



Australian Government
Department of Finance

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David Tune PSM
Secretary

Our Ref: SEC0010103

Dr Andrew Southcott MP
Chair
Joint Committee of Public Accounts and Audit
Parliament House
CANBERRA ACT 2600

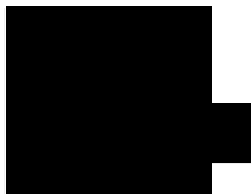
Dear Dr Southcott

Please find attached a further supplementary submission from the Department of Finance (Finance) to the Joint Committee of Public Accounts and Audit's (JCPAA's) *Inquiry into Public Governance, Performance and Accountability Act 2013 Rules Development*.

This submission provides additional information to assist the JCPAA in its deliberations, including responses to questions on notice as a result of the public hearing on 27 March 2014 and a summary of the issues raised through external submissions.

Finance does not consider the information in this submission to be such that it needs to be kept confidential.

Yours sincerely



David Tune
10 April 2014

Inquiry into the *Public Governance, Performance and Accountability Act 2013* Rules Development

Joint Committee of Public Accounts and Audit

**Further supplementary submission by the
Department of Finance**

10 April 2014

Introduction

1. This further supplementary submission to the Joint Committee of Public Accounts and Audit's (JCPAA's) inquiry into the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) Rules development, provides additional information to assist the JCPAA in its deliberations following the provision of submissions by other parties and the conduct of hearings on 27 March and 7 April 2014.
2. Fifteen submissions were lodged with the JCPAA, in addition to the Department of Finance (Finance) submissions. The issues raised in submissions and Finance's responses are set out at Attachment A. Submissions were generally supportive of the proposed rules and complimentary of Finance's consultation process as providing genuine opportunity for organisations to contribute to the development of the rules. The Auditor-General has stated that the rules provided to the JCPAA will provide a reasonable basis for substantive commencement on 1 July 2014. Notwithstanding this, submissions raised and the JCPAA has inquired into three key issues:
 - a. audit committee composition;
 - b. the general duties of officials and the relationship to the APS code of conduct; and
 - c. the commitment of relevant money.These are discussed in more detail below.
3. During the public hearing held on 27 March 2014 three questions on notice were taken. Responses to these questions are at Attachment B.

Controlling the Commitment of Future Spending

4. The ANAO's submission dated 18 March 2014 expressed concern over the proposal not to reproduce the specific requirements in FMA Regulation 10 around the commitment of expenditure beyond available appropriation. The Auditor-General expressed his view that this control over the 'lock-in' of future Budgets would be most effective if it remained as part of the resource management framework rather than became a budgetary control "because it is transactions entered by entities that commit expenditure over the forward estimates that are the focus of current arrangements"¹.
5. An important control in any public resource management framework relates to the commitment of future moneys that have yet to be appropriated by the Parliament. Whilst appropriations are frequently on an annual basis, entities' operations, their interactions and transactions with the public and with business do not lapse annually, but are ongoing. Contractual arrangements, partnerships and accommodation leases span many years, potentially twenty-five years or longer. Services are provided for which there may be a public or professional liability that runs on for many years.
6. In delegating power over future spending to accountable authorities, an appropriate balance needs to be struck that allows the accountable authority to operate in an efficient and financially sustainable manner with suitable controls over Budget 'lock-in' and oversight by the Executive and Parliament.
7. Through FMA Regulation 10, the current framework takes a purely prescriptive path to control the commitment of future spending². FMA Regulation 10 has a limited impact. It applies to a small proportion of total government spending – in practical terms, less than 8 per cent of total government expenditure is subject to FMA Regulation 10. In addition, the

¹ Submission by the ANAO dated 18 March 2014 to the JCPAA's Inquiry into Public Governance, Performance and Accountability Act Rules Development.

² FMA Regulation 10 requires the Finance Minister's agreement for expenditure that might become payable under a proposed arrangement for which there is insufficient uncommitted appropriation. The Finance Minister has delegated this power to agency chief executives for routine matters, based on thresholds, so that only significant items (in terms of financial impact, timeframe and/or risk) come to the Finance Minister for his consideration.

FMA Regulation 10 process often captures arrangements that do not have a material impact on future Budgets, such as low value, long term leases and urgent matters that have Government approval but require arrangements to be entered into before appropriations are available.

8. The effectiveness of FMA Regulation 10 has diminished over time as better controls have been introduced. Two thirds of FMA Regulation 10 requests to the Finance Minister relate to indemnities – these will now be subject to the Finance Minister’s approval under a requirement in primary legislation (PGPA Act section 60). Significant indemnities will still require the Finance Minister’s personal approval. Under the Commonwealth’s property management framework, high value property leases (over \$30 million) require the endorsement of the Finance Secretary before they can be entered into.
9. In addition to retaining some prescriptive elements in relation to the commitment of future spending, the PGPA Act places principles-based requirements for financial management on all accountable authorities. This includes the duty to govern the entity (PGPA Act section 15), which includes promoting the financial sustainability of the entity and considering the effect of decisions on public resources generally. The draft guidance material issued by Finance for section 15 points out that in meeting these obligations, an accountable authority should consider whether proposed commitments can be met from known appropriations, and whether, by entering into long-term commitments, they are locking away future flexibility to accommodate new policy and program priorities³. The accountable authority would be expected to implement internal controls to support this duty (PGPA Act section 16).
10. The PGPA framework introduces a range of principles and controls to manage future Budget lock-in as well as recognising that effective controls exist in other frameworks. In this way, “other elements of the framework and other elements of the system can meet the needs which reg 10 is meant to achieve but does not”⁴.
11. It is intended that this will drive accountable authorities to focus on financial sustainability as an ongoing requirement, rather than on particular transactions at a point in time when arrangements are being considered. Improved oversight by the Executive will result from the PGPA’s obligation on accountable authorities to notify responsible ministers and the Finance Minister (PGPA Act section 19) as soon as practicable after becoming aware of significant issues that may affect the entity.
12. The Commonwealth’s Budget process contains a number of controls over future expenditure including the consideration of the future financial impact of proposals⁵. The Government is considering appropriate successor mechanisms to FMA Regulation 10 in light of feedback. This could include strengthening budget rules. Consideration at Budget enables Government to properly consider the financial impact of proposals at the policy approval stage rather than when actual transactions or arrangements are proposed, as is the case with the current FMA Regulation 10 process.
13. Taken together, the systems of controls, obligations and duties under the PGPA framework, and controls contained in other frameworks provide a rigorous control over future Budget lock-in and protect the ability of Government to respond to emerging priorities.

³ Resource Management Guidance (Draft), Duties of Accountable Authorities, Department of Finance March 2014

⁴ Evidence by Dr Stein Helgeby, Department of Finance, to the JCPAA hearing of 7 April 2014 on the Public Governance, Performance and Accountability Act Rules Development.

⁵ Evidence by Mr Lembit Suur, Department of Finance, to the JCPAA hearing of 7 April 2014 on the Public Governance, Performance and Accountability Act Rules Development

Approvals for the Commitment of Relevant Money

14. In evidence to the JCPAA on 7 April 2014, the Auditor-General expressed reservations “about the rule on the commitment of relevant money, as it does not require those who approve the commitment of relevant money to form a judgement that it represents the proper use of such money”⁶.
15. Fundamentally the PGPA reforms take a more holistic approach to the prudent control over public resources.
16. In creating a single framework for all Commonwealth entities, the PGPA Act and Rules move away from the transactional, process and legislative prescription currently contained in the FMA Act; for example, which deal with ‘persons entering arrangements’ and ‘approvers recording the terms of approvals’. While providing a degree of assurance about process-compliance, these processes are prone to over-prescription, inefficiency and red-tape when broadly applied to all instances. As the ANAO notes, “these regulations are quite prescriptive and there are benefits in streamlining existing requirements”⁷. No such process, for example, is prescribed in the CAC Act, and there is no evidence that CAC Act entities are poorer in their handling of public moneys.
17. The PGPA Act seeks to establish a coherent system of governance and accountability across all Commonwealth entities. A prudent control system is not solely about the final consideration or approval steps in a process—it is holistic, starting with the level of control exercised by an accountable authority, and the structures, checks and balances that the accountable authority deploys to provide confidence to Ministers, the auditor and the Parliament that it is meeting its obligations in relation to the proper use of public resources. It is about how those controls are supported by legislative controls on officials to exercise care and diligence, good faith and for proper purpose.
18. In the proposed system of controls, obligations and duties under the PGPA Act, there is flexibility for accountable authorities to apply processes for committing relevant money that are appropriate to their entities and the environments that they operate in. “The Accountable Authority is best placed to understand the organisational context and maturity of its control environment”⁸. This encourages accountable authorities and officials to engage effectively with risk and implement controls around spending that are efficient and proportionate to the risks involved, but always within the context of the discretion and powers provided to them by the Parliament.
19. In moving away from the rigid prescription currently applied to FMA Act agencies, the new framework gives accountable authorities the responsibility to develop controls that are appropriate to their entities, rather than a ‘one size fits all’ approach. This allows accountable authorities to “determine the most appropriate resource management arrangements for their specific operations, rather than applying a mandatory threshold or approvals process for all agencies that may not be relevant in all circumstances”⁹. The principles and requirements contained in the PGPA Act and Rule ensure that the efficient operation of Commonwealth entities can be supported while still giving the Executive and the Parliament assurance that public resources are being properly managed.

⁶ Evidence by the Auditor-General Mr Ian McPhee, to the JCPAA hearing of 7 April 2014 on the Public Governance, Performance and Accountability Act Rules Development.

⁷ Submission by the ANAO dated 18 March 2014 to the JCPAA’s inquiry into Public Governance, Performance and Accountability Act Rules Development.

⁸ Submission by the CSIRO dated 14 March 2014 to the JCPAA’s inquiry into Public Governance, Performance and Accountability Act Rules Development.

⁹ Submission by the Australian War Memorial dated 24 March 2014 to the JCPAA’s inquiry into Public Governance, Performance and Accountability Act Rules Development.

20. A central part of this new scheme is that accountable authorities are now responsible, under section 15 of the PGPA Act, for promoting the proper use and management of public resources for which it is responsible while required to promote the achievement of the purposes of the entity.
21. In part, this extends and builds on the current FMA Act requirement under section 44 to all Commonwealth entities, corporate and non-corporate alike. Accountability is further reinforced by the requirement in section 16 of the PGPA Act that the accountable authority must also establish an appropriate system of internal control which includes requirements on officials approving commitments.
22. One thing that is mandatory is the requirement for an approval to be recorded in writing as soon as practicable after it is given. This ensures that there is an auditable record of an official's approval, in writing, that will form a part of the evidentiary trail against which the official can be held to account for their proper use of relevant money.
23. The proposed framework introduces a system of control at the whole-of-government level which gives the Executive and the Parliament confidence that the commitment of relevant money across the whole Commonwealth system and by each Commonwealth entity is:
 - undertaken according to consistent principles,
 - subject to processes and controls that are proportionate to the risks involved, and
 - being recorded in a way that is auditable.
24. In summary, the PGPA Act places a positive duty on all accountable authorities to promote the proper use and management of public resources under their control and to maintain appropriate systems of risk and control in their entity. This facilitates an operating environment that supports the proper use of public resources in a manner that effectively addresses risk and fosters efficiency. This is in contrast to the current framework that contains rigid prescription and red tape requirements for some Commonwealth entities, and only general requirements for other Commonwealth entities.

General Duties of Officials

A single set of standards that apply to all officials

25. As advised in Finance's previous submissions to the committee and discussed at the two hearings, the general duties of officials in sections 25 to 29 of the PGPA Act apply a single set of standards that apply to all officials who use public resources, which promotes a coherent system of governance and gives the Parliament confidence that public resources will be managed consistently and to a high standard.
26. The APS code of conduct, which is prescribed by section 13 of the *Public Service Act 1999* (PS Act) and applies to around half of Commonwealth officials, has broader scope and relates to the employment of APS employees. The APS code of conduct is highly valued, and gives confidence about the high professional standards of an apolitical Australian Public Service, but the PGPA Act applies more precision when it comes to standards of governance, performance and accountability, particularly in relation to the management of resources. Good governance demands precise and unambiguous standards to promote effective management of public resources by officials.
27. The PGPA Act creates a complete scheme around the management of public resources. The duties of officials complement the framework of controls and processes established by the accountable authority as required by sections 15 to 19 of the PGPA Act. The direct link between these controls and processes and the duties placed on all officials through sections 25

to 29 is designed to drive the cultural changes needed within entities to, amongst other things, promote effective risk management and performance cultures. The need for precise and unambiguous standards would disrupt the scheme if APS employees were subject to a broader set of duties that are described differently.

28. Aligning the duties of all Commonwealth officials with the broadly understood duties from the *Corporations Act 2001* (Corporations Act), and the *Commonwealth Authorities and Companies Act 1997* (CAC Act), that are applied in part or full to directors, senior officials and employees in Commonwealth authorities, extends established standards for managing money and resources to the Commonwealth as a whole.
29. The Corporations Act has in the past and will continue to provide a complete suite of corporate governance and financial reporting requirements for all companies, including Commonwealth companies. The duties on directors are laid out in this context, which is similar to what the PGPA Act does for non-corporate and corporate Commonwealth entities. Where there are additional requirements on Commonwealth companies, these are spelt out in the PGPA Act, and relate to the Commonwealth owned nature of the entities, e.g. planning, reporting, the role of audit committees and the provision of information to Ministers.
30. Decisions of the current and future governments to reshape government administration are best supported by a framework that applies the same set of duties and rules to all officials in their management of public resources. A single set of standards will allow the government to be more efficient and agile in times of administrative reorganisation and structural change. It will also give comfort to the Parliament that all officials, irrespective of whether an APS employee or a non-APS employee or of a corporate or non-corporate Commonwealth entity, will be subject to a complete scheme.
31. The Public Service Commissioner (Commissioner) raised a “concern that the PGPA Act had the potential to create confusion in the minds of APS employees about their responsibilities [under the APS code of conduct]”¹⁰.
32. The Commissioner also stated “Our concern is that the current approach in the PGPA Act to achieve this objective will in reality leave us with two such statements, one in the PGPA Act and another in the Public Service Act, which is part of a more comprehensive framework governing the conduct of APS employees. Moreover, although they are expressed very similarly in respect of financial management, these statements use slightly different language, which carries the potential for unnecessary confusion, inefficiency and cost”¹¹.
33. Finance is appreciative of the Commissioner’s statements in the Hearing around his willingness to “recommend to the government that they consider some minor changes to the way that the code is expressed in order to be able to eliminate that scope for confusion between the two acts”¹².
34. It should be noted that entities and officials already operate under multiple regulatory regimes, including sets of duties, without difficulty.
35. Under the *Financial Management and Accountability Act 1997* (FMA Act), 11 agencies engage personnel under enabling legislation as well as the PS Act. This includes the Department of Defence, which employs both military personnel under the *Defence Act 1903*, the *Naval Defence Act 1910* and the *Air Force Act 1923* and APS employees. The Australian

¹⁰ Australian Public Service Commission Submission, dated 24 March 2014 to the JCPAA’s Inquiry into Public Governance, Performance and Accountability Act Rules Development.

¹¹ Evidence by the Australian Public Service Commissioner Mr Stephen Sedgwick AO, to the JCPAA hearing of 7 April 2014 on the Public Governance, Performance and Accountability Act Rules Development.

¹² Evidence by the Australian Public Service Commissioner Mr Stephen Sedgwick AO, to the JCPAA hearing of 7 April 2014 on the Public Governance, Performance and Accountability Act Rules Development.

Defence Force issues several different codes of conduct under which military personnel in the Army, Navy and Air Force must comply. This is complemented by specific guidance issued by the individual forces.

36. For example, section 9A of the *Defence Act 1903* provides for the Secretary of Defence or the Chief of the Defence to issue General Defence Instructions (DIs) that can pertain to any matter that deals with the administration of the Australian Defence Force (ADF). As statutory instruments, DIs have the force of law. DIs can apply to both APS and ADF personnel. In relation to ADF members, DIs constitutes a general order for the purposes of the *Defence Force Discipline Act 1982* and non-compliance may result in disciplinary action being taken. In relation to APS employees, a DI is a lawful and reasonable direction by the Secretary under subsection 13(5) of the PS Act. Non-compliance may be a breach of the APS code of conduct and be sanctioned accordingly¹³. This arrangement is analogous to arrangements being developed under the PGPA Act as it allows DIs under the *Defence Act 1903* to apply statutory requirements on APS and non-APS employees in a way that still allows the APS code of conduct to apply.
37. In addition, the Department of Defence has issued Defence specific values. In this regard, the Defence website states “without diminishing the existing single service and Australian Public Service (APS) values, or their use, [Defence] has implemented specific Defence values that provide a common and unifying thread for all people working in Defence.” For example, these values go to issues of professionalism, loyalty, integrity, innovation and teamwork.
38. The Commissioner’s desire to avoid overlap between the APS code of conduct and the duties of officials under the PGPA Act should be viewed in the context that the CAC Act when enacted in 1997 contained the same duties as the duties of officials currently detailed in sections 25 to 29 of the PGPA Act. The APS code of conduct was initially introduced as part of the PS Regulations in 1998 before being moved in section 13 of the PS Act in 1999.
39. However, there is no evidence that the two sets of similar duties has created confusion over the past 14 years for the 17 CAC Act bodies that are also subject to the PS Act. In fact there is an argument that having consistent duties across multiple operating environments can help reinforce expectations on officials and help implement a consistent change in organisational culture.

Way forward

40. Finance appreciates the assistance provided to date by the Australian Public Service Commission (APSC) in developing guidance and will continue to work collaboratively with the APSC to ensure clarity around the way that the PGPA Act and PS Act interact. It will be important to monitor this issue both in the short term and as part of the independent review of the PGPA Act in three years time.

Audit Committee Rule (s.17 and s.28 of the PGPA Act Rule)

41. A number of submissions from Commonwealth companies and corporate entities do not support section 17(5)(a) of the proposed draft rule, which provides that a person who is “the accountable authority or, if the accountable authority has more the one member, the head (however described) of the accountable authority”, must not be a member of the audit committee. This requirement is applied to wholly-owned Commonwealth companies through section 28 of the rule.

¹³ Re-thinking systems of inquiry, investigation, review and audit in Defence, Report on Stage A Annex B – Legal framework analysis, dated 1 August 2012.

42. The submissions argue that this provision is unnecessarily restrictive and that it disrupts current practice. Commonwealth companies also argue that this requirement subjects them to a higher standard in terms of audit committee composition than comparable privately-owned companies, and therefore imposes a competitive disadvantage on Commonwealth companies. In relation to companies, it is argued that:
- *the Corporations Act 2001 (Cth)* imposes no requirements in relation to the composition of audit committees; and
 - that the Australian Securities Exchange (ASX) makes provision in its *Corporate Governance Principles and Recommendations with 2010 Amendments (2nd edition) 2010* (ASX Principles) that an audit committee should be “chaired by an independent chair, who is not chair of the board”, but does not prohibit the chair of the board of directors of a company from being a member of the audit committee; and
 - that similar provision can be found in other regulatory requirements, for example, the *Private Health Insurance (Insurer Obligations) Rules 2009*.
43. The advantages of a chair of a board or council of an entity sitting on the audit committee for the entity is explained as allowing the chair “to tender well-informed strategic input” to the deliberation of the audit committee¹⁴, and is seen to reflect “a genuine interest in the internal controls and risk management approach within their organisations”¹⁵.
44. The distinguishing feature of an audit committee of an entity is its independence from the day-to-day operations and management of an entity. The ASX Principles make this point explicitly, noting that “the existence of an independent audit committee is recognised internationally as an important feature of good corporate governance”¹⁶. The ASX Principles also acknowledge this implicitly by requiring that chairs of boards should not be chairs of Audit Committees whereas other non-executive directors of a board are not precluded from chairing an audit committee¹⁷.
45. The rules go a step further in relation to the role of a chair for reasons that go to the scope or responsibility of an audit committee under the PGPA Act.
46. Under the ASX Principles, the responsibilities of an audit committee are to “review the integrity of the company’s financial reporting and oversee the independence of the external auditors”¹⁸. Under the section 17(2) of the draft PGPA Rule, the functions assigned of an audit committee are broader, and “must include reviewing the appropriateness of the accountable authority’s: (a) financial reporting; and (b) performance reporting; and (c) system of risk oversight and management; and (d) system of internal control; for the entity”.
47. The role of an audit committee under the PGPA Act is, therefore, wider than under the ASX Principles. The exclusion of the chairs of boards and councils from the audit committee reflects the fact that a chair, like a chief executive officer and chief financial officer of an entity, both of whom are also excluded from the membership of an entity’s audit committee, is responsible for leading the accountable authority in acting on and giving effect to advice provided by the audit committee. In relation to these three positions a separation of roles is highly desirable.

¹⁴ The Australian War Memorial Submission dated 24 March 2014 to the JCPAA’s Inquiry into the Public Governance, Performance and Accountability Act Rules Development.

¹⁵ Evidence by the Auditor-General Mr Ian McPhee, to the JCPAA hearing of 7 April 2014 on the Public Governance, Performance and Accountability Act Rules Development.

¹⁶ ASX Corporate Governance Principles and Recommendations with 2010 Amendments (2nd edition), p.26.

¹⁷ Section 19(5) of the Rule to the PGPA Act does not preclude a non-executive director of the board or council of a corporate Commonwealth entity or a Commonwealth-owned company from sitting on or chairing the audit committee of the entity or company.

¹⁸ ASX Corporate Governance Principles and Recommendations with 2010 Amendments (2nd edition), p.26.

48. As noted in Finance's evidence to the Committee on 7 April 2014, nothing in the rule precludes persons in these three positions from attending any meeting of an entity's audit committee as an observer¹⁹. Such an arrangement would recognise the advantage of a chair providing "strategic perspective" to an audit committee²⁰. Indeed, the Auditor-General noted at the same hearing the "a significant number of chairs... [already] attend the audit committee hearings as observers"²¹ and the Chief Financial Officer of the Australian War Memorial noted that such an arrangement "does not impinge on the independence at all, but appearing as an observer would be better than not being able to appear at all"²².

Next Steps

49. In finalising the draft PGPA rules required for 1 July 2014, Finance will have regard to the Report of this inquiry, as well as the ongoing consultation process, including with the APSC and the ANAO.
50. Finance will continue to provide support to Commonwealth entities in implementing the PGPA Act within their organisations in the lead up to the 1 July 2014 start date and beyond. Entity training has been in progress since February 2014, with sessions being delivered to Commonwealth entities in Canberra, Sydney and Melbourne. This will continue with further training sessions scheduled to be delivered through to July in Canberra, the Northern Territory, Queensland and South Australia.
51. Guidance is being released to assist entities to comply with the PGPA Act, rules and associated policies, and to promulgate better practice. Draft guidance material is currently available on the PMRA website to support the training suite being delivered.
52. As noted in the previous submission, Finance is also preparing a Consequential and Transitional Bill to be presented to Parliament in the Winter Sittings of 2014 to align the statute book with the new financial and performance framework and to facilitate the transition from the FMA Act and the CAC Act to the PGPA Act. The Bill is anticipated to make amendments to more than 250 pieces of legislation.
53. Further, a PGPA Act Amendment Bill will also propose amendments to the PGPA Act that are necessary to further improve the operation of the Act and to support the introduction of the PGPA rules.
54. As has been noted in our previous submissions, it will take several years to implement the PMRA reforms and integrate them fully into the practices and processes of Commonwealth entities and companies. Noting this, the second stage through to 1 July 2015 will focus on improving the quality of planning, performance information and evaluation within government to improve accountability to Ministers, the Parliament and moreover the public. It will also look at longer term issues like tiered financial reporting, introducing earned autonomy concepts and the appropriations framework.
55. The next stage of the reform agenda will be supported using the existing governance arrangements and consultation processes put in place for stage one. This includes the continuation of subject specific steering committees, within Canberra and interstate as well as other stakeholders and the JCPAA.
56. Finance would like to once again thank the JCPAA, the committee secretariat, and to all who have participated in the inquiry to date.

¹⁹ Evidence by Mr Lembit Suur, Department of Finance, to the JCPAA hearing of 7 April 2014 on the Public Governance, Performance and Accountability Act Rules Development.

²⁰ Evidence by the Auditor-General Mr Ian McPhee, 7 April 2014 on the Public Governance, Performance and Accountability Act Rules Development.

²¹ Evidence by the Auditor-General Mr Ian McPhee, 7 April 2014 on the Public Governance, Performance and Accountability Act Rules Development.

²² Evidence by Ms Leanne Patterson, Australian War Memorial, to the JCPAA hearing of 7 April 2014 on the Public Governance, Performance and Accountability Act Rules Development.

Index of Attachments

Attachment A – Summary of responses to external submissions

Attachment B – Responses to Questions on Notice

Attachment A

Department of Finance (Finance) response to written submissions provided to the JCPAA

| Sub Ref | Submission | Issue | Finance comment |
|---------|---|--|--|
| 2 | Reserve Bank of Australia (RBA) | No issues requiring a response. | |
| 3 | Australian National Audit Office (ANAO) | <p>An additional guiding principle for the PMRA reforms is suggested.</p> <p>That the financial framework, including the risks and supporting policy and guidance, should support the legitimate requirements of the Government and the Parliament in discharging their respective responsibilities.</p> | <p>The PGPA Act puts in place requirements for high standards of governance, performance and accountability and seeks to ensure that the Parliament is provided with meaningful information. The number of references to the Parliament has increased from 6 under the FMA and 4 under the CAC Acts to 14 under the PGPA Act.</p> <p>At the highest level, the PGPA Act has done a number of things to enhance the role of the Parliament. For example, it requires:</p> <ul style="list-style-type: none"> the inclusion of an annual performance statement in annual reports, that, of course, are tabled in Parliament; Parliamentary scrutiny of terminations of accountable authorities' appointments made under section 30; and expanded powers for the Auditor-General. <p>These provisions have been to ensure that important role of the Parliament is effectively supported by the supported by the PGPA Act.</p> |
| | | <p>Having a <u>staged approach to implementation</u> that need to be managed include: various elements of the reforms are not considered in the context of the full revised <u>financial</u></p> | <p>These considerations will be taken into account in developing and implementing the PMRA reforms. It will take several years to implement the different stages of reform and integrate them fully into the practices and processes of Commonwealth entities and Commonwealth companies. Gradual introduction of the reforms</p> |

| Sub Ref | Submission | Issue | Finance comment |
|---------|------------------|---|--|
| | ANAO (continued) | <u>framework</u> ; the <u>performance framework</u> , a priority area for attention, is not in Stage 1; unclear whether current proposals will need to be amended in future reforms; and a long term investment in project and change management is required. | will ensure that they are appropriately tested and refined in light of experience and robust consultation. |
| | | <u>Section 38</u> of the PGPA Act may be interpreted too narrowly to not cover the performance of an entity in terms of the effectiveness of its programs, where those programs are conducted with other entities. | Section 38 of the PGPA Act is intended to encompass a broad view of the performance of an entity in achieving its purposes. Finance will consult extensively both within and outside of the Commonwealth on the development of the new performance framework to ensure it is coherent, flexible and sufficiently detailed to enable an improved system of performance management and governance, and it provides meaningful information to Parliament. |
| | | It is unclear why the PGPA Act does not contain provisions that retain <u>section 32B of the FMA Act</u> and related regulations after 1 July 2014. | 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. 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, as well as related definitions and delegations provisions, when the other provisions of the FMA Act are repealed and/or transitioned. The necessary amendments to allow these arrangements to |

| Sub Ref | Submission | Issue | Finance comment |
|---------|------------------|---|--|
| | ANAO (continued) | | continue to operate will be included in the <i>Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Bill 2014</i> , which is to be presented to Parliament in the 2014 Winter Sittings. |
| | | <p>There should be a <u>clear distinction between mandatory requirements and guidance</u>.</p> <p>To avoid uncertainty about the status of guidance and policies, the need for development of these materials should be based on an assessment of the need for entities to comply with requirements and the benefits of having a common approach across the Commonwealth.</p> | The PGPA framework makes a clear distinction between the mandatory requirements in the PGPA Act, rules, policy, and the guidance that will assist entities to meet their obligations. |
| | | <p>The 'commitment of relevant money' rule <u>does not impose an explicit obligation on an official to be satisfied that the proposed commitment would be 'proper use' of relevant money</u>. This does not provide Parliament with sufficient confidence that officials will be required in all cases to do so in accordance with their accountable authorities' instructions/delegations.</p> | <p>Fundamentally the PGPA reforms take a more holistic approach to the prudent control over public resources.</p> <p>In creating a single framework for all Commonwealth entities, the PGPA Act and Rules move away from the transactional, process and legislative prescription currently contained in the FMA Act. Finance considers that while providing a degree of comfort about process-compliance, these processes are prone to over-prescription, inefficiency, red-tape when broadly applied to all instances. No such processes are prescribed in the CAC Act, and there is no evidence that this provides a lesser degree of comfort or assurance about their handling of public moneys.</p> <p>The PGPA Act seeks to establish a coherent system of governance</p> |

| Sub Ref | Submission | Issue | Finance comment |
|---------|------------------|-------|---|
| | ANAO (continued) | | <p>and accountability across all Commonwealth entities</p> <p>The principles and requirements contained in the PGPA Act and Rule ensure that the efficient operation of Commonwealth entities can be supported while still giving the Executive and the Parliament assurance that public resources are being properly managed.</p> <p>A central part of this new scheme is that accountable authorities are now responsible, under section 15 of the PGPA Act, for promoting the proper use and management of public resources for which it is responsible while required to promote the achievement of the purposes of the entity. This extends the current FMA Act requirement under section 44 to all Commonwealth entities, corporate and non-corporate alike. Parliamentary accountability and prudence is further reinforced by the requirement in section 16 of the PGPA Act that the accountable authority must also establish an appropriate system of internal control which includes requirements on officials approving commitments.</p> <p>One thing that is mandatory is the requirement for an approval to be recorded in writing as soon as practicable after it is given. This ensures that there is an auditable record of an official's approval, in writing, that will form a part of the evidentiary trail against which the official can be held to account for their proper use of relevant money.</p> <p>The proposed framework introduces a system of control at the whole-of-government level which gives the Executive and the Parliament confidence that the commitment of relevant money</p> |

| Sub Ref | Submission | Issue | Finance comment |
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| | ANAO (continued) | | <p>across the whole Commonwealth system and by each Commonwealth entity is:</p> <ul style="list-style-type: none"> • undertaken according to consistent principles, • subject to processes and controls that are proportionate to the risks involved, and • being recorded in a way that is auditable. <p>The PGPA Act places a positive duty on all accountable authorities to promote the proper use and management of public resources under their control and to maintain appropriate systems of risk and control in their entity. This facilitates an operating environment that supports the proper use of public resources in a manner that effectively addresses risk and fosters efficiency. This is in contrast to the current framework that contains rigid prescription for some Commonwealth entities, which creates red tape and stifles innovation, and only general requirements for other Commonwealth entities.</p> |
| | | <p>It would not be unreasonable to <u>require the basis for decisions to enter into commitments above a certain threshold be recorded</u>.</p> | <p>Consistent with the broader PGPA reforms, the PGPA rules move away from the level of prescription currently contained in the FMA Act. Rather, the PGPA Act has imposed on all accountable authorities general duties and specific responsibilities for the governance of entities. It provides core governance principles for accountable authorities and gives them the flexibility to design their processes for the management of their entity, according to the nature of the entity, its operations and, significantly, the risks that the entity faces and engages within its operations.</p> <p>The accountable authority responsible for relevant money has a</p> |

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| | ANAO (continued) | | <p>duty to promote the proper use of the money (section 15 of the Act). The accountable authority is able to promote the proper use of the money through its delegations or instructions to officials, which may contain requirements around the recording of decisions based on the factors such as the nature and size of the commitment, and the risk profile of the entity.</p> <p>Finance guidance material will support accountable authorities in determining where this might be appropriate.</p> |
| | | <p>Controls around the <u>commitment of expenditure beyond available appropriations</u> in the Budget process are not as effective as having it in the resource management framework.</p> | <p>The PGPA framework and the Budget process provides effective control over commitments that rely on future appropriations.</p> <p>A new Budget process requirement will allow the Finance Minister to review the impact of significant proposed spending commitments before commitments are made, where they would be beyond available appropriations.</p> <p>In addition, the PGPA Act framework will improve the management of unfunded future commitments by placing a positive duty on all accountable authorities to promote the financial sustainability of their entity and to take into account the effect of their decisions on public resources generally (section 15 of the PGPA Act). The accountable authority would also be expected to put in place internal controls over the decision-making process for the use of resources by the entity (section 16 of the PGPA Act).</p> <p>This approach reflects the PGPA Act's whole-of-system approach to the stewardship and management of public resources across the Commonwealth.</p> <p>Requirements relating to property, indemnities related</p> |

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| | ANAO (continued) | | commitments will continue to govern these higher risk or longer term commitments. |
| | | To improve the standard of performance measurement and reporting in the short term, Finance should enhance the level of communication with entities on these matters as part of implementing the revised performance regime. | <p>Finance agrees with the need for continual engagement with Commonwealth entities as part of the transition to, and development of, a new performance framework under the PGPA Act. Finance will consult extensively both within and outside of the Commonwealth to ensure the framework is coherent, flexible and sufficiently detailed to enable an improved system of performance management and governance, and it provides meaningful information to Parliament.</p> <p>The guidance materials for the new performance framework will be available from December 2014, noting that guidance materials will be available for entities for 1 July 2014 about the elements of the PGPA Act related to maintaining proper records to measure and assess performance (Sections 37 and 38). The broader framework will be available in December 2014 for implementation from 1 July 2015.</p> |
| 4 | Medibank Private, Australian Rail Track Corporation, ASC joint submission | <p><u>Section 28 of the PGPA Rule should be amended so that paragraph 17(5)(a) does not apply to a wholly-owned Commonwealth company that is a GBE.</u></p> <p>Paragraph 17(5)(a) requires that a single person <u>accountable authority</u> or the head of a multi-member accountable authority <u>must not be a member of the audit committee.</u></p> <p>The submission expresses concern that</p> | <p>The distinguishing feature of an audit committee of an entity is its independence from the day-to-day operations and management of an entity. The ASX principles make this point explicitly, noting that “the existence of an independent audit committee is recognised internationally as an important feature of good corporate governance”. The ASX principles also acknowledge this implicitly by requiring that chairs of boards should not be chairs of Audit Committees because of the particular role that a chair plays in relation to the operations of a company, when compared with other non-executive directors of</p> |

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| | Medibank Private, Australian Rail Track Corporation, ASC joint submission (continued) | that the requirement in the proposed rule will impact on their <u>competitiveness</u> . | <p>a board who are not precluded from chairing an audit Committee.</p> <p>The draft PGPA Act audit committee rules mandate majority independent membership for the same reason. However, the rules go a step further in relation to the role of a chair for reasons that go to the scope or responsibility of an audit committee under the PGPA Act.</p> <p>Under the ASX principles, the responsibilities of an audit committee are to “review the integrity of the company’s financial reporting and oversee the independence of the external auditors”. Under the section 17(2) of the draft PGPA Rule, the functions assigned of an audit committee are broader, and “must include reviewing the appropriateness of the accountable authority’s: (a) financial reporting; and (b) performance reporting; and (c) system of risk oversight and management; and (d) system of internal control; for the entity”.</p> <p>The role of an audit committee under the PPA Act is, therefore, much wider than under the ASX Rules. The exclusion of the chairs of boards and councils from the audit committee reflects the fact that a chair, like a chief executive officer and chief financial officer of an entity, both of whom are also excluded from the membership of an entity’s audit committee is responsible for acting on and giving effect to advice provided by the audit committee from the accountable authority perspective. In relation to these three positions a separation of roles is highly desirable.</p> <p>As noted in Finance’s evidence to the Committee on 7 April 2014,</p> |

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| | Medibank Private, Australian Rail Track Corporation, ASC joint submission (continued) | | nothing in the rule precludes persons in these three positions from attending any meeting of an entity's audit committee as an observer. |
| 5 | Statutory Research and Development Corporations | Subsection 14(4) of the PGPA Rule be amended to <u>remove the requirement that it be an 'official' that ensures that a disclosure of interest is recorded in the minutes of the meeting</u> (so that the requirement is not attributed to any person). | Finance has developed this subsection in consultation with the Office of Parliamentary Counsel who has advised that the obligation needs to be attributed to a particular person. |
| | | Clarify that the term ' <u>instructions</u> ' (as used in section 16 of the PGPA Rule) <u>includes internal policies of a corporate Commonwealth entity</u> . | The instructions given by an accountable authority will become internal policies of their Commonwealth entity and binding on the officials of that entity. |
| | | Clarify that the term ' <u>employee</u> ' (as used in subsection 17(4) of the PGPA Rule relating to audit committee membership) <u>does not include a member of the relevant accountable authority of a corporate Commonwealth entity</u> . | Employees can include members of the accountable authority where they are executives of the entity. However, non-executive members of the accountable authority are not employees for the purpose of the rule, that is, they meet the independence test (excluding the head of the accountable authority under subsection 17(5) of the PGPA Rule). |
| | | <u>Do not apply subsection 18(1) of the PGPA Rule to corporate Commonwealth entities</u> (that an official approving a commitment of relevant money must record the approval in writing) as there | Finance submits that officials that currently approve commitments of relevant money must have obtained the authority to approve the proposed commitment through a delegation or authorisation from their accountable authority. A proposal for the commitment of relevant money can be general |

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| | Statutory Research and Development Corporations (continued) | are various circumstances where an approval may not be granted prior to making a commitment to spend. | in nature (such as, a proposal relating to a group or class of proposed arrangements). Finance will continue to consult with stakeholders on the guidance offered to ensure that entities understand how to apply the Rule. Refer to response to ANAO comments above |
| | | Reinsert the exception that an official receiving relevant money does <u>not have to bank it if their accountable authority considers it to be uneconomical</u> . | Under paragraph 19(1)(b) of the PGPA Rule, an accountable authority may prescribe a period by which bankable money received by an official must be deposited. This discretion may be exercised by an accountable authority for a broad range of reasons, including the situation where individual amounts collected over a certain period is likely to be uneconomical to bank. |
| | | Encourage further consideration of the implementation of earned autonomy, noting that a more “nuanced” approach to risk management and system of earned autonomy was proposed as part of the PMRA reforms. | The concept of earned autonomy will be considered in later stages of the PMRA reforms, where it will be explored in consultation with a broad range of Commonwealth entities, consistent with the approach taken in the PMRA reforms thus far. This will also allow sufficient time to ensure that the Commonwealth Risk Management Policy is appropriately tested and refined in light of experience and consultation before an earned autonomy model is put in place. |

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| 6 | Australian War Memorial | Excluding the Chairman of the Council as a <u>member of the Audit Committee</u> is too restrictive. | <p>The distinguishing feature of an audit committee of an entity is its independence from the day-to-day operations and management of an entity. The ASX principles make this point explicitly, noting that “the existence of an independent audit committee is recognised internationally as an important feature of good corporate governance”. The ASX principles also acknowledge this implicitly by requiring that chairs of boards should not be chairs of Audit Committees because of the particular role that a chair plays in relation to the operations of a company, when compared with other non-executive directors of a board who are not precluded from chairing an audit Committee .</p> <p>The draft PGPA Act audit committee rules mandate majority independent membership for the same reason. However, the rules go a step further in relation to the role of a chair for reasons that go to the scope or responsibility of an audit committee under the PGPA Act.</p> <p>Under the ASX principles, the responsibilities of an audit committee are to “review the integrity of the company’s financial reporting and oversee the independence of the external auditors”. Under the section 17(2) of the draft PGPA Rule, the functions assigned of an audit committee are broader, and “must include reviewing the appropriateness of the accountable authority’s: (a) financial reporting; and (b) performance reporting; and (c) system of risk oversight and management; and (d) system of internal control; for the entity”.</p> <p>The role of an audit committee under the PPA Act is, therefore, much wider than under the ASX Rules. The exclusion of the chairs</p> |

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| | Australian War Memorial (continued) | | <p>of boards and councils from the audit committee reflects the fact that a chair, like a chief executive officer and chief financial officer of an entity, both of whom are also excluded from the membership of an entity's audit committee is responsible for acting on and giving effect to advice provided by the audit committee from the accountable authority perspective. In relation to these three positions a separation of roles is highly desirable.</p> <p>As noted in Finance's evidence to the Committee on 7 April 2014, nothing in the rule precludes persons in these three positions from attending any meeting of an entity's audit committee as an observer.</p> |
| 7 | Australian Public Service Commission (APSC) | <p>The PGPA Act should be amended so that the <u>officials' duties</u> (sections 25 to 29 of the PGPA Rule) <u>do not apply to people employed under the Public Service Act</u> (PS Act) as the APS Code of Conduct already provides a comprehensive framework for regulating conduct.</p> | <p>The general duties of officials in sections 25 to 29 of the PGPA Act apply a single set of high standards that apply to all officials who use public resources, which promotes a coherent system of governance and gives the Parliament confidence that public resources will be managed consistently and to a high standard.</p> <p>The APS code of conduct, which is prescribed by section 13 of the <i>Public Service Act 1999</i> (PS Act) and applies to around half of Commonwealth officials, has broader scope and relates to the employment of APS employees. The PGPA Act applies more precision when it comes to standards of governance, performance and accountability, particularly in relation to the management of resources. Good governance demands precise and unambiguous standards to promote effective management of public resources by officials.</p> |

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| | Australian Public Service Commission (continued) | | <p>The PGPA Act creates a complete scheme around the management of public resources.</p> <p>Aligning the duties of all Commonwealth officials with the broadly understood duties from the <i>Corporations Act 2001</i> (Corporations Act), and the <i>Commonwealth Authorities and Companies Act 1997</i> (CAC Act), that are applied in part or full to directors, senior officials and employees in Commonwealth authorities, extends established standards for managing money and resources to the Commonwealth as a whole.</p> <p>Decisions of the current and future governments to reshape government administration are best supported by a framework that applies the same set of duties and rules to all officials in their management of public resources. It will also give comfort to the Parliament that all officials, irrespective of whether an APS employee or a non-APS employee or of a corporate or non-corporate Commonwealth entity, will be subject to a complete scheme.</p> <p>The APSC is concerned that the PGPA Act has the potential to create confusion in the minds of APS employees about their responsibilities is not supported by evidence.</p> <p>The APS code of conduct introduced in 1998 created an overlap between the APS code of conduct and the duties of officials contained in the CAC Act. When enacted in 1997 the CAC Act contained the same duties as the duties of officials currently detailed in sections 25 to 29 of the PGPA Act. While not applying uniformly to all officials, there is no evidence that the two sets of</p> |

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| | Australian Public Service Commission (continued) | | <p>similar duties has created confusion over the past 14 years for the 17 CAC Act bodies that are also subject to the PS Act.</p> <p>In fact there is an argument that having consistent duties across multiple operating environments can help reinforce expectations on officials and help implement a consistent change in organisational culture.</p> <p>Finance appreciates the assistance provided to date by the APSC in developing guidance and will continue to work collaboratively with the APSC to ensure clarity around the way that the PGPA Act and PS Act interact. It will be important to monitor this issue both in the short term and as part of the independent review of the PGPA Act in three years time.</p> |
| | | In extending section <u>30 of the PGPA Act</u> (termination of appointment of accountable authorities) to all <u>Commonwealth entities</u> , care should be taken not to disturb existing processes for appointment and termination in other legislation, including the PS Act. | Section 30 of the PGPA Act will only apply to corporate Commonwealth entities. The appointment and termination provisions for accountable authorities in the enabling legislation of many non-corporate Commonwealth entities will continue under the PGPA framework, including the appointment and termination provisions for agency heads and departmental secretaries under the PS Act. |
| | | Ensure it is clear in the rules related to Officials' duty to disclose interests that the disclosure provisions in <u>section 13 of the PS Act applies</u> to members of accountable authorities that are also the head of an APS agency. | The guide to section 16 of the PGPA Rule (which applies to officials who are not an accountable authority or a member of an accountable authority) specifically references the duty in subsection 13(7) of the PS Act. Finance is amenable to including a similar reference in the guide to section 13 of the PGPA Rule (which applies to officials who are the accountable authority). |

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| 8 | Capital Training College | Once the rules are finalised, Finance should implement a communication strategy to <u>ensure senior executives of the Commonwealth are aware of the PGPA Act, PGPA Rules and other guidance.</u> | We agree that continual communication with Commonwealth entities will be critical beyond 1 July to ensure the smooth implementation of PGPA Act. Once the PGPA rules are finalised, Finance will continue to communicate with senior executives through structured consultation, updated guidance materials, and the delivery of updated financial management and budget training. |
| | | That a rule be made to require accountable authorities to follow the Risk Management Policy to further strengthen the focus on risk management | It was decided that a risk policy was preferable to a rule as this would allow a more nuanced approach to the introduction of a Commonwealth Risk Management Policy. Experience in implementing the Risk Management Policy will allow for informed consideration of the future need for a rule |
| | | A recommendation that further to the requirement to communicate risks with the responsible minister under the Model Resource Management Instructions, that an entity's risk management policy must be approved by their Minister and that it should be subject to parliamentary review | One of the aims of the Risk Management Policy was to ensure that the policy did not place additional administrative burden on Commonwealth entities. In keeping with this aim, it was decided that the policy would not include any additional reporting requirements. The Model Resource Management Instructions highlight the need to communicate key risks with their responsible Minister. |
| | | There should be clear statements of the performance outcomes to be achieved by government programs to assist entities in developing KPIs that demonstrate achievement of the entity's purposes. | This will be one of the issues examined in the second stage of the PMRA reforms, which will focus on improving the quality of planning, performance information and evaluation within government to improve accountability to Ministers, the Parliament and the public. |

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| | Capital Training College (continued) | The <u>rule on the commitment of relevant money should include the 'proper use' test</u> and that the approver should document their satisfaction that the expenditure represents the 'proper use' of the money. | An official who is approving a proposed commitment of relevant money would be doing so in accordance with directions from his or her accountable authority who is required to promote the proper use and management of public resources for which the authority is responsible (section 15 of the PGPA Act). It is for the accountable authority to ensure internal controls of the entity support the proper use and management of public resources. Officials must also comply with the general duties of officials to act in good faith and for a proper purpose (section 26 of the PGPA Act). |
| | | That Finance <u>develop a definition of financial sustainability and tests</u> to determine whether an accountable authority satisfies their duty to promote the financial sustainability of the entity (paragraph 15(1)(c) of the PGPA Act). | Consistent with the principles-based approach of the PGPA Act, the duties on accountable authorities are designed to be high level and able to be applied across the broad range of entities in the Commonwealth. Therefore Finance does not consider it appropriate to develop prescriptive tests on whether an accountable authority has satisfied their duties, but has developed guidance to assist accountable authorities to understand and meet their responsibilities. |
| 9 | Morison Consulting | In relation to audit committees, there is no need for the PGPA framework to go beyond the requirement to have an audit committee. <u>Too much specificity in a rule reduces flexibility.</u> | Refer to finance comments in response to the Medibank Private, Australian Rail Track Corporation, ASC joint submission above. |

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| | Morison Consulting (continued) | The level of <u>independent members</u> on an audit committee should be <u>left to the discretion of the accountable authority</u> . | Refer to finance comments in response to the Medibank Private, Australian Rail Track Corporation, ASC joint submission above. |
| | | Subsection 17(4) of the PGPA Act (which requires that the majority of a corporate Commonwealth entity's audit committee must not be employees of the entity), would allow for an audit committee comprised only of board members. There should be at <u>least one member who is external of the corporate accountable authority</u> . | Refer to finance comments in response to the Medibank Private, Australian Rail Track Corporation, ASC joint submission above. |
| 10 | Indigenous Business Australia (IBA) | <p>Amend section 59 of the PGPA Act so that the <u>restrictions on investing in that section do not apply in relation to corporate Commonwealth entities that are expressly authorised by an Act to invest money</u>.</p> <p>This would make it clear that section 59 only applies where money is not immediately required for the purpose of the entity, and does not mean that all investment can only be undertaken with surplus funds.</p> | <p>The investment powers for corporate and non-corporate entities under the PGPA Act have not changed from those currently in place under the CAC Act.</p> <p>Section 18(3) of the CAC Act provides that an authority may invest surplus money. Section 59 of the PGPA Act provides that a corporate Commonwealth entity must not invest relevant money unless the money is not immediately required for the purposes of the entity. This is the same as the surplus money provisions in the CAC Act.</p> <p>Where corporate Commonwealth entities have specific investment powers in their enabling legislation (such as the IBA), these powers will not change.</p> <p>Corporate entities will have no diminution of investment powers under the new framework.</p> |

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| 11 | Risk Management Institution of Australasia (RMIA) | The successful implementation of the Policy may be at risk if entities do not possess appropriate risk management expertise and are not adequately supported in understanding risk management; | <p>Finance acknowledges that the challenge of having appropriate risk management expertise available may impact some entities approach to implementation of the PGPA Act. The ability for entities to draw on the expertise and better practice that currently exists within government will contribute to minimising this risk.</p> <p>Finance is currently developing a suite of supporting material in close consultation with Commonwealth entities to assist them in implementing the Risk Management Policy. This includes a risk management better practice guide, tools and templates, and a comprehensive education and awareness program.</p> |
| | | To what extent will the obligation to engage with risk extend to private sector service providers engaged by the Commonwealth? | In general, where the private sector has been engaged to perform a function on behalf of the Commonwealth, it is the accountable authority's responsibility to ensure that private sector service providers understand the policies of the Commonwealth. However, it is not Finance's intention that private sector service providers must adopt the Commonwealth Risk Management Policy |
| | | <p>Changing recommendations in the risk management policy to mandatory requirements</p> <p>There is an absence of an explicit identification of the types of risks encountered by the Commonwealth</p> | <p>The Risk Management Policy has been drafted to be principles based and flexible. This flexibility was intentional to allow entities to tailor their existing risk practices and systems to the policy and to not unduly add any additional administrative burden on Commonwealth entities.</p> <p>Paragraph 22 of the Risk Management Policy contains a number of examples of risk categories. As different Commonwealth entities will be exposed to different risks, this list was not</p> |

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| | RMIA (continued) | | intended to be exhaustive, but rather a high level example of some risk categories that entities may consider. |
| 12 | Uniting Care | Finance should give priority to engaging with the not for profit (NFP) sector to develop a risk framework (section 16) and rules around sections 17 and 18 of the PGPA Act. | <p>As part of the ongoing consultation process of drafting the Risk Management Policy, Finance is consulting broadly with Government and non-Government entities, including the NFP sector.</p> <p>In relation to sections 17 and 18 of the PGPA Act (duties to encourage cooperation with others and to consider the risks and effects of imposing requirements on others around public resources), draft guidance has been prepared to assist accountable authorities to comply with the PGPA Act and leverage opportunities. A rule is not proposed at this time in relation to sections 17 and 18 of the PGPA Act.</p> |
| 13 | Commonwealth Scientific and Industrial Research Organisation (CSIRO) | The Framework in itself is not a barrier but CSIRO would <u>encourage efforts within the broader reform program to explore mechanisms that enable government priorities to be funded and governed on a program or outcome basis</u> , rather than necessarily on an entity by entity basis alone. CSIRO's experience with the implementation of the National Research Flagships Program may serve as a useful case study in this regard. | <p>There is an increasing desire by the Government for not only different levels of governments, but also the not-for-profit and private sectors to work more collaboratively together. This puts an onus on government to have governance arrangements that can facilitate this.</p> <p>The PGPA Act (section 17) sends a clear message that cooperation must be considered and that the resource management framework will not impede effective partnering, by placing a duty on accountable authorities to encourage officials within their entities to cooperate with others to achieve common objectives. Stage three of the Public Management Reform Agenda, beyond July 2015, is outward looking and will focus on improving how the</p> |

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| | CSIRO (continued) | | Commonwealth joins up with external parties from all sectors of the economy to deliver public policy outcomes. |
| | | The Rule on corporate planning and performance measurement and reporting should as intended support an efficient and integrated planning, performance and accountability process based on the preparation of a corporate plan with associated performance measures as the primary input to the Commonwealth Budget process. The identification of effective and comparable performance measures would benefit from supporting guidance material. | The Department of Finance will consult extensively both within and outside of the Commonwealth on the development of the new performance framework during Stage two to ensure it is coherent, flexible and sufficiently detailed to enable an improved system of performance management and governance, and it provides meaningful information to Parliament. This will include increased emphasis on the non-financial performance of entities. The guidance materials for the new performance framework will be available from December 2014, noting that guidance materials will be available for entities for 1 July 2014 about the elements of the PGPA Act related to maintaining proper records to measure and assess performance (Sections 37 and 38). |
| | | It will be important that the development of the Rules and related material continues to be consultative. The risk of imposing Rules without consultation, or introducing inappropriate central oversight, is that it might inadvertently disempower the Accountable Authority and reduce desired accountability. | Finance will continue to engage and consult in the development of the remaining rules and other initiatives to be progressed in the Public Management Reform Agenda. |

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| | CSIRO (continued) | <p>CSIRO suggest that government entities need to focus on risk at the concept and planning stages on terms of whole of portfolio work.</p> <p>The rules should allow entities to determine what is appropriate for their operations as the accountable authority is best placed to understand the organisational context and maturity of its control environment.</p> <p>Where possible alignment with standards applied on other sectors to ensure a consistent community of practice, easy of transfer between private to public sector and support for the communication of better practice material and access to training.</p> | <p>The draft policy encourages entities to consider shared risk and the importance of identifying and allocating responsibility for oversight of these risks at the early stages of policy, program or project design.</p> <p>The draft policy has been developed to ensure consistency with one of the more common risk management standards ISO 31 000. On drafting the policy Finance has been careful to ensure that the policy is not in conflict to the standard but instead builds on the standard by providing the Government context.</p> |
| 14 | ScottCromwell | <p>ScottCromwell makes two recommendations to the JCPAA:</p> <ol style="list-style-type: none"> 1. Note that a strategic vulnerability exists for the PGPA Reforms associated with the Draft Risk Management Policy Guidelines provided by the Department of Finance; it is located in the ISO 31000 notion of risk as “the effect of uncertainty on objectives”; and, 2. That an enhancement is available that addresses this strategic vulnerability by | <p>Finance will explore further with ScottCromwell their proposed approach to strengthen that of ISO 31 000, by adopting a model that utilises a more mature appreciation of risk management. That said it is Finance’s position to provide as much flexibility to entities and to encourage entities to continue to use existing frameworks that currently display high levels of maturity.</p> |

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| | ScottCromwell (continued) | enabling and facilitating an implementation approach which utilises a more mature appreciation of risk management. This enhancement recognises the longer-term objective of appreciating risk identification as a necessary step in improving performance. | |
| 15 | Community and Public Sector Union | Concerns that the inclusion of performance indicators in Annual Performance Statements will upset the balance between efficiency and effectiveness. | The Department of Finance will consult extensively both within and outside of the Commonwealth on the development of the new performance framework during Stage two to ensure it is coherent, flexible and sufficiently detailed to enable an improved system of performance management and governance, and it provides meaningful information to Parliament. This will include increased emphasis on the non-financial performance of entities. The guidance materials for the new performance framework will be available from December 2014, noting that guidance materials will be available for entities for 1 July 2014 about the elements of the PGPA Act related to maintaining proper records to measure and assess performance (Sections 37 and 38). |
| 16 | Moorebank Intermodal Company | Concern that Chair of a wholly owned Commonwealth company cannot be a member of its audit committee. | Refer to finance comments in response to the Medibank Private, Australian Rail Track Corporation, ASC joint submission above. |

Responses to Questions on Notice

Questions on notice - 27 March 2014

The Joint Committee of Public Accounts and Audit (JCPAA) held a public hearing on 27 March 2014 inquiring into the *Public Governance, Performance and Accountability Act 2013* Rules Development. During the hearing three questions were taken on notice by the Department of Finance (Finance). Responses to these questions are outlined below.

Question 1: Could the committee get a list of those top 20 projects you are focussing on?¹

The following table lists the top 20 expense programmes of the Commonwealth Government in 2013-14. This represents approximately two-thirds of total expenses in this year. More than half of the expense programs provide financial assistance or services to seniors, families, people with a disability, students, carers and the unemployed.

The Department of Finance will work with the Commonwealth Departments included on this list to identify options for standardising the processes and tools for performance measurement in relation to these programmes.

Top 20 Expense Programmes of the Commonwealth Government in 2013-14²

| COMMONWEALTH PROGRAMME | AGENCY | ESTIMATES | |
|--|-----------------|----------------|----------------|
| | | 2013-14 \$m | 2014-15 \$m |
| Revenue assistance to the States and Territories | Treasury | 51,234 | 53,804 |
| Income support for seniors | Social Services | 39,442 | 42,065 |
| Family tax benefit | Social Services | 20,289 | 20,561 |
| Medicare services | Health | 19,092 | 20,843 |
| Disability support pension | Social Services | 15,549 | 16,280 |
| Assistance to the States for healthcare services | Treasury | 13,941 | 15,432 |
| Pharmaceuticals and pharmaceutical services | Health | 10,071 | 10,570 |
| Job seeker income support | Employment | 9,550 | 10,559 |
| Non government schools – national support | Education | 8,891 | 9,252 |
| Residential and flexible care | Social Services | 8,811 | 9,325 |
| Higher education support | Education | 7,185 | 7,465 |
| Public sector superannuation | Finance | 7,059 | 7,189 |
| Income support for carers | Social Services | 6,878 | 7,630 |
| Fuel tax credits scheme | Treasury/ATO | 5,871 | 5,906 |
| Management of capability sustainment | Defence/DMO | 5,640 | 6,128 |
| Private health insurance | Health | 5,399 | 5,578 |
| Army capabilities | Defence | 5,377 | 5,746 |
| Parents' income support | Social Services | 5,275 | 5,320 |
| Child care fee assistance | Social Services | 5,048 | 5,373 |
| Navy Capabilities | Defence | 4,396 | 4,565 |
| TOTAL EXPENSES | | 254,998 | 269,591 |

¹ Proof Committee Hansard – Joint Committee of Public Accounts and Audit – Public Governance, Performance and Accountability Act rules development, Thursday 27 March 2014 (Question 1 Pg 6 Committee Chair).

² Budget Strategy and Outlook, Budget Paper No. 1 2013-14, Statement 6: Expenses and Net Capital Investment, page 6-12.

Attachment B

Responses to Questions on Notice

Question 2: Is it possible to get a list of those rules or those subsections of those rules that still have not been resolved?³

An extract of the Rules Status Log ([Attachment E](#) to Finance submission dated 5 March 2014) is below and details the rules that are not yet resolved. Additional information is highlighted.

| Draft PGPA Rule (Provision Supporting Requirements of the PGPA Act) | | Timeframe |
|---|---|---|
| (1) Corporate Plans (s35) | (2) Annual performance statements for Commonwealth entities (s39) | Deferred introduction of these rules. As a transitional arrangement, the first corporate plan to be published by entities will be for the 2015-16 financial year commencing 1 July 2015. As annual performance statements report against the corporate plan, the first annual performance statement will be published in entity annual reports for the 2015-16 financial year. Annual reports for the 2013-14 financial year will apply the current requirements. Draft rules will be developed over the balance of 2014 in consultation with the JCPAA. |
| (3) Listed entities (s8) | | |
| (4) Listed law enforcement agency (s8) | (5) Prescribing/listing person as an official | These rules are listing rules that do not require public consultation. These rules are reliant on the Consequential and Transitional Bill and the PGPA Act Amendment Bill prior to being finalised. Following the tabling of the bills noted above these rules will be provided to the JCPAA for noting – in June 2014. |
| (6) Rule modifying the operation of the Finance law (s104) | | |
| | | Consultation on this rule will be undertaken separately with the impacted entities and is not for public consultation. Following consultation this rule will be provided to the JCPAA for review – in April 2014. |

³ Proof Committee Hansard – Joint Committee of Public Accounts and Audit – Public Governance, Performance and Accountability Act rules development, Thursday 27 March 2014 (Question 2 Pg 8 Ms Brodtmann).

Responses to Questions on Notice

Question 3: What are the various dates for when these other sets of draft rules will be made available for public consultation and potentially come to this committee and ultimately be implemented?⁴

An extract of the Rules Status Log ([Attachment E](#) to Finance submission dated 5 March 2014) is below and details the timing of additional rules going forward.

| Rule and Draft PGPA Rule provision | Timeframe |
|--|---|
| <i>Rules assessed by Finance as not required for 1 July 2014</i> | |
| Financial Reporting Requirement (Annual Financial Statements) (s42) | <p>The financial reporting rules under section 42 of the PGPA Act are currently being developed.</p> <p>Draft rules will be made available for public consultation in September 2014 following consultation with PMRA steering committees.</p> <p>The rules are planned to be finalised in December 2014 and released in early 2015. Financial Statements for 2013-14 financial year will apply the current requirements. It is not proposed to provide this rule to the JCPAA.</p> |
| Arrangements for the establishment of entities with other jurisdictions (s102) | <p>Arrangements for the establishment of entities with other jurisdictions is part of the longer term work program continuing past 1 July 2014.</p> <p>A joint ventures and establishing entities subcommittee has been established under the Governance and Risk Management Steering Committee to commence work in this area. Given the breadth of this mechanism, considerable consultation will be required to finalise a coherent model which meets the requirements of all stakeholders.</p> |
| Transfers of functions and personnel (s75) | At this time no rule is required to operationalise PGPA Act s75. |
| Establishing new corporate Commonwealth entities (s87) | <p>This rule is not required for 1 July 2014.</p> <p>Following consultation, further work will be undertaken to develop a streamlined and simple model for creating new Corporate Commonwealth entities in accordance with the PMRA rule design principles.</p> |
| Annual reports and reporting requirements (s46(3) & s97) | <p>At this time a rule is not required to operationalise PGPA Act sections 46(3) and 97.</p> <p>The current annual report requirements approved by the Joint Committee of Public Accounts and Audit will be retained and updated to reflect the PGPA Act.</p> <p>Draft rules will be developed in consultation with the JCPAA over the balance of 2014 as part of the development of the performance framework.</p> |

⁴ Proof Committee Hansard – Joint Committee of Public Accounts and Audit – Public Governance, Performance and Accountability Act rules development, Thursday 27 March 2014 (Question 3 Pg 13 Committee Chair).

Responses to Questions on Notice

Questions on notice – 7 April 2014

The JCPAA held a second public hearing on 7 April 2014 inquiring into the *Public Governance, Performance and Accountability Act 2013* Rules Development. During the hearing, the committee asked Finance to clarify information provided in the supplementary submission of 18 March. A response to this question is outlined below.

Question 4: That is a percentage. Have you quantified the eight per cent? What sort of a dollar figure is it? It is easy to work it out based on those figures⁵.

In the Finance's supplementary submission of 18 March to the Committee it stated that "in practical terms, less than 8 per cent of total government expenditure is subject to FMA Regulation 10". Finance advises that this figure in dollar terms amounted to approximately \$26 billion in 2012-13⁶.

⁵ Proof Committee Hansard – Joint Committee of Public Accounts and Audit – Public Governance, Performance and Accountability Act rules development, Monday 7 April 2014 (Question 4 Pg 10 Senator Smith).

⁶ Source: 2013-14 Budget Papers.