applicable |
| Policy | <p>No changes in policy are proposed at this time.</p> <p>The introduction of the PGPA Act provides an opportunity to introduce a more coherent and consistent approach to the purpose, timing and development of annual reports.</p> |

| | |
|--------------------------|---|
| | Finance will work with key stakeholders, including the JCPAA and PM&C, on such arrangements during the course of 2014. |
| Guidance | <p>Guidance on annual reports is currently given in the Annual Reporting Guidelines issued by PM&C and the Finance Minister's Orders issued in relation to CAC Act bodies.</p> <p>Any changes to guidance will take account of consultations with key stakeholders on overall arrangements as well as reforms to improve reporting on performance and evaluation.</p> |
| Proposed approach | <p>Continuation of existing arrangements in relation to Commonwealth companies.</p> <p>The development of guidance for Commonwealth entities on performance and evaluation may provide useful ongoing assistance for Commonwealth companies in continuing to improve the quality of reporting provided to Parliament.</p> |

| | |
|--|---|
| Section 98: | Auditor of Commonwealth companies |
| Related PGPA Act provisions | <ul style="list-style-type: none"> • Audit of annual financial statements for Commonwealth entities (s 43) • Annual report for Commonwealth entities (s 46) • Annual report for Commonwealth companies (s 97) • Audit of subsidiary's financial statements (s 99) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | The Corporations Act identifies the company auditor for companies established under that Act. |
| PGPA Rule(s) | Not applicable |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | <p>Sub-section 99(3) allows for the Auditor-General not to be the auditor of a subsidiary if the subsidiary is incorporated outside of Australia and either:</p> <ul style="list-style-type: none"> • under the law applying to the subsidiary in that place the Auditor-General cannot be appointed as auditor of the subsidiary, or • in the Auditor-General's opinion it is impracticable or unreasonable for the Auditor-General to audit or be required to audit the statements. |
| Policy | The existing policy position is that the Auditor-General is the auditor for Commonwealth entities and companies except in specific circumstances. This provision makes that policy explicit. |
| Guidance | Not applicable |
| Proposed approach | Continuation of existing approach. |

| | |
|--|---|
| Section 99: | Audit of subsidiary's financial statements |
| Related PGPA Act provisions | <ul style="list-style-type: none"> • Accounts and records for Commonwealth entities (s 41) • Annual financial statements for Commonwealth entities (s 42) • Audit of annual financial statements for Commonwealth entities (s 43) • Audit of subsidiary's financial statements (s 44) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | Not applicable |
| PGPA Rule(s) | Not applicable |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Requirements for audits of financial statements are contained in the Corporations Act, the Auditor-General Act and Australian Accounting Standards. |
| Policy | No changes in policy are proposed. Any changes would be developed in consultation with the ANAO and other key stakeholders. |
| Guidance | No changes to existing guidance are proposed. Any changes would be developed in consultation with the ANAO and other key stakeholders. |
| Proposed approach | Continuation of existing arrangements. |

Chapter 4—Rules, delegations and independent review

PGPA Act provisions

- Section 100: Guide to this Part (rules)
- Section 101: The rules
- Section 102: Rules relating to the Commonwealth and Commonwealth entities
- Section 103: Rules relating to the Commonwealth and non-corporate Commonwealth entities
- Section 104: Rules modifying the application of this Act
- Section 105: Rules in relation to other CRF money
- Section 106: Guide to this Part (delegations)
- Section 107: Finance Minister
- Section 108: Treasurer
- Section 109: Finance Secretary
- Section 110: Accountable authority
- Section 111: Guide to this Part (independent review)
- Section 112: Independent review

The rules

What are the rules?

Part 4-1 of the Act is about the rules, which are legislative instruments that support the Act and can be disallowed by Parliament. It provides the general power to make the rules (see s 101) and sets out additional matters for which rules can be made (see ss 102 to 105).

The Act sets out the fundamental elements of a coherent financial framework that applies to all Commonwealth entities, Commonwealth companies, and classes of Commonwealth entities and Commonwealth companies. The primary legislation contains the main principles and requirements and the rules will prescribe the requirements and procedures necessary to give effect to the governance, performance and accountability matters covered by the PGPA Act.

The rules made by the Finance Minister under the Act will replace a range of instruments under the current legislation, including the FMA Regulations, CAC Regulations and Finance Minister's Orders. Importantly, the Act does not unnecessarily push requirements from the primary legislation into the rules. Most issues in the Act for which rules can be made are currently contained in the subsidiary legislation of the FMA and CAC Acts.

Rules rather than regulations

Using rules, rather than regulations, as the form of legislative instrument is consistent with current drafting practice. The Office of Parliamentary Counsel reserves the use of regulations to a limited range of matters that are more appropriately dealt with in regulations made by the Governor-General than in an instrument made by some other person. Matters in this category include offence provisions, powers of arrest or detention, entry provisions and search or seizure provisions. With a few exceptions, the rules will be legislative instruments subject to disallowance by Parliament and will sunset under the provisions of the *Legislative Instruments Act 2003*.

Differentiation and earned autonomy

Section 101(2) allows the Finance Minister to tailor rules in specific circumstances to an entity or class of entities. This capacity will, for example, provide the basis for implementation of the earned autonomy model, which is a key enhancement to the Commonwealth's financial framework being introduced as part of the reform package. Under earned autonomy, the nature and extent of regulatory intervention will be based on an entity's risk profile and performance. This allows for a more nuanced approach than applying blanket requirements across all Commonwealth entities or Commonwealth companies and classes of Commonwealth entities or Commonwealth companies.

The earned autonomy model is intended to reduce the compliance burden and improve performance of Commonwealth entities or Commonwealth companies and classes of Commonwealth entities or Commonwealth companies.

Consultation

When proposing new or amended rules, the Finance Minister will consult with Commonwealth entities or Commonwealth companies and classes of Commonwealth entities or Commonwealth companies. As the rules are generally disallowable, Parliament will also play a key role in framing the earned autonomy model so there is an appropriate balance between performance and accountability.

Structure of the rules

The rules are structured in five main streams of activity:

- general rules for the operation of an entity or Commonwealth company and the management of resources
- listing of entities, accountable authorities and officials, where not already provided for through other means such as legislation
- establishing entities under s 87 of the Act
- financial reporting obligations (for entities and companies)
- grants and procurement activities.

The reason for this grouping approach is a desire for simplicity in presentation and use by those involved in applying the financial framework to their entities. The general rules represent the core set of obligations that members of Commonwealth entities must observe. The other categories of rules relate to specific activities and by their nature are voluminous in their description of requirements. As such, this compartmentalised approach is meant to make it simpler for users of the framework to find and apply requirements and to make it easier to maintain and update requirements with a clear structure.

Delegations

Part 4-2 is about delegations and sets out when the Finance Minister, the Treasurer, the Finance Secretary and the accountable authority of a non-corporate Commonwealth entity may delegate a power, function or duty under the Act or the rules.

The accountable authority of a corporate Commonwealth entity does not need explicit authority to delegate powers, functions or duties under the PGPA Act because the authority is already provided through the enabling legislation of the entity.

Independent review

Consistent with commitments to the Parliament, the Finance Minister, in consultation with the JCPAA, is to arrange for a review of the introduction of the PGPA Act and related arrangements after three years of operation. The Finance Minister is to table the review in each House of Parliament within 15 sitting days of receiving the report.

Part 4-1—The rules

| Section 101: | The rules |
|--------------------------------------|--|
| Related PGPA Act provisions | <ul style="list-style-type: none"> • Rules relating to the Commonwealth and Commonwealth entities (s 102) • Rules relating to the Commonwealth and non-corporate Commonwealth entities (s 103) • Rules modifying the operation of this Act (s 104) • Other CRF money (s 105) • Specific provisions allowing for the Finance Minister to make rules |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | <p>The rules cover a range of matters that may be directly or indirectly also covered in enabling legislation. Finance is working with entities as part of the process of drafting the C&T Bill to identify how their legislation and the rules interact and the implications. This may involve:</p> <ul style="list-style-type: none"> • deleting the relevant provision and relying on the rule • modifying the provision to ensure alignment with the rule • recognising the rule but allowing for additional requirements in the legislation to continue, and/or • allowing for exemption from the rule in whole or in part (in limited circumstances). |
| PGPA Rule(s) | <p>It is proposed that rules be established as part of the new framework relating to:</p> <ul style="list-style-type: none"> • listing (prescribing) <ul style="list-style-type: none"> ○ defining law enforcement agencies and listing government business enterprises ○ listing entities as being covered by the Act ○ identifying accountable authorities of entities where otherwise uncertain ○ identifying who is, or is not, an official of an entity • matters specific to non-corporate Commonwealth entities and connected to the use of appropriations <ul style="list-style-type: none"> ○ processes in relation to waivers of amounts, setting off of payments and act of grace payments (ss 63 to 65) ○ payments pending probate and act of grace payments (ss 65 and 103) ○ retention of receipts by non-corporate Commonwealth entities (s 74) ○ other CRF money (s 105) |

| | |
|--|--|
| | <ul style="list-style-type: none"> • governance of entities <ul style="list-style-type: none"> ○ disclosure of interests (s 29) ○ audit committees (ss 45 and 92) ○ insurance obtained by corporate Commonwealth entities (s 62) ○ establishing new corporate Commonwealth entities (s 87) * ○ fraud control (s 102) ○ debt recovery or write-off (s 103) • the planning and accountability cycle <ul style="list-style-type: none"> ○ corporate planning (s 35) * ○ annual performance statements (s 39) * ○ financial statements (s 42) * ○ annual reports (s 46) * • commitment and expenditure of resources <ul style="list-style-type: none"> ○ commitment of relevant money (s 52) ○ investments (s 58) ○ Minister to inform Parliament of certain events (s 71) ○ grants (s 102) ○ procurement (s 102). <p>* NB Not required for 1 July 2014</p> |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | The need for delegation of powers and functions under the rules is being considered as part of Finance's development of a draft set of delegations from the Finance Minister to accountable authorities that will be circulated for comment and review before 1 July 2014. |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Not applicable |
| Policy | Finance will work with stakeholders to identify existing policies and arrangements that need to be amended or replaced to align with changes in approach towards less prescription and greater reliance on the internal controls of entities and the capacity of accountable authorities to govern their entities. |
| Guidance | Finance is developing guidance, templates and other forms of assistance to be progressively rolled out to entities throughout the remainder of 2013–14 and beyond. |

| | |
|--------------------------|--|
| | Guidance required for 1 July 2014 will be released in draft form during March for review and comment, and final versions will be released in May 2014. |
| Proposed approach | Finance is consulting Commonwealth entities and other stakeholders in developing and introducing a range of training, guidance and other assistance to cover the rules and related arrangements. |

| | |
|--|---|
| Section 102: | Rules relating to the Commonwealth and Commonwealth entities |
| Related PGPA Act provisions | <ul style="list-style-type: none"> • The rules (s 101) • Rules relating to the Commonwealth and non-corporate Commonwealth entities (s 103) • Specific provisions allowing for the Finance Minister to make rules |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | <p>The rules cover a range of matters that may be directly or indirectly also covered in enabling legislation. Finance is working with entities to identify how their legislation and the rules interact and the implications. This may involve:</p> <ul style="list-style-type: none"> • deleting the relevant provision and relying on the rule • modifying the provision to ensure alignment with the rule • recognising the rule but allowing for additional requirements in the legislation to continue, and/or • allowing for exemption from the rule in whole or in part (in limited circumstances). |
| PGPA Rule(s) | See 'Proposed approach' below. |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | The need for delegation of powers and functions under the rules is being considered as part of Finance's development of a draft set of delegations from the Finance Minister to accountable authorities that will be circulated for comment and review before 1 July 2014. |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Australia's international trade agreement with the United States places constraints on the content and application of the Commonwealth procurement rules. Any efforts to streamline and simplify arrangements will take these agreements and their associated constraints into account. |
| Policy | The general approach to the establishment and operation of rules is that they only be introduced if there is a justifiable case for doing so. This is consistent with the Government's deregulation agenda and with placing greater accountability on entities for managing their activities. |
| Guidance | Finance is developing guidance, templates and other forms of assistance to be progressively rolled out to entities |

| | |
|--------------------------|--|
| | <p>throughout the remainder of 2013–14 and beyond.</p> <p>Guidance required for 1 July 2014 will be released in draft form during March for review and comment, and final versions will be released in May 2014.</p> <p>The Model Resource Management Instructions (based on the Model Chief Executive’s Instructions for FMA Act agencies and informed by a review of CAC Act bodies and their internal control documents) will provide a template against which to assess the appropriateness of internal controls and practices in relation to arrangements as well as practical guidance. A draft of the instructions will be made available in March for review and comment, and a final version will be released in May 2014 taking into account feedback from stakeholders.</p> |
| Proposed approach | <p><u>Ensuring or promoting the proper use and management of public resources (ss 102(a))</u> No rules are proposed at this time.</p> <p><u>Ensuring or promoting proper accountability for the use and management of public resources (s 102(b))</u> No rules are proposed at this time.</p> <p><u>Procurement and grants (s 102(c))</u> Existing requirements in relation to procurement and grants will be incorporated into the rules, including the current form of differentiating requirements for different types of entities (for example, arrangements under s 47A of the CAC Act), pending a longer term intention to review and streamline obligations wherever possible. This further body of work will be the subject of extensive consultation before such amended arrangements are introduced.</p> <p><u>Risk oversight and management (s 102(d))</u> A rule on fraud will be made for the purposes of this section. Finance is working with stakeholders to develop a Commonwealth risk management policy that recognises the different facets of risk and will develop guidance to assist accountable authorities in meeting their duty to establish and maintain systems relating to risk and control (s 16).</p> <p><u>Managing appropriations (s 102(e))</u> No rules are proposed at this time in relation to appropriations other than those to be established under specific sections of the Act such as ss 74 and 105.</p> |

| | |
|--|---|
| | <p><u>Reporting periods (s 102(f))</u></p> <p>No rule is proposed at this time. The Australian National University applies a calendar year reporting period in contrast to other entities, but recognition of this will be addressed in its enabling legislation.</p> <p><u>Performance management (s 102(g))</u></p> <p>No rules are proposed at this time in relation to performance management other than those to be established under specific sections of the Act such as ss 38 and 39.</p> |
|--|---|

| | |
|---------------------------------------|--|
| Section 103: | Rules relating to the Commonwealth and non-corporate Commonwealth entities |
| Related PGPA Act provisions | <ul style="list-style-type: none"> • The rules (s 101) • Rules relating to the Commonwealth and Commonwealth entities (s 102) • Specific provisions allowing for the Finance Minister to make rules |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | <p><i>Lands Acquisition Act 1989</i> <i>Public Works Committee Act 1969</i></p> <p>No specific changes to those Acts are required as a result of the introduction of the PGPA Act.</p> |
| PGPA Rule(s) | <p>Section 103 relates to the making of rules for non-corporate Commonwealth entities in relation to:</p> <ul style="list-style-type: none"> • the use, management, disposal and acquisition of property (ss 103(a) and (b)) • the recovery of debts (s 103(c)) • reporting and auditing arrangements for circumstances where: <ul style="list-style-type: none"> ○ parts of an entity are to be treated as separate entities for those purposes (s 103(d)) ○ an entity ceases to exist or functions are transferred to or from another entity (s 103(e)) • payment pending probate by the Finance Minister (s 103(f)). <p>Rules will be made for the recovery of debts and payments pending probate that will be in effect on 1 July 2014.</p> <p>Reporting and auditing arrangements for these special circumstances will be covered in financial reporting rules to be developed during the course of 2014 for 2014–15 and beyond.</p> <p>No rule is proposed in relation to property arrangements. Existing obligations in legislation and policies issued as part of the Commonwealth Property Framework continue to apply and do not need to be supplemented by a rule.</p> |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | <p>The need for delegation of powers and functions under the rules is being considered as part of the development of a draft set of delegations for entities that will be circulated for comment and review before 1 July 2014.</p> <p>At this time, the rule on payments pending probate is the</p> |

| | |
|--|--|
| | only rule with a power to be delegated. Guidance has been drafted on this rule for consideration by the JCPAA. |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | <p>Requirements in relation to the acquisition, use, management and disposal of property are also covered by arrangements relating to the Budget process, funding arrangements and Australian Accounting Standards.</p> <p>Reporting and auditing arrangements need to be developed and implemented consistent with the Australian Accounting Standards and any additional requirements imposed by the Finance Minister.</p> |
| Policy | No specific changes to policies covered by this provision are proposed at this time, but will be reviewed as part of the ongoing Public Management Reform Agenda. |
| Guidance | Guidance on these matters will be reviewed to assess the need for amendment, but no substantial changes to guidance are expected in the near term apart from probate arrangements. |
| Proposed approach | <ul style="list-style-type: none"> • Implement rules for debt recovery and payments pending probate. • Implement arrangements for reporting and audit for special cases as part of broader reporting arrangements (see s 42 of the Act). • No rule to be implemented at this time in relation to the property framework. |

| | |
|--|--|
| Section 104: | Rules modifying the application of this Act |
| Related PGPA Act provisions | Section 8 (defining listed law enforcement agencies) |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | Entities mentioned in s 104 are also subject to enabling legislation and related arrangements that specify responsibilities and accountability obligations. |
| PGPA Rule(s) | <p>A rule will be made in relation to intelligence, security and listed law enforcement agencies specifying modifications to the way in which the PGPA Act applies to their operations to ensure that their activities and related national security and national interest objectives are not compromised.</p> <p>The rule will represent a continuation of arrangements operating under the FMA and CAC Acts, but the opportunity will be taken to simplify and streamline the content of the rule and supporting arrangements.</p> <p>No rule is planned in relation to modifying the operation of the PGPA Act for the Commonwealth Superannuation Corporation, but this will be the subject of ongoing review.</p> |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | The need for delegation of powers and functions under the rules is being considered as part of the development of a draft set of delegations for entities that will be circulated for comment and review before 1 July 2014. |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | While there is no public disclosure requirement for listed law enforcement agencies, this does not mean that the entities in question are not accountable for their use of public resources. The finances of the entities are audited by the ANAO, the Budget process is used to review proposed uses of resources, and the Commonwealth Government and the Parliament have specific committees to scrutinise activities. |
| Policy | No changes in policy are proposed. |
| Guidance | Guidance for relevant entities is being updated by Finance in consultation with those entities to reflect the amended arrangements. |
| Proposed approach | Effectively a continuation of the existing approach, although with simplified administrative arrangements. |

| | |
|--|--|
| Section 105: | Rules in relation to other CRF money |
| Related PGPA Act provisions | Part 2-5—Appropriations |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | Not applicable |
| PGPA Rule(s) | A rule will be made for other CRF money. |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Delegations are unlikely, but the matter is subject to review. |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Use of s 105(3) to establish an appropriation depends on the Finance Minister being satisfied that the expenditure is not authorised by another appropriation. |
| Policy | No changes in policy are proposed. |
| Guidance | Draft guidance on Other CRF money will be available in March for review, and the final version will be released in May 2014. |
| Proposed approach | Introduce rule and release guidance to assist non-corporate Commonwealth entities. |

Part 4-2—Delegations

| | |
|--|--|
| Section 107: Section 108: Section 109: Section 110: | <ul style="list-style-type: none"> • Finance Minister • Treasurer • Finance Secretary • Accountable authority |
| Related PGPA Act provisions | Not applicable |
| Options to amend the PGPA Act | <p>The current wording of the Act allows for sub-delegation of powers allocated to the accountable authorities of non-corporate Commonwealth entities by the Finance Minister and for limitations and directions to be imposed on officials.</p> <p>The ability of accountable authorities to place limitations and directions on officials is less certain when a power is allocated through subordinate legislation such as the rules as this may constitute a situation in which the powers available in the primary legislation are exceeded.</p> <p>It is proposed that this situation be clarified, through amendments either to s 110 or to specific provisions within the Act.</p> <p>It is also proposed that the power to issue instructions under s 23A (indicative) and the ability for the accountable authorities of non-corporate Commonwealth entities to issue instructions be included on the list of matters that cannot be delegated by an accountable authority. The ability to establish and ensure the maintenance of controls for the operation of the entity should not be a matter that is capable of being delegated.</p> |
| Enabling legislation | <p>The enabling legislation of the overwhelming majority of corporate Commonwealth entities provides explicit authority for the delegation within the entity of functions and powers allocated to the accountable authority (as will occur through the PGPA Act). As part of the exercise to assess consequential and transitional amendments arising from the introduction of the PGPA Act, a small number of entities have been revealed not to have this power and the legislation in question will be amended accordingly.</p> |
| PGPA Rule(s) | Not applicable |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | See comments under ‘Proposed approach’ below. |
| Finance Secretary directions (not disallowable) | Not applicable |

| | |
|---------------------------|---|
| Other requirements | Not applicable |
| Policy | No significant departure from current policies is expected apart from simplifying and streamlining arrangements. |
| Guidance | Accountable authorities will be able to base their own new delegation and authorisation instruments on existing documentation. However Finance will also prepare advice for 1 July 2014 and be available to discuss with entities differences between existing legislation and the PGPA scheme and how this may need to be reflected. |
| Proposed approach | <ul style="list-style-type: none"> • Amend relevant provisions to clarify the ability of accountable authorities to place limitations and directions on officials in relation to powers delegated through subordinate legislation. • Amend s 110 to ensure that the power to issue instructions under s 23A (indicative) cannot be delegated. • New delegation instruments will be prepared by Finance in relation to powers under the PGPA Act being delegated to the accountable authorities of entities. • While accountable authorities will be able to base their own new delegation and authorisation instruments on existing documentation, Finance will also prepare advice and be available to discuss with entities differences between existing legislation and the PGPA scheme and how this may need to be reflected. |

Part 4-3—Independent review

| | |
|--|---|
| Section 112: | Independent review |
| Related PGPA Act provisions | Not applicable |
| Options to amend the PGPA Act | No changes are proposed to this section of the Act. |
| Enabling legislation | Not applicable |
| PGPA Rule(s) | Not applicable |
| Determinations (disallowable) | Not applicable |
| Delegations (not disallowable) | Not applicable |
| Finance Secretary directions (not disallowable) | Not applicable |
| Other requirements | Consistent with commitments to the Parliament, the Finance Minister, in consultation with the JCPAA, is to arrange for a review of the introduction of the PGPA Act and related arrangements after three years of operation. The Finance Minister is to table the review report in each House of Parliament within 15 sitting days of receiving the report. |
| Policy | Not applicable |
| Guidance | Not applicable |
| Proposed approach | Finance will ensure that a review is conducted during the course of the 2017–18 financial year. To support this review, Finance will maintain records of how and when arrangements change from those under the FMA and CAC Acts and the impact of such changes. |