

The Commonwealth Financial Framework

- 2.1 As outlined in the Explanatory Memorandum of the Public Performance, Governance and Accountability Bill 2013, the Commonwealth financial framework underpins the use of money and resources within the Australian Government, and is an important feature of an accountable and transparent public sector.¹
- 2.2 This chapter provides a brief history of the financial framework and the ongoing role that the Joint Committee of Public Accounts and Audit (JCPAA) has played in its evolution, followed by background to the genesis of the Public Performance, Governance and Accountability Bill 2013. The final part of the chapter provides an overview of the high level features of the Bill drawn from the Explanatory Memorandum.

The history of the existing legislation – FMA Act and CAC Act

- 2.3 In April 1989 an inquiry of the Audit Office by the then Joint Committee of Public Accounts (JCPA) recommended that the *Audit Act 1901* be replaced with separate acts to deal with auditing and financial administration.²
- 2.4 The Committee's report was the result of an extensive twelve month inquiry, in which ten public hearings were conducted (with a total of 57 witnesses appearing), 47 submissions were received and comparative evidence was gathered about multiple international Auditors-General.

1 Explanatory Memorandum, Public Governance, Performance and Accountability Bill 2013 (PGPA Bill 2013), p. 3.

2 JCPA Report 296, *The Auditor General: Ally of the People and Parliament*, Canberra, 1989, p. 240.

- 2.5 The package of Bills was first introduced to the House of Representatives in June 1994 at which time it was referred to the JCPA for review.³ The package included the Auditor General Bill 1994, the FMA Bill 1994 and the CAC Bill 1994. The JCPA was initially asked to report its advice by 23 August 1994, however, due to the breadth and detail of evidence it received, the Committee was granted an extension to 22 September 1994. In conducting the inquiry the Committee received 66 submissions, conducted six public hearings and was also briefed on 27 July 1994 by the Comptroller and Auditor General of the UK.⁴
- 2.6 In its advisory report, the JCPA recommended a series of amendments to the CAC Bill 1994 and two minor changes to the FMA Bill 1994. These were reflected in Government amendments made in the House of Representatives before passing the Bills on 8 December 1994. However, the Bills lapsed as they did not pass both Houses in the same form before Parliament was prorogued for the 1996 Election.⁵
- 2.7 In October 1997, the following three Acts replaced the Audit Act (a similar package to that first introduced to the House of Representatives in 1994):
- *Auditor-General Act 1997* (which provided for the powers and functions of the Auditor-General)
 - *Financial Management and Accountability Act 1997* (FMA Act)
 - *Commonwealth Authorities and Companies Act 1997* (CAC Act)
- 2.8 Introducing the Acts to Parliament, the then Minister for Finance advised that the separate FMA and CAC Acts accounted for Commonwealth bodies having two different types of financial administration:
- ...Commonwealth bodies differ according to the basic legal financial status that each one has – namely, whether the body has the legal capacity, in its own right, to acquire ownership of money and other assets coming into its possession, or whether it acts only

3 The Hon Kim Beazley, Minister for Finance, FMA Bill Second Reading Speech, *House of Representatives Hansard*, 7 December 1994, p. 4148.

4 Joint Committee of Public Accounts, *Report 331, An Advisory Report on the Financial Management Bill 1994, the Commonwealth Authorities and Companies Bill 1994 and the Auditor-General Bill 1994, and on a Proposal to Establish an Audit Committee of Parliament*, Canberra, 1994, p. 1.

5 Department of the Parliamentary Library, *Bills Digest 109, 1996-97 Financial Management and Accountability Bill 1996*,
http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/BD9697/97bd109#top
 Accessed 27 May 2013; Department of the Parliamentary Library, *Bills Digest 108, 1996-97 Commonwealth Authorities and Companies Bill 1996*,
http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/BD9697/97bd108
 Accessed 27 May 2013.

as a financial and custodial agent for the Commonwealth, without acquiring separate legal ownership of such money and assets.⁶

- 2.9 Accordingly, the FMA Act pertains to Commonwealth bodies that do not acquire legal ownership of the money they raise and spend. This Act specifies the responsibilities and powers necessary for the efficient, effective and ethical use of the resources lawfully held by the Commonwealth.⁷
- 2.10 The CAC Act pertains to financially autonomous Commonwealth bodies that have legal ownership of money. The Act streamlined accountability requirements of Commonwealth authorities and companies by providing a single set of reporting and auditing requirements that replaced those in the individual enabling legislation and constitutions of these bodies.⁸
- 2.11 Both Acts were intended to clarify and strengthen transparency and accountability arrangements by introducing mechanisms that:
- placed responsibility directly on individual directors and chief executives of bodies as opposed to the bodies more broadly, and
 - increased the role of parliamentary control in decision making:
 - ⇒ The FMA Act introduced a new funding model in which all spending by Commonwealth agencies was classified as appropriation requiring tabling in parliament.
 - ⇒ The CAC Act defined the Finance Minister's Orders as disallowable instruments, creating an ongoing role for the parliament in determining the reporting obligations of directors of Commonwealth authorities.
- 2.12 In 2000 the JCPAA tabled Report 374: Review of the *Financial Management and Accountability Act 1997* and the *Commonwealth Authorities and Companies Act 1997*. The Committee found that in general the legislation had accommodated the new financial management framework and the needs of the public sector. The Committee made four recommendations aimed at improving consistency in terminology and ensuring reporting met the needs of Parliament.⁹

6 The Hon Kim Beazley, Minister for Finance, FMA Bill Second Reading Speech, *House of Representatives Hansard*, 7 December 1994, p. 4148.

7 Explanatory Memorandum, Financial Management and Accountability Bill 1996, pp. 1-2.

8 Explanatory Memorandum, Commonwealth Authorities and Companies Bill 1996, pp. 1-2.

9 A copy of Report 374 can be accessed at http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jcpaa/fma/contents.htm.

The Commonwealth Financial Accountability Review

- 2.13 In December 2010 the Minister for Finance and Deregulation announced that the Department of Finance and Deregulation (Finance) would undertake the Commonwealth Financial Accountability Review (CFAR). The review would be an opportunity to analyse the existing Commonwealth financial framework from first principles and develop a framework that had the flexibility and capability to meet the changing demands on government.¹⁰
- 2.14 Noting that the CFAR was the first major review of the Commonwealth financial framework since the establishment of the FMA Act and CAC Act, Finance outlined that the aim of the review was to ‘improve performance, accountability and risk management across government, though a framework that is simple, easy to use and valued by all stakeholders’.¹¹
- 2.15 Finance made extensive efforts to engage with stakeholders, including with ‘town hall’ type meetings, moderating a blog and requests for submissions to inform the review. Throughout this process the department maintained a regular dialogue with the JCPAA.
- 2.16 In March 2012, Finance released the CFAR Discussion Paper, *Is Less More? Towards Better Commonwealth Performance*. This first paper was generated to stimulate debate on the financial framework and help inform the development of options to be presented to the Government at a later stage.
- 2.17 In November 2012, Finance released the CFAR Position Paper: *Sharpening the Focus*. The position paper put forward options for a number of significant reforms to the public sector financial framework, most notably a suggestion to move from prescriptiveness and towards more principles-based legislation.

The draft Bill

- 2.18 According to Finance’s submission to the Committee and evidence provided to the Senate Finance and Public Administration Committee at the most recent Estimates hearing, consultation on the draft Bill started in

10 Senator the Hon Penny Wong, Minister for Finance and Deregulation, Speech at the Commonwealth Authorities & Companies Discussion Forum “Better Government”, National Portrait Gallery, Canberra, 8 December 2010

11 Department of Finance and Deregulation, CFAR Introduction, <<http://www.cfar.finance.gov.au>>, accessed 17 May 2013.

February 2013. The draft Bill was released to a core working group, which included the Auditor-General.¹²

- 2.19 Following several iterations, the draft Bill was then released in April to all the entities that Finance had met with and to all portfolio departments and agencies with a request to distribute to agencies within the portfolio. A full list of stakeholders included in Finance's consultation process is at Attachment E of their submission to the JCPAA.¹³ In an iterative process the draft Bill was refined in response to concerns raised by stakeholders.¹⁴
- 2.20 The Public Governance, Performance and Accountability Bill 2013 was then introduced into the House of Representatives on 16 May 2013.

About the Public Governance, Performance and Accountability Bill 2013

- 2.21 Stemming from the CFAR, the Public Governance, Performance and Accountability Bill 2013 is proposed to replace the FMA Act and the CAC Act with a single Act to govern the management of public resources and the performance of Commonwealth bodies.
- 2.22 According to the Explanatory Memorandum, the Bill will set the foundation for the implementation of the broad range of reforms coming out of the CFAR. These reforms are expected to result in:
- improved quality of information to Parliament to support its constitutional role in relation to Commonwealth expenditure;
 - a more mature approach to risk across the Commonwealth;
 - improved productivity and performance of the Commonwealth public sector with concomitant benefits for a broad range of stakeholders; and
 - reduced red tape within the Commonwealth and for partners who contribute to the delivery of Australian Government programs and services, including grant recipients.¹⁵
- 2.23 The Bill provides objects of the Act as follows:
- to establish a coherent system of governance and accountability across Commonwealth entities; and
 - to establish a performance framework across Commonwealth entities; and

12 Department of Finance and Deregulation, *Submission 9*, Attachment E; and Senate Finance and Public Administration Committee, *Senate Estimates Hansard*, 28 May 2013.

13 Department of Finance and Deregulation, *Submission 9*, Attachment E

14 Senate Finance and Public Administration Committee, *Senate Estimates Hansard*, 28 May 2013.

15 Explanatory Memorandum, Public Governance, Performance and Accountability Bill 2013 (PGPA Bill 2013), pp. 3–4.

- to require the Commonwealth and Commonwealth entities:
 - ⇒ to meet high standards of governance, performance and accountability; and
 - ⇒ to provide meaningful information to the Parliament and the public; and to use and manage public resources properly; and
 - ⇒ to work cooperatively with others to achieve common objectives, where practicable; and
- to require Commonwealth companies to meet high standards of accountability.¹⁶

Financial Impact

- 2.24 While there are no explicit financial implications associated with the Bill, the Explanatory Memorandum suggests that there are potential gains through improved operational efficiencies for Commonwealth entities.
- 2.25 The Explanatory Memorandum notes the example of the Australian Securities and Investments Commission's (ASIC) experience transferring from the CAC Act to the FMA Act to demonstrate the current inefficiencies due to the complex regulatory burden placed on FMA Act agencies, regardless of their size.¹⁷

Issues to Address in the Existing Commonwealth Financial Framework

- 2.26 According to the Explanatory Memorandum, this Bill seeks to lay the foundation to address a number of issues that have emerged since the bifurcated model was introduced in 1998, including:
- Fragmentation and increased complexity with the FMA and CAC Acts as a result of incremental amendments made to 'maintain their serviceability and to respond to emerging issues'.
 - The distinction between entities under the FMA Act and entities under the CAC Act is overstated, and confuses operational independence with ownership. Regardless of the Act the body operates under, the money and property held are public resources.
 - A choice between the two basic governance models does not provide for the administrative and legal diversity across Commonwealth entities.¹⁸

16 PGPA Bill 2013, p. 4.

17 Explanatory Memorandum, PGPA Bill 2013, p. 1; ASIC's submission to the CFAR discussion paper provides further detail in relation to its experience transitioning between the Acts. A copy is available at www.cfar.finance.gov.au.

18 Explanatory Memorandum, PGPA Bill 2013, pp. 3–4.

- 2.27 In addition to the primary issues outlined above, the following matters have also been raised:
- Some provisions have resulted in regulatory costs disproportional to the materiality of the issues they seek to address (e.g. drawing rights and FMA Regulation 9)
 - The majority of Commonwealth entities, regardless of the Act they work under, receive all or most of their funding from the Parliament through the appropriations process
 - Independence is not defined by the Act a body exists under, with a number of FMA Act agencies having significant statutory independence (e.g. the Australian National Audit Office)
 - Greater clarity is needed in the way that employment arrangements interact with governance arrangements
 - While there is a strong focus on financial accountability, little consideration is given to the achievement of objectives and purposes or the quality of performance monitoring and evaluation.
 - There is limited focus on a whole of Australian Government perspective.¹⁹

Key elements of the PGPA Bill

- 2.28 According to the Explanatory Memorandum, the proposed reforms are based on four guiding principles, that:
- government should operate as a coherent whole;
 - uniform 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.²⁰

Government as a whole

- 2.29 The Bill aims to provide a consistent approach to the governance, performance and accountability of the Commonwealth, at the level of primary law. However, it is noted that:
- exceptions will be made to accommodate particular mandates contained in enabling legislation; and
 - the Bill will explicitly exempt the High Court of Australia and the Future Fund Board of Guardians (though not the Future Fund Management Agency) from its ambit.²¹

19 Explanatory Memorandum, PGPA Bill 2013, p. 4.

20 Explanatory Memorandum, PGPA Bill 2013, p. 2.

- 2.30 The Bill creates two primary categories of Commonwealth body:
- Commonwealth companies
 - Commonwealth entities
 - ⇒ non corporate Commonwealth entities
 - ⇒ corporate Commonwealth entities (legally separate from Commonwealth)
- 2.31 All Commonwealth entities will be required to keep Ministers and the Parliament informed, and the Commonwealth Auditor-General will continue to be the auditor. There will be a uniform set of duties on all accountable authorities and officials; and defined responsibilities for all Ministers when they approve proposed expenditure proposals.²²

Independence of entities

- 2.32 According to the Explanatory Memorandum, the Bill does not seek to alter the operational independence of entities as set out in their enabling legislation. The Explanatory Memorandum provides the following example:

... the ABC has a number of current exemptions from the CAC Act and, with limited exceptions, is not subject to direction by the Government (subsection 8(1) of the ABC Act). Various provisions in the SBS Act (sections 11, 12 and 13) maintain the independence and integrity of Special Broadcasting Service (SBS) in relation to the content and scheduling of programs. Other arrangements go to the independence of their respective Boards of the ABC and SBS and appointment of their Managing Directors. ... It is not intended that the ABC's or SBS's independence will be compromised by the PGPA Bill.²³

Uniform duties

- 2.33 In an attempt to align the Commonwealth sector with the private and not-for-profit sectors, the duties of officials within the Bill are based on the fiduciary duties contained in the *Corporations Act 2001*. A number of the duties imposed on officials also align with requirements under the *Public Service Act 1999* Code of Conduct.²⁴

21 Explanatory Memorandum, PGPA Bill 2013, p. 5.

22 Explanatory Memorandum, PGPA Bill 2013, p. 6.

23 Explanatory Memorandum, PGPA Bill 2013, p. 6.

24 Explanatory Memorandum, PGPA Bill 2013, p. 7.

Public resources

- 2.34 The Bill seeks to clarify the concept of public resources through the introduction of a single definition that applies to all money and all property held by Commonwealth entities.²⁵

Planning and evaluation

- 2.35 The Bill aims to establish the means to provide ‘a clear cycle of planning, measuring, evaluating and reporting of results to the Parliament, Ministers and the public’ by:
- explicitly recognising the high-level stages of the resource management cycle;
 - recognising the value of clearly articulating key priorities and objectives;
 - requiring every Commonwealth entity to develop corporate plans;
 - introducing a framework for measuring and assessing performance, including requiring effective monitoring and evaluation; and
 - maintaining the rigorous audit arrangements currently in place.²⁶
- 2.36 The Department of Finance and Deregulation indicates it will ‘play a stronger role in encouraging a more systematic approach to performance monitoring and evaluation’.²⁷

Risk management and earned autonomy

- 2.37 The Bill includes ‘an express duty on an accountable authority to ensure that the entity for which it is responsible has appropriate systems of risk oversight and management’.²⁸
- 2.38 The provision to allow the Finance Minister to prescribe matters or make different provisions in relation to particular Commonwealth entities or classes of entities underpins the proposed system of earned autonomy. Rules to the Bill, developed in consultation with Commonwealth entities, are as the proposed mechanism to operationalize earned autonomy – ‘[t]he nature and extent of oversight and regulatory intervention exercised will depend on an entity’s risk profile and performance’.²⁹

25 Explanatory Memorandum, PGPA Bill 2013, p. 7.

26 Explanatory Memorandum, PGPA Bill 2013, p. 7.

27 Explanatory Memorandum, PGPA Bill 2013, p. 8.

28 Explanatory Memorandum, PGPA Bill 2013, p. 8.

29 Explanatory Memorandum, PGPA Bill 2013, p. 8.

Cooperation and partnering

- 2.39 The Bill places explicit obligations on accountable authorities to encourage officials within their entities to cooperate with partners, and to consider the effect of compliance burdens being placed on partners when dealing with them.³⁰

Accountability

- 2.40 The Bill includes provisions for performance monitoring, evaluation and reporting, including annual reporting. In regard to annual reporting the Bill provides for an increased role for the JCPAA 'approving the proposed annual report requirements for all Commonwealth entities'.³¹

Penalties and sanctions

- 2.41 Apart from an exception relating to removal of an accountable authority in the case of breach of duties, 'the Bill does not contain specific penalties and sanctions. This is to avoid duplication of provisions already existing under other legislation or legal arrangements'.³²

Simplification

- 2.42 By moving away from prescriptive legislation to a principles-based model, the Bill aims to remove or modify undue and unnecessary regulation or administrative requirements, and instead focus on areas of high risk. However, it is noted that 'the framework will require reporting obligations to be periodically reviewed to ensure they continue to meet their intended objectives efficiently and effectively'.³³
- 2.43 Suggested future directions include 'options to streamline financial reporting requirements for Commonwealth entities, including through the introduction of tiered or differential financial reporting arrangements'.³⁴

Rules

- 2.44 As is the case with the existing FMA and CAC Acts, the Bill has provisions for the Finance Minister to issue more detailed rules, including allowing for modifications of framework requirements for intelligence, security and law enforcement agencies.

30 Explanatory Memorandum, PGPA Bill 2013, p. 9.

31 Explanatory Memorandum, PGPA Bill 2013, p. 9.

32 Explanatory Memorandum, PGPA Bill 2013, p. 9.

33 Explanatory Memorandum, PGPA Bill 2013, p. 10.

34 Explanatory Memorandum, PGPA Bill 2013, pp. 9-10.

- 2.45 The Bill makes explicit the areas in which, and in some parts the extent to which, the Finance Minister can make rules.
- 2.46 In addition to assuring that the rules will be developed in consultation with Commonwealth bodies and remain disallowable instruments, the Explanatory Memorandum also suggests that the JCPAA will have a role in the development and approval of the rules.³⁵

Consequential amendments

- 2.47 The Explanatory Memorandum provides assurance that 'the enabling legislation of all statutory authorities, including the ABC and SBS, will be updated through consequential amendments to allow for a continuation of existing exemptions from specific financial framework requirements that relate to them'.³⁶

35 Explanatory Memorandum, PGPA Bill 2013, p. 10.

36 Explanatory Memorandum, PGPA Bill 2013, p. 4.

