



Australian Government
Department of Finance

Rosemary Huxtable PSM
Secretary

Senator Jenny McAllister
Chair
Senate Finance and Public Administration References Committee
Parliament House
CANBERRA ACT 2600

Dear Senator McAllister

I am writing in relation to the Senate Finance and Public Administration References Committee's (the Committee's) inquiry into the operation, effectiveness, and consequences of the *Public Governance, Performance and Accountability (Location of Corporate Commonwealth Entities) Order 2016* (the Order, Attachment A).

The Department of Finance (Finance) supports the Finance Minister's administration of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and his responsibilities in relation to delegated legislation, including government policy orders (GPOs).

A GPO is a legislative instrument made under the PGPA Act to specify a policy of the Australian Government that is to apply in relation to one or more corporate Commonwealth entities (section 22 of the PGPA Act) or wholly-owned Commonwealth companies (section 93 of the PGPA Act). These provisions are set out at Attachment B.

The Order is a GPO made in accordance with section 22 of the PGPA Act. The Order was made on 23 November 2016 by the Finance Minister, Senator the Hon Mathias Cormann, at the request of the Deputy Prime Minister and Minister for Agriculture, the Hon Barnaby Joyce MP. In accordance with the PGPA Act, the Finance Minister made the Order following the Deputy Prime Minister's consultation with the Chief Executive Officer of the Australian Pesticides and Veterinary Medicines Authority (APVMA). The Order commenced on 25 November 2016, the day after it was registered on the Federal Register of Legislation (FRL).

The following attributes of PGPA Act GPOs may be of interest to the Committee:

- A GPO will set out a policy of the Australian Government and the body or bodies to which the GPO will apply. A GPO is not a disallowable instrument and is registered on the FRL once made;
- For the purposes of the PGPA Act, a policy of the Australian Government is a policy that is approved by the government, usually by Cabinet, the Prime Minister or the Minister responsible for the policy (policy Minister) acting in their area of delegated authority;
- The Finance Minister must, before making a GPO, be satisfied that the policy Minister has consulted the body or bodies to which it will apply on the application of the policy; and
- The accountable authorities of corporate Commonwealth entities and the directors of wholly-owned Commonwealth companies must ensure that an applicable GPO is complied with by their entity and any subsidiaries of the entity so far as practicable. They must also disclose in their annual report the details of any GPO applying to them, including the particulars of any non-compliance.

The PGPA Act GPO arrangements closely reflect the arrangements under the former *Commonwealth Authorities and Companies Act 1997* (CAC Act), repealed with the commencement of the PGPA Act on 1 July 2014. Two points of difference are that: the PGPA Act places the obligation to consult on the policy Minister, whereas the CAC Act placed this requirement on the portfolio Minister; and, GPOs issued under the PGPA Act are subject to the sunset provisions of the *Legislation Act 2003*, where they were not under the CAC Act. Attachment C summarises arrangements under the former CAC Act.

Finance provides advice on the GPO process, including through guidance contained in Resource Management Guide No. 207, Government Policy Orders, June 2014, at Attachment D.

I trust that this information is of assistance to the Committee.

Yours sincerely

Rosemary Huxtable
Secretary

6 March 2017



Public Governance, Performance and Accountability (Location of Corporate Commonwealth Entities) Order 2016

I, Mathias Cormann, Minister for Finance, make the following order.

Dated 23 November 2016

Mathias Cormann
Minister for Finance

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Section 1

1 Name

This instrument is the *Public Governance, Performance and Accountability (Location of Corporate Commonwealth Entities) Order 2016*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	25 November 2016

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under subsection 22(1) of the *Public Governance, Performance and Accountability Act 2013*.

4 Location of corporate Commonwealth entities

- (1) It is a policy of the Australian Government that a corporate Commonwealth entity with agricultural policy or regulatory responsibilities is to be located:
- (a) in a regional community; and
 - (b) within 10 kilometres by road of the main campus of a regional university that is recognised for research and teaching in the field of agricultural science.
- (2) In this section:

regional community means a community that is not within 150 kilometres by road of Canberra or the capital city of a State.

5 Application

The policy of the Australian Government mentioned in section 4 is applied to the Australian Pesticides and Veterinary Medicines Authority.

ATTACHMENT B

Public Governance Performance and Accountability Act 2013
Legislative requirements for government policy orders

22 Corporate Commonwealth entities

- (1) The Finance Minister may make an order (a ***government policy order***) that specifies a policy of the Australian Government that is to apply in relation to one or more corporate Commonwealth entities.
- (2) Before making a government policy order that applies in relation to a corporate Commonwealth entity, the Finance Minister must be satisfied that the Minister responsible for the policy has consulted the entity on the application of the policy.
- (3) If a government policy order applies in relation to a corporate Commonwealth entity, the accountable authority of the entity must ensure that the order is complied with:
 - (a) in relation to the entity; and
 - (b) in relation to any subsidiary of the entity, so far as practicable.
- (4) A government policy order is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to it.

93 Application of government policy

- (1) The Finance Minister may make an order (a ***government policy order***) that specifies a policy of the Australian Government that is to apply to one or more wholly-owned Commonwealth companies.
- (2) Before making a government policy order that applies in relation to a wholly-owned Commonwealth company, the Finance Minister must be satisfied that the Minister responsible for the policy has consulted the company on the application of the policy.
- (3) If a government policy order applies in relation to a wholly-owned Commonwealth company, the directors of the company must ensure that the order is complied with:
 - (a) in relation to the company; and
 - (b) in relation to any subsidiary of the company, so far as practicable.
- (4) A government policy order is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to it.

ATTACHMENT C

Commonwealth Authorities and Companies Act 1997 (CAC Act) **Legislative requirements for General Policy Orders**

From 1998 until 2008, the CAC Act provided for portfolio Ministers to notify directors of Commonwealth authorities (section 28) and wholly-owned Commonwealth companies (section 43) of general policies of the Australian government that are to apply to these CAC Act bodies. Portfolio Ministers were required to consult with directors prior to notifying them of new general policies in writing. The policy Minister was to co-ordinate the consultation and notification process with portfolio Ministers across government. The portfolio Minister could, in writing, exempt the directors from the application of the policies in relation to specified activities. Where relevant, before granting an exemption, the portfolio Minister had the opportunity to consult with the policy Minister.

The *Commonwealth Authorities and Companies Amendment Act 2008* amended the CAC Act to provide for the Finance Minister to issue General Policy Orders, which would be listed on the then Federal Register of Legislative Instruments (FRLI) and therefore be more readily identifiable to Parliament, the public and affected bodies.

The amendment in 2008 did not change the way a general policy was developed or how consultation with Commonwealth authorities and wholly-owned Commonwealth companies occurred. The significant change was that General Policy Orders would be issued by the Finance Minister and listed on the FRLI.

General Policy Orders could be expressed to apply to all Commonwealth authorities and wholly-owned Commonwealth companies, or a particular class, or to specified bodies.

Exemptions from the application of section 28 that applied to the Australian Broadcasting Corporation, the then Australian Industry Development Corporation, Australian National University and Special Broadcasting Service were continued. The exemption from the Legislative Instruments Act from disallowance and sunset provisions was retained.

No General Policy Orders were made between 2008 and 1 July 2014. Because of the decentralised nature of the pre-2008 arrangements, it is not possible to ascertain which general policies of the Australian government were notified as applying to CAC Act bodies. Examples of Finance policies that were the subject of pre-2008 portfolio notification processes include: the employee leave liability transfer policy in 2001-2002; and the cost recovery policy and the foreign exchange policy (to CAC Act bodies in the General Government Sector) in 2003-2004.

CAC Act provisions before passage of the *Commonwealth Authorities and Companies Amendment Act 2008*

Section 28 Compliance with general policies of the Government

- (1) The responsible Minister may notify the directors of a Commonwealth authority in writing of general policies of the Commonwealth Government that are to apply to the authority. The responsible Minister must consult the directors before notifying them of the policies.
- (2) The directors must ensure that the policies are carried out in relation to the authority.
- (3) The directors must also ensure, as far as practicable, that the policies are carried out in relation to the subsidiaries of the authority.
- (4) The responsible Minister may, in writing, exempt the directors of a Commonwealth authority from subsection (2) or (3) in relation to specified activities.

Section 43 Compliance with general policies of the Government

- (1) The responsible Minister may notify the directors of a wholly-owned Commonwealth company in writing of general policies of the Commonwealth Government that are to apply to the company. The responsible Minister must consult the directors before notifying them of the policies.
- (2) The directors must ensure that the policies are carried out in relation to the company.
- (3) The directors must also ensure, as far as practicable, that the policies are carried out in relation to the subsidiaries of the company.
- (4) The responsible Minister may, in writing, exempt the directors of a wholly-owned Commonwealth company from subsection (2) or (3) in relation to specified activities.

Section 5 Definitions

Responsible Minister means:

- (a) for a Commonwealth authority—the Minister who is responsible for the authority; or
- (b) for a Commonwealth company:
 - (i) the Minister who is prescribed by the regulations as the Minister responsible for the company; or
 - (ii) if no Minister is prescribed—the Minister who is responsible for the company.

CAC Act provisions following passage of the *Commonwealth Authorities and Companies Amendment Act 2008*

28 Compliance with General Policy Orders

- (1) The directors of a Commonwealth authority must ensure that the authority complies with a General Policy Order to the extent that the Order applies to the authority.
- (2) The directors must also ensure, as far as practicable, that the subsidiaries of the authority comply with the Order to that extent.

43 Compliance with General Policy Orders

- (1) The directors of a wholly-owned Commonwealth company must ensure that the company complies with a General Policy Order to the extent that the Order applies to the company.
- (2) The directors must also ensure, as far as practicable, that the subsidiaries of the company comply with the Order to that extent.

48A General Policy Orders

Finance Minister to make General Policy Orders

- (1) The Finance Minister may make an Order (a General Policy Order) that specifies a general policy of the Australian Government.

Consultation before making General Policy Orders

- (2) Before making a General Policy Order, the Finance Minister must be satisfied that the responsible Ministers for the Commonwealth authorities and wholly-owned Commonwealth companies to which the Order will apply have consulted those authorities and companies on the application of the policy.

Note: The responsible Ministers may consult with the Commonwealth authorities and wholly-owned Commonwealth companies by consulting:

- (a) if the authority or company has a Chair—the Chair; and
- (b) otherwise—the directors.

Authorities and companies that General Policy Orders apply to

- (3) A General Policy Order applies to:
 - (a) if the Order is expressed to apply only to specified Commonwealth authorities or wholly-owned Commonwealth companies—those specified authorities or companies; and
 - (b) if the Order is expressed to apply to all Commonwealth authorities or wholly-owned Commonwealth companies, other than:
 - (i) specified authorities or companies; or
 - (ii) a class of authorities or companies;all Commonwealth authorities or wholly-owned Commonwealth companies except those specified authorities or companies or those authorities or companies that are members of that class; and

(c) otherwise—all Commonwealth authorities or wholly-owned Commonwealth companies.

Partial application of General Policy Orders

(4) If a General Policy Order specifies that a part of the Order does not apply to:

- (a) specified authorities or companies; or
- (b) a class of authorities or companies;

then that part of the Order does not apply to those specified authorities or companies or those authorities or companies that are members of that class.

General Policy Orders not subject to disallowance or sunseting

(5) A General Policy Order is a legislative instrument, but neither section 42 nor Part 6 of the *Legislative Instruments Act 2003* applies to it.

General Policy Orders not to create offences or penalties

(6) A General Policy Order cannot create offences or impose penalties.



Australian Government
Department of Finance



Resource Management Guide No. 207

Government Policy Orders

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This guide contains material that has been prepared to assist Commonwealth entities and companies to apply the principles and requirements of the *Public Governance, Performance and Accountability Act 2013* and associated rules, and any applicable policies. In this guide the: mandatory principles or requirements are set out as things entities and officials ‘must’ do; and actions, or practices, that entities and officials are expected to take into account to give effect to those principles and/or requirements are set out as things entities and officials ‘should consider’ doing.

Audience

This guide is relevant to corporate Commonwealth entities (corporate entities) and wholly owned Commonwealth companies (wholly-owned companies) where a Government Policy Order (GPO) is created by the Finance Minister under section 22 (for corporate entities) or section 93 (for wholly-owned companies) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

Key points

This guide describes the:

- statutory mechanism imposed by sections 22 and 93 of the PGPA Act that places obligations on corporate entities and wholly-owned companies to comply with specified government policies; and
- process to be implemented by policy departments, on behalf of policy ministers, especially around the consultation required, before the Finance Minister creates a GPO.

Resources

This guide is available on the Department of Finance (Finance) website at www.finance.gov.au.

What does the PGPA Act say?

1. Sections 22 and 93 of the PGPA Act provide a mechanism for applying policies of the Australian Government to relevant corporate entities / or wholly-owned companies. The process under the PGPA Act remains the same as the one that was implemented from 1 July 2008, through amendments made to the *Commonwealth Authorities and Companies Act 1997* (CAC Act).
2. Under sections 22 and 93, the Finance Minister can issue a GPO, specify the relevant corporate entities or wholly-owned companies to which it will apply, and specify the extent to which it will apply. Sections 22 and 93 are reproduced at [Attachment A](#).
3. The PGPA Act requires relevant corporate entities¹ and wholly-owned companies² to comply with GPOs, made under sections 22 (for corporate entities) and 93 (for wholly-owned companies) of the PGPA Act. These sections also require the Finance Ministers to be satisfied that the policy Minister has consulted the relevant corporate entities and wholly-owned companies before creating a GPO. In order to limit issues raised by corporate entities and wholly-owned companies as part of the GPO consultation process, where possible, these entities should also be consulted during the policy development phase.
4. **Specific requirements for procurement policies:** A separate legislative power deals with compliance with government procurement requirements. Section 30 of the PGPA Rule 2014 prescribes the corporate entities and the wholly-owned companies that must comply with the Commonwealth Procurement Rules (CPRs).

¹ Section 11 of the PGPA Act defines Corporate Commonwealth entity as a Commonwealth entity that is a body corporate.

² Section 90 defines a wholly-owned Commonwealth company as a Commonwealth Company, other than a company any of the shares in which are beneficially owned by a person other than the Commonwealth. A Commonwealth company is defined as a *Corporations Act 2001* that the Commonwealth controls. However, it does not include a company that is a subsidiary of a Commonwealth company, a subsidiary of corporate Commonwealth entity or a subsidiary of the Future Fund Board of Guardians.

Transitional arrangements

5. At 30 June 2014 there were no GPOs issued under section 48A of the CAC Act. General policy notifications issued to relevant CAC Act bodies prior to 1 July 2008 will not continue in force from 1 July 2014.

What is a general policy of the Government

6. A general policy of the Australian Government is a policy that is made by the government, usually by Cabinet or the Prime Minister, that applies to all or selected Commonwealth entities or wholly-owned companies subject to the PGPA Act. A GPO is the mechanism required to impose the government policy as a statutory obligation on relevant corporate entities and wholly-owned companies.
7. The department responsible for a policy (policy department) should, when developing the policy, liaise with Finance to discuss whether the government policy is best applied to corporate entities and wholly-owned companies through a GPO.

The GPO Process

8. Generally, a Minister is responsible for developing and administering a policy (the policy Minister). Accordingly, it is appropriate for the policy Minister to consider if a government policy should be applied to relevant corporate entities and wholly-owned companies.
9. The accountable authorities or directors of relevant corporate entities or wholly-owned companies are subject to legal duties and requirements regarding the oversight of the activities of their entities. Accordingly, requiring them to comply with a particular government policy involves a level of rigour and consultation, to help ensure that they are aware of the proposed policy and are able to comply with it once issued as a GPO. For this reason, the process for developing and consulting on the application of a potential policy is relatively detailed.
10. If a decision is made by the Government to apply a policy to relevant corporate entities or wholly-owned companies, the policy Minister, as part of the GPO process, should request all portfolio Ministers to consult relevant entities in their portfolios, on the application of the policy. The policy department, on behalf of their Minister, will need to administer the consultation process across government.
11. Portfolio departments, on behalf of their Minister, will need to administer the consultation process with relevant entities within their portfolio. Accordingly, the policy department will need to provide the portfolio departments with all relevant documentation and sufficient time should be allowed for effective consultation to take place. Generally, a two month consultation period for relevant entities to consider the effects the policy may have on their entity is considered appropriate. This time could be significantly shorter if all relevant entities were consulted as part of the policy development process.
12. After receiving responses from relevant corporate entities and wholly-owned companies, the policy Minister and portfolio Ministers should settle any exemptions (partial or full) that might be granted to individual entities. The policy Minister should then write to the Finance Minister explaining the consultation process undertaken with portfolio Ministers to support their request for a GPO to be issued. The Finance Minister may issue a GPO if satisfied that policy Ministers have implemented an effective consultation process with relevant corporate entities and wholly-owned companies.
13. The GPO will take effect once registered on the Federal Register of Legislative Instruments, including details of the policy and its application to relevant corporate entities and wholly-owned companies.

14. A flow chart of the process is at [Attachment B](#) and a template letter for the policy Minister to provide to portfolio Ministers, for consulting relevant corporate entities and wholly-owned companies on a government policy, is at [Attachment C](#).

Changes to a general policy

15. If the government policy materially changes, a new consultation process needs to be undertaken in full. That is, the Finance Minister must be satisfied that the policy Minister has consulted with their relevant corporate entities and wholly-owned companies on the application of the altered government policy. Once this is complete a new GPO can be issued and the old GPO revoked by the Finance Minister.
16. Guidance can be issued on explaining, implementing and complying with a government policy that can be updated from time-to-time without issuing a new GPO. Such guidance cannot, however, seek to change the content or effect of a government policy. Accordingly, the policy Department should consider the role of guidance when developing a government policy applicable to corporate entities and wholly-owned companies.

Changes to a GPO's applicability

17. If the applicability of an existing GPO is required to change (for example if an exemption for a particular relevant corporate entity or wholly-owned company needs to be granted after a GPO is made), then the Finance Minister can issue an amendment to the GPO. As with making a GPO, the Finance Minister can issue an amendment if satisfied that the relevant policy Minister has consulted with relevant corporate entities and wholly-owned companies affected by the proposed changes.

Disclosure

18. Corporate entities and wholly-owned companies must disclose in their annual report the particulars of any government policies applying to them under the PGPA Act. The Annual Reporting Rule, requires disclosure of government policies applicable to the corporate entities and wholly-owned companies, and the extent of, and reasons for, any non-compliance with a government policy.
19. Any potential or actual non-compliance with a government policy subject to a GPO should be raised with the relevant policy department in the first instance. Part of an accountable authorities or director's role in discharging his or her duties includes ensuring that their relevant corporate entities or wholly-owned companies complies with GPOs issued under sections 22 and 93 of the PGPA Act, respectively.

Attachment A

Public Governance, Performance and Accountability Act 2013

22 Corporate Commonwealth entities

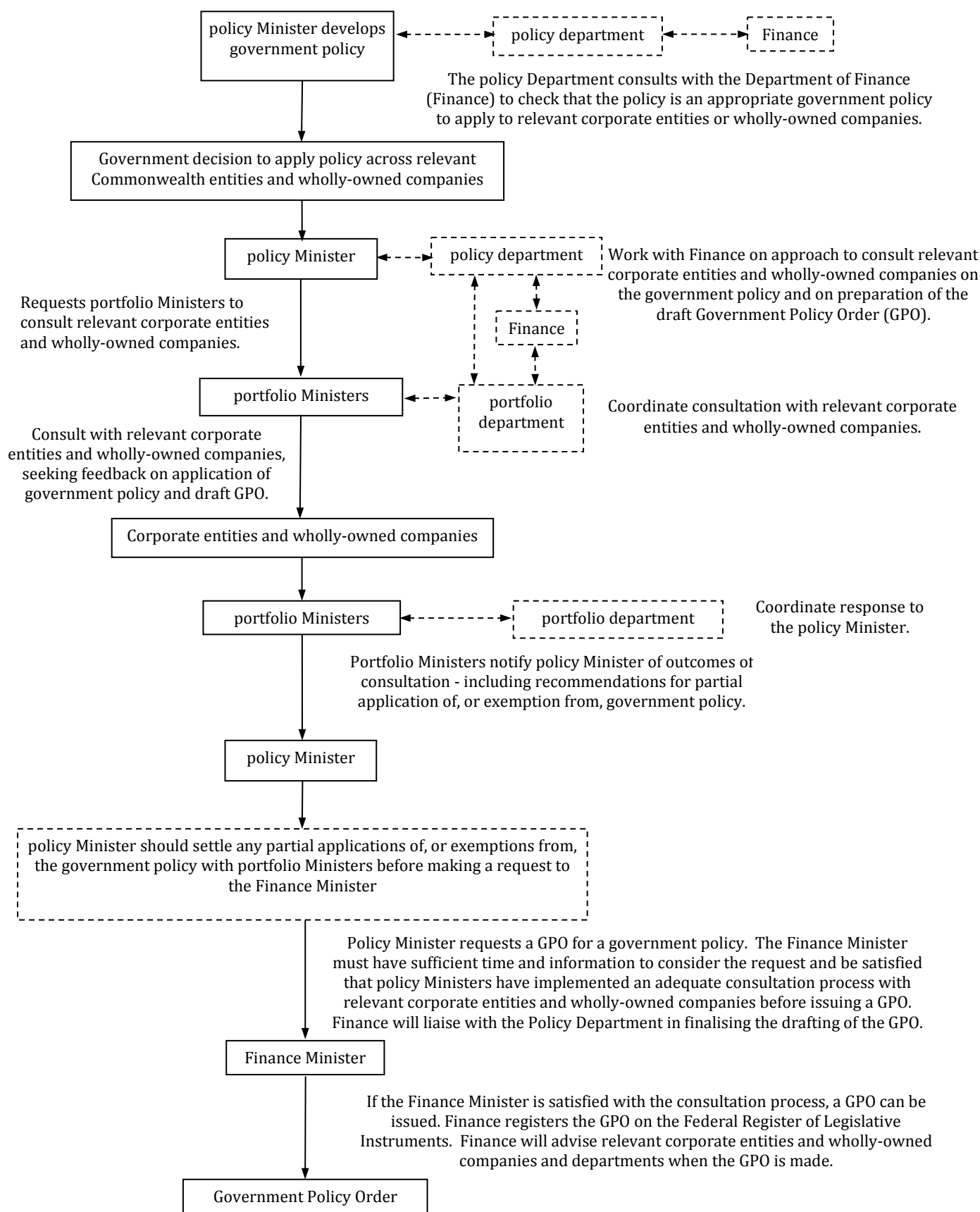
- (1) The Finance Minister may make an order (a ***government policy order***) that specifies a policy of the Australian Government that is to apply in relation to one or more corporate Commonwealth entities.
- (2) Before making a government policy order that applies in relation to a corporate Commonwealth entity, the Finance Minister must be satisfied that the Minister responsible for the policy has consulted the entity on the application of the policy.
- (3) If a government policy order applies in relation to a corporate Commonwealth entity, the accountable authority of the entity must ensure that the order is complied with:
 - (a) in relation to the entity; and
 - (b) in relation to any subsidiary of the entity, so far as practicable.
- (4) A government policy order is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to it.

93 Application of government policy

- (1) The Finance Minister may make an order (a ***government policy order***) that specifies a policy of the Australian Government that is to apply to one or more wholly-owned Commonwealth companies.
- (2) Before making a government policy order that applies in relation to a wholly-owned Commonwealth company, the Finance Minister must be satisfied that the Minister responsible for the policy has consulted the company on the application of the policy.
- (3) If a government policy order applies in relation to a wholly-owned Commonwealth company, the directors of the company must ensure that the order is complied with:
 - (a) in relation to the company; and
 - (b) in relation to any subsidiary of the company, so far as practicable.
- (4) A government policy order is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to it.

Attachment B

GPO Process Flowchart



Attachment C

Template letter for consultation

Dear Chairperson,

Government policy of the Australian Government - consultation

I am writing to consult with you on the application of a policy of the Australian Government on **<describe policy>**. This government policy has been proposed by **<insert policy Minister's title>**. The policy will potentially be applied to corporate Commonwealth entities and wholly-owned Commonwealth companies through a proposed Government Policy Order (GPO), issued under section 22 or 93 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

Sections 22 (for corporate Commonwealth entities) and 93 (for wholly-owned Commonwealth companies) of the PGPA Act provide that:

- The Minister for Finance (Finance Minister) may issue a GPO that specifies a policy of the Australian Government.
- Before issuing a GPO, the Finance Minister must be satisfied that the Minister responsible for the policy has consulted with relevant corporate Commonwealth entities and wholly-owned Commonwealth companies, through the relevant portfolio Minister, to which the GPO will apply.
- A GPO can apply in full or in part to: all corporate Commonwealth entities and wholly-owned Commonwealth companies; a class of corporate Commonwealth entities or companies; or specific corporate Commonwealth entities or companies.

This letter provides your entity the opportunity to raise any concerns about the application of the policy before the Finance Minister issues the GPO.

The policy

The policy requires **< outline key elements of the policy>**. The draft GPO is included at Attachment **<insert relevant attachment letter>**.

<Include one of the following paragraphs as relevant. Delete the other>

<For CCEs with an accountable authority or a WOCC with a board>

I ask that you, as chairperson, provide a copy of this policy to directors in order to consider the potential effect of the policy upon the operations of your organisation (and its subsidiaries if applicable). Any comments on the policy are welcome, including requests, with reasons, for exemptions from the application of the policy (in whole or part) that the directors may wish to seek. Your response will assist the Minister responsible for the policy, who will propose any exemptions in the application of the GPO to the Finance Minister. Your response is sought by **<insert date>**.

<For CCEs that have a single member accountable authority>

I ask that you consider the potential effect of the policy upon the operations of your organisation (and its subsidiaries if applicable). Any comments on the policy are welcome, including requests, with reasons, for exemptions from the application of the policy (in whole or part) that you may wish to seek. Your response will assist the Minister responsible for the policy, who will propose any exemptions in the application of the GPO to the Finance Minister. Your response is sought by **<insert date>**.

Notification procedures

The Department of Finance will advise affected corporate Commonwealth entities and wholly-owned Commonwealth companies of the commencement of any GPO arising from this process. The GPO, if made, will only take effect, in law, once registered on the Federal Register of Legislative Instruments (accessible from the Comlaw web site: www.comlaw.gov.au/comlaw/comlaw.nsf/frli). As required by the PGPA Act, the GPO must state the extent of any exemptions granted to specific bodies.

Yours sincerely,

<insert name of portfolio Minister>