



Auditor-General for Australia



29 June 2018

Ms Elizabeth Alexander AM and Mr David Thodey AO
c/o PGPA Act Review Secretariat
Department of Finance
One Canberra Avenue
FORREST ACT 2603

By email: PGPAActReview@finance.gov.au

Dear Ms Alexander and Mr Thodey

Review of the *Public Governance, Performance and Accountability Act 2013*—consultation draft

I am writing to provide you with comments on the consultation draft report of the review of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and Public Governance, Performance and Accountability Rule 2014 (PGPA Rule).

Thank you for the opportunity to comment on the consultation draft report, which I see as a very positive contribution to public sector management improvement of which the PGPA Act is a central part.

Independence issues

An important consideration for me, although one which I acknowledge will not be central to your role in reviewing the PGPA Act, is to ensure than any proposed changes do not compromise the independence of my role, and if possible, can reinforce or enhance it. An example of previous legislative change where this did not occur was when the passage of the PGPA Act removed my ability to table my annual report to the Parliament, a matter which was addressed recently in the *Prime Minister and Cabinet Legislation Amendment (2017 Measures No. 1) Act 2018*. With that in mind, I offer the following comments.

Recommendation 7

This recommendation is that the Finance Minister request that the Auditor-General pilot assurance audits of annual performance statements to trial an appropriate methodology for these audits.

I would welcome a request from the Minister for Finance to undertake a pilot to facilitate transition to a program of mandated annual audits of Commonwealth entities. In the first instance the focus should be on transitioning to annual audits of major Commonwealth entities.¹

Substantial work has already been undertaken by the ANAO to develop and apply a standards-based methodology.

- Section 24 of the *Auditor-General Act 1997* (the Act) provides that the Auditor-General must, by notice in the *Gazette*, set auditing standards that are to be complied with by persons performing audit functions, including an audit of annual performance statements. Under the *Australian National Audit Office Auditing Standards 2018*, made on 28 February 2018, the standard which is relevant and would be required to be applied to an audit of annual performance statements, is Standard on Assurance Engagements ASAE 3000 *Assurance Engagements Other than Audits or Reviews of Historical Financial Information*, issued by the Auditing and Assurance Standards Board in May 2017.
- The ANAO has developed and I have mandated a methodology for audits of annual performance statements based on ASAE 3000. The methodology has been shared with the Department of Finance and was piloted by the ANAO in the course of the two performance audits of entities' annual performance statements tabled to date.² The methodology is also being applied in the ANAO's third performance audit of the annual performance statements, presently underway.
- The ANAO's methodology and conduct of those audits is currently being reviewed by the Office's independent external auditor at the request of our oversight committee, the Joint Committee of Public Accounts and Audit (JCPAA). Section 41 of the Act establishes the position of the Independent Auditor, who may at any time conduct a performance audit of the ANAO. The Independent Auditor's report will be tabled in the Parliament and considered by the JCPAA.

¹ This group of entities is included in the ANAO's annual interim report to Parliament on key financial controls. Auditor-General Report No.47 of 2017-18 *Interim Report on Key Financial Controls of Major Entities* was published on 14 June 2018. The report examined 26 entities, including all departments of state and a number of major Australian government entities. The entities included in the report were selected on the basis of their contribution to the income, expenses, assets and liabilities of the 2016-17 Consolidated Financial Statements (CFS) of the Australian Government.

² Report No.58 2016-17 *Implementation of the Annual Performance Statements Requirements 2015-16* (tabled 26 June 2017) and Report No.33 2017-18 *Implementation of the Annual Performance Statements Requirements 2016-17* (tabled 28 March 2018).

Insofar as the proposed pilot relates to the audit standards I set for the ANAO and the audit methodology adopted by the ANAO, it would be appropriate for the JCPAA to monitor implementation of this recommendation on behalf of the Parliament.

Such an approach would be consistent with the Committee's statutory role to oversight the ANAO, and the Auditor-General's status as an independent officer of the Parliament under section 8 of my Act. The Act provides that the Auditor-General has complete discretion in the performance or exercise of his or her functions or powers. In particular, the Auditor-General is not subject to direction from anyone in relation to: whether or not a particular audit is to be conducted; or the way in which a particular audit is to be conducted; or the priority to be given to any particular matter.

The approach is also appropriate as the primary purpose of the audit of performance statements is to provide assurance to the Parliament, as the user of the statements, of the extent to which they can be relied on.

Accordingly, it is my strong view that the JCPAA should consider the scope and conduct of the proposed pilot, assess the outcomes of the pilot, and propose next steps. In doing so the Committee could consider the views of the Executive (possibly via the Department of Finance), the ANAO and other interested parties.

I note that the body of the draft report does not address any matters relating to the independence of the Auditor-General as raised in my submission of 10 November 2017. These matters remain relevant. For example, Appendix A of the draft report briefly mentions issues relating to the operation of section 105D of the PGPA Act, which were raised in the ANAO's submission to the review of 10 November 2017. Section 105D provides authority for the Finance Minister to determine, by written instrument, modifications to the application of the PGPA Act in respect of entities (or entities' activities) which are determined by responsible Ministers to be intelligence or security agencies or listed law enforcement agencies. This might result for example in an accountable authority being authorised to make deletions from his or her annual report, possibly including deletion of material in my auditor's report.

In making such determinations, there is no transparency to the Parliament about whether determinations have been made, the scope of any determinations that are made (the determinations are not legislative instruments), nor the actions undertaken by accountable authorities in acting in accordance with them. I note that this is a different position to the operation of section 37 of my Act whereby subsection 37(4) provides that the Parliament should be made aware of omissions in public reports resulting from the application of subsection 37(1)(b) by the Executive. The commentary in Table A1 of the draft report does not address all of the points made in my earlier submission.

ANAO Budget estimates

Another case in point is the operation of the rules for the Federal Budget process and my ability to brief the Joint Committee of Public Accounts and Audit on the impact of Budget

decisions. The Committee has a statutory responsibility, under section 8 of the *Public Accounts and Audit Committee Act 1951*, to review my budget estimates and make recommendations to Parliament relating to the draft estimates, prior to the introduction of the Federal Budget. You may be aware that in respect of Budget 2018, I was advised that I was not in a position to brief the Committee on changes made to my budget after my budget submission and draft estimates were provided to the Committee under section 53 of the *Auditor-General Act 1997*.

I have taken advice from the Australian Government Solicitor since these events. In effect, I have a statutory duty to respond to a request from the JCPAA to disclose information about the ANAO's pre-budget estimates, and am advised that section 53 is designed to ensure the information is available to the JCPAA despite its otherwise confidential status. I am advised that this leaves no real room for executive discretion based on conventions around pre-budget confidentiality.

That being the case, I have advised the JCPAA that in practice, it is open to the Committee to make more than one request per budget cycle to require me to provide an update on the ANAO's budget estimates.

While this matter can be practically resolved, it is important that any changes to the PGPA Act and Rule sufficiently take account of the position of the Auditor-General as an independent officer of the Parliament, and the special relationship established by statute with the Committee.

Other Comments

Recommendation 2

This recommendation is that the PGPA Rule should be amended to raise the minimum standard for performance reporting by including a requirement that performance information must be relevant, reliable and complete. This will require entities to improve the quality of their performance measures.

I support the recommendation. Incorporating the criteria of relevance, reliability and completeness in the PGPA Rule would provide clear direction to entities and would establish a basis for audit and review against standards mandated by the policy owner (regulator).

Recommendations 10 to 14

I welcome the focus on managing and engaging with risk in section three of the draft report.

Recommendations 15 to 22

I also welcome the focus on audit committees in section four of the draft report, including the benefits of independent members (Recommendation 15) and active engagement with the audit committee by the accountable authority (Recommendation 16). Further, I welcome

the review's support for the established practice of ANAO officials attending audit committee meetings.

On the issue of small entities with limited resources (Recommendation 20), the Department of Finance has made a number of observations which are as valid today as when they were first published:

... it is possible for a body's size to affect the sustainability of its attention to governance matters. For example, a body will typically need financial management procedures, an audit committee and a CFO to support the Chief Executive Officer (CEO) on financial issues. It will also require access to professional advice on the governance regime that applies to it and general matters such as human resources. These requirements could prove cost prohibitive for smaller scale functions.

Where a body's size suggests that the effort of attention to these matters would be disproportionate to its size, then the body may best be consolidated into a department or with another body.³

Recommendation 26

This recommendation is that Finance should amend the PGPA Rule on corporate plans to require the plans to outline how entities will achieve their purpose(s) over a four-year reporting horizon, how they cooperate and coordinate with others, and to identify key risks and how these will be managed.

I support the recommendation, which addresses a number of the issues identified by the ANAO in the recent series of audits on entities' implementation of the corporate planning requirement.

Recommendation 29

This recommendation is that entity annual reports should be presented to the Parliament on or before 30 September. This would ensure the Parliament has annual reports available before the Senate Supplementary Budget Estimates hearings. Annual reports should be presented to the responsible minister no later than seven days before this date.

I support the earlier presentation of meaningful information, through an annual report, to the Parliament. Notwithstanding that, I note that on page 34 of the draft report, there is a statement that auditor's reports should be provided in the first week of September at the latest to facilitate the tabling of annual reports in Parliament by 30 September. It is unclear why a three week period would be required from the issue of the auditor's report on the financial statements to tabling, especially if a digital reporting platform is used. The insertion of the signed financial statements and auditor's report into a draft annual report should not be an onerous task.

³ Department of Finance and Administration, *Governance Arrangements for Australian Government Bodies*, August 2005, paragraphs 143-44.

Further, it may be useful to note that, upon completion of each financial statements audit, a copy of the signed financial statements and signed auditor's report is provided by the ANAO to the responsible Minister. Therefore, the Minister should have sufficient time to review these aspects of the annual report before the proposed 30 September annual report tabling deadline.

Thank you for the opportunity to comment on the draft report.

The ANAO's contact officer for these matters is Dr Tom Ioannou (Group Executive Director, tom.ioannou@anao.gov.au) should the review require any further information.

Yours sincerely

A solid black rectangular redaction box covering the signature area.

Grant Hehir
Auditor-General

cc Senator Dean Smith, Chair, Joint Committee of Public Accounts and Audit