



**Australian Government**  
**Department of Finance**

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**G**UIDE

# Resource Management Guide No. XX

General duties of accountable authorities

WORKING DRAFT

[GUIDE NUMBER] | [MONTH YEAR]

# Contents

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WORKING DRAFT

# Resource Management Guide No. XX

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## General duties of accountable authorities

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### Audience

This guide is relevant to accountable authorities, chief finance officers, chief operating officers and their units in all Commonwealth entities.

### Key points

- Defined in section 12 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), the accountable authority of a Commonwealth entity is generally the person or group of persons who has responsibility for, and control over, the entity's operations.
- The PGPA Act confers on accountable authorities various responsibilities and powers to promote high standards of accountability and performance. It also confers on accountable authorities responsibility for the financial management of the entity and compliance with reporting requirements.

### Resources

[Related guidance](#)

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### Summary

1. Whether comprising a single person or a group of persons, such as a board or council, the accountable authority of a Commonwealth entity has a range of duties, responsibilities and obligations to meet in discharging its role. These are set out in a variety of places, and can consist of legislative requirements, the requirements of regulatory bodies, and the expectations of Ministers, the Parliament and other stakeholders.
2. The PGPA Act sets out the requirements for the governance, reporting and accountability of Commonwealth entities and Commonwealth companies, and for their use and management of public resources. It vests many of the powers and responsibilities for the financial management of a Commonwealth entity in the hands

of the accountable authority, and sets out a series of duties that the accountable authority must meet.

3. In addition to governance, these duties include establishing and maintaining systems relating to risk and control, encouraging cooperation with others and weighing carefully the administrative requirements that are imposed on other parties, and keeping relevant Ministers informed. The duties are contained in section 15 to 19 of the PGPA Act.
4. The central theme, through this set of duties, is to support the efficient, effective, economical and ethical use of public resources at the entity level and across the Commonwealth generally. The duties are consistent with the four guiding principles that underpin the design of the PGPA Act:
  - Government should operate as a coherent whole.
  - A uniform set of duties should apply to all resources handled by Commonwealth entities.
  - Performance of the public sector is more than financial.
  - Engaging with risk is a necessary step in improving performance.
5. This guidance gives the general context for the duties of accountable authorities and sets out what an accountable authority should consider when fulfilling those duties. The guidance is not meant to be exhaustive or limiting. Experience, innovation and lessons learned from the experience of others will lead accountable authorities to do a range of things to ensure that they can meet their duties to a high level.
6. Like all Commonwealth officials, individuals who constitute an accountable authority, or who are members of an accountable authority, are also subject to a set of general duties that appear in sections 25 to 29 of the PGPA Act. The duties of officials are the subject of a separate guidance document. However, it is part of the duties of an accountable authority, in governing a Commonwealth entity, to provide a workplace that encourages individuals to fulfil their general duties and also to ensure that those duties are fulfilled.

## Introduction

7. The PGPA Act is the keystone of the Commonwealth's financial framework for the governance, reporting and accountability of Commonwealth entities and Commonwealth companies, and for their use and management of public resources.<sup>1</sup> Under the scheme established by the PGPA Act, each Commonwealth entity has at its apex an accountable authority.

## What is an accountable authority?

8. Defined in section 12 of the PGPA Act, the accountable authority of a Commonwealth entity is generally the person or group of persons who has responsibility for, and control over, the entity's operations. Typically they are secretaries of departments or chief executives of statutory bodies, or for a statutory body established by a law of the Commonwealth as a corporate entity, the governing board of that body.<sup>2</sup> In some

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<sup>1</sup> The operating provisions of the PGPA Act come into force on 1 July 2014, and replace the *Financial Management and Accountability Act 1997* (FMA Act) and the *Commonwealth Authorities and Companies Act 1997* (CAC Act).

<sup>2</sup> The majority of Commonwealth entities are established by statute.

cases, the governance structure of a particular Commonwealth entity reflects some unique circumstance that requires the accountable authority to be identified (or prescribed) in rules that are made under the PGPA Act. These are called 'listed entities' in section 12.<sup>3</sup>

9. An accountable authority can therefore be either a single person or a group of persons acting collectively as a governing board. The PGPA Act sets out the general duties of accountable authorities, as well as particular roles and responsibilities they have in relation to their entities. It also sets out general duties for all officials of Commonwealth entities. The duties on officials, which are contained in sections 25 to 29 of the PGPA Act, also apply to individuals who are or form part of an accountable authority. In some cases, rules made under the PGPA Act provide further detail on requirements.

### What does an accountable authority do?

10. The functions of an accountable authority are usually outlined in the enabling legislation of the statutory entity in question, or in key pieces of overarching legislation like the *Public Service Act 1999*. The functions of an entity that is a department of state or an executive agency or that is a non-statutory body can be set out in instruments such as the Administrative Arrangements Order. For example, the functions of the board of the Commonwealth Scientific and Industrial Research Organisation are found mainly in the *Science and Industry Research Act 1949* and the duties of the ABC board are largely contained the *Australian Broadcasting Corporation Act 1983*, but the functions of the Department of Finance are set out in the Administrative Arrangements Order.
11. The PGPA Act contains provisions about how these functions and duties should be performed from the overarching perspective of ensuring the 'proper' (defined in section 8 of the PGPA Act as 'efficient, effective, economical and ethical') use and management of public resources.
12. The PGPA Act confers on accountable authorities various responsibilities and powers to promote high standards of accountability and performance. They are also responsible for the financial management of the entity and compliance with reporting requirements. These requirements include preparing a corporate plan for the entity and its subsidiaries (section 35), preparing budget estimates (section 36), keeping records about and measuring and assessing the performance of the entity (sections 37 and 38), preparing an annual performance statement for the entity (section 39), keeping proper accounts and records to explain the entity's transactions and financial position (section 41), preparing annual financial statements for the entity and its subsidiaries and ensuring that the statements are audited (sections 42 and 44), ensuring that the entity has an audit committee (section 45) and providing the Minister responsible for the entity with a copy of the annual report (section 46).
13. The accountable authority of a corporate Commonwealth entity is obligated to ensure that none of the entity's subsidiaries does anything the entity itself does not have the power to do (section 86). The accountable authority of a non-corporate Commonwealth entity has an obligation to govern the entity in a way that is not

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<sup>3</sup> Commonwealth companies are not assigned an accountable authority under the PGPA Act. Although Chapter 3 of the PGPA Act lists a range of requirements for Commonwealth companies, the *Corporations Act 2001* provides the primary regulatory framework for Commonwealth companies, their directors and senior officials, as it does for corporations generally.

inconsistent with the policies of the Commonwealth (section 21);<sup>4</sup> the power to enter into, vary and administer arrangements relating to the affairs of the entity on behalf of the Commonwealth (section 23); and the power to establish advisory boards (section 24).<sup>5</sup>

## Duties of accountable authorities

14. Sections 15 to 19 of the PGPA Act set out general duties that apply to all accountable authorities. These are:

- 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

15. As in the case of the functions of an accountable authority, matters to do with the structure of accountable authorities and their relationship to executive government are usually found in the entity's enabling legislation or, for a number of non-corporate Commonwealth entities, in some overarching legislative or administrative instrument.

16. While an accountable authority has some discretion in determining the operating style of the entity and how it is directed and controlled, the corporate governance practices of an entity are typically informed and tempered by legal and accountability requirements, stakeholder interests and lessons learned from a range of sources.

17. In the Commonwealth public sector, where entities are accountable, ultimately, to the Parliament and the people, the legal and accountability requirements for accountable authorities often have a strong public good or public interest element. Some of the duties are comparable to the general governance duties that are expected of directors in other sectors of the economy. For example, the Company Directors Corporate Governance Framework used by the Australian Institute of Company Directors outlines comparable requirements in its organisational and stakeholder quadrants.<sup>6</sup>

18. Section 20 of the PGPA Act allows for the rules made under the legislation to prescribe matters relating to accountable authorities discharging their general duties. It is expected that that these rules will be on an exceptions basis. Fundamentally, each accountable authority should seek to continually improve the mechanisms of the entity's corporate governance and to calibrate them to meet the underlying policy intent of the general duties.<sup>7</sup>

19. The success of an accountable authority in meeting appropriate standards of corporate governance will be apparent from its performance and financial reporting,

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<sup>4</sup> Corporate Commonwealth entities are required to comply with policies of the Commonwealth if the Finance Minister issues an order under section 22 of the PGPA Act or a direction under another statutory provision.

<sup>5</sup> Separate guidance titled [\[insert title\]](#) has been issued on advisory boards.

<sup>6</sup> [www.companydirectors.com.au](http://www.companydirectors.com.au).

<sup>7</sup> In seeking continual improvement, it is important to ensure resources are used efficiently.

which are dealt with under sections 37 to 44 of the Act, and which are subject to scrutiny by the responsible Ministers, the Finance Minister, the Commonwealth Auditor-General, the Parliament and the people.

20. In a strict sense, if an accountable authority fails to meet the requirements set out in sections 15 to 19 of the PGPA Act, they might also contravene one of the general duties of officials laid out in sections 25 to 29 of the Act, and be subject to the termination of appointment provisions in sections 30 to 32.<sup>8</sup>
21. The general duties on officials are a duty of care and diligence (section 25), a duty to act in good faith and for a proper purpose (section 26), a duty not to misuse their position (section 27), a duty not to misuse information (section 28) and a duty to disclose material personal interests (section 29).
22. None of these provisions limits a law of the Commonwealth, or any principles or rules of the common law or equity, in relation to the duty or liability of a person because of their position in or employment with a Commonwealth entity, or in relation to conflicts of interest. Nor do any of these provisions limit any provision in an entity's enabling legislation that restricts an official of the entity from having a material personal interest in a matter or holding an office or possessing property involving duties or interests that conflict with their duties or interests as an official (section 31).
23. Like all officials, individuals constituting an accountable authority must also meet the requirements of the finance law, which is defined in section 8 to mean the PGPA Act, the rules and instruments made under the Act, or an appropriation Act.
24. Taken together, the general duties of accountable authorities are markers to help accountable authorities discharge their duties in a way that ensures that Commonwealth public resources are properly used and managed.

### **Duty to govern a Commonwealth entity**

25. Section 15 of the PGPA Act sets out requirements for how an accountable authority governs a Commonwealth entity. Under section 15(1), the accountable authority must:
  - (a) promote the proper use and management of public resources for which the accountable authority is responsible
  - (b) promote the achievement of the purposes of the entity
  - (c) promote the financial sustainability of the entity.

### **Proper use**

26. Promoting the proper use and proper management of public resources within an entity is a fundamental duty of accountable authorities. 'Proper' in this context is defined in section 8 of the Act as 'efficient, effective, economical and ethical'.
27. To fulfil this duty, an accountable authority should, among other things, establish decision-making processes for the use of public resources, including, importantly, robust decision-making and control processes for the expenditure of relevant

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<sup>8</sup> General duties of officials in Division 3 of Part 2-2 of the PGPA Act are addressed in a separate guidance document titled General duties of officials.

money<sup>9</sup>. These processes should be designed to provide an appropriate level of assurance in accordance with the duty to establish and maintain systems in relation to risk and control, under section 16.

28. Robust decision-making processes could be supported by requirements on the type of information that officials need to consider before making a spending decision, or a requirement that officials make reasonable enquiries before approving a proposed expenditure of relevant money.
29. For non-corporate Commonwealth entities the accountable authority should also ensure that the requirements of the *Commonwealth Procurement Rules* and *Commonwealth Grant Rules* are understood. The *Commonwealth Procurement Rules* also apply to certain corporate Commonwealth entities.
30. An accountable authority should ensure appropriate oversight and reporting arrangements for line areas responsible for projects and activities, and address the inappropriate use of resources by individuals in the entity. This includes having adequate processes to ensure that all officials, including accountable authorities, disclose material personal interests under section 29 in accordance with the processes identified in the rule on the duty to disclose interests.
31. Under section 21, the accountable authority of a non-corporate entity is subject to an additional requirement to govern the entity 'in accordance with paragraph 15(1)(a) in a way that is not inconsistent with the policies of the Australian Government'. This reproduces the obligations placed on chief executives of FMA Act agencies under section 44 of the FMA Act.
32. The proper use and management of public resources under section 15(1)(a) links to the obligation placed on accountable authorities of non-corporate Commonwealth entities to recover debts in accordance with the rule on debt recovery under section 103(c).

## Purposes

33. The 'purposes' of a Commonwealth entity referred to section 15(1)(b) include its objectives, functions or role. For a statutory authority, the purposes will generally correspond to the entity's statutory objectives and functions. For many non-statutory entities like departments of state, the objectives would align with the Administrative Arrangements Order. For all entities, the purposes would be identified in the corporate plan, which, where appropriate, should align with any government statement of key priorities and objectives (see section 35 of the PGPA Act). The provision in sections 37 to 39 of the PGPA Act about keeping records and measuring, assessing and reporting on performance are designed to produce information that allows stakeholders to assess the success of an accountable authority in this area.
34. Separate guidance will be developed on measuring, assessing and reporting on the purposes of an entity and the programs and services for which an entity is responsible as the details of the performance and evaluation framework are developed in the next phase of implementing the PGPA Act.

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<sup>9</sup> The rule on the commitment and expenditure of relevant money reinforces the need for an accountable authority to have appropriate internal controls and processes in relation to officials approving proposed commitments of relevant money.



## Financial sustainability

35. Section 15(1)(c) essentially establishes a requirement on the accountable authority to protect the Commonwealth's investment and equity in the entity.<sup>10</sup> The use of the term 'financial sustainability' in section 15(1)(c) recognises the importance of medium- to long-term planning and budgeting, and financial management strategies that can accommodate resourcing and revenue fluctuations, including from appropriations made by the Parliament.
36. For appropriations, an accountable authority should consider issues such as whether future commitments can be met from available appropriations, and whether, by entering into long-term commitments, they are locking away future flexibility to accommodate new policy and program priorities. The requirement under section 19 for an accountable authority to keep the responsible Minister and Finance Minister informed includes keeping them informed of significant expenditure or investment decisions.
37. The term 'financial sustainability' relates to managing the risks, obligations and opportunities that are associated with an entity.
38. This duty also encompasses a requirement that accountable authorities behave prudently and responsibly in their management of public resources, including by promoting the proper use of public resources. Accordingly, this duty also aligns with the duty under section 16 to establish and maintain systems relating to risk and control.
39. This duty is complemented by other elements of the PGPA Act, such as the provisions in sections 35 and 36 on corporate planning and, where relevant, budget estimates, which are designed to enhance the quality of financial and strategic planning activities in the Commonwealth. Similarly, sections 60 and 62 allow for rules to be made to place controls on issuing indemnities, guarantees and warranties, and on insurance. Section 107 also allows for the Finance Minister to delegate powers to certain officials in relation to section 60. The delegations issued by the Finance Minister will contain controls for non-corporate Commonwealth entities in relation to section 60.

## Public resources generally

40. Section 15(2) requires an accountable authority, when making decisions for the purposes of section 15(1), to take into account the effect of those decisions on public resources generally. This requirement is tied to the theme of government acting as a coherent whole. It is designed to ensure that when making a decision, the accountable authority considers the impact of that decision on the public resources managed by another Commonwealth entity, or on public resources generally, if there are flow-on effects to other areas of public expenditure.
41. This requirement would include considering the direct or indirect costs imposed on other Commonwealth entities or the activities or programs administered by other Commonwealth entities, and the exposures associated with issuing indemnities, guarantees or warranties. One outcome that is sought from this provision is the emergence of more effective partnerships between entities and the sharing of information and better ways of working between Commonwealth entities.

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<sup>10</sup> This requirement may also need to be considered in the context of an entity's enabling legislation.

42. This requirement is consistent with recent changes to the *Public Service Act 1999* that strengthen the role of secretaries in providing stewardship across the public service.<sup>11</sup>

### Summary

To meet its obligations under section 15 of the PGPA Act, an accountable authority *must* govern the entity in a way that:

- promotes the proper use and management of public resources for which the accountable authority is responsible

- promotes the achievement of the purposes of the entity

- promotes the financial sustainability of the entity.

When making decisions about these matters, the accountable authority must take into account how those decisions will affect public resources generally.

In addition, under section 21, the accountable authority of a non-corporate entity must govern the entity 'in accordance with paragraph 15(1)(a) in a way that is not inconsistent with the policies of the Australian Government'.

In meeting these obligations, an accountable authority *should*:

- establish decision-making and control processes for the proper use of public resources, including the type of information an official should seek or the level of enquiry an official should make before approving a proposed commitment of relevant money.

- establish a process for addressing inappropriate use of public resources by individuals in the entity, noting the requirements of the PGPA Act and its rules, including the fraud provisions

- ensure appropriate oversight and reporting arrangements for projects and activities within the entity

- undertake medium- to long-term planning and budgeting, noting the requirements of the PGPA Act and its rules

- manage the risks, obligations and opportunities of the entity at a strategic level

- consider the impact of decisions it makes on public resources generally, both now and into the future, including those managed by other Commonwealth entities.

### Duty to establish and maintain systems relating to risk and control

43. Section 16 requires an accountable authority to establish and maintain an appropriate system of risk oversight and management and an appropriate system of internal controls. The accountable authority is expected to create an operating environment that supports the proper use and management of public resources, without stifling innovation in pursuit of both the public good and the purposes of the entity. Again, this duty acts in concert with the general duties of officials.

<sup>11</sup> See section 57(1)(c) of the Public Service Act, which commenced on 1 July 2013.

## Risk

44. Taking appropriate risks in promoting the achievement of the purposes of an entity is consistent with careful and proper use and management of public resources.<sup>12</sup>
45. The Commonwealth Auditor-General has noted that parliamentary committees generally support the application of risk management principles as an integral part of good management practice and recognise that one of its benefits is the optimisation of opportunities.<sup>13</sup>
46. Section 16(a) places an explicit responsibility on an accountable authority to establish and maintain a system of risk oversight and management. The accountable authority is responsible for determining the nature and extent of the significant risks that they are willing to take in achieving the entity's strategic objectives. An accountable authority should recognise, however, that even when a strategic approach to risk management has been taken, they will be criticised if things go wrong, simply because public resources are involved. Any internal control system, no matter how well operated, is unlikely to be able to prevent or detect all errors or misstatements. Nevertheless, accountable authorities should, implement appropriate systems of control and accountability and ensure these are properly managed and followed.
47. The standard set in the ASX Corporate Governance Council's principles and recommendations for Australian companies is that:
- Risk management policies should reflect the company's risk profile and should clearly describe all elements of the risk management and internal control system and any internal audit function. When developing risk management policies, the company should take into account its legal obligations. A company should also consider the reasonable expectations of its stakeholders.<sup>14</sup>
48. At a minimum, entities need to have policies and business processes for identifying, measuring, managing and reporting material risks. The rule on corporate planning requires accountable authorities to detail the risk management framework for the entity, including an analysis of the key risks and mitigation strategies. The entity's appetite for risk should be well articulated, so that officials understand the acceptable parameters for risk, and the amount of risk that the entity is prepared to tolerate at any point in time. Officials will be more willing to take appropriate risks and innovate in a culture that accepts that some failures will occur, but will not lead to adverse personal consequences if proper risk management practices have been followed. The Commonwealth's overarching policy on risk is contained in *[insert name of document once its title is known]*.
49. Accountable authorities should establish processes that allow risks to be identified, their significance estimated and their likelihood of occurrence assessed. They should

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<sup>12</sup> A similar sentiment applies to the operation of private sector entities. In talking about the collective responsibility of the board for the long-term success of a company, the UK Corporate Governance Code issued by the Financial Reporting Council in September 2012 says, at page 8: 'The board's role is to provide entrepreneurial leadership of the company within a framework of prudent and effective controls which enables risk to be assessed and managed'.

<sup>13</sup> Ian McPhee, *Risk Management in the Public Sector, Public Sector Governance and Risk Forum*, September 2005, p. 3.

<sup>14</sup> ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations*, 2007 (2nd edition) pp. 32–33.

also establish processes for deciding the actions that are to be taken in relation to those risks.<sup>15</sup> Having effective insurance cover is an element of risk management and a separate rule on insurance has been made under section 62 of the PGPA Act.<sup>16</sup>

## Internal controls

50. To complement sound risk management practices, the accountable authority is also required, under section 16(b), to establish and maintain an appropriate system of internal controls for the entity. The control system should be commensurate with the level of risk. Internal controls will be needed to deal with issues such as approval processes for the spending of relevant money by officials and ensuring compliance with the finance law.
51. Accountable authorities of non-corporate Commonwealth entities also need to ensure that they establish adequate internal control processes for the management of 'other CRF money' in accordance with the rule made under section 105 of the PGPA Act.
52. The Australian Auditing and Assurance Standards Board has noted that:
- The control environment includes the governance and management functions and the attitudes, awareness, and actions of those charged with governance and management concerning the entity's internal control and its importance in the entity. The control environment sets the tone of an organisation, influencing the control consciousness of its people.<sup>17</sup>
53. Accountable authorities need to be aware that when their financial statements and reports are being audited, the Auditor-General will be guided by Australian Auditing Standard 315, which requires that an auditor understand the entity and its environment, including its internal control system, by looking at factors that include:
- communication and enforcement of integrity and ethical values
  - commitment to competence
  - participation by those charged with governance
  - management's philosophy and operating style
  - organisational structure
  - assignment of authority and responsibility
  - human resources policies and practices.<sup>18</sup>
54. Most Commonwealth entities currently have in place some form of operating manual or chief executive instructions that formalise an internal framework of control. Similar arrangements will need to be put in place under the PGPA Act, refreshed to take into account any new requirements and to remove requirements that relate to the FMA Act or the CAC Act and are now redundant.
55. The ASX Corporate Governance Council notes that for companies, it is usual for a board to oversee the control and accountability systems, which includes 'reviewing,

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<sup>15</sup> Auditing and Assurance Standards Board, *Auditing Standard ASA 315: Identifying and Assessing the Risks of Material Misstatement through Understanding the Entity and Its Environment*, 2013, p. 11.

<sup>16</sup> The rule on insurance requires accountable authorities to have adequate private insurance cover when the entity is covered by a Comcover policy.

<sup>17</sup> Auditing and Assurance Standards Board, *Auditing Standard ASA 315*, p. 30.

<sup>18</sup> Auditing and Assurance Standards Board, *Auditing Standard ASA 315*, pp. 30–31.

ratifying and monitoring systems of risk management and internal control, codes of conduct and legal compliance'.<sup>19</sup>

56. Like organisations and companies in other sectors of economic activity in Australia, Commonwealth entities can be subject to general legislation.
57. In addition, many of the specific requirements that will inform the design of the control and accountability systems of Commonwealth entities are also contained in legislation. For example, the Commonwealth's requirements for the keeping of records are contained in sections 37 and 41 of the PGPA Act, Part V of the *Archives Act 1983* and section 10 of the *Privacy Act 1988*. The Commonwealth requirements for the commitment and expenditure of relevant money and management of fraud are set out in rules made under the PGPA Act.
58. The legal and policy requirements that are relevant to an entity's control and accountability needs will develop and vary over time. It is the responsibility of the accountable authority to remain abreast of these developments and to ensure that the system of internal controls that they are responsible for establishing and maintaining is properly calibrated to these requirements.

### Supporting compliance

59. An entity's audit committee, which is required to be established under section 45 of the PGPA Act and in accordance with the rules, can play a valuable role by providing the accountable authority with independent assurance of the internal control system for the entity and any compliance issues. Audit committees can also play a role in monitoring the risk environment, although in more complex operating environments a separate risk committee may perform this function.
60. Under the PGPA Act accountable authorities could share audit committee resources. This may be an attractive option for small entities working in similar environments, and it would allow for overhead costs to be shared and learnings and better practice to be leveraged between organisations. It is an example of how accountable authorities can cooperate and join up across entity boundaries.
61. Note 1 to section 16 gives an example of a measure for ensuring that officials comply with the finance law: the creation of employment arrangements that recognise the importance of compliance. This would involve the inclusion, in terms and conditions of employment of officials, of a clause that requires compliance with the finance law and the specification of sanctions (such as termination) that apply to the official for contravening that condition. Such a provision would not be needed for officials to whom the *Public Service Act 1999* or *Parliamentary Service Act 1999* applies because the PGPA Act already references the sanctions that may be imposed on those officials for contravening the finance law.
62. Note 2 to section 16 recognises that, in relation to consultants or independent contractors who are not officials of an entity, an accountable authority still has a duty to implement measures aimed at ensuring they meet the requirements of finance law. One way to do this would be to replicate the requirements of finance law through the contractual arrangement governing the relationship.

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<sup>19</sup> ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations*, p. 13.

### Summary

To meet its obligations under section 16 of the PGPA Act or the associated rule, an accountable authority *must* establish and maintain:

- an appropriate system of risk oversight and management for the entity
- a corporate plan that details the entity's risk management framework
- an appropriate system of internal controls for the entity
- an audit committee in accordance with the audit committee rule
- a fraud control framework in accordance with the fraud control rule
- measures directed at ensuring that officials of the entity comply with the finance law.

In meeting these obligations, an accountable authority *should*:

establish and articulate the entity's appetite for risk, consistent with any requirements in the enabling legislation for the entity or other requirements of government that may apply

establish policies and business processes for identifying, measuring, managing and reporting material risks, consistent with the Commonwealth's overarching policy on risk

establish the audit committee charter and ensure that the audit committee reviews the integrity of the entity's financial statements and provides assurance on compliance requirements

regularly scan the risk environment within which the entity operates

manage the risks, obligations and opportunities of the entity at a strategic level

establish internal control processes that are commensurate with the entity's risk environment and risk appetite, noting the compliance requirements of general legislation and the PGPA Act and its rules, including the fraud control rule

establish internal control and reporting processes that adequately control the proposed commitment and expenditure of relevant money by officials in accordance with the rule

put in place arrangements that promote an understanding of the requirements of the finance law

ensure that employment arrangements for officials, consultants and independent contractors provide for sanctions if the finance law is not complied with.



## Duty to encourage cooperation with others

63. Section 17, and section 18 (discussed below), both go beyond financial management and ethics to include issues of culture and behaviour, but are consistent with the role of an accountable authority in cementing values in the entity that consider public resources issues in a broad sense. The ASX Corporate Governance Council notes that: 'To make ethical and responsible decisions, companies should not only comply with their legal obligations, but should consider the reasonable expectations of their stakeholders'.<sup>20</sup>
64. The same should hold true for the accountable authorities of Commonwealth entities. The Parliament and the people expect that Commonwealth entities can work effectively with others. Commonwealth partners expect that Commonwealth entities can join up in positive and mutually beneficial relationships to deliver public policy outcomes.
65. The word 'others' should be interpreted broadly. It includes other Commonwealth entities, other levels of government, and other public and private bodies and organisations including in the not-for-profit sector. Many significant public policy objectives, such as closing the gap on indigenous disadvantage, require a whole-of-government approach with precisely these sorts of linkages to achieve the government's priorities. A diversity of views and expertise is essential for developing policies and plans to deal with complex challenges.
66. Section 17 places a positive duty on an accountable authority to cooperate with others to achieve common objectives, where practicable. This duty recognises that Commonwealth entities do not operate in isolation. They often cannot achieve their objectives without working with others.<sup>21</sup>
67. The phrase 'achieve common objectives' establishes the scope of cooperation expected. The clause aims to encourage cooperation, where practicable. It would be counter-productive to require cooperation between organisations that are working towards completely different goals, or, for example, if cooperation was inconsistent with the proper use and management of public resources or contrary to achieving the purposes of an entity.
68. It is also clear that some entities' statutory functions may make cooperation difficult or even unlawful in particular circumstances. Examples include the Reserve Bank of Australia when setting monetary policy and the ABC and SBS when determining editorial content. The duty must therefore be read in light of specific limitations in enabling legislation. Requirements in legislation such as the Privacy Act and in arrangements that involve commercial confidentiality may also place limits on cooperation.
69. It is recognised that cooperation is not always easy. A Commonwealth entity that seeks to cooperate with state and territory government organisations, for example, may need to deal with complex accountability issues relating to the confidentiality of information. The PGPA Act seeks to recognise some of these issues in section 82 by allowing for rules to be made that enable the reports, documents and information of a prescribed Commonwealth entity to be made available to a state or territory minister. In all cooperative efforts involving different parties, there is likely to be some difference on prioritising objectives, costs, accountability and reporting.

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<sup>20</sup> ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations*, p. 21.

<sup>21</sup> The challenges in measuring the success of joint activities is acknowledged, and this issue will be addressed in the performance and evaluation framework that is being developed in the next phase of implementing the PGPA Act.

70. These are all issues that should be worked through, and an accountable authority should take positive steps to build a culture within the entity to encourage officials to explore how they can join up with others in achieving the entity's purposes. This is consistent with the theme that underpins section 15(2) of government acting as a coherent whole. An accountable authority can also encourage officials of an entity to cooperate with others by articulating the entity's risk appetite in terms that recognise the risks that arise from joined-up activities.

### Summary

To meet its obligations under section 17 of the PGPA Act, an accountable authority *must* encourage officials of the entity to cooperate with others to achieve common objectives, where practicable.

In meeting these obligations, an accountable authority *should*:

take positive steps to build a culture that encourages an entity to explore how it can join up with others in achieving its purposes

articulate its risk appetite in terms that recognise the risks that arise from joined-up activities.

### Duty in relation to requirements imposed on others

71. Section 18 places a duty on an accountable authority to ensure that the compliance, reporting and other obligations that the entity imposes on others in relation to the use or management of public resources take into account the risks associated with that use or management and the effects imposing those requirements may have. This section aims to encourage accountable authorities to think carefully about the administrative requirements they impose on other parties.
72. As in section 17, the term 'others' should be interpreted broadly.
73. Commonwealth entities provide relevant money and sometimes other public resources to others when they join up with states and territories and other partners in common projects, or when they make grants, procure goods and services or enter into commercial arrangements, including the management of projects. Rightly or wrongly, Commonwealth entities have a reputation for imposing excessive red tape, compliance and reporting requirements and for shifting risk inappropriately in these circumstances. Sometimes such criticisms are made by parties whose behaviours or interests are restricted by a regulator. More frequently they are made about how the Commonwealth conducts its partnering and business activities.
74. The duty in section 18 requires accountable authorities to assess the risks in relation to the public resources provided, and then place proportionate obligations on recipients. For example, a grant recipient with a proven record for delivery may not need to report as often as one with less experience. The imposition of unnecessary requirements and red tape on others, including compliance and reporting requirements that do not go to ensuring the proper use and management of public resources, is inappropriate. It can affect the productivity and profitability of the other party and the efficient and economical use of public resources for which the authority is responsible.
75. The compliance and reporting requirements imposed on others should focus on areas of high risk. However, merely shifting the risk burden onto others, especially external service providers, may shift responsibilities away from where the risks are most effectively assessed and managed.



76. For Commonwealth entities that play a regulatory role, this duty must be read subject to their enabling legislation and in the context of the accountable authority's responsibility for promoting the achievement of the purposes of the entity under section 15(1)(b).

#### Summary

To meet its obligations under section 18 of the PGPA Act, an accountable authority, when imposing requirements on others in relation to the use or management of public resources for which the accountable authority is responsible, *must* take into account:

the risks associated with the use or management

the effects of imposing those requirements.

In meeting these obligations, an accountable authority *should*:

consider whether the compliance and reporting requirements that it imposes, or that are imposed by the entity, go to ensuring the proper use and management of public resources for which the accountable authority is responsible

consider the red tape, compliance and risk impacts on others, including the cost of those impacts.

### Duty to keep responsible Minister and Finance Minister informed

77. Section 19 deals with an accountable authority's duty to keep key ministerial stakeholders informed. It seeks to establish an appropriate level of dialogue and engagement between the accountable authority and Ministers. Section 8 defines the responsible Minister as the Minister who is responsible for the entity unless otherwise prescribed by the rules. The Finance Minister is the Minister who administers the PGPA Act. This provision also supports the obligations placed on responsible Ministers by section 72 to keep the Parliament informed of certain events.

78. Section 19 generally reflects the substance of section 44A of the FMA Act and sections 15 and 16 of the CAC Act. Section 19(1) requires the accountable authority of a Commonwealth entity to:

- keep the responsible Minister informed about the activities of the entity and its subsidiaries, within time limits set by the Minister
- give the responsible Minister and the Finance Minister any reports, documents and information they require on the activities of an entity or subsidiary, within the time limits they set
- notify the responsible Minister of any significant decision in relation to the entity or its subsidiaries
- give the responsible Minister reasonable notice of any significant issue that may affect the entity or its subsidiaries
- notify the responsible Minister of any significant issue that has affected the entity or its subsidiaries.

79. The requirement to keep the Finance Minister informed is consistent with the requirements under section 44A of the FMA Act and section 16 of the CAC Act. It is intended to provide the Finance Minister with sufficient information to discharge his or her responsibilities for managing and reporting on Commonwealth spending at a

whole-of-government level and given the greater emphasis on performance monitoring and evaluation in the PGPA Act.

80. The terms 'reports', 'documents' and 'information' are meant to be interpreted broadly, in accordance with the notion of responsible government. Ministers need to know what is happening in their portfolios to meet their accountability to the Parliament. The terms are intended to encompass the underlying information, data and assumptions that a Commonwealth entity uses to produce final reports, such as estimates numbers.
81. The interpretation of the term 'significant' is meant to be similar to its use in sections 15 and 40 of the CAC Act. Section 19(3) of the PGPA Act allows for rules to be prescribed on this matter, but in the absence of a rule, the following should serve as a guide.
82. Generally, whether a decision or issue is 'significant' will depend on:
- materiality—the importance of the decision or issue relative to the entity's size and functions
  - the risks involved—that is, whether the decision or issue is likely to be politically sensitive, whether there would be contingent liabilities that could affect the Commonwealth's balance sheet, and whether the decision or issue might affect the entity's financial sustainability or that of others
  - the novelty of the decision or issue for the entity—that is, whether the entity has previous experience with the decision or issue.
83. For example, forming, or participating in the formation of, a business (including a company, trust, partnership, unincorporated joint venture, incorporated association or similar arrangement) is likely to be a significant decision or issue. Changing the nature of the entity's involvement with a business and acquiring or disposing of a business unit may also be significant decisions or issues. It also includes keeping the responsible Minister and Finance Minister informed of any significant expenditure or investment decisions an accountable authority may make, including long-term commitments, that lock away future flexibility to accommodate new policy and program priorities.
84. It is important for the accountable authority to establish a clear understanding of the responsible Minister's expectations about the type and level of information they are provided. This may vary over time and periodic discussion on level of disclosure by the entity.
85. Section 19(2) states that for courts and tribunals, the information they are required to provide is restricted to administrative matters and does not include information of a judicial nature. Section 19(3) allows for rules to be made that prescribe the matters to be considered in determining if a matter is significant or not. Section 19(4) allows the relevant Minister to determine the timeframe for receiving reports requested under section 19(1)(b). An accountable authority can request an extension if it needs more time. Sections 19(4A) and 19(4B) recognise that the enabling legislation of the entity, or a Commonwealth law in general, may limit or prevent the ability of the accountable authority to disclose particular information. Section 19(5) clarifies that section 19 of the PGPA Act does not limit any other power that a Minister has to require information from a Commonwealth entity.

### Summary

To meet its obligations under section 19 of the PGPA Act, an accountable authority, *must*:

- keep the responsible Minister informed about the activities of the entity and its subsidiaries

- give the responsible Minister and the Finance Minister any reports, documents and information they require on the activities of an entity or subsidiary

- notify the responsible Minister of any significant decisions in relation to the entity or its subsidiaries

- give the responsible Minister reasonable notice of a significant issue that may affect the entity or its subsidiaries

- notify the responsible Minister of any significant issue that has affected the entity or its subsidiaries.

In meeting these obligations, an accountable authority *should*:

- establish with the responsible Minister the frequency and nature of reports to the Minister on the activities of the entity and any subsidiaries

- establish with the responsible Minister the types of decisions and issues that might be significant and therefore subject to the provisions section 19

- discuss with the responsible Minister any limitation in law that might affect or prohibit the information that can be provided to the Minister under section 19.

WORKING