

Inquiry into the *Public Governance and Resources Legislation Amendment Bill* ***(No. 1) 2015***

Senate Finance and Public Administration Legislation
Committee

Submission by the Department of Finance

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Table of Contents

Introduction.....	3
The Bill in the context of broader reform activities.....	3
Overview of key amendments in the Bill	4
Consultation	6
Related legislative activity.....	7
Other Submissions to the Committee’s Inquiry.....	7

Introduction

The *Public Governance and Resources Legislation Amendment Bill (No. 1) 2015* (the Bill) would, if enacted, amend 33 Acts across the Commonwealth to address matters of a governance or resource management nature. The Bill includes:

- technical amendments that would further improve the operation of the *Public Governance, Performance and Accountability Act 2014* (PGPA Act), including a provision to support the administration of GST obligations of non-corporate Commonwealth entities;
- amendments to provisions within the *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014* (PGPA (C&T) Act) that would streamline transitional arrangements supporting the implementation of the PGPA Act;
- amendments to the enabling legislation of Commonwealth entities intended for inclusion in the PGPA (C&T) Act but unable to proceed at that time; and
- amendments to improve and clarify the governance and resource management arrangements of the enabling legislation of Commonwealth entities that have been identified in consultations with those entities during and since the development of the PGPA (C&T) Act.

This submission aims to enhance the Senate's understanding of key proposed amendments in the Bill and the broader context within which it has been developed.

The Bill in the context of broader reform activities

The Commonwealth's resource management framework provides for the governance of Commonwealth entities and Commonwealth companies and for the proper management and use of public resources. The framework supports the government in meeting its obligations and responsibilities to the public and the parliament. It is an important feature of an accountable and transparent public sector and guides the daily work of Commonwealth entities and Commonwealth companies, including the work of office holders and officials.

The PGPA Act is the key component of a broader Public Management Reform Agenda (PMRA), which aims to encourage cultural change in the way government does business.

The reforms seek to deliver long-lasting benefits, including:

- improved quality of information to parliament to support its constitutional role in relation to Commonwealth expenditure;
- a more mature approach to risk across the Commonwealth;
- improved productivity and performance of the Commonwealth public sector with accompanying benefits for a broad range of stakeholders; and
- reduced red tape within the Commonwealth and for partners who contribute to delivering government programs and services, including grant recipients.

The aim of the reform agenda, through the PGPA Act, is to create a resource management framework where entities have the flexibility and incentives to adopt appropriate systems and processes that help them to achieve policy and statutory objectives efficiently and effectively. The PGPA Act is also intended to underpin other aims in reducing red tape, achieving

appropriate simplification, and encouraging joint ventures with partners both within and external to government.

It will take several years to implement the reforms and integrate them fully into the practices and processes of Commonwealth entities and Commonwealth companies, allowing reforms to be appropriately refined in light of experience.

Overview of key amendments in the Bill

The PGPA (C&T) Act amended 242 Acts across the Commonwealth and was complex in nature. The amendments reflected the variety of governance and operational arrangements across the Commonwealth, with the nature of amendments required to individual enabling legislation varying from entity to entity. The policy approach has been to align entities' enabling legislation with the PGPA Act wherever possible, with the intention being to implement a more consistent and coherent resource management framework, without impinging on the statutory obligations of entities to the parliament and to the community.

Due to the complexity in the legislative program, with contingent amendments potentially requiring multiple scenarios to be accommodated and limited time to resolve issues, for example in relation to the restructuring of Environment and Employment portfolio bodies, not all amendments were able to be addressed in the PGPA (C&T) Act. As a result, some entities have been subject to interim transitional arrangements, developed in consultation with entities and portfolio departments. Importantly, entities' capacity to meet their statutory obligations has not been compromised.

The Bill addresses some of these outstanding matters.

Schedule 1 – PGPA Act – key amendments

Key amendments in schedule 1 to the Bill would add a new provision to the PGPA Act in relation to GST arrangements and clarify some existing requirements:

- Appropriation provisions to meet GST liabilities for non-corporate Commonwealth entities. Arrangements under the *Financial Management and Accountability Act 1997* (FMA Act) were preserved until 1 July 2015, through transitional provisions. Consultations with entities on the administration of GST beyond this date occurred through 2014. The outcome of consultations was to largely maintain the existing arrangements with some enhancements, in particular in relation to clearer legislative drafting, and enhanced departmental guidance. Accordingly, this Bill would enhance GST arrangements for Commonwealth entities with effect from 1 July 2015. The passage of this Bill in the current sitting will provide certainty to Commonwealth entities prior to the commencement of the new financial year; and
- Section 75 of the PGPA Act, which provides for the Finance Minister to adjust the appropriations available to non-corporate Commonwealth entities following a transfer of functions. Amendments to section 75 will clarify that the Finance Minister is *modifying* rather than making actual textual amendments to Appropriations Acts when he exercises his powers under this provision. This will simplify the administration of transfers of functions, for example, following machinery of government changes.

Schedule 2 – PGPA (C&T) Act – key amendments

Amendments in schedule 2 to the Bill improve transitional arrangements put in place through the PGPA (C&T) Act. Key amendments include:

- Amendments to streamline appropriation arrangements for repayments by the Commonwealth. Section 77 of the PGPA Act provides a special appropriation to support repayments by the Commonwealth where the Commonwealth is required or permitted to make a repayment but does not otherwise have an appropriation to support that repayment. It replaced a similar provision in the FMA Act (Section 28). These amendments provide for section 77 to support repayments regardless of when the payments to be refunded were received. Transitional arrangements currently provide for section 28 of the FMA Act to continue to apply for repayments relating to payments received before 1 July 2014. This creates unnecessary complexity.
- Amendments to the *Future Fund Act 2006* (FF Act) in relation to the Future Fund Board of Guardians (the Board). The Board has continued to be subject to the civil penalty provisions contained within the *Commonwealth Authorities and Companies Act 1997* (CAC Act). With the repeal of the CAC Act from 1 July 2014, these civil penalty arrangements were preserved for the Board to remain consistent with the similar provisions that apply to other institutional investor through the *Corporations Act 2001*. Subsequent to this, the *Regulatory Powers (Standard Provisions) Act 2014* (RPSP Act) commenced on 21 July 2014. The amendments would incorporate the RPSP Act arrangements to the greatest extent possible while maintaining consistency with the current arrangements. Schedule 6 also contains amendments to give effect to this change.

Schedule 3 – Bodies ceasing to be bodies corporate and Schedule 4 – Listed entities – key amendments

Amendments in schedule 3 and 4 to the Bill would confirm key governance arrangements for the Clean Energy Regulator (CER) and the Climate Change Authority (CCA).

The Bill contains amendments to the *Clean Energy Regulator Act 2011* (CER Act) and the *Climate Change Authority Act 2011* (CCA Act) to remove the entities' body corporate status (schedule 3), and to list the roles, membership, functions and powers of each entity for the purposes of the PGPA Act (schedule 4).

The purpose of the amendments is to continue the day to day arrangements that have applied to the CER and CCA since they were first created and were made subject to the FMA Act. The CER and CCA have only ever held assets and incur liabilities for and on behalf of the Commonwealth. They do not require body corporate status to perform their statutory functions.

The CER and the CCA will continue to perform their regulatory functions with the independence they have always possessed, including, for the CER, the right to sue, or be sued, in its own name.

Schedule 5 – consequential amendments relating to PGPA Act

The amendments in schedule 5 would enhance the interaction of the PGPA Act with entities' enabling legislation. For example, the amendments update references in enabling legislation from the FMA Act or the CAC Act to the PGPA Act and harmonise matters such as corporate planning, annual reporting, disclosure of interest, status of officials and termination of appointments.

Many amendments of this nature were made in the PGPA (C&T) Act, this bill seeks to harmonise a further 22 Acts.

Schedule 6 – Other amendments – key amendments

The amendments contained in this schedule have been identified as required by entities and proposed by responsible Ministers. As they are of a governance or resource management nature, it is considered appropriate to include them in this Bill. For example:

- The *Air Services Act 1995* would be amended to allow Airservices to better manage foreign currency exposure on operating expenses including insurance premiums and technical support services. Under existing powers, Airservices can manage its exposure to foreign currency on commodities (predominately capital project payments) via hedge transactions. The proposed amendment would replace the current power to hedge in relation to ‘commodities’ with a power to hedge in relation to the broader concept of ‘goods and services’.
- The *Auditor-General Act 1997* would be amended to extend the prohibition on disclosing information in draft audit reports provided under section 19 of the Auditor-General Act to also cover extracts of draft reports and to any other report created for the purposes of preparing a draft report. Such documentation is to be kept confidential to preserve the integrity of the audit process.
- The *Australian Trade Commission Act 1985* would be amended to reflect the Administrative Arrangements Order that allocates domestic tourism to the Australian Trade Commission (Austrade). In performing the function, the CEO of Austrade must have regard to the need to provide services as efficiently and economically as possible.
- The *Reserve Bank Act 1959* would be amended to continue current disclosure of interest arrangements for members of the Reserve Bank Board and the Payments System Board beyond 30 June 2015. Importantly, these allow members of the Reserve Bank Board who have disclosed to the Treasurer a material personal interest, to be present and vote in relation to matters dealing with monetary policy decisions and financial system stability. The disclosure of interest arrangements would revert to the standard PGPA Act requirements from 1 July 2015 if the amendment was not made, requiring members to absent themselves from performing this key function of the Reserve Bank Board.

Consultation

The PGPA Act was presented to the Parliament in June 2013 following two years of extensive consultation and consideration of issues. The PGPA (C&T) Act was also developed in consultation with Commonwealth entities over the course of 2013-2014, and many of the amendments included in this Bill were identified during those consultations. Further consultation, following the passage of the PGPA Act and the PGPA (C&T) Act, was undertaken in relation to the operation of the provisions of these Acts, and associated rules and opportunities for clarifying and refining particular provisions have been identified.

The Bill has been prepared in consultation with affected Commonwealth entities and responsible Ministers. Finance, as the portfolio responsible for the resource management framework, is continuing the practice of supporting entities to keep their enabling legislation current through omnibus amendment legislation. In that context, the *Public Governance and Resources Legislation Amendment Bill (No. 2) 2015* is also proposed for introduction in 2015.

Related legislative activity

The Bill follows on from:

- The PGPA Act which replaced the FMA Act and the CAC Act as the primary financial legislation of the Commonwealth. The PGPA Act was given Royal Assent on 29 June 2013, with the first five sections being effective from 1 July 2013 and sections 6 to 112 of the Act effective on 1 July 2014.
- The *Public Governance, Performance and Accountability Amendment Act 2014* (PGPA Amendment Act) which simplified and supported the regulatory requirements and contributed to long-term efficiencies through improved governance, transparency and accountability arrangements for Commonwealth entities (including both non-corporate Commonwealth entities and Commonwealth entities) within the Australian Government. The PGPA Amendment Act was given Royal Assent on 26 June 2014.
- The PGPA (C&T) Act amended 242 Acts across the Commonwealth to support the implementation of the PGPA Act and its related rules and instruments and harmonise their operation with the PGPA Act. The PGPA (C&T) Act was given Royal Assent on 30 June 2014.

Other Submissions to the Committee's Inquiry

The Reserve Bank of Australia's submission to the committee's inquiry of 10 March 2015 advises of their support for the amendments to the *Reserve Bank Act 1959*, and confirms that they are consistent with the arrangements that applied under the CAC Act.