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Australian Government
Department of Finance

David Tuncu PSM
Secretary

Our Ref: SEC0009964

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

Dear Dr Southcott

I enclose a submission from the Department of Finance (Finance) to the Joint Committee of Public Accounts and Audit's *Inquiry into Public Governance, Performance and Accountability Act 2013 Rules Development*.

The submission and attached documentation details the revised draft rules as drafted by the Office of the Parliamentary Council following broad consultation, the process for the development of the rules, and the impact and purpose in the context of the broader Public Management Reform Agenda, for your consideration in the context of your announced inquiry into the PGPA Act rule development.

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

Yours sincerely

A handwritten signature in black ink, appearing to be 'DT' or similar initials.
5 March 2014

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

Joint Committee of Public Accounts and Audit

Submission by the Department of Finance

March 2014

Introduction

1. The *Public Governance, Performance and Accountability Act 2013* (PGPA Act) consolidates into a single piece of legislation the governance, performance and accountability requirements of the Commonwealth, setting out a framework for regulating resource management by the Commonwealth and relevant entities. The PGPA Act aims to promote a consistent approach to public sector governance by bringing together the better elements of each of the *Financial Management and Accountability Act 1997* (FMA Act) and the *Commonwealth Authorities and Companies Act 1997* (CAC Act). The substantive provisions of the PGPA Act come into force on 1 July 2014.
2. The PGPA Act is principles-based and will be supported by rules and guidance. The guiding principles for the resource management framework are that:
 - Government should operate as a coherent whole;
 - Public resources are public resources, and a common set of duties should apply to all resources handled by Commonwealth entities;
 - Performance of the public sector is more than financial; and
 - Engaging with risk is a necessary step in improving performance.
3. Attachment A – PGPA Act overview provides a short background to the PGPA Act and supporting principles. These are a key component of a broader Public Management Reform Agenda (PMRA), which aims to encourage cultural change in the way government does business. The overall direction of the reforms has won wide support from both within and outside government, including professional bodies and groups. Measures required to promote and implement these principles through the PGPA Act are well underway and have developed momentum.
4. The JCPAA considered the principles and associated reform agenda when it inquired into the *Public Governance, Performance and Accountability Bill 2013* (PGPA Bill) in May and June 2013. Its Advisory Report on the PGPA Bill (Report 438) was issued in June 2013. In supporting the objectives of the PGPA Bill, the JCPAA made a range of recommendations, with coalition party members also providing a dissenting report.
5. Further to Report 438, the JCPAA resolved on 13 February 2014 to inquire into and report on the development of rules under the PGPA Act, in particular, the process for the development of the rules in the context of the broader PMRA.
6. This submission provides information from the Department of Finance (Finance) to report to the JCPAA on PMRA progress, focusing on the development of rules under the PGPA Act. In particular it provides:
 - a response to the recommendations of Report 438;
 - the current draft proposed rules for 1 July 2014 commencement;
 - a supporting draft explanatory statement;
 - an overview of the rules development process and logic, including consultation processes;
 - draft guidance on the new duties of accountable authorities;
 - a working compendium of the PGPA scheme, setting out the overall framework hierarchy, referencing legislation, rules, instruments, policy and guidance as well as reform directions, and how sections of the Act fit into the hierarchy;

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- an overview of the proposed *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Bill 2014* (the C&T Bill); and
 - an overview of implementation progress.
7. Finance will provide a supplementary submission with further information to assist the JCPAA on 18 March 2014. That submission will include:
- draft rules relating to procurement and grants;
 - draft guidance developed in support of individual rules and on the duties of officials;
 - draft model resource management instructions; and
 - an outline of the approach to key reform initiatives relating to risk and performance management frameworks.

Response to Report 438 recommendations

8. Finance has been mindful of the JCPAA recommendations in Report 438 in working towards implementation of the PGPA Act. In particular, Finance has complied with the commitments made to the JCPAA by the former Minister for Finance and Deregulation as referenced in recommendation four of the report, and recommendation (b) of the coalition members' dissenting report to:
- consult widely on the development of the proposed rules, within and external to government, including through working groups;
 - make the rules available for no less than 30 days for public comment and further consultation. The rules and explanatory statement (ES) were to be made available on the Finance website, and rigorously tested through workshops; and
 - following the public consultation phase, make the rules available to the JCPAA.
9. On 2 December 2013, Finance provided a progress report to the JCPAA Secretariat on the development and drafting of the rules (in accordance with recommendation (a) of the coalition party members dissenting report). This progress included establishing steering committees on key issues, such as planning and reporting, with members drawn from across the Commonwealth (including from the Australian National Audit Office) to help ensure extensive consultation. Working groups have also been established in Sydney and Melbourne to ensure Commonwealth Government entities based in these cities were part of developing the next stage of the PMRA process, including in developing the rules proposed to be made under the PGPA Act.
10. Since December's progress report, Finance has continued its work in accordance with the JCPAA's recommendations. This has included:
- releasing tranches of draft proposed rules for a comment period of at least 30 days;
 - consulting with 136 Commonwealth entities with enabling legislation requiring consequential amendment as a result of the PGPA Act, including ensuring that these entities are comfortable that their statutory independence is not being compromised (in accordance with recommendation 6 of the JCPAA report). This is an ongoing process; and
 - preparing guidance and training, which commenced from February 2014, to assist agencies in transitioning to the PGPA Act (consistent with recommendation 10 of the JCPAA report, publications will be edited for plain English by a professional editor).

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11. In relation to the other recommendations of the JCPAA:
- recommendations 1, 2, 3, 5 and 11 are not matters for this submission; and
 - recommendations 7, 8, 9 and 10 were addressed during the PGPA Bill's passage.

Development of proposed rules – principles and logic

12. Following passage of the Bill in June 2013, a key focus has been on the development of rules to support the implementation of the PGPA Act.
13. The PGPA Act provides broad rule making powers for the Finance Minister to support the proper management by the Commonwealth of public resources. In determining the suite of rules required, Finance reviewed the existing legislative requirements established under regulations made for the FMA and CAC Acts. A set of design principles was developed to ensure a consistent consideration of issues in the development of the proposed rules and to ensure that where a rule was to be included, the requirements and intent of the rule was clear (Attachment B – Design Principles for Rules).
14. The proposed rules that have been developed predominantly relate to key accountability and control mechanisms in the Commonwealth's financial management system, that is, the elements of the framework that support the transactions of the Commonwealth and Commonwealth entities.
15. The proposed rules will support the role of the Finance Minister, responsible Ministers and accountable authorities in the following areas:
- entity governance issues (e.g. disclosure of interest, fraud control and audit committees);
 - transaction support (e.g. investment, insurance, advisory committees, debt recovery, payments pending probate, receipts, banking, expenditure, other CRF money, procurement and grants); and
 - accountability (e.g. Minister to inform Parliament and financial reporting).
- There are also a number of rules of a technical nature that go to the scope of the PGPA Act (e.g. listing accountable authority of an entity to provide certainty in relation to coverage of the PGPA Act).
16. A consolidated set of draft proposed rules required for 1 July 2014 (the *Public Governance, Performance and Accountability Rule 2014*) is at Attachment C and a draft explanatory statement is at Attachment D.
17. The Rules Status Log - Attachment E sets out, for each provision in the PGPA Act with an associated rule making power, the approach that is proposed, and reconciles the draft proposed rules released for public comment with the subject matter headings assigned by the Office of Parliamentary Counsel (OPC) in the consolidated rule instrument. It highlights those rules that are required for 1 July 2014. For some provisions, it explains why a rule is deemed as not required, either for 1 July 2014 or for the foreseeable future.

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Development of proposed rules – consultation processes

18. In developing the draft proposed rules, business requirements were clarified in consultation with the relevant subject matter steering committees by the technical policy experts in Finance (and the Attorney-General's Department in relation to fraud). Draft proposed rules were then developed according to agreed design principles to provide appropriate controls and:
 - minimise regulation and red tape;
 - recognise and manage risk;
 - avoid repetition and ambiguity; and
 - support coherence of the Commonwealth framework.
19. When the relevant subject matter steering committee and the Legislation and Rules Steering Committee were satisfied that a draft proposed rule reflected policy objectives, the rule was released for public comment on the [PMRA website](#).¹ Attachment F – Rules consultation process sets out the committee and public consultation process in more detail.
20. The steering committees were particularly concerned to have clarity on the coverage of the draft proposed rules and to ensure that their requirements could be operationalised in individual entities across a broad spectrum of operations, size, complexity, stakeholders and legal status. The committees required that the draft proposed rules be principles focussed but include prescriptive requirements where necessary for reasons of integrity and accountability.
21. The draft proposed rules were finalised by OPC on instruction from Finance. The instructions from Finance were informed by comments received through the public consultation process, as well as by legal advice obtained from the Australian Government Solicitor (AGS).

Rules required for 1 July 2014 but not subject to public consultation

22. Some rules required for 1 July 2014 have not been released for public comment. These include draft proposed rules of a technical nature that go to the scope of the PGPA Act and rules for grants and procurement.

Proposed rules of a technical nature

23. These draft proposed rules prescribe a status to a person or body and are subject to ongoing consultation with the affected entities. They relate to:
 - Listing entities that are subject to the PGPA Act and their accountable authority where this is not clearly identifiable under the enabling legislation of the entity as provided for by section 8 and section 12 of the PGPA Act.
 - Listing a person as an official, or not as an official, in an entity where not clearly identified in section 13 of the PGPA Act or the enabling legislation of the entity.
 - Listed law enforcement entities. This draft list is a sub-set of the list provided for in section 85ZL of the *Crimes Act 1914* and is necessary to support the draft proposed rule being developed in relation to the modification provisions for section 104 of the PGPA Act.

¹ <http://www.pma.finance.gov.au/legislation-pgpa-act/pgpa-rules/>

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Grants and procurement rules

24. There is no intention to make material changes to either grants or procurement requirements at this time, with the current Commonwealth Procurement Rules (CPRs) and Commonwealth Grants Guidelines (CGGs) being brought into the PGPA rule framework largely in their current form. This allows for a smooth transition to the new framework without disrupting the routine activities of Commonwealth entities.
25. The current version of the CPRs commenced on 1 July 2012 following an extensive review. The content of the CPRs are strongly influenced by requirements established in free trade agreements entered into by Australia and are reviewed in this context on a regular basis. The Senate Finance and Public Administration Committee is currently conducting an inquiry into Commonwealth procurement procedures and there are a number of new free trade agreements being negotiated. Given the potential for these processes to impact on the current scope and content of the CPRs, Finance prefers to bring these together with any PGPA related changes into a single process at a later date.
26. The current CGGs commenced on 1 June 2013 and reflect the outcomes of a significant review, which sought to address issues raised by the not-for-profit (NFP) sector, recommendations of the Australian National Audit Office and the JCPAA itself. The current CGGs incorporate a number of legislative and policy changes that have occurred since the CGGs were first introduced in July 2009. Consistent with the broader PMRA reform agenda, the updated CGGs encourage stronger collaboration between government and the NFP sector and seek to reduce red-tape.
27. The rules for procurement and grants will be provided with Finance's supplementary submission on 18 March 2014. While these rules will be legislative instruments, Finance will propose to continue their current status as non-disallowable instruments.
28. While this approach is proposed for 1 July 2014, over time Finance will work to review and simplify the requirements of both the CGGs and the CPRs.

Rules required after 1 July 2014

29. Some rules are not required for 1 July 2014 and will be introduced during the course of 2014-15. They will be prepared in consultation with stakeholders and the JCPAA. These include proposed rules for: corporate plans, annual performance statements and annual reports; financial reporting; and a number of rules relating to machinery of government issues.

Corporate planning, annual performance statements and annual reports

30. 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.²

² Arrangements for entities that report on a calendar year will be addressed through the C&T Bill process as necessary.

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31. A key focus of the PGPA Act is to improve the standard of planning and reporting for Commonwealth entities, especially in relation to the management of their affairs, and their delivery of programmes and services to the public. Finance will work with key stakeholders, including Parliament (through the JCPAA and other committees), Commonwealth entities and other interested parties over the course of 2014 to finalise the rules, policies, templates and guidance on better practice of the proposed performance framework. This will include rules on corporate planning and annual performance statements. Finance's second submission to the JCPAA on 18 March 2014 will provide an outline of the proposed approach to developing the proposed performance framework.
32. The development of these arrangements does not absolve entities of the need to maintain proper records (section 37 of the PGPA Act) or to measure and assess performance (section 38 of the PGPA Act). Both provisions will become effective on 1 July 2014 and will impose requirements on entities regardless of the final form in which the reporting of planned and actual performance is presented.

Financial reporting

33. The Commonwealth's financial reporting rules are released as Finance Minister's Orders (FMOs). Existing practice in relation to the preparation of financial statements sees the FMOs released towards the middle of the financial year, taking into account any changes in accounting standards that may have been introduced for that financial year. Financial statements for the 2013-14 financial year will apply the requirements of the 2013-14 FMOs.
34. The financial reporting rules to be released under section 42 of the PGPA Act need to reflect the changes in accounting standards for 2014-15. These will be released in early 2015, consistent with current practice. These financial reporting rules will take into account the results of consultation with Commonwealth entities and other interested parties, including the professional accounting bodies, the Australian Accounting Standards Board (AASB) and the Commonwealth Auditor-General.
35. As a transitional arrangement, the 2013-14 FMOs would remain in force until replaced by financial reporting rules under the PGPA Act, thus enabling Commonwealth entities to prepare their 2013-14 financial statements in accordance with the FMOs.

Establishing new corporate Commonwealth entities

36. Section 87 of the PGPA Act provides a mechanism for establishing new entities through a rule. The rule would detail the core features of the corporate entity, with the specifics of each entity created, including additional or varied features, being included in a schedule to the rule. A draft proposed rule incorporating these arrangements was developed for consultation within government.
37. As a result of feedback, the draft proposed rule needs further development. Finance proposes to continue consultations with stakeholders on how to improve its design and application during the course of 2014.

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38. A further development of this work would be to explore a standard set of better practice government principles that could foster inter-jurisdictional co-operation. Current COAG governance models are usually purpose built and the underpinning governance principles for new inter-jurisdictional entities need to be negotiated each time one is formed.
39. In recognition of the increasing desire by the Commonwealth to join up with other jurisdictions, as well as the not-for-profit and commercial sectors, section 17 of the PGPA Act places an explicit duty on accountable authorities to “encourage officials of the entity to cooperate with others to achieve common objectives, where practicable.”
40. Sections 82 and 83 of the PGPA Act provide for a Commonwealth entity to share information with other jurisdictions and the auditing of activities by State and Territory Auditors General. Recent amendments to section 18B of the *Auditor General Act 1997* also allow the Commonwealth Auditor-General to follow the flow of Commonwealth money.³

Amendments required to the PGPA Act to support the draft proposed rules

41. In the process of consulting and developing the draft proposed rules required for 1 July 2014, various amendments to the PGPA Act have been identified. In some cases, these amendments are required to support the legal authority of accountable authorities to provide the binding instructions and appropriate sub-delegations that underpin the rules. The Finance Minister has sought policy approval from the Prime Minister for these changes, to be advanced through the C&T Bill. The proposed approach to the C&T Bill is discussed in the next section.
42. The rules that rely on amendments to the PGPA Act relate to:
 - receipts;
 - commitment of relevant money;
 - disclosure of interest;
 - banking; and
 - setting off amounts owed to and by the Commonwealth.
43. The proposed amendments seek to:
 - provide for the treatment of entity GST receipts and payments on the face of the Act rather than through a rule (receipts);
 - permit sub-delegation of powers by the Finance Minister to the accountable authority (commitment of relevant money, banking and disclosure of interest); and
 - provide a rule making power (set-off).
44. Attachment G – Amendments required to the PGPA Act sets out in more detail the rationale for each amendment. Pending policy approval, a set of draft amendments will be made available to the JCPAA.

³ Highlighted in a recent audit of the Mersey Community Hospital in Tasmania.

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Consequential and Transitional Bill

45. The C&T Bill will 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. This includes removing the many references to these two pieces of superseded legislation.
46. The C&T Bill will seek to amend more than 250 pieces of legislation across government. Finance has been consulting with Commonwealth entities since September 2013 to discuss the detail of their enabling and other relevant legislation.
47. In addition to including transitional and savings provisions and updating references to the new financial and performance framework, the Bill will simplify enabling legislation where provisions of the PGPA Act cover an issue previously dealt with in enabling legislation.
48. A draft of the C&T Bill will be circulated to relevant entities in late March to confirm that proposed amendments discussed with entities and their portfolio departments have been properly reflected in the wording of the Bill. Consideration will also be given to the outcomes from the JCPAA inquiry into the rules, which may also lead to consequential amendments that need to be included in the legislation.

PGPA Act hierarchy of requirements

49. Finance has sought to develop a financial and performance framework which has an effective hierarchy of requirements, without duplication across control mechanisms and with clarity as to the status of the control.
50. Many of the issues that could be dealt with under a rule are equally effectively dealt with through alternative control mechanisms such as delegations and policy, or through guidance. For example:
 - delegation: gifts of relevant property;
 - policy: risk; user charging; and acquisition, use, management and disposal of property; and
 - guidance: accountable authorities and officials duties; performance records; access to records, measuring, assessing and reporting on performance; accounts and records; monthly financial reporting.
51. The overall hierarchy of the PGPA Act framework is discussed in the Compendium at Attachment H. This document comprises a description of legislative and other arrangements to support the introduction of the Act. This is a working document that aims to inform the reader of the overall framework, as well as the place of individual provisions within the framework, and associated rules, policy, guidance, instruments and future directions.

PGPA Act control framework

52. The PGPA Act is principles based. The Act seeks to improve high level accountability through uniform duties and better reporting, while reducing overall red tape on entities. An underlying theme is to establish coherence to the whole of the Commonwealth's operations, while allowing individual entities to have an appropriate level of operational independence within the control framework.
53. Instead of legislative requirements based on process, the PGPA framework is focused on duties, internal controls and risk management, while continuing to provide for a high standard of accountability. For example, the process-focussed requirements for commitments beyond available appropriations under FMA regulation 10 are replaced by a mix of specific legislative provisions, policy and budget process requirements and duties on accountable authorities to achieve the same goal of managing forward commitments in the budget. An overview of this change is provided at Attachment I - Controlling the Commitment of Future Spending by way of a case study.
54. Most rules do not impose detailed requirements but provide the key principles against which accountable authorities are to design their processes for the management of the entity, according to the nature of the entity, its operations and the risks that it faces, and within the control limits of the legislation and rules. For example, the rule on commitment of relevant money requires an approval to be recorded in writing, and requires officials to have regard to the requirements of their accountable authority in discharging this obligation.
55. A number of key control principles are newly introduced, or have been elevated from regulations made under the FMA and CAC Acts into primary legislation. For example, Section 16 requires an accountable authority to establish and maintain an appropriate system of risk oversight and management and an appropriate system of internal controls. The accountable authority is expected to create an operating environment that supports the proper use and management of public resources, without stifling innovation in pursuit of both the public good and the purposes of the entity. This duty operates in concert with the general duties that officials are required to meet, but there is an additional duty on the accountable authority to implement measures directed at ensuring officials of the entity comply with the finance law.
56. To complement sound risk management practices, the accountable authority is also required, under section 16(b), to establish and maintain an appropriate system of internal controls for the entity. The control system should be commensurate with the level of risk. Internal controls will deal with issues like approval processes for the spending of relevant money by officials and ensuring compliance with the finance law.
57. The Australian Auditing and Assurance Standards Board has noted that a control environment includes the governance and management functions and the attitudes, awareness, and actions of those charged with governance and management concerning the entity's internal control and its importance in the entity. The control environment sets the tone of an organisation, influencing the control consciousness of its people.⁴

⁴ Auditing and Assurance Standards Board, *Auditing Standard ASA 315*, p. 30.

Implementation

58. It will take several years to implement the PMRA reforms and integrate them fully into the practices and processes of Commonwealth entities and companies. Gradual and staged introduction of the reforms will ensure that each element is appropriately tested and refined in light of experience and robust consultation.
59. The reforms are well under way and have developed a momentum. The reform process will have three broad stages, which present several opportunities to continue to reform public sector governance, performance and accountability arrangements.
- Stage one (current) is about establishing the base from which other reforms can be advanced. It concentrates on the Commonwealth's business process and systems and how they can be streamlined and better focused. It builds on many of the strengths of the current financial framework, but strips away some process and red tape requirements.
 - Stage two (through to 1 July 2015) is also about internal process but is more outward looking. It will focus on improving the quality of planning, performance information and evaluation within government to improve accountability to Ministers, the Parliament and the public.
 - Stage three (thereafter) is outward looking. It will focus on improving how the Commonwealth joins up with external parties from all sectors of the economy to deliver its public policy outcomes – through commercial partnerships, grants, joint projects. To fully embed improvements in this area, it is necessary to have in place operating practices which support government working as a whole with better transparency and accountability, and a risk based approach to governance, incorporating earned autonomy concepts.
60. Following passage of the Act, Finance has focussed on Stage one and in particular:
- the development of supporting rules that are necessary for 1 July 2014;
 - the introduction to the Parliament and passage of the C&T Bill in the Winter Sittings; and
 - the release of guidance and training to support Commonwealth entities in implementing the Act within their organisations.
61. A key goal of stage one is to establish the base from which objectives of the PGPA Act can be advanced. This includes establishing a unified framework within which Commonwealth entities will have the flexibility to adopt appropriate systems and processes. In the lead up to 1 July 2014, Finance has focused on assisting Commonwealth entities to prepare for the start of the PGPA Act. In the transition the need for structural, system or process changes is expected to be limited.

Guidance

62. Finance is preparing guidance to assist entities to comply with the Act, rules and associated policies. Following consultation with entities, Finance has identified the following priority areas for developing guidance:
- General duties of accountable authorities (Attachment J) and General duties of officials; and
 - Guidance to support the rules made under the PGPA Act (e.g. commitment of relevant money, fraud control, audit committees, banking, investment, insurance, receipts, discretionary compensation payments and waiver).

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- Drafts of this guidance material will be available for public comment on the PMRA website through early March and will be provided to the JCPAA in Finance’s supplementary submission on 18 March 2014.
63. To help Commonwealth entities to review and update internal controls and procedures before 1 July 2014, Finance will also produce:
- model resource management instructions (formerly Chief Executive Instructions for FMA Act agencies);
 - a draft Finance Minister’s delegation instrument; and
 - FAQs for the PMRA website.

Training and information sessions

64. In anticipation of the release of the rules and guidance, Finance has commenced training and information sessions to assist Commonwealth entities prepare and transition to the PGPA Act. Entities in Canberra, Sydney, Melbourne, Alice Springs and Darwin have received assistance already and further sessions are planned. The training will continue into the later part of 2014.
65. In addition, Finance is updating the [Financial Management and Budget \(FMB\) Training Program](#)⁵ materials to address the PGPA Act. The updated FMB training materials will be available in April for entities to use for internal training.

Conclusion

66. The PGPA framework represents an evolution in public governance, performance and accountability arrangements for the Commonwealth. The rules proposed to support the PGPA Act, developed following an extensive consultation process, retain a number of important existing framework controls and in some instances strengthens them. Other existing requirements have been streamlined, so that accountable authorities can prudently but efficiently manage the public resources under their control within the context of their financial management responsibilities.
67. In this way, the new framework represents a shift from a prescriptive compliance-based approach to financial management towards a broad principles-based approach. Instead of legislative requirements based on process, the PGPA framework contains a stronger focus on duties, internal controls and risk, while continuing to provide a high standard of accountability.
68. The framework provides the opportunity for Commonwealth entities to reconsider the way they manage public resources and places greater accountability on entities to manage their resources well. All resources within the control of the entity, regardless of whether they have been provided by Parliament or other sources should be managed to the same high standards.

⁵ <http://www.finance.gov.au/financial-framework/training/training-products.html>

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Index of Attachments

Attachment A – *Public Governance, Performance and Accountability Act 2013* overview

Attachment B – Public Governance, Performance and Accountability Rule Design Principles

Attachment C – Consolidated proposed draft rules (the *Public Governance, Performance and Accountability Rule 2014*) (attached separately)

Attachment D – Draft Explanatory Statement for the *Public Governance, Performance and Accountability Rule 2014* (attached separately)

Attachment E – Rules Status Log

Attachment F – Rules consultation process

Attachment G – *Public Governance, Performance and Accountability Act 2013* Compendium (attached separately)

Attachment H – Summary of proposed amendments to the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) to support the Rule

Attachment I – Controlling the Commitment of Future Spending

Attachment J – Draft Guidance on Duties of Accountable Authorities (attached separately)

Attachment A - *Public Governance, Performance and Accountability Act 2013 overview*

The *Public Governance, Performance and Accountability Act 2013* (PGPA Act) will apply to the 194 bodies currently subject to the *Financial Management and Accountability Act 1997* (FMA Act) and *Commonwealth Authorities and Companies Act 1997* (CAC Act) from 1 July 2014.

The PGPA Act (the Act) is the cornerstone of a broad integrated package of reforms to the Commonwealth's financial framework: the Public Management Reform Agenda. The Act was developed on the basis of four guiding principles, that:

- Government should operate as a coherent whole;
- A uniform set of duties should apply to all resources handled by Commonwealth entities;
- Performance in the public sector is more than financial; and
- Engaging with risk is a necessary step in improving performance.

The Act will replace the current two Act financial framework (FMA Act and CAC Act) which is premised primarily on the legal character of two categories of body and their 'ownership' of funds. This split categorisation confuses the reality that both types of body hold money and property that are ultimately public resources, and the legal character of the bodies should not be the determining factor on how these bodies are treated for the purposes of accountability, reporting and control of public resources.

The Act creates two categories of 'Commonwealth entity' - corporate and non-corporate Commonwealth entities (section 11 of the Act). The general approach in the Act is to apply the same principles, legal requirements and obligations on both types of entity and their staffs to ensure consistency of management, reporting and accountability.

The Act introduces the term 'accountable authority' (section 12 of the Act). This term is applicable to the person or persons who have the control and responsibility for the management of an entity. An accountable authority may be a single person or a group of persons.

The Act also introduces a uniform set of duties applied to accountable authorities (sections 15-19 of the Act) and all 'officials' (sections 25-29 of the Act) (who include accountable authorities) of Commonwealth entities. These duties are principles based. The rationale for placing duties on all officials is that it clarifies the standards of behaviour that are expected of individuals across the Commonwealth using public resources. Further, to promote mobility across sectors the duties have been based on the fiduciary duties in the Corporations Act. Aligning duties in this way provides consistency across the private, public and not-for-profit sectors. This is designed to help government to join up with other sectors and will help with recruiting experienced directors for government boards.

The Act introduces the new concept of 'public resources' (section 8 of the Act). This new concept provides a single definition that applies broadly to all money and all property held by Commonwealth entities. This stands in distinction to the FMA and CAC Act approach which treated money and property, and accountability for it, in entirely separate ways. The Act's approach eliminates the inconsistencies of the current

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legislative framework and any perceived advantage or disadvantage in terms of public accountability arising from the inconsistency.

One of the key differences in the Act compared to the FMA and CAC Acts is that the Act brings together into a single piece of legislation all the elements of the resource management cycle (the cycle of planning, budgeting, implementing, evaluating and being held accountable) (Parts 2-3 and 2-4 of the Act), applied across all Commonwealth entities, in order to ensure clarity and consistency around accountability and transparency in the management of public resources.

A key element of this, and new to the legislative framework, relates to the introduction of the requirement for the accountable authority to record and report on the entity's performance (Part 2-3 of the Act). This seeks to parallel performance reporting with financial reporting by recognising the inherent value of quality performance reporting to government and stakeholders.

The Act is part of an integrated package of reforms, it is the first step in encouraging cultural change in the way government does business. This is especially evident in relation to risk. Unlike the current framework, the Act places an explicit duty in respect of risk upon accountable authorities (section 16 of the Act) to recognise that a prudent appetite for risk is crucial for innovation and improved productivity and efficiency. Moreover, appropriate risk-taking and innovation are consistent with careful and proper control of public resources. Furthermore the Act, through the rules (section 101), allows the Finance Minister a power to prescribe matters, or make different provisions in relation to particular Commonwealth entities or classes of entities. This flexible model allows a targeted and risk based approach to be taken to regulation where required.

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Attachment B – Public Governance, Performance and Accountability Rule Design Principles

1. Threshold justification

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

2. Make clear the intent of a rule

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

3. Minimises regulation and red tape

- All rules should be drafted with the objective of keeping to a minimum the level of regulation and red tape, including through a regular review mechanism – the emphasis of the new system is on encouraging prudent behaviour through the duties of accountable authorities and officials, not on overly prescriptive regulatory and compliance requirements.
- Compliance for compliance's sake is to be avoided and should only be required where it is necessary to promote the objectives of the PGPA Act.
- Where prescriptive provisions are included, they should be clear, easy to understand and be able to be applied consistently.

4. Recognises and manages risk

- The content of each rule will be dependent on the risk and consequences of non-compliance, and the nature and complexity of the subject matter.
- The rules will focus on ensuring an entity's response to any non-compliance is appropriate and balanced, taking into account all the circumstances, including associated risks.

5. Avoids repetition and ambiguity

- A rule should avoid repeating features already included in the Act or best dealt with in entity-level policy and/or guidance/instructions.

6. Supports the coherence of the Commonwealth framework

- Rules will have general application unless there is a clear case for them to apply to one group or type of entity ("Commonwealth as a whole").
- Some rules may need to be expressed in a form that meets particular legal requirements and circumstances that relate to particular entities.
- The approach reflected in one rule should not be in conflict with or overlap with another rule or the provisions of the Act.

Attachment E – Rules Status Log

Draft PGPA Rule (provision of the PGPA Act)	OPC Consolidated Draft Rule	FMA/CAC Equivalent	Public Release
<i>Rules released for public consultation</i>			
Government Business Enterprise (s8)	^{^5} Government business enterprise	CAC Regulations – CAC Regulation 4 listed CAC authorities and companies that are classed as GBEs FMA Regulations – Nil	Tranche 1 Released 6 Dec – Public Release 2
Fraud (s102)	^{^10} Preventing, detecting and dealing with fraud	Draft rule to cover Commonwealth entities as part of their duty in respect of risk and control to have regard to the fraud control guidelines. S45 FMA Act, FMA regulation 16A CAC Act - Nil	Tranche 2 Released 17 Jan – Public Release 5
Debt recovery/write off (s103)	^{^11} Recovery of debts	Continues current arrangements under section 47 of the FMA Act. CAC Act - Nil	Tranche 1 Released 21 Nov – Public Release 1
Disclosure of interests (s29)	^{^12} When duty does not apply ^{^13} Officials who are the accountable authority ^{^14} Officials who are members of the accountable authority – how and when to disclose interests ^{^15} Officials who are members of the accountable authority – consequences of having interests ^{^16} Officials who are not the accountable authority or a member of the accountable authority	CAC Act sections 27F to 27K address directors duty to disclose material personal interests. These provisions will serve as a template for the Rules that apply to disclosure by officials under the PGPA Act who are also members of multi-member accountable authorities FMA Act- Nil	Tranche 1 Released 6 Dec – Public Release 2
Audit committee (ss45 and 92)	^{^17} Audit committee for Commonwealth entities ^{^28} Audit committee for wholly-owned Commonwealth companies	CAC Act section 32 and CAC Regulations regulation 6A, Audit committees for Commonwealth authorities. And CAC Act section 44 and CAC Regulation 6B, Audit committees for wholly owned Commonwealth companies. FMA Act section 46 and FMA Regulation 22C	Tranche 2 Released 17 Jan – Public Release 5

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Draft PGPA Rule (provision of the PGPA Act)		OPC Consolidated Draft Rule	FMA/CAC Equivalent	Public Release
<i>Rules released for public consultation</i>				
Banking of relevant money by Ministers and officials (s55)	^19	Banking of bankable money received by officials	FMA Act ss 10, 11, 12, FMA Regulations 17, 18, 19, 19A CAC Act – sections 18 and 19	Tranche 3 Released 23 Jan – Public Release 6
	^20	Otherwise dealing with bankable money received by officials		
	^21	Dealing with unbankable money received by officials		
Commitment and expenditure of relevant money (s52)	^18	Approving commitments of relevant money	The FMA Regulations 7-12 deal with commitments to spend public money. CAC Act – Nil	Tranche 3 Released 23 Jan – Public Release 6
Investments by the Commonwealth (s58)	^22	Investment by the Commonwealth	FMA Act s 39 FMA Regulation 22 currently covers the investment of public money CAC Act – sections 18 and 19	Tranche 1 Released 18 Dec – Public Release 3
Insurance obtained by corporate Commonwealth entities (s62)	^23	Insurance obtained by corporate Commonwealth entities	CAC Act section 27M FMA – Nil	Tranche 1 Released 18 Dec – Public Release 3
Authorisation of amounts by the Finance Minister (s63)	^24	Authorisations of amounts by the Finance Minister	For sections 47, 63 and 65 the current FMA regulation 29 covering act of grace payments and waiver of debts. CAC Act - Nil	Tranche 1 Released 21 Nov – Public Release 1
Payments pending Probate (s103(f))	^25	Payment of amount owed to person at time of death	FMA Regulation 30 CAC Act - Nil	Tranche 1 Released 21 Nov – Public Release 1
Minister to inform Parliament of certain events (s72)	^26	Minister to inform Parliament of certain events	FMA Act section 39A and FMA Regulations – the particulars contained at regulation 22AA and the form of the notice at Schedule 1A CAC Act - Nil	Tranche 1 Released 21 Nov – Public Release 1
Act of Grace payments by the Commonwealth (s65)	A draft rule was released however it is now proposed to amend the PGPA Act to allow for sufficient authority in the legislation, therefore a rule is not required at this time.		For sections 63 and 65 the current FMA Regulation 29 covering act of grace payments and waiver of debts. CAC Act - Nil	Tranche 1 Released 21 Nov – Public Release 1
Receipts (source of funds and retention of receipts) (s74)	^27	Receipts of amounts by non-corporate Commonwealth entities	FMA Act sections 30 (Repayments to the Commonwealth), 30A (Appropriations to take account of recoverable GST) and 31 (Retaining prescribed receipts) and FMA regulation 15 (Prescribed receipts that an agency may retain). CAC Act - Nil	Tranche 2 Released 17 Jan – Public Release 5

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Draft PGPA Rule (provision of the PGPA Act)	OPC Consolidated Draft Rule	FMA/CAC Equivalent	Public Release
<i>Rules released for public consultation</i>			
Other CRF Money (s105)	^29 Other CRF Money	No current equivalent. FMA section 12 CAC Act - Nil	Tranche 3 Released 23 Jan – Public Release 6
Corporate Plans (s35)	No rule provided at this time A draft rule has been released that includes details of corporate plan contents and arrangements for publication. The draft rule is subject to review and will be reissued for further comment.	CAC sections 17 and 42 and CAC regulation 6AAA address requirements for GBE corporate plans. FMA Act - Nil	Tranche 1 Released 23 Dec – Public Release 4
Annual performance statements for Commonwealth entities (s39)	No rule provided at this time A draft rule has been released that includes details of statement contents and arrangements for publication. The draft rule is subject to review and will be reissued for further comment.	No current equivalent.	Tranche 1 Released 23 Dec – Public Release 4

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Draft PGPA Rule (Provision of the PGPA Act)	OPC Consolidated Draft Rule	FMA/CAC Equivalent
<i>Rules not released for public consultation - included in consolidation</i>		
Listed entities (s8)	^6 Listed entities Schedule 1 – Listed entities (Schedule 1 is not included in consolidation at this time, due to ongoing consultation with entities)	FMA Act– Act s 5, Regulation 5 CAC Act - Nil
Listed law enforcement agency (s8)	^7 Listed law enforcement agency	FMA Act - s58 CAC Act- Nil
Accountable authorities - listed entities (s12(2))	^8 Accountable authorities - listed entities	FMA Act– Act s5, FMA Regulation 5 CAC Act- Nil
listing person as an official (s13(3)(a)(iii))	^9 Officials	FMA Act– Act s5, Regulation 4 CAC Act - Nil

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Rule	Draft PGPA Rule Provision Supporting Requirements of the PGPA Act	FMA/CAC Equivalent	Reason
<i>Rules not released for public consultation - not included in consolidation</i>			
Procurement	102(c)	FMA s64 and Regulation 7 CAC Act s47A CAC Regulation 9	Rule will be a separate instrument – not to be consolidated into PGPA Rule instrument.
Grants	102(c)	FMA a64 and Regulation 7A CAC Act – Nil	Rule will be a separate instrument – not to be consolidated into PGPA Rule instrument.
Rule modifying the operation of the Finance law	104	Section 58 of the FMA Act: FMA Regulations 27, 28, 28A and Schedule 2 to the Regulations CAC Act s46, CAC Regulation 8,	This rule will be the subject of a separate consultation process.

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Rule		PGPA Act	FMA/CAC Equivalent	Reason
<i>Rules assessed by Finance as not required for 1 July 2014</i>				
1	Financial Reporting Requirement (Annual Financial Statements)	s42	FMA Act s49 and schedule 1 of the CAC Act	<p>Currently, Finance Minister's Orders for Financial Reporting (FMOs) are revised each financial year to ensure the consistency of individual entity financial reports that flow into the Australian Government's Consolidated Financial Statements.</p> <p>As part of the transitional process supporting the commencement of the PGPA Act, arrangements will be put in place for Commonwealth entities to prepare their 2013-14 financial year reports against the current FMO. Under the PGPA Act, the matters addressed in FMOs will be contained in a separate PGPA Rule that will be developed for release in early 2015 for the preparation of 2014-15 financial year reports (which is consistent with the current timing relating to revising FMOs).</p>
2	Arrangements for the establishment of entities with other jurisdictions	s102	Nil	Arrangements for the establishment of entities with other jurisdictions is part of the longer term work program continuing past 1 July 2014. 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.
3	Establishing new corporate Commonwealth entities (s87)	s87	No current equivalent in financial legislation but entities are created under regulation as part of <i>Primary Industries and Energy Research and Development (PIERD) Act 1989</i> .	This rule is not necessary for 1 July 2014. Following consultation, further work is required to make the rule simpler and clearer in accordance with the PMRA rule design principles.
4	Annual reports and reporting requirements	(s46(3) & s97)	CAC Act Orders	At this time a rule is not required to operationalise PGPA Act sections 46(3) and 97. 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.

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Rule/Act provision		PGPA Act	FMA/CAC Equivalent	Reason
<i>Rules assessed by Finance as not required</i>				
Rules allowed for in PGPA Act				
1	Termination of appointment of a member of accountable authority	S30	FMA Act - Nil The CAC Act has a range of penalty provisions in schedule 2	No rules are needed to operationalise PGPA Act section 30.
2	Performance records for Commonwealth entities	S37	Nil	Sections 37 (records about performance) and 38 (measuring and assessing performance) relate to activities that the accountable authorities of entities should already be engaged in as part of managing a well-functioning organisation. The provisions will come into effect on 1 July 2014 and, subject to consultation with stakeholders, it is proposed that, at this stage, the requirements of the provisions be supported by guidance and promotion of better practice, rather than by a rule.
3	Measuring, assessing and reporting on performance	S38	Nil	Sections 37 (records about performance) and 38 (measuring and assessing performance) relate to activities that the accountable authorities of entities should already be engaged in as part of managing a well-functioning organisation. The provisions will come into effect on 1 July 2014 and, subject to consultation with stakeholders, it is proposed that, at this stage, the requirements of the provisions be supported by guidance and promotion of better practice, rather than by a rule.
4	User charging	S102	Nil – Government Policy (Cost Recovery) Applies to FMA & CAC	The Australian Government’s policy on cost recovery, as outlined in the Cost Recovery Guidelines will be retained. The Department of Finance is currently finalising outcomes of a review of the Guidelines, which will result in revised Guidelines that will improve the consistency, transparency and accountability of cost recovery of government activities. No PGPA rule will be required.
5	Acquisition of property	S103	Nil - Commonwealth Property Framework	The current approach to the acquisition of property as set out in the <i>Lands Acquisition Act 1989</i> (the LAA) and the Commonwealth Property Framework (CPF) will continue to apply. No PGPA rule will be required. The LAA applies to the acquisition and disposal of an interest in land by ‘acquiring authorities’ (that is, by the Commonwealth and by Commonwealth authorities unless otherwise exempt from the LAA). The LAA currently applies to both FMA Act and CAC Act bodies. The CPF is a collection of materials published by the Department of Finance that are designed to assist Commonwealth entities (subject to the FMA Act) to comply with legislative requirements and relevant policy frameworks in relation to their acquisition, use and disposal of real property interests. This guidance will be updated to reflect the PGPA Act.

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Rule/Act provision		PGPA Act	FMA/CAC Equivalent	Reason
<i>Rules assessed by Finance as not required</i>				
6	Risk Rule (s102)	s 102	No current equivalent	A rule will not be made at this time – consideration will be given to the need for a rule once a whole of government risk management policy is in place.
7	Act of Grace	s 65	FMA Act s 33 CAC Act - Nil	A draft rule was released however it is now proposed to amend the PGPA Act to allow for sufficient authority in the legislation, therefore a rule is not required at this time.
8	Transfers of functions and personnel	s 75	FMA Act s 32 CAC Act - Nil	At this time no rule is required to operationalise PGPA Act section 75.
Act provision or regulation currently under FMA or CAC Act				
9	Borrowing by corporate Commonwealth entity	s 56/S57	CAC Act s 28A, s 28B and Regs 6AA to 6AE FMA Act s 37, 38, 60 and regulation 21	There is no requirement for a rule to operationalise this provision. The primary use of ‘borrowing’ by Commonwealth entities is through the use of credit cards.
10	Care and diligence	s 25	CAC Act s 22 FMA Act - Nil	There is no need to include any specific requirements in a rule at this time. This duty will be expanded upon in guidance which will be drawn from common law and corporations law interpretations of this concept.
12	Accounts and records	s 41	FMA Act s 48, CAC Act s 20	At this time a rule is not required to operationalise PGPA Act section 41. Guidance material in this area could provide standards for managing records, drawing on better practice and from accounting standards as appropriate.
14	Use, management and disposal of property	s 103	FMA ss 41 - 43	The current approach to the use, management and disposal of property as set out in the <i>Lands Acquisition Act 1989</i> (the LAA) and the Commonwealth Property Framework (CPF) will continue to apply. No PGPA rule will be required.
15	Gifts of relevant property	s 66	FMA Act s 43	No rule is proposed. However, consideration of the likely content of a rule has led to a position that such requirements would be more appropriately contained within the primary legislation. The provision would be proposed for amended amendment through the Consequential and Transitional

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Rule/Act provision		PGPA Act	FMA/CAC Equivalent	Reason
<i>Rules assessed by Finance as not required</i>				
				Amendments (C&T Bill).
16	Banking by the Commonwealth	s 53	FMA Reg 21	No rule is necessary to operationalise PGPA Act section 53 as the current protocols for transactional banking services as set out in the Finance Minister's Delegations will be retained. A revised banking framework manual will be issued to provide information to entities on banking arrangements.
17	Banking by corporate Commonwealth entities	s 54	CAC Act s18 - 19	No rule is necessary to operationalise PGPA Act section 54. A revised banking framework manual will be issued to provide information to entities on banking arrangements.
18	Operation of instruments making the Rules	s 101	FMA s 63 and s 65 CAC s 48, s 48A, s 49	To date, a need for this rule has not been identified as no instruments subordinate to the rules are currently required.
19	Approval of proposed expenditure by a Minister	s 71	FMA Regulation 7A and Regulation 9 CAC Act- Nil	The Commonwealth Grant Guidelines (CGGs) contain a number of grants-specific decision making and reporting requirements, in addition to the legislative requirements that apply where Ministers exercise the role of an approver. Under the PGPA Act, a separate rule for Ministerial approvals will not be needed because it will be included in the CGGs, which will be one of the PGPA rules.
20	Indemnities, guarantees and warranties	s 60	FMA Regulation 9, 10, 10A and 11.	No rule will be required to operationalise PGPA Act section 60 as any instructions given to delegates will be contained in a Delegation from the Finance Minister. Current guidance is contained in Financial Management Guidance No.6, <i>Guidelines for Issuing and Managing Indemnities, Guarantees, Warranties and Letters of Comfort, September 2003</i> (Indemnity Guidelines). The Indemnity Guidelines will be updated to reflect the introduction of the PGPA Act and provide best practice guidance around the consideration of proposed indemnities, guarantees or warranties on behalf of the Commonwealth.

Attachment F – Rules consultation process

Following the passage of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) in June 2013, the Department of Finance put in place a broad based consultation process to promote the effective and efficient development of the rules, the consequential and transitional amendments to legislation and associated policy reforms that will underpin the PGPA Act.

The governance structure includes five steering committees, with membership drawn from across 60 Commonwealth entities, the details of these are outlined below. This builds on the three years of consultation in the lead up to the passage of the PGPA Act. It enables a level of agency engagement with, and understanding of, the framework that might be otherwise difficult to obtain, facilitating implementation of the PGPA Act.

In the longer term, Finance considers this governance structure to be essential to the development of a robust framework under the Public Management Reform Agenda (PMRA).

Consultation through Steering Committees

A Project Board chaired by the Department of Finance has overseen the rules development process. Membership of the Board comprises 10 senior officials from entities such as the Departments of Treasury, the Prime Minister and the Cabinet and Social Services, the Australian Public Service Commission, Australian Taxation Office, Indigenous Business Australia, National Gallery of Australia and the Commonwealth Scientific and Industrial Research Organisation. The Australian National Audit Office attends as observers.

Five steering committees were constituted to work on particular subjects within the framework. Membership of the steering committees was drawn from a wide range of Commonwealth entities including, Departments of State, prescribed agencies, Departments of the Parliament, statutory authorities and Commonwealth companies. The committees are:

1. Appropriations and Resourcing Steering Committee – membership from 24 entities.
2. Governance and risk management steering committee – membership from 21 entities.
3. Legislation and rules steering committee – membership from 21 entities.
4. Planning and reporting steering committee – membership from 19 entities.
5. Streamlining and reducing red tape steering committee – membership from 17 entities.

The Australian National Audit Office has been engaged as an observer and participated in all committees. Finance policy experts are also representatives and participate in committees.

The five steering committees also formed working groups and references groups on specific policy topics. These groups have also met regularly and feed into the steering committee process.

The steering committees have met up to six times during the period July 2013 – March 2014, dependent on the number of rules that they had subject matter responsibility for. Committee members provided comments through meeting forums and in writing in relation to draft rules, discussion papers, policy documentation, draft guidance material in relation to rules and the PGPA Act. Documentation was also considered out-of-session to ensure that where meetings

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were not convened, the committee were still able to provide input into policy positions and drafting.

In addition to the above mentioned steering committees, consultation was also undertaken with key stakeholders in Sydney (membership of 12 entities) and Melbourne (membership of 10 entities) on four occasions, and included the Australian Institute of Company Directors. Consistent with the approach to the main steering committees, issues were also dealt with out-of-session via email correspondence.

Consultation meetings were held in Adelaide, Alice Springs and Darwin involving statutory authorities and indigenous land councils. These meetings discussed draft rules, consequential amendments to enabling legislation and draft guidance. Papers were also issued out-of-session where a meeting was not required and feedback sought via correspondence on a number of occasions.

Discussions with representatives from the Not for Profit sector have also occurred through electronic means and in a meeting forum.

Following consultation through steering committees, interstate committees and Project Board, draft rules were progressively posted on the Public Management Reform Agenda website over the period 11 November to 23 December 2013. The rules were open for public comment for a minimum of 30 days. Public submission deadlines were staggered and occurred on 30 January, 15 February and 22 February 2014, with a period of two weeks when all rules were open for comment concurrently. Draft rules have remained on the website after the comment period has closed.

Finance received 204 comments on the draft rules that were the subject of this process. Predominately, submitted comments focused on the draft rules relating to Audit Committees, in which 33 comments were received, Corporate Plans, which received 28 comments, Fraud Control, which received 22 comments, and Annual Performance Statements with 21 comments.

The consultation process has enabled Finance to present draft rules to the public that are robust and well thought through. Comments have improved the content of rules without, for the most part, prompting a different policy path. Key changes relate to deferring the requirement for majority independent membership of Audit Committees until 1 July 2015 and deferring introduction of the Corporate Plan and Annual Performance Statement rules (noting that they would not be required for 1 July 2014 in any case).

Communication tools

To help ensure that the key messages of the PMRA continue to be far reaching and consultation broad and robust, communication tools including the PMRA website, regular email updates to Agency Coordinators and key contacts and the issuing of an information Newsletter have been utilised.

Finance has been invited on a number occasions to present at portfolio, agency and third sector forums. These have included presentations to Audit Committees, Portfolio quarterly gatherings, agency arranged meetings on specific rules, with entities on an individual basis as requested, private sector companies, as well as networking events such as the CPA Congress.

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While steering committee members generally sat on one committee, Finance established a PMRA community on GovDex, the Commonwealth Government's online collaboration space. Currently, the community has over 230 members with access to documentation related to the development of the draft rules and guidance, through the ability to access papers relating to each of the committee meetings and Project Board meetings. Further to this, the community contains information in relation to the proposed Consequential and Transitional Amendments Bill.

A central email repository was established during the legislation development stage. This mailbox, administered by the Project Management Office, remains a central point of contact for questions, queries and issues generated through consultation and the PMRA website.

- The PMRA website invites visitors to subscribe to an update service.
- PMRA updates have been issued on a regular basis.
- The PMRA taskforce also trialled Twitter as a channel to alert interested parties of significant milestones.

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Attachment H - Summary of proposed amendments to the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) to support the Rule

A number of amendments to the PGPA Act have been identified as part of the Rule development process – policy approval is currently being sought for these amendments. While the changes are technical in nature they provide greater certainty in relation to the operation of the Act as well as supporting the design of a more operationally effective PGPA Rule. The proposed changes are detailed below.

Section 23: Power in relation to arrangements

Section 23 of the PGPA Act provides for an accountable authority to enter into arrangements. It is proposed that section 23 be amended to broaden its scope to include the power for an accountable authority to approve arrangements relating to the commitment and expenditure of money.

While the majority of accountable authorities of entities can draw on explicit legislative authority for making decisions on the commitment and expenditure of public resources, there are a limited number of entities that are listed as separate Commonwealth entities for the purposes of the PGPA Act that do not have enabling legislation, or agency-status under the Public Service Act 1999 (PS Act), where the basis for doing so is less clear. These Commonwealth entities are generally separated out from a Department of State for the purposes of the financial framework in order to help ensure that there is effective accountability for a distinct task or function, but are part of the parent Department for staffing purposes. Where this occurs, the entity's accountable authority and the entity's agency head for employment purposes are different and there may be uncertainty over the accountable authority's power to issue instructions under the PGPA Act (an example is the Australian Office of Financial Management (AOFM) where the Chief Executive of AOFM will be the accountable authority, but the Secretary of the Treasury will be the Agency Head of AOFM staff for the purposes of the PS Act). Amending the PGPA Act is needed to provide certainty of legislative authority.

New Section 23A (indicative): Power to issue instructions

It is proposed that a new provision be included in the PGPA Act that would permit the accountable authority of a non-corporate Commonwealth entity to issue instructions to the entity's officials on all matters related to the PGPA Act and the PGPA Rule. This provision would be based on section 52 of the *Financial Management and Accountability Act 1997* (FMA Act).

While the majority of accountable authorities of entities can draw on explicit legislative authority for the issuing of instructions in relation to governing the use of resources, there are a limited number of entities that are listed as separate Commonwealth entities for the purposes of the PGPA Act that do not have enabling legislation, or agency-status under the PS Act, where the basis for doing so is less clear. These Commonwealth entities are generally separated out from a Department of State for the purposes of the financial framework in order to help ensure that there is effective accountability for a distinct task or function, but are part of the parent Department for staffing purposes. Where this occurs, the entity's accountable authority and the entity's agency head for employment purposes are different and there may

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be uncertainty over the accountable authority's power to issue instructions under the PGPA Act (an example is the Australian Office of Financial Management (AOFM) where the Chief Executive of AOFM will be the accountable authority, but the Secretary of the Treasury will be the Agency Head of AOFM staff for the purposes of the PS Act). Amending the PGPA Act is needed to provide certainty of legislative authority.

It is also proposed that the introduction of the new section and the ability for the accountable authorities of non-corporate Commonwealth entities to issue instructions be included in the list of matters in section 110 of the Act that cannot be delegated by an accountable authority. The duty to establish and ensure the maintenance of controls for the operation of the entity should not be a matter that is capable of being delegated.

Section 55: Banking of relevant money by Ministers and officials

Under section 55 of the PGPA Act, Commonwealth entities are obligated to bank relevant money promptly and in accordance with any rules made under the section. It is proposed that section 55 be amended to provide greater clarity in relation to the responsibilities of Ministers and officials, and in relation to the banking of money.

In relation to the responsibilities of Ministers, it is proposed that section 55 of the PGPA Act be amended to require that a Minister who receives relevant money must ensure that the money is provided to an official of a non-corporate Commonwealth entity as soon as practicable. The current provision (section 10 of the FMA Act) requires Ministers to bank the money, which in practice only occurs through providing it to an official.

This approach supports a general principle taken in relation to provisions in the PGPA Act that requirements for Ministers be expressed on the face of the Act rather than relying, as is currently the case in section 55, on subordinate legislation to specify the Finance Minister's power to direct the activities of other Ministers.

It is proposed that section 55 is also amended to recognise that not all relevant money can be banked and to provide greater scope for the Finance Minister to properly describe supporting arrangements through the application of rules. The amended provision would specify that:

- a Minister who receives relevant money must ensure that the money is given to an official of a non-corporate Commonwealth entity as soon as practicable;
- an official who receives relevant money (including from a Minister) that can be banked must deposit the money in a bank as soon as practicable and/or deal with the money in accordance with requirements in the rules; and
- if the money is non-bankable money (for example, foreign coins which cannot be banked) then the rules can specify how such money is to be handled.

Section 64: Setting off amounts owed to, and by, the Commonwealth

Section 64 provides the Finance Minister with the discretion to set off amounts owed to the Commonwealth by a person with amounts payable by the Commonwealth to that same person as a cost effective mechanism to handle debts. This mechanism is consistent with the approach provided for in section 35 of the FMA Act.

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An amendment to section 64 is being proposed to enable the Finance Minister to make rules in relation to the set off of amounts. This will promote a consistency of approach in relation to the application of rules for set offs and waivers of debts owing to the Commonwealth, allowing the Finance Minister to take advice from an Advisory Committee where sizable amounts of public money are involved.

New Section 76A (indicative): Appropriation for GST-related payments

It is proposed to include a provision for a special appropriation to cover the GST-related component of any payment by a non-corporate Commonwealth entity as part of an approach to simplify and streamline the appropriation arrangements for GST.

A review of the application of section 30A of the FMA Act, which provides for appropriations to take account of the recoverable GST amount, has identified inconsistent practices across government. Section 74 of the PGPA Act (which provides for the retention of certain receipts by non-corporate Commonwealth entities) was originally intended to deal with GST recovered amounts as well as other receipts. An examination of legal requirements and business practices found that while section 74 may address one aspect of the process, outstanding issues in relation to GST payments still need to be explicitly addressed for clarity and to put the legal basis of the arrangement beyond doubt.

The proposed approach would involve the establishment of a special appropriation to cover the GST-related aspect of any payment. GST-related receivables (from the Australian Taxation Office or as part of a sales receipt) will be transferred by non-corporate Commonwealth entities to the Official Public Account. There are no budget implications as a result of the proposed approach.

Section 103: Rules relating to the Commonwealth and non-corporate Commonwealth entities

Section 103 of the PGPA Act provides for rules relating to the Commonwealth and non-corporate Commonwealth entities to be made under the PGPA Act. An amendment to this section is proposed to allow for an additional rule to be made to prescribe the name or purposes of a non-corporate Commonwealth entity to be a listed entity. This amendment is being proposed to address an issue in relation to non-statutory entities, such as the Defence Materiel Organisation, to ensure that the purposes of such entities are properly described for the application of the PGPA Act and appropriations more broadly.

Section 110: Accountable Authority (delegations)

The current wording of the PGPA Act allows for sub-delegation of powers allocated to the accountable authorities of non-corporate Commonwealth entities by the Finance Minister, and for limitations and directions to be imposed on officials. The ability of accountable authorities to place limitations and directions on officials is less certain where a power is allocated through subordinate legislation such as the Rules as this may constitute a situation in which the powers available in the primary legislation are exceeded. It is proposed that this situation be clarified, either through amendments to section 110 or to specific affected provisions within the Act.

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Attachment I - Controlling the Commitment of Future Spending

Through Regulation 10 of the *Financial Management and Accountability Regulations 1997* (FMA Regulation 10), the current framework contains a prescriptive requirement, applicable to FMA Act agencies only, to control the commitment of future spending beyond appropriations.

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. This approach reflects the PGPA Act's whole-of-system approach to the stewardship and management of public resources across the Commonwealth. It can be contrasted to the current framework's day-to-day transactional focus on individual agencies.

Important existing framework requirements have been retained and strengthened. For example, the Finance Minister has been given responsibility for granting indemnities, guarantees and warranties on behalf of the Commonwealth in the Act itself (section 60 refers), making it clear that any exercise of this power by others requires his express authority, or the express authority of legislation. To support this, Budget process requirements will be strengthened to ensure that a mechanism exists for the Finance Minister to provide a check on significant proposals to commit to new future spending not caught by section 60 or other processes, where such spending would be beyond available appropriations.

Current Framework Requirements

Under the current financial management framework, Regulation 10 of the *Financial Management and Accountability Regulation 1997* (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 come to the Finance Minister for his agreement.

The purpose of FMA Regulation 10 is to ensure there is sufficient flexibility in the Budget in future years by providing a check over commitments that may lock-in future expenditure and impact on the ability of the Government to fund emerging priorities. Its effectiveness in achieving this has been limited as it only applies to a small proportion of total government spending – in practical terms, less than 8% of total government expenditure is subject to FMA Regulation 10.

- Around 75% of total government expenditure is made through special appropriations. These appropriations are usually not time limited and are therefore not subject to FMA Regulation 10. The remaining 25% of total government expenditure is made through annual appropriations. Of this, administered expenditure is usually subject to Cabinet approval and is not subject to agency discretion.⁶ Further removing

⁶ Administered expenditure through annual appropriations is subject to FMA Regulation 10 even though limited discretion is exercised by agencies.

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employee expenditure, which is not subject to FMA Regulation 10, leaves less than 8% of total government expenditure to which FMA Regulation 10 is applicable.

The FMA Regulation 10 process has promoted some positive agency behaviour, such as maintaining internal systems for recording and managing future commitments. However, it represents a prescriptive, process based requirement rather than focussing on sound decision making promoting financial sustainability.

Very few FMA Regulation 10 requests come to the Finance Minister. Finance's records indicate that over the last two years, the Finance Minister has received approximately 42 requests for FMA Regulation 10 agreement. Of these, 26 (62%) relate to indemnities, 6 (14%) relate to property leases, and 10 (24%) relate to other matters.

The PGPA Act addresses this by placing emphasis on improving the internal management of entities through the duties on accountable authorities, in particular at sections 15 and 16, while eliminating unnecessary transactional prescription.

PGPA Framework Requirements

Duties of the accountable authority

Instead of legislative requirements based on process, the PGPA framework contains a stronger focus on duties, internal controls and risk, while continuing to provide a high standard of accountability.

Rather than controlling future spending through a prescriptive legislative requirement like FMA Regulation 10, the PGPA Act places principles-based requirements for financial management on accountable authorities. This includes the duty to govern the entity (section 15), which includes promoting the financial sustainability of the entity and considering the effect of decisions on public resources generally. 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 priorities.

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).

Internal controls would, for example, include a system of delegations that devolves decision making for making commitments of relevant money to appropriate officials within the entity. This should employ a risk based approach so that officials making spending decisions are limited to those with an appropriate level of authority, and should be supported by controls such as spending limits, acquittal procedures, and record keeping and reporting requirements. Entities should also have systems that enable the tracking of commitments against available appropriation as part of their controls over the spending of relevant money. Finance will support agencies through a suite of guidance material that will assist them in managing the commitment of relevant money. This includes guidance on committing relevant money, arrangements for other CRF money, indemnities and Model Resource Management Instructions.

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The duty to promote the financial sustainability of the entity, and public resources more broadly, improves control over commitments by:

- elevating the requirement to the primary legislation;
- applying to the accountable authorities of *all* Commonwealth entities whereas FMA Regulation 10 only applies to FMA Act agencies;
- applying to the management of public resources and governance generally which is broader than the current narrow requirement which focuses only on committing public money; and
- placing a positive duty on accountable authorities designed to drive behaviour that supports a strategic focus on managing financial sustainability. FMA Regulation 10 has a transactional focus that does not foster a culture directed towards effective financial management.

Indemnities

Most FMA Regulation 10 requests to the Finance Minister relate to significant indemnities. In line with current requirements, the new framework will continue to require the Finance Minister's authorisation for significant indemnities, but on the basis of the Finance Minister's overarching power in this area being contained in primary legislation, rather than in subordinate legislation (i.e. regulations). It is anticipated that FMA Regulation 10 requests relating to indemnities that currently go to the Finance Minister under the current framework will continue to require the Finance minister's authorisation under the PGPA framework.

Section 60 of the PGPA Act gives the Finance Minister the power to enter into indemnities, guarantees or warranties granted by the Commonwealth. It is proposed to delegate this power to accountable authorities of non-corporate Commonwealth entities for low risk, routine matters necessary for the efficient running of entities. Higher risk, non-routine or sensitive matters would come to the Finance Minister.

Budget Controls

Most public expenditure that involves commitments beyond available appropriation levels is agreed through the Budget process. The Budget process, together with other frameworks such as the Commonwealth Property Management Framework, already contains a number of significant controls on government forward commitments. These controls will be enhanced by a new Budget process requirement allowing the Finance Minister to review the impact of significant proposed spending commitments before commitments are made, where they would be beyond available appropriations.

The duties of accountable authorities, combined with the requirement of PGPA Act section 60 for indemnities and the Budget processes provide a strong framework for controlling forward commitments and ensuring there is sufficient flexibility in the Budget in future years to enable the Government to fund emerging priorities.