



Australian Government

Department of Finance

**Rosemary Huxtable PSM
Secretary**

Our Ref: IS21-000002

Committee Secretary
Senate Finance and Public Administration Committees
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee Secretary

In response to your invitation of 16 December 2020, please find attached a submission by the Department of Finance (Finance) to the *Inquiry into the planning, construction and management of the Western Sydney Airport project*.

The submission addresses Finance's role in the delivery of Western Sydney International (Nancy-Bird Walton) Airport, as well as the role and performance of, and governance arrangements for, WSA Co Limited. Finance understands that other matters in the Inquiry's Terms of Reference will be addressed by the Department of Infrastructure, Transport, Regional Development and Communications and WSA Co Limited.

Thank you for the opportunity to provide this submission to the Committee. I trust this information will assist your Inquiry.

Yours sincerely

Rosemary Huxtable
Secretary

(8) February 2021

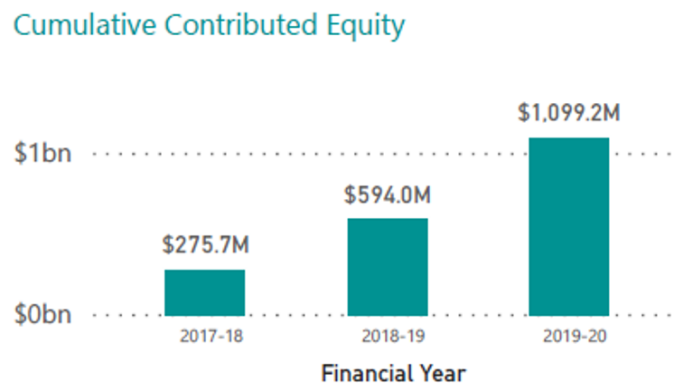
Introduction

The delivery of Western Sydney International (Nancy-Bird Walton) Airport (WSI) is a unique opportunity to build national economic infrastructure with real and lasting benefits for Australia. The new airport in Western Sydney will be a catalyst for jobs and economic growth in the region, creating around 28,000 direct and indirect jobs in the region by the early 2030s.¹

As a wholly-owned Commonwealth Company, it is expected that WSA Co Limited (WSA Co) operates in a commercial manner at arm's length from Government, with the Board of WSA Co ultimately responsible for the performance of the company. WSA Co is accountable to the Government as sole shareholder for its performance in relation to the delivery of WSI.

WSA Co has flexibility and discretion in its operational and commercial decisions, within the parameters of the *Corporations Act 2001* (the Corporations Act), the *Public Governance, Performance and Accountability Act 2013* (the PGPA Act), associated subordinate legislation, the *Resource Management Guide (RMG) 126: Commonwealth Government Business Enterprises - Governance and Oversight Guidelines* (GBE guidelines) and the Government's policy objectives.

WSA Co continues to progress delivery of WSI for completion by the end of 2026. As at 30 June 2020, WSA had drawn down \$1.1 billion of the Government's \$5.3 billion equity commitment, including \$505.1 million in the 2019-20 financial year.²



In 2019-20, WSA Co achieved four of its five Key Performance Indicators relating to safety, delivery, environmental performance, and financial performance. The community engagement indicator was 0.6 per cent below the target of 66 per cent. Achievement of this target was hampered by the lack of face to face engagement opportunities during the COVID-19 pandemic.³

¹ WSA Co Statement of Expectations, page 1

https://www.westernsydneyairport.gov.au/sites/default/files/WSACo_Statement_of_Expectations.pdf

² Page 73, WSA Co 2019-20 Annual Report https://westernsydney.com.au/sites/default/files/2020-10/WSA%20Annual%20Report_2020.pdf

³ Page 43, WSA Co 2019-20 Annual Report https://westernsydney.com.au/sites/default/files/2020-10/WSA%20Annual%20Report_2020.pdf

Role of the Department of Finance

Consistent with the Administrative Arrangements Order (AAO) of 1 February 2020, the Department of Finance (Finance) provides support to the Minister for Finance on a range of matters including Shareholder advice on Government Business Enterprises (GBEs), Budget policy advice and process, and the Commonwealth property policy framework.

- Finance supports the Minister for Finance in his capacity as Shareholder Minister of nine GBEs, by providing sound strategic advice and analysis on GBE operations, actioning the Ministers' decisions including communicating objectives, and implementing a robust governance framework.
- Consistent with the Budget Process Operational Rules, the costs of expense, capital and non-taxation revenue policy proposals are agreed with Finance prior to Government consideration.
- Finance is also responsible for the Commonwealth Property Management Framework, including administering the *Lands Acquisition Act 1989*.

Establishment of WSA Co

Long term demand forecasts for aviation services in the Sydney region indicated that by 2027, no new services could be accommodated at Sydney's Kingsford Smith Airport (KSA).⁴

Badgerys Creek was formally designated as the site for the Western Sydney Airport following a decision of Government on 15 April 2014, recognising the site's proximity to predicted aviation demand and to act as a major catalyst for increased investment, infrastructure and jobs in the fast-growing Western Sydney region.

Consistent with demand forecasts and following strategic and economic evaluation, on 21 October 2016, Infrastructure Australia rated the Western Sydney Airport initiative as a High Priority Project on the [Infrastructure Priority List](#).

On 2 May 2017, the Australian Government announced it would establish WSA Co as a GBE, to build and operate WSI, following a decision by Sydney Airport Group to decline the opportunity to build and operate the second Sydney airport.⁵

In the 2017-18 Budget, the Government committed \$5.3 billion in equity to WSA Co to deliver WSI by the end of 2026.

⁴ [2012 Joint Study on aviation capacity in the Sydney region](#)

⁵ Under the sale agreement of KSA in 2002, Southern Cross Airports Corporation (SCAC), as the purchaser, acquired a Right of First Refusal on the development of a second major airport in the Sydney basin (within 100 kilometres). Following selection of the Badgerys Creek site, the Australian Government undertook extensive consultation with SCAC, culminating in the issuance of an unfinanced Notice of Intention in December 2016 that offered the opportunity to develop Western Sydney Airport without any Government financing. After considering the offer, Sydney Airport Group declined the opportunity to build and operate the airport.

Company Overview

WSA Co is an unlisted public company, limited by shares and was incorporated under the Corporations Act on 7 August 2017.⁶ WSA Co is a Commonwealth Company for the purposes of the PGPA Act and has been prescribed as a GBE under the *Public Governance, Performance and Accountability Amendment (Government Business Enterprise) Rules 2017*.

WSA Co is wholly owned by the Commonwealth, with the Commonwealth's shareholding overseen jointly by the Minister for Communications, Urban Infrastructure, Cities and the Arts and the Minister for Finance (Shareholder Ministers). The Department of Infrastructure, Transport, Regional Development and Communications (Infrastructure) and Finance (together referred to as Shareholder Departments) support the Shareholder Ministers in their oversight of WSA Co.

GBE Governance Framework

As a wholly-owned Commonwealth company, WSA Co is required to adhere to the governance and reporting requirements outlined in the PGPA Act and the Corporations Act. The PGPA Act outlines that the WSA Co Board has a duty to keep Shareholder Ministers informed of WSA Co's activities which complements and extends beyond Directors' duties outlined in the Corporations Act.

To ensure compliance with these legislative governance and reporting requirements, Finance has issued the GBE guidelines, which provide further guidance on board and corporate governance, financial governance, planning and reporting.

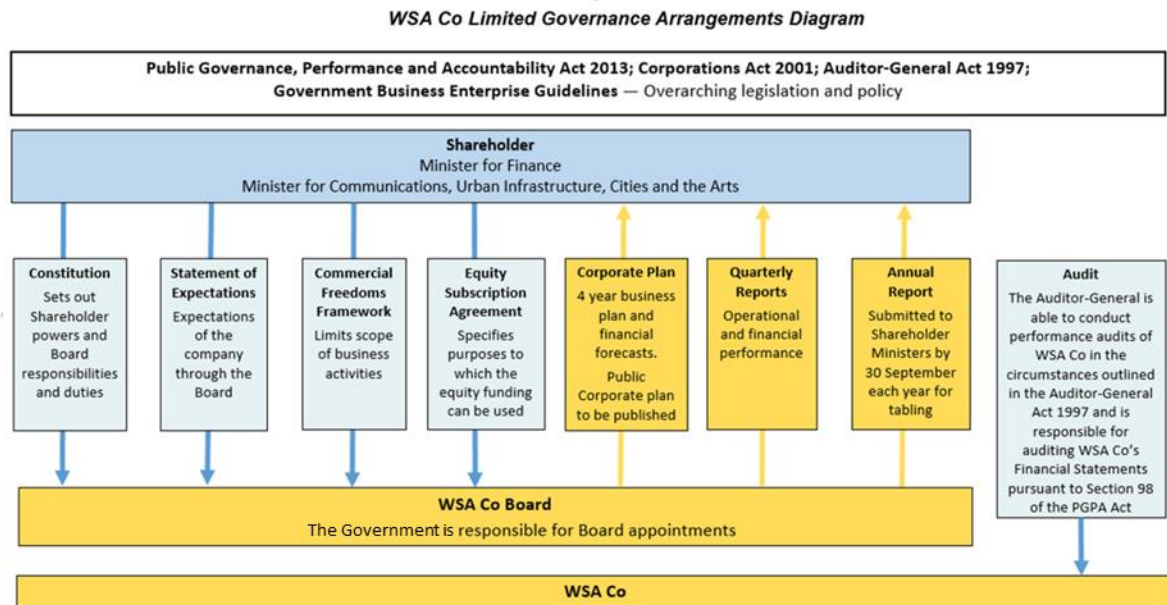
Shareholder Ministers' oversight of WSA Co is also achieved through expectations and requirements set out in governance documents established between Shareholder Ministers and the company, including:

- a [Statement of Expectations](#) which details Shareholder Ministers' expectations of WSA Co in its delivery of WSI and other obligations – the Statement of Expectations is available publicly;
- an Equity Subscription Agreement, which details the Commonwealth's provision of equity financing to WSA Co and the terms and conditions on which the financing is provided;
- a Commercial Freedoms Framework, which provides guidance and limits on WSA Co's activities to ensure they are in line with the expectations of Shareholder Ministers, with regard to the Company's core business functions as outlined as the 'objects' of WSA Co in the Company's constitution; and
- a Project Deed, which defines the scope of the airport WSA Co is required to deliver and provides clarity on the roles and responsibilities between WSA Co and the Commonwealth.

The Equity Subscription Agreement, Commercial Freedoms Framework and Project Deed are commercially sensitive and are therefore not publicly available.

⁶ <https://www.directory.gov.au/portfolios/infrastructure-transport-regional-development-and-communications/wsa-co-limited>

The below diagram outlines the governance framework and key governance documents.



Reporting to the Commonwealth

WSA Co is required to prepare routine reports including a confidential Corporate Plan, a public facing Corporate Plan (also known as a Statement of Corporate Intent), Quarterly Reports and an Annual Report. Together, these documents create a framework in which targets are set and progress is reported, facilitating Shareholder Ministers' oversight of WSA Co.

PGPA Act and Corporations Act obligations

Section 95 of the PGPA Act sets requirements for Corporate Plans and Statements of Corporate Intent. WSA Co's Corporate Plan is its primary annual planning document. The Corporate Plan sets out the company's purpose, operating context, the key activities it intends to pursue and how performance will be measured and assessed over the next four reporting periods. Noting the commercial sensitivity of these matters, WSA Co publishes a summarised version.⁷

Confidential quarterly reports are provided by the Chair to Shareholder Ministers and track WSA Co's progress in meeting the objectives established in the Corporate Plan. Quarterly Reports contain analysis of WSA Co's quarterly and year-to-date performance against Corporate Plan forecasts, financial statements, updates on emerging issues and their potential consequences for performance, and any material changes to identified risks with detailed management strategies.

The Annual Report concludes the annual reporting cycle, reflecting WSA Co's performance against the financial and non-financial expectations outlined in the Corporate Plan for that financial year. As a Commonwealth Company, *RMG 137: Annual reports for Commonwealth companies* requires WSA Co's Annual Report to include information on the main corporate

⁷ WSA Co's 2020-21 Statement of Corporate Intent: <https://westernsydney.com.au/sites/default/files/2020-08/WSA%20Corp%20Plan%202020-21.pdf>

governance practices in place during the financial year. Pursuant to Section 98 of the PGPA Act, the Auditor-General is responsible for auditing WSA Co's Financial Statements. WSA Co's Annual Report is tabled in Parliament and the Financial Report is lodged with the Australian Securities and Investments Commission.

In addition to routine reporting requirements, WSA Co must also keep Shareholder Ministers informed of its activities pursuant to Section 91 of the PGPA Act, and follow a disclosure principle which is similar to the continuous disclosure requirements of the [ASX Listing Rules](#). If an urgent initiative arises which is unable to wait for inclusion in the routine planning cycle, it is to be treated as a notifiable significant issue.

Airport Progress

Major earthworks commenced in March 2020 and are now the primary activity occurring on-site, with the contract valued at \$644 million awarded to Lendlease CPB Joint Venture (a joint venture between Lendlease Building and CPB Contractors) in 2019. These earthworks are required to level the site ahead of terminal, runway and supporting infrastructure construction. In May 2020, WSA Co completed the early earthworks project, moving about 1.8 million cubic metres of earth covering about 6 per cent of the site⁸ and achieving site-wide remediation of asbestos contamination.⁹

In addition to major earthworks, WSA Co has awarded contracts for a master architect, independent certifier, terminal master engineer, landside master engineer and master technologist.¹⁰ WSA Co has also contracted Bechtel Corporation as its delivery partner and project manager.

Procurements are underway for construction of the airport terminal, pavements and landside facilities. In September 2020, WSA Co announced that it had selected Lendlease CPB Joint Venture, Multiplex Constructions and Watpac Construction to tender for construction of the terminal, due to commence by the end of 2021. The terminal construction contract is expected to be awarded in mid-2021.

Audit of Western Sydney Airport Procurement Activities

In addition to Shareholder oversight, the Auditor-General is able to conduct performance audits of WSA Co in the circumstances outlined in the *Auditor-General Act 1997*.

On 4 December 2019, the ANAO published a performance audit report titled "Western Sydney Airport Procurement Activities".¹¹ The report concluded that value for money outcomes were, in large part, demonstrated. It further concluded that WSA Co's procurement

⁸ Page 11, WSA Co 2019-20 Annual Report https://westernsydney.com.au/sites/default/files/2020-10/WSA%20Annual%20Report_2020.pdf

⁹ Page 19, WSA Co 2019-20 Annual Report https://westernsydney.com.au/sites/default/files/2020-10/WSA%20Annual%20Report_2020.pdf

¹⁰ Page 35, WSA Co 2019-20 Annual Report https://westernsydney.com.au/sites/default/files/2020-10/WSA%20Annual%20Report_2020.pdf

¹¹ Western Sydney Airport Procurement Activities: <https://www.anao.gov.au/work/performance-audit/western-sydney-airport-procurement-activities>

activities have mostly been competitive and, particularly for the higher value procurements examined, conducted through open approaches to the market.¹²

While no recommendations were directed at WSA Co, WSA Co's response to the report noted its commitment to continuous improvement and advised that opportunities to improve record keeping and transparency of procurement outcomes had all been addressed.

The report contained two recommendations for Finance, specifically recommending that:

- (a) To assist Government Business Enterprises obtain value for money from their procurement activities, the Department of Finance take steps to better enable those Enterprises to take advantage of coordinated and cooperative procurements, such as panel arrangements; and
- (b) The Department of Finance require Government Business Enterprises to use the AusTender website to publicise procurement activities and report procurement results.

In response to these audit findings, Finance agreed to provide further assistance to GBEs to identify panel opportunities. Finance wrote to all GBEs in March 2020 to confirm that Commonwealth coordinated procurement panels are open to Commonwealth entities, including GBEs. This correspondence included a list of the available panels and a commitment to formally notify GBEs when new panels are established by Finance.

Finance noted the second recommendation. As GBE boards have ultimate responsibility for the performance of each GBE, they are expected to oversee the development of business strategies and day to day management policies, including procurement, having appropriate regard to the commercial operating environment of the GBE. Unlike Government departments and non-corporate Commonwealth entities that use AusTender, GBEs must operate commercially, flexibly and in competition with other businesses. GBEs aim to avoid actions that risk competitive disadvantage. The release of procurement related information may be commercially sensitive and could result in unreasonable commercial prejudice to the GBE.

However, GBEs may choose to undertake assessments of procurement related activities and publicly release some information where they conclude that such a release is consistent with GBE policies and appropriately balances commercial sensitivities with the public's interest in transparency.

Commonwealth Budget Framework

Finance supports the Government in preparing, delivering and managing the Australian Government Budget. To support Government decision making, Finance provides policy and financial advice on matters relating to expense and non-taxation revenue.

¹² The Commonwealth Procurement Rules (CPRs) govern the way in which non-corporate Commonwealth entities and prescribed corporate Commonwealth entities listed in Section 30 of the *Public Governance, Performance and Accountability Rule 2014* undertake Commonwealth procurements. However, GBEs are not bound by the CPRs as this would limit their ability to operate commercially, flexibly and in competition with other businesses. WSA Co's Board has ultimate responsibility for the company's performance and it is expected to oversee the development of day to day management policies, including for procurement, in a way that promotes the appropriate use of resources expected of a publicly-owned company.

Consistent with the Budget Process Operational Rules, the costs of expense, capital and non-taxation revenue policy proposals are agreed with Finance prior to Government consideration. Finance works with agencies to develop agreed costings and relies on entities to provide accurate costing information.

The agreed costs for Government measures are reflected in the Budget. Throughout the year, entities update their estimates of expenditure and revenue for the budget year and forward years. Estimates are generally updated three times a year and Finance validates and consolidates the estimates, ensuring accuracy and consistency with accounting standards.

Finance has worked with Infrastructure to develop agreed costings and provided advice to Government to assist in decision making on a range of new policy proposals for Western Sydney Airport and its complimentary infrastructure. Funding decisions of Government are published in the Budget Papers.

Commonwealth Property Management Framework

Finance is responsible for the Commonwealth Property Management Framework, including administering the *Lands Acquisition Act 1989* (LAA). The purpose of the LAA is to operationalise the head of power in Section 51(xxxi) of the Constitution that enables the Commonwealth to acquire land on just terms for a purpose for which it can make laws. As outlined in the Explanatory Memorandum, the act seeks to “strike a balance between the rights of property holders on the one hand and the legitimate need of society for land for public purposes and public works on the other”.

The LAA operates within the broader resource management framework. Entities are responsible for determining their requirements for land, negotiating potential acquisitions and ensuring that acquisitions comply with broader legislative obligations, including the requirements to ensure the proper use of public resources under the PGPA Act and to achieve value for money under the CPRs.

In January 2020 the Minister for Finance announced a review of the LAA to ensure it meets modern community expectations and is in line with current public administration practices.

Finance has provided broad procedural and process advice to Infrastructure and assisted with steps to meet the requirements of the LAA in regard to a number of property transactions for WSI.

The ANAO recently conducted a performance audit on the *Purchase of the ‘Leppington Triangle’ Land for the Future Development of Western Sydney Airport*, which occurred under the LAA. The ANAO did not make any findings, conclusions or recommendations about the LAA or Finance’s administration of the Act.

Conclusion

Recognising the scale and national significance of WSI, and the substantial investment by the Commonwealth, Shareholder Ministers have set a clear expectation that WSA Co is to undertake the procurement of goods and services to a high standard, to achieve value for money, and ensure appropriate financial and probity controls are in place. WSA Co is expected to maintain a high level of transparency, to give confidence to stakeholders in the integrity of WSA Co's procurement processes.

Finance thanks the committee for the opportunity to provide this submission and we trust this information will assist the Inquiry.