

# Chapter 1

## Public Governance, Performance and Accountability Amendment Bill 2014

### Referral

1.1 On 15 May 2014 the Senate passed the following resolution:

To ensure appropriate consideration of time critical bills by Senate committees, the provisions of all bills introduced into the House of Representatives after 15 May 2014 and up to and including 5 June 2014 that contain substantive provisions commencing on or before 1 July 2014 (together with the provisions of any related bill) are referred to committees for inquiry and report by 16 June 2014.<sup>1</sup>

1.2 On 29 May 2014, the Public Governance, Performance and Accountability Amendment Bill 2014 (the PGPA Amendment Bill) was introduced into the House of Representatives by the Hon Michael McCormack MP, Parliamentary Secretary to the Minister for Finance.<sup>2</sup>

1.3 Accordingly, following its introduction into the House of Representatives, the provisions of the PGPA Amendment Bill were referred to the Senate Finance and Public Administration Legislation Committee (the committee) on 29 May 2014 for inquiry and report by 16 June 2014.

### Purpose of the bill

1.4 From 1 July 2014, the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) replaces the *Financial Management and Accountability Act 1997* (FMA Act) and the *Commonwealth Authorities and Companies Act 1997* (CAC Act) as the primary financial management legislation of the Commonwealth. According to the second reading speech, the PGPA Amendment Bill seeks to:

[A]mend the Public Governance, Performance and Accountability Act 2013 to clarify specific resource management and governance matters for Commonwealth entities and ensure the effective implementation of the rules that will support the operation of the PGPA Act and the broader financial framework of the Commonwealth.<sup>3</sup>

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1 *Journals of the Senate*, No. 29 – Thursday, 15 May 2014, p. 821.

2 House of Representatives, *Votes and Proceedings*, No. 41 – 29 May 2014, p. 515.

3 The Hon Michael McCormack MP, Parliamentary Secretary to the Minister for Finance, Second reading speech, *House Hansard*, 29 May 2014, p. 9.

1.5 During the process of developing and consulting on the proposed draft rules required for 1 July 2014, various amendments to the PGPA Act were identified.<sup>4</sup> Specifically, the PGPA Amendment Bill seeks to amend the PGPA Act to:

- clarify definitions and technical requirements relating to entities, officials and accountable authorities;
- add section 20A to clarify the power of accountable authorities to issue instructions to officials in relation to the operation of the PGPA Act and the broader finance law;
- expand section 23 to provide explicit authority to the accountable authorities of non-corporate Commonwealth entities to make commitments of relevant money (adding to the power to enter into arrangements);
- amend section 30 to limit the power to terminate officials to the accountable authority, or a member of the accountable authority, of a corporate Commonwealth entity;
- amend planning, performance and reporting provisions to clarify responsibilities and accountabilities, including the requirement that Commonwealth entities must provide annual reports (under section 46) to their minister by the 15<sup>th</sup> day of the fourth month after the end of the reporting period (ie. generally by 15 October);
- amend requirements on how ministers and officials bank and deal with relevant money (under section 55) to clarify responsibilities for dealing with bankable and unbankable money;
- clarify the status of authorisations made in relation to borrowing, investments and payments, and clarify how similar provisions in other legislation interacts with these provisions; and
- add new Part 4-1A to enable the Finance Minister to make instruments (relating to procurements, grants, intelligence or security agencies and listed law enforcement agencies) that are not subject to disallowance.<sup>5</sup>

### **Conduct of the inquiry**

1.6 Details of the inquiry were placed on the committee's website. The committee also directly contacted a number of relevant organisations to notify them of the inquiry and invite submissions by 4 June 2014. Submissions received by the committee are listed at Appendix 1.

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4 Department of Finance, *Submission 1* to the Joint Committee of Public Accounts and Audit (JCPAA) inquiry into the Public Governance, Performance and Accountability Act 2013 Rules Development, p. 8.

5 Department of Finance, Public Management Reform Agenda, Readiness for implementation - 08, 30 May 2014, pp 1-2; EM, pp 5-6. See summary of proposed amendments to the PGPA Act outlined in Department of Finance, *Submission 1* to the JCPAA inquiry into the Public Governance, Performance and Accountability Act 2013 Rules Development, pp 29-31.

1.7 The committee is aware that the Department of Finance (Finance) has undertaken an extensive consultation process in relation to the development of the PGPA Act and the draft rules.<sup>6</sup> Finance advised that several of the proposed amendments in the PGPA Amendment Bill 'are the result of consultation with Commonwealth entities about their enabling legislation and its operation'.<sup>7</sup> In addition:

[I]n the process of consulting on the content of the PGPA rules, issues have been identified that are better dealt with in the primary legislation itself, rather than the rules.

[and]

[I]n the period since the passage of the PGPA Act, issues have been raised by key stakeholders that require particular amendments to support the interest of better accountability in the Commonwealth.<sup>8</sup>

1.8 The committee is also aware of the work of the Joint Committee of Public Accounts and Audit (JCPAA) which conducted inquiries into the Public Governance, Performance and Accountability Bill 2013 (PGPA Bill 2013)<sup>9</sup> and more recently, into the development of the rules.<sup>10</sup>

1.9 The committee therefore decided to prepare its report on the basis of submissions received and available information. The committee thanks those who assisted by providing submissions to the inquiry.

## **Background**

### ***Primary Legislation***

1.10 On 16 May 2013, the PGPA Bill 2013 was referred to the Senate Finance and Public Administration Legislation Committee for inquiry and report by 3 June 2013. The committee noted that the bill was also referred to the JCPAA for inquiry and

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6 Department of Finance, *Submission 4*, p. 4. See also JCPAA, Inquiry into Public Governance, Performance and Accountability Act 2013 Rules Development, Report 441, May 2014, pp 22-26; Department of Finance, *Submission 1* to the JCPAA inquiry into the Public Governance, Performance and Accountability Act 2013 Rules Development, pp 26-28.

7 *Submission 4*, p. 5.

8 *Submission 4*, p. 5.

9 JCPAA, Advisory Report on the Public Governance, Performance and Accountability Bill 2013, Report 438, June 2013.

10 JCPAA, Inquiry into Public Governance, Performance and Accountability Act 2013 Rules Development, Report 441, May 2014.

report and determined not to proceed with a separate inquiry.<sup>11</sup> The JCPAA tabled its report on 4 June 2013.<sup>12</sup>

1.11 The Public Governance, Performance and Accountability Bill 2013 was passed in the last days of the previous Parliament and was given Royal Assent on 29 June 2013.<sup>13</sup> While the broad aims of the PGPA Act were supported by the then opposition, concern centred on how the principles would be applied through rules and the short timeframe to consider the legislation.<sup>14</sup>

### **Rules**

1.12 Detailed arrangements on how the principles contained in the PGPA Act will be applied are to be set out in the PGPA rules. The PGPA rules will replace a range of instruments under current legislation, including the FMA Regulations, CAC Regulations and Finance Minister's Orders. The rules will be legislative instruments subject to disallowance by Parliament.<sup>15</sup> However, the Explanatory Memorandum (EM) indicates that the PGPA Amendment Bill will allow the Finance Minister to make other instruments that are not disallowable under the Legislative Instruments Act (LI Act). In relation to this, the EM notes:

This arrangement in relation to procurement and grants is consistent with existing arrangements under the FMA Act. An exemption from the LI Act for modified arrangements in relation to intelligence and security agencies and listed law enforcement agencies is consistent with arrangements operating under the FMA and CAC Acts.<sup>16</sup>

1.13 Given the importance of the rules that will underpin the operation of the PGPA Act and the need for these to be in place by 1 July 2014, Finance indicated that the draft rules would be submitted to the JCPAA in early 2014 for review before they are presented to the Parliament.<sup>17</sup>

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- 11 See [www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Finance\\_and\\_Public\\_Administration/Completed\\_inquiries/2010-13/publicgovernancebill2013/info](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Completed_inquiries/2010-13/publicgovernancebill2013/info) (accessed 2 June 2014).
- 12 JCPAA, Advisory Report on the Public Governance, Performance and Accountability Bill 2013, Report 438, June 2013.
- 13 PGPA Amendment Bill, EM, p. 2.
- 14 The Hon Michael McCormack MP, Parliamentary Secretary to the Minister for Finance, Second reading speech, *House Hansard*, 29 May 2014, pp 9-10.
- 15 PGPA Amendment Bill, EM, p. 3.
- 16 PGPA Amendment Bill, EM, p. 3.
- 17 See correspondence from Mr David Tune, Secretary, Department of Finance to Mr David Brunoro, Committee Secretary, JCPAA dated 2 December 2013. Available from: [www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=jcpaa/reports.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jcpaa/reports.htm) (accessed 2 June 2014).

1.14 On 13 February 2014, the JCPAA resolved to inquire into the development of the rules.<sup>18</sup> On 13 May 2014, the JCPAA tabled its report into the development of the draft rules to support the PGPA Act.<sup>19</sup> The JCPAA recommendations are under consideration by the government.

### ***Staged implementation***

1.15 The Public Management Reform Agenda (PMRA)<sup>20</sup> process will have three broad stages. The primary legislation, namely the PGPA Act, and the initial set of rules complete stage one.

1.16 Stage two (through to 1 July 2015) 'will focus on improving the quality of planning, performance information and evaluation within government to improve accountability to Ministers, the Parliament and the public'.<sup>21</sup>

1.17 Stage three 'will focus on improving how the Commonwealth joins up with external parties from all sectors of the economy to deliver its public policy outcomes'.<sup>22</sup>

1.18 Finance advised the JCPAA there is also a staged implementation process for the PGPA rules:

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.<sup>23</sup>

## **Previous involvement by the committee**

### ***Annual reporting***

1.19 The committee has an ongoing interest in the annual reporting process followed by Commonwealth departments and agencies. In particular, the committee is required to examine the annual reports of the departments and agencies of the

18 JCPAA, *Inquiry into Public Governance, Performance and Accountability Act 2013 Rules Development*, Report 441, May 2014, p. 1.

19 The report may be accessed from the JCPAA website: [www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Public\\_Accounts\\_and\\_Audit/PGPA\\_Act/Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Public_Accounts_and_Audit/PGPA_Act/Report) (accessed 2 June 2014).

20 Commenced in December 2010 and formerly known as the Commonwealth Financial Accountability Review (CFAR). See: <http://www.pmra.finance.gov.au/#ref1> (accessed 4 June 2014). See also Department of Finance, *Submission 4*, p. 8.

21 Department of Finance, *Submission 1* to the JCPAA inquiry into the Public Governance, Performance and Accountability Act 2013 Rules Development, p. 11.

22 Department of Finance, *Submission 1* to the JCPAA inquiry into the Public Governance, Performance and Accountability Act 2013 Rules Development, p. 11.

23 Department of Finance, *Submission 1* to the JCPAA inquiry into the Public Governance, Performance and Accountability Act 2013 Rules Development, p. 6.

portfolios for which it has oversight in accordance with Senate Standing Order 25(20). As part of this examination, the committee monitors the date that annual reports are presented in the Parliament and considers the timely tabling of annual reports to be an important element of accountability.

1.20 The committee was concerned that section 46 of the PGPA Act, as currently drafted, specified the latest date that an annual report can be provided to the minister as 31 October. This timeframe may lead to annual reports being tabled in the Parliament after this date. While entities may provide reports to the minister earlier than 31 October, should an entity need to utilise the latest date to provide its report to the minister, it would be likely that the report would be tabled after 31 October, and after the supplementary budget estimates hearings which are usually held in mid to late October of each year.

1.21 In December 2013, the committee wrote to the Chair of the JCPAA in relation to section 46, drawing its concerns to the attention of the JCPAA in order for it to consider this matter during its review of the rules and/or in its role in approving the Requirements for Annual Reports, developed by the Department of the Prime Minister and Cabinet (PM&C). A copy of this letter is at Appendix 2 of this report.

1.22 The JCPAA conveyed the committee's concerns to Finance and provided the department's response (see Appendix 3) to the committee:

While the provision is intended to be read consistent with the existing practice of tabling annual reports before the end of October each year (and providing a statement to Parliament if this cannot be achieved) it can be understood why [the Senate Finance and Public Administration Legislation Committee] is concerned about the potential for the wording of the provision to be used to delay the presentation of the annual report of an entity.<sup>24</sup>

1.23 The committee notes the proposed amendment to section 46 of the PGPA Act contained in Item 35 of the PGPA Amendment Bill to require annual reports to be provided to the responsible minister by the 15<sup>th</sup> day of the fourth month after the reporting period (usually October), rather than the last day of the fourth month as currently drafted. The intention is for this amendment to allow the minister sufficient time to table the report in the Parliament by 31 October and prior to the supplementary budget estimates hearings, in accordance with the existing arrangements under the current PM&C Requirements for Annual Reports.<sup>25</sup>

1.24 The committee notes this proposed amendment will not guarantee the early tabling of annual reports in time for supplementary budget estimates hearings. However, the committee anticipates that the updated guidance from PM&C on annual reporting requirements will continue to require annual reports to be tabled by

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24 Correspondence from Dr Andrew Southcott MP, Chair, JCPAA, dated 24 March 2014, p. 2.

25 Department of the Prime Minister and Cabinet, *Requirements for annual reports for departments, executive agencies and FMA Act bodies*, 24 June 2013.

31 October and will encourage the tabling of reports prior to the supplementary budget estimates hearings as best practice.

### **Support for the PGPA Amendment Bill**

1.25 The Auditor-General reported that the amendments contained in the PGPA Amendment Bill have been identified during the course of the development of the supporting rules and the drafting of the PGPA (Consequential & Transitional Provisions) Bill 2014 which is yet to be introduced into Parliament. The Australian National Audit Office (ANAO) noted that:

the amendments do not represent substantive changes to the relevant provisions of the PGPA Act and the ANAO has no specific comments on the various amendments contained in the PGPA Amendment Bill.<sup>26</sup>

1.26 The Australian Public Service Commissioner confirmed his support of the broad objectives of the PGPA Act and the reform it represents. The Commissioner, Mr Stephen Sedgwick, added that the Australian Public Service Commission has been working with Finance to draft amendments to the PGPA Act and/or the Public Service Act 1999 'to remove overlaps and reduce potential confusion from dual coverage'.<sup>27</sup> Mr Sedgwick reported that good progress has been made and, subject to government approval, amendments will be brought forward to Parliament.<sup>28</sup> The committee notes that government amendments to the PGPA Act to address this issue<sup>29</sup> were introduced into the House of Representatives on 5 June 2014 by the Hon Michael McCormack MP, Parliamentary Secretary to the Minister for Finance, and agreed.<sup>30</sup> Relevant amendments to the *Public Service Act 1999* and *Parliamentary Service Act 1999* are expected to be proposed by the government.<sup>31</sup>

### **Issues with the PGPA Amendment Bill**

1.27 The Clerk of the Senate, Dr Rosemary Laing, highlighted item 5 which proposes to add words to the definition of 'Parliamentary Departments' in the PGPA Act and noted that:

It appears that the amendment in item 5 is intended to retain consistency between the treatment of departments of the Parliament and other Commonwealth entities.<sup>32</sup>

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26 *Submission 3*, p. 1.

27 *Submission 3*, p. 1.

28 *Submission 2*, p. 1.

29 The amendments propose minor changes to sections 26, 27 and 28 of the PGPA Act. See Department of Finance, *Submission 4*, p. 7.

30 House of Representatives, *Votes and Proceedings*, No. 45 – 5 June 2014, p. 542.

31 The Hon Michael McCormack MP, Parliamentary Secretary to the Minister for Finance, *House Hansard*, 5 June 2014, pp 8-9.

32 *Submission 1*, p. 2.

1.28 The Clerk suggested that it may be useful to confirm with Finance the effect of the amendment and seek an explanation or example of the circumstances in which the extended definition would apply.<sup>33</sup> The committee drew this issue to the attention of Finance, which responded:

These changes are technical amendments to ensure consistency with changes to the definition of a Department of State in terms of prescribing who is (or is not) a member of the entity for the purposes of the finance law.

The circumstance might arise, for example, where a new statutory officer was established and needed to be assigned to a Parliamentary Department for the purposes of the PGPA Act. The amendment therefore effectively provides choice to the Presiding Officers and the accountable authorities of their departments as to how to allocate that officer to a particular Parliamentary Department. That is, the amendment creates the option of allocating that official through the relevant enabling legislation; alternatively it could be effected through a PGPA rule issued by the Finance Minister. In the case of a PGPA rule, the Finance Minister would consult with the Presiding Officers in the process of and prior to making the rule which will be subject to disallowance.<sup>34</sup>

1.29 The Clerk also raised the use of the term 'the relevant Presiding Officer' which is not used elsewhere and suggested that the PGPA Act use or invoke a definition of Presiding Officer or Presiding Officers as defined in the Parliamentary Services Act.<sup>35</sup> Finance indicated that it supports this position 'and will seek to have it addressed in a legislative amendment bill that is expected to come forward in the next sittings of Parliament'.<sup>36</sup>

## **Conclusion**

1.30 The committee acknowledges the short timeframe for the inquiry into this legislation. However, the committee is aware of the extensive consultation undertaken by Finance in relation to the development of the PGPA Act and the rules. It also appreciates the response by Finance to the issues raised by the Clerk of the Senate.

1.31 The committee also acknowledges the ongoing work of the JCPAA in this area. In particular, the committee was persuaded by the evidence of Finance to the JCPAA's recent inquiry to the effect that Commonwealth bodies should not need to make significant changes to be compliant with the requirements of the PGPA Act and

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33 *Submission 1*, p. 2.

34 *Submission 4*, p. 10.

35 *Submission 1*, pp 2-3.

36 *Submission 4*, p. 10.



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its rules on 1 July 2014.<sup>37</sup> This view was confirmed by the Auditor-General, the Public Service Commissioner and others.<sup>38</sup>

1.32 The JCPAA also sought assurances about the provision of appropriate training and guidance for agencies. Finance advised that they are providing information, drafting guidance and making training available to agencies and reassured the JCPAA that Commonwealth bodies are well prepared for the transition on 1 July 2014.<sup>39</sup>

### **Recommendation 1**

**1.33 The committee recommends that the bill be passed.**

**Senator Cory Bernardi**

**Chair**

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37 JCPAA, Inquiry into Public Governance, Performance and Accountability Act 2013 Rules Development, Report 441, May 2014, p. 35.

38 JCPAA, Inquiry into Public Governance, Performance and Accountability Act 2013 Rules Development, Report 441, May 2014, pp 37-38.

39 JCPAA Report, 13 May 2014, p. 36, 38, 41.

