

**SELECT COMMITTEE ON THE PERTH MINT AND COMMONWEALTH  
REGULATORY COMPLIANCE**

Answers to Questions on Notice

**Department/Agency:** Australian National Audit Office

**Outcome/Program Group:**

**Type of question:** Hansard, Wednesday 8 May 2024, Page 12-13

**Date set by the committee for the return of answer:** COB 29 May 2024

**Number of pages:** 4

**Question 1:**

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**Senator REYNOLDS:** Here we've got an organisation that is a government trading entity. Under the state act that it's established under it has very tight secrecy provisions which would not be seen in any other corporation, for example. It's got a very complex web of other trading entities and businesses and joint venture arrangements over time. But it has had a series of internal audit reports over time, all done by PwC, which identified issues with their internal governance, with their reporting and also with their compliance with AUSTRAC requirements. So these are very serious issues, which ultimately had led to very high risk-taking behaviour and exposure to CTF and anti-money-laundering activities here and overseas. Ultimately it has led to a liability of many millions of dollars, potentially, to the WA taxpayer. All of this has been able to happen because everybody's pointing the fingers at each other and nobody has been taken to task, before AUSTRAC did late in the piece. So it's quite a complex web we're trying to untangle and learn some of the lessons from that. In that context, while you haven't looked at them specifically, are you able to draw on your experience with the ANAO in having a look at parts of that and lessons learned and observations from other entities?

**Ms Jago:** Yes, I can talk more generally about what we see. I might start with something that's not specific to what I would call a government business enterprise, government trading enterprise, something along those lines but just a more general observation. In the Commonwealth every entity is required to have an audit committee. That audit committee has a set role under the Public Governance, Performance and Accountability Act. It includes a number of functions. Part of that is reviewing the appropriateness of risk oversight and management and internal control. Part of the way most audit committees do that is by engaging with internal audit. Internal audit reports are reported to the audit committee, and the audit committee consider the findings coming out of those reports and monitor implementation of recommendations and the like. That would be one place. If there were internal audits coming through that had issues, I would expect the audit committee to take quite an interest in that and to be tracking the implementation of any recommendations. If the audit committee had particular concerns coming out of any of those internal audits or any other information they were seeing through that committee, they would then be reporting that back to the accountable authority, which may be a board or an

individual depending on what type of entity it is. They do have a reporting line directly to the accountable authority. I would expect that to be one mechanism where that kind of information would flow up to the top of an organisation.

If I turn to government business enterprises, in the Commonwealth there are a number of pieces of guidance and requirements for government business enterprises around how they conduct themselves in terms of governance processes. They have a lot of flexibility on the detail of how they do that, but they are encouraged to look at the ASX corporate governance principles and apply those in their organisation. There are requirements around reporting particular issues and items to ministers, so if there was a significant issue then you would expect that to be reported to the minister. It sounds like that didn't happen in this case. We sometimes do performance audits of governance across government business enterprises. We sometimes also come in and make recommendations around where we think improvements can be made. Does that assist, Senator?

**Senator REYNOLDS:** Can you take on notice, firstly, to provide a summary of what the requirements are for the relevant Commonwealth agencies and organisations, as you've just described?

**Answer:**

The requirements for Commonwealth agencies regarding internal governance and reporting include the following from the Department of Finance's RMG 202 *Audit Committees*, including *A guide for corporate Commonwealth entities on the role of an audit committee*.<sup>1</sup>

'Section 45 of the *Public Governance, Performance and Accountability Act 2013* provides as follows:

**Section 45—Audit committee for Commonwealth entities**

- (1) The accountable authority of a Commonwealth entity must ensure that the entity has an audit committee.
- (2) The committee must be constituted, and perform functions, in accordance with any requirements prescribed by the rules.'<sup>2</sup>

'Section 17 of the *Public Governance, Performance and Accountability Rule 2014* provides as follows:

**Section 17—Audit committee for Commonwealth entities**

This section is made for subsection 45(2) of the Act.

Functions of the audit committee

- (1) The accountable authority of a Commonwealth entity must, by written charter, determine the functions of the audit committee that is established for the entity as required by subsection 45(1) of the Act.
- (2) The functions must include reviewing the appropriateness of the accountable authority's:
  - (a) financial reporting; and
  - (b) performance reporting; and

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<sup>1</sup> [Audit committees \(RMG 202\) | Department of Finance](#)

<sup>2</sup> [Guide for corporate Commonwealth entities on the role of audit committees.pdf \(finance.gov.au\)](#) p.7

- (c) system of risk oversight and management; and
- (d) system of internal control; for the entity.’<sup>3</sup>

### ‘Part 1 Functions of the audit committee

Using its skills and experience, the audit committee reviews the information provided to it by internal audit and the entity’s management. In order to understand and review the entity’s processes and systems the committee also actively pursues information from relevant areas of the entity.’<sup>4</sup>

#### ‘1.4.1 Duties and responsibilities of the accountable authority directly related to internal controls

Accountable authorities are expected to establish and maintain other systems and processes that facilitate good governance—for example, internal audit processes, business continuity management, and promotion of a positive entity culture.’<sup>5</sup>

‘An internal audit can actively assist the audit committee in the periodic reviews of the entity’s internal controls by suggesting, and delivering, specific reports with a focus on the entity’s current risks affecting internal control.’<sup>6</sup>

Internal audit is one of the activities the audit committee could undertake to fulfil its review function:

- ‘reviewing the proposed internal audit coverage, ensuring that the coverage takes into account the entity’s primary risks, and recommending approval of the internal audit work plan by the board
- reviewing all internal audit reports, providing advice to the board on major concerns identified in those reports, and recommending action on significant matters raised—including identification and dissemination of information on good practice.’<sup>7</sup>

#### ‘3.2.3 Internal audit

The relationship between the audit committee and the managers of the internal audit function is central to enabling the audit committee to meet its responsibilities. The internal audit function supports the board in discharging its duties and requirements under the PGPA Act. The relationship between internal audit and the audit committee should be effective in supporting the audit committee’s functions. It may be of a value to invite the head of internal audit to attend some audit committee meetings in an advisory capacity.’<sup>8</sup>

In addition, the Department of Finance’s RMG 126 *Government Business Enterprises*, provides requirements and guidance. <sup>9</sup>

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<sup>3</sup> ibid

<sup>4</sup> Ibid p.11

<sup>5</sup> Ibid p.19

<sup>6</sup> Ibid p.20

<sup>7</sup> Ibid pp.20-21

<sup>8</sup> Ibid p.27

<sup>9</sup> [Government Business Enterprises \(GBEs\) \(RMG 126\) | Department of Finance](#)

- 2.2 Boards have ultimate responsibility for the performance of the GBE, and are fully accountable to Shareholder Ministers. Boards are expected to implement effective governance frameworks to support their role and responsibilities, and report on their implementation in the Annual Report.<sup>10</sup>
- 3.1 GBEs are expected to detail in their Annual Report key governance practices. This information can be modelled against the ASX Corporate Governance Principles and Recommendations and may include, but is not limited to:
- a. board committees of the company and their main responsibilities
  - b. education and performance review processes for directors
  - c. ethics and risk management processes.<sup>11</sup>

### **Keeping Shareholder Ministers Informed**

- 3.2 Notification requirements are contained in the PGPA Act for both entity (section 19) and company (section 91) GBEs.
- 3.3 In accordance with the PGPA Act, the board of an entity GBE or the directors of a company GBE must keep Shareholder Ministers informed of the activities of the GBE and its subsidiaries, and follow a disclosure principle which is similar to the continuous disclosure requirements of the ASX Listing Rules.
- a. If a GBE becomes aware of any information that may have a material effect on its value and/or performance, that information must be provided immediately to Shareholder Ministers. This may include significant changes to the business environment and risks which may impact on the achievement of planned activities and financial projections such as revenue and dividends.<sup>12</sup>

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<sup>10</sup> Ibid p.8

<sup>11</sup> Ibid p.22

<sup>12</sup> Ibid p.24

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**Question 2:**

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**Senator REYNOLDS:** Can you take on notice, firstly, to provide a summary of what the requirements are for the relevant Commonwealth agencies and organisations, as you've just described? The second thing I want to ask you about is that in general, for government trading or government business entities, there is obviously the tension between making a profit and returning dividends to shareholders versus their public sector requirements and obligations. Do you have some observations about what is good practice in managing that tension between having to take perhaps very risky corporate behaviours that other companies might not take because they could break the law—and there also might be financial risks the company can't manage—whereas for government entities you still have the taxpayer to, in this case, fund your billions of dollars of potential liabilities? What is the practice in this sort of situation?

**Ms Jago:** Usually the minister would issue what is called a statement of expectations to each of those entities. That would set out the minister's expectation around how to balance those tensions and how much risk they would like an entity to take or not take. It's not uncommon for those statements of expectations to include statements that they must uphold all legal requirements and operate in a better practice way in regard to those matters. Each statement of expectations is tailored depending on the type of entity involved, but we do see that commonly across most government business enterprises.

**Senator REYNOLDS:** As the major shareholder in this case, being accountable a government minister, the minister and the department that reports to the minister, Commonwealth-wise, have significant responsibilities in that sense.

**Ms Jago:** Yes. The minister is the shareholder. The relevant department will assist the minister in undertaking those shareholder duties. There will be regular reporting from the government business enterprise through to the minister. In a lot of cases in the Commonwealth, there are actually two shareholder ministers—one being the finance minister, to deal with the PGPA financial aspects of it and the other being the policy minister, to deal with that aspect of the entity. Quite often, there are two shareholder ministers.

**Senator REYNOLDS:** Thank you, that is all. Can I just ask, Ms Jago, if you could take that one on notice, and, if there is anything else to flesh that out in terms of the responsibilities and the reporting framework, that would be very helpful.

**Answer:**

The Department of Finance's RMG 126 Government Business Enterprises sets out a GBE's public sector requirements and obligations.

- 1.1 'The mandate of a GBE will be considered by Shareholder Ministers as part of the annual corporate planning process. Shareholder Ministers will, in consultation with the GBE's board, provide further guidance on the purpose, role and limits on the activities of the GBE. This will be documented in the form of a Statement of Expectations or Commercial Freedoms Framework appropriate to the commercial activities, environment and risk profile of the GBE, having regard to the GBE's mandate as agreed by the government while ensuring adequate Shareholder Minister oversight. In addition, a Funding or Financing Agreement may be negotiated with a GBE to prescribe the terms and conditions associated with any funding or financing the government may provide to the GBE. The Shareholder Ministers will, where appropriate, periodically undertake a stand-alone review of the mandate.'<sup>1</sup>
- 3.1 'Notification requirements are contained in the PGPA Act for both entity (section 19) and company (section 91) GBEs.
- 3.2 In accordance with the PGPA Act, the board of an entity GBE or the directors of a company GBE must keep Shareholder Ministers informed of the activities of the GBE and its subsidiaries, and follow a disclosure principle which is similar to the continuous disclosure requirements of the ASX Listing Rules.
  - a. If a GBE becomes aware of any information that may have a material effect on its value and/or performance, that information must be provided immediately to Shareholder Ministers. This may include significant changes to the business environment and risks which may impact on the achievement of planned activities and financial projections such as revenue and dividends.
  - b. Directors must provide such other information in relation to the GBE's activities as Shareholder Ministers require, within the time limits set by the Shareholder Ministers.
  - c. Where there are two Shareholder Ministers, all correspondence and reports from GBEs must be sent to both Shareholder Ministers simultaneously. Whilst Shareholder Ministers will consult in relation to all correspondence, they may decide that, in relation to some matters, one of the Shareholder Ministers will correspond on behalf of both Shareholder Ministers.
  - d. Shareholder Ministers may consult with the Prime Minister and/or other Ministers about any material matter affecting the value of the GBE and in doing so may provide copies of Corporate Plans, progress reports and correspondence on other major matters to the Prime Minister and/or other Ministers for possible comment.'<sup>2</sup>

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<sup>1</sup> [Government Business Enterprises \(GBEs\) \(RMG 126\) | Department of Finance](#) p.8

<sup>2</sup> Ibid p.24

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**Question 3:**

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**CHAIR:** When we have an audit report and then a subsequent audit report and there is such a significant deterioration in the compliance requirements, what are some of the internal or external causes for such a significant deterioration?

**Ms Jago:** That's a really hard question, because it depends on the circumstances. It could be that the risk settings right from the beginning weren't actually right, and therefore the controls the entity has put in place aren't sufficient to address the issue. It could be that they did actually design good controls, but the way they've been implemented isn't working. It could be that that should all be working okay, but the capability of the people undertaking the work is deficient. Sometimes, there could be systems issues, where a system has been set up to help with implementing those controls and there's been an error in how that's been set up. So it's a hard question to answer generally, because we see a lot of different reasons for that kind of thing happening.

**CHAIR:** Perhaps on notice you could think about that a little more. I'd be interested in understanding the difference between those internal considerations, which I think you've identified, and whether or not there could be some external considerations or a change of context externally that has influenced or impacted that internal audit. It may well be, 'No, Senator, external matters are immune or are not likely to because of the way the audit is constructed.'

**Answer:**

When successive audit reports indicate a significant deterioration in compliance, the internal or external causes could include:

- **Risk settings:** risk assessments and treatments might not have been identified appropriately, and therefore the controls the entity has put in place are not sufficient to address the issue. In terms of external factors, there might have been changes in the environment so risk settings were incorrect or rules might have changed and the entity did not update their risk assessment or controls commensurately.
- **Internal controls:** the entity may have designed appropriate controls, but the way they have been implemented is not effective.

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- **Capability:** risk assessments/treatments and internal controls might be implemented effectively, but the capability of the people undertaking the work is deficient.
- **Systems:** there could be systems issues, where a system has been set up to help with implementing those controls and there has been an error in how it has been developed or implemented.

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**Question 4:**

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**CHAIR:** Yes. 'Interrogation' is the word I was looking for. Thank you very much for that. How different or how similar are those public governance standards that operate across the Commonwealth and state and territory governments?

**Ms Jago:** I don't know that I can answer that. Sorry, Chair. I haven't done an analysis across all of them to see how similar or different they are. I can't imagine they are significantly different, but I haven't done that analysis.

**CHAIR:** Perhaps, on notice, you could let the committee know—

**Ms Jago:** We'll see if we can find something.

**CHAIR:** I don't need the detail, but I'm curious to know if they are highly comparable or if they are highly differentiated. I would suspect—I won't put words in your mouth; I'm interested in whether there is a high level of uniformity, because I would hope that all the jurisdictions are moving forward in a constant process of continuous improvement.

**Answer:**

The question of how different or similar are public governance standards that operate across the Commonwealth and state and territory governments is not a topic that the ANAO has analysed, and it is likely that the Department of Finance would be better placed to answer such a question.

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**Question 5:**

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**CHAIR:** I don't need the detail, but I'm curious to know if they are highly comparable or if they are highly differentiated. I would suspect—I won't put words in your mouth; I'm interested in whether there is a high level of uniformity, because I would hope that all the jurisdictions are moving forward in a constant process of continuous improvement.

This is a little bit out of sphere, but you don't have to answer, or you can take it on notice: in your observation, to what extent has the royal commission into banking changed or deepened the scope of work that auditors do for audited entities, particularly in the banking and financial sector?

**Ms Jago:** We might take that one on notice and come back to you, to give you a more fulsome answer. I can say that, in my experience, it has made auditors more conscious of calling out compliance issues that they see and making sure that they are brought to the attention of the relevant people within an entity. But, in terms of the level of actual audit work being done, I might come back to you on notice.

**Answer:**

ANAO performance audits have reported on the relevance of the 2019 Hayne Royal Commission on the governance of public sector entities:

- *Effectiveness of Board Governance at Old Parliament House* with regard to information going to boards and its effective use, and culture, governance and remuneration. The Commissioner challenged governance boards to actively discharge their core functions, including the strategic oversight of non-financial risks such as compliance risk, conduct risk and regulatory risk. The APRA Prudential Inquiry and Hayne Royal Commission highlighted the criticality of effective board governance, corporate culture and the interplay of the 'hard' and 'soft' attributes of governance, and the report recommended

that there would be merit in Finance issuing guidance which has regard to the key insights and messages of those inquiries directed to accountable authorities.<sup>1 2</sup>

- *Probity Management in Financial Regulators – Australian Security and Investments Commission* with regard to the establishment of the Financial Regulator Assessment Authority (whose role is to assess and report on the effectiveness and capability of ASIC and the Australian Prudential Regulation Authority) and acknowledgment of regulatory capture risk.<sup>3</sup>

Auditor-General Report No. 9 2023–24 *Audits of the Financial Statements of Australian Government Entities for the Period Ended 30 June 2023* reported that the implementation of revised auditing standard ASA 315 *Identifying and Assessing the Risks of Material Misstatement* (ASA 315) has resulted in audits placing greater focus on entities' processes and controls around governance, as well as IT risk and control environments. This increased focus has resulted in the identification of an increased number of insights, as well as areas of weakness in these areas.

The strengthened focus of the ANAO's audits on entities' processes and controls around governance included the examination and evaluation of: whether management, with oversight of those charged with governance, has created and maintained a culture of ethical behaviour; whether the entity's risk assessment process is appropriate to the entity's circumstances; and whether the entity's process for monitoring the system of internal control is appropriate. The ANAO raised a number of findings relating to governance matters, including in relation to a few entities failing to appropriately assess and report the impact of relevant legal matters in their financial statements. This internal control weakness increases the risk that not all matters that affect the financial statements are captured and reported appropriately.

There has been an increase in the number of audit findings identified relating to the IT control environment following the ANAO's implementation of the revised ASA 315. This is partly due to some systems becoming in-scope as a result of the revisions in the standard. The findings identified included deficiencies in privileged user access processes and user termination controls.<sup>4</sup>

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<sup>1</sup> Auditor-General Report No.34 2018–19 *Effectiveness of Board Governance at Old Parliament House* [Auditor-General Report 2018-2019 34.pdf \(anao.gov.au\)](#) pp.18-21

<sup>2</sup> This recommendation was implemented in November 2019, see [Lessons learned from the Banking Royal Commission.pdf \(finance.gov.au\)](#)

<sup>3</sup> Auditor-General Report No.36 2022–23 *Probity Management in Financial Regulators – Australian Security and Investments Commission* [Auditor-General Report 2022-23 36.pdf \(anao.gov.au\)](#) p.24 and p.31

<sup>4</sup> Auditor-General Report No.9 2023–24 *Audits of the Financial Statements of Australian Government Entities for the Period Ended 30 June 2023* [Auditor-General Report 2023-24 9.pdf \(anao.gov.au\)](#) p.105

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**Question 6:**

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**CHAIR:** There was a recent report which talked about rotation of committee members. Rather than mandating time periods or tenure for committee members, it did point to the need to have a rotation policy. That's correct, isn't it? What was that report?

**Ms Jago:** I would have to check and come back to you on notice. I can't remember off the top of my head, sorry.

**Answer:**

The 2018 Independent Review into the operation of the *Public Governance, Performance and Accountability Act 2013 and Rule* recommended that accountable authorities 'establish an audit committee membership rotation policy, with maximum appointment terms to ensure regular rotation of committee membership'.<sup>1</sup> Finance guidance indicates that the Finance Secretary wrote to all accountable authorities in August 2019 drawing their attention to this recommendation.<sup>2</sup> This Review and guidance were referred to in Auditor-General Report No.29 2022–23 *Governance of the Anindilyakwa Land Council*.<sup>3</sup>

Prior to that, Auditor-General Report No. 32 of 2021–22 *Interim Report on Key Financial Controls of Major Entities* discussed audit committee membership, reporting and charter requirements.<sup>4</sup>

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<sup>1</sup> E Alexander and D Thodey, *Independent Review into the operation of the Public Governance Performance and Accountability Act and Rule* [Internet], Department of Finance, 2018, p. 29, available from [https://www.finance.gov.au/sites/default/files/2019-08/PGPA\\_Independent\\_Review\\_-\\_Final\\_Report.pdf](https://www.finance.gov.au/sites/default/files/2019-08/PGPA_Independent_Review_-_Final_Report.pdf)

<sup>2</sup> Department of Finance, *Resource Management Guide 202 - A guide for corporate Commonwealth entities on the role of audit committees*, September 2021, p. 24

<sup>3</sup> Auditor-General Report No.29 2022–23 *Governance of the Anindilyakwa Land Council* [Governance of the Anindilyakwa Land Council | Australian National Audit Office \(ANAO\)](#) paragraph 4.75

<sup>4</sup> Auditor-General Report No.32 2021–22 [Interim Report on Key Financial Controls of Major Entities | Australian National Audit Office \(ANAO\)](#) paragraphs 1.26 to 1.54