



PGPA Act Review
Attention: Review Secretary
Department of Finance
One Canberra Avenue
FORREST ACT 2603

Dear Ms Alexander and Mr Thodey

**PUBLIC GOVERNANCE, PERFORMANCE AND ACCOUNTABILITY ACT 2013
(PGPA ACT) AND RULE INDEPENDENT REVIEW
- DRAFT REPORT FOR CONSIDERATION.**

Thank you for your email dated 30 May 2018 and for the opportunity to provide comments on the draft report on the PGPA Act and Rule Independent Review.

Overall, the ATO views the draft report as constructive and thanks the Independent Reviewers for their consultative approach. Broadly, we believe the recommendations will support the continued maturity of the governance frameworks set up under the PGPA Act and Rule.

We recognise the importance of leadership in driving improvement and the essential need for a values-led culture of transparency, trust and aligned purpose. These key themes in the report underpin the ATO's focus on reinvention and are aligned with our strategic vision.

Notwithstanding that, there are several key areas where the ATO has a view that differs from the views contained in the draft report.

Attached are two documents for your consideration:

1. An overview of headline ATO comments on the draft report.
2. ATO comments against specific recommendations in the draft report.

We would be happy to provide further input and support as the recommendations move towards finalisation and ultimately implementation.

If you require further information on this matter, please contact Assistant Commissioner Ben Kelly on 02 6216 3308.

Yours sincerely



Jacqui Curtis
Chief Operating Officer
Australian Taxation Office

21 June 2018



Annexure 1

ATO Headline Comments

This overview is intended to be read in parallel with the comments against specific recommendations in annexure 2.

Audit committee membership

The ATO does not agree that Audit and Risk Committees should be comprised entirely of non-executive directors.

The ATO's Audit and Risk Committee is comprised of a majority of independent members, with an independent Chair. This is consistent with most other public sector entities in Australia and reflects a need to balance independence and organisational understanding.

The ATO is a large and complex organisation, which needs a fully functioning audit committee with knowledge and understanding of the organisation, as well as a mixture of skills and experience. The ATO is of the view that the current Audit and Risk committee membership provides a strong balance of independence, knowledge and expertise.

Regulator Performance Framework reporting

The ATO supports integrating requirements under the Regulator Performance Framework self-assessment (RPF) report with the Annual Performance Statement. However, retaining the current external consultation requirements as mandatory for regulators creates further unwarranted duplication.

The ATO undertakes considerable consultation with the community via multiple stewardship groups, open consultation processes, community surveys and user centred design activities with multiple stewardship, stakeholder relationship and special purpose working groups. In addition, the Commissioner of Taxation is a member of the Board of Taxation, which is the RPF Ministerial Advisory Council for the ATO. The Board meets regularly throughout the year providing opportunities to raise any issues of concern or identified improvements relating to the effectiveness of the ATO in regulating the taxation system.



Annual Performance Statements of Independent statutory bodies

Independent statutory bodies should be able to sign their own annual performance statements.

As previously submitted, under the Act, performance reports for the Australian Charities and Not-for-profits Commission (ACNC) and the Tax Practitioners Board (TPB) have to be signed by the Commissioner of Taxation (as the accountable authority). Consistent with their enabling legislation, the ACNC and TPB operate as independent statutory bodies, and importantly have requirements to report annually under their own legislation.

To acknowledge the unique nature of independent statutory bodies and the responsibilities of their respective boards, they should be permitted to sign off their own annual performance statements. This would enhance the community's view of the independence of ACNC and TPB.

In this regard we note the observations made in the report at page 51 that 'the operation of the PGPA Act for independent statutory office holders or bodies is consistent with its intended operation and appropriate for the manner in which statutory office holders or bodies have been established in their enabling legislation (i.e. not as standalone entities).' Our view remains that the current accountable authority framework in the PGPA Act does not currently offer a set of arrangements that is tailored to the unique nature of the ACNC or TPB referred to above, and further consideration of that framework is warranted to ensure the more appropriate outcome for entities of this nature.



Annexure 2

PGPA Act and Rules Independent Review

Draft Report Recommendations and ATO Comments

#	Recommendation	Comment
Performance framework		
6.	Finance should continue to develop guidance on performance reporting to assist entities to meet the requirements of the PGPA Act and Rule and develop high-quality performance reports. This will also assist audit committees to review performance reporting.	Agree. The guidance provided by Finance is valuable in supporting the ATO to meet the requirements of the PGPA Act. As submitted previously, timeliness in agencies receiving this guidance is of importance in allowing for implementation of changes.
7.	The Finance Minister should request that the Auditor-General pilot assurance audits of annual performance statements to trial an appropriate methodology for these audits.	Agree. The assurance audits completed to date by the ANAO have been valuable in better understanding the requirements and expectations. While we don't disagree, as a first step, a trial should be undertaken to determine the benefits and establish the criteria against which the statements could be audited (as there are no relevant standards). Before mandating, a full cost-benefit analysis should be undertaken. Annual audits might not be necessary, a rolling program or risk-based ("earned trust") approach should be considered.
8.	Finance should encourage the Australian Accounting Standards Board to develop a standard for performance reporting to assist entities and audit committees to develop and review performance reporting. We also support the Auditing and Assurance Standards Board further developing an auditing standard for performance reporting to assist auditors with auditing performance reporting.	Partly agree. Having standards of reporting in place is of value, but consideration needs to be given to: <ul style="list-style-type: none">• the variables in the role and responsibilities for each agency and• expectations of the type of reporting information needed for transparency to the community.
9.	Finance should develop 'lessons learned' papers that cover complete performance cycles to identify good-	Agree.



#	Recommendation	Comment
	practice examples of a clear read of performance information across portfolio budget statements, corporate plans and annual reports.	Finance has been providing Lessons Learned papers and they have been valuable. As noted above, timeliness in receipt of these papers is of importance in allowing for implementation of any changes.
Managing and engaging with risk		
10.	Accountable authorities should identify ways to embed effective risk management and engagement into policy development and program management, and incentivise officials at all levels to manage and engage better with risk.	Agree.
11.	Accountable authorities should engage with key stakeholders to identify their risk appetite and explain how risks will be identified, accepted and managed. In doing this, adequate attention should be given to upside, as well as downside, risk. The Parliament could also acknowledge the complex environment in which government operates.	Agree.
12.	Accountable authorities of large Commonwealth entities, or entities with complex risks, should consider appointing a Chief Risk Officer to support the accountable authority to implement a strong risk culture and behaviours across all levels of the organisation.	Agree. The recommendation notes that dedicated leadership is needed to support the development of a positive risk culture. The establishment of the role of Chief Risk Officer has demonstrated ATO's commitment to a strong risk culture.
13.	Accountable authorities of large entities, or entities with complex risks, should consider establishing a separate risk committee, with an independent chair and membership linkage with the audit committee, to strengthen the governance of risk. Where an entity establishes a separate risk committee, the risk committee should be responsible for reviewing the appropriateness of the entity's system of risk oversight and management, with the audit committee's functions amended accordingly.	Partially agree. While the ATO does not disagree, we do not think it necessary to mandate <u>consideration</u> of something in the Act or Rule. In its current form, the recommendation may be interpreted to infer that unless there are good reasons to the contrary, the Accountable Authority <u>should</u> establish a separate risk committee. There is no evidence to justify the additional cost of maintaining separate committees. The ATO has already turned its mind to the situation and decided to



#	Recommendation	Comment
		<p>maintain the Audit and Risk Committee as the Governance committee, and implement a management committee to manage risk at both operational and strategic levels. This arrangement ensures those assessing the risk understand the organisational and environmental context. There is a strong link between the risk management committee and the Audit and Risk Committee.</p>
14.	<p>For entities where a separate risk committee is not established, audit committees should be called 'audit and risk committees' to reinforce the important role of these committees in supporting accountable authorities to manage and engage with risk.</p>	<p>Agree.</p> <p>The ATO has the committee positioned as an Audit and Risk Committee.</p>
Audit Committees		
15.	<p>The independence of audit committees should be strengthened by requiring all audit committee members to be independent, with independence defined as not being an official or employee of a Commonwealth entity.</p>	<p>Disagree.</p> <p>The ATO does not agree with the recommendation that the ATO's Audit and Risk Committee should be comprised entirely of non-executive directors. This view is shared by the Audit and Risk Committee's independent chair.</p> <p>The ATO's Audit and Risk Committee is comprised of a majority of independent members, with an independent Chair. This is consistent with most other public sector entities in Australia and reflects a need to balance independence and organisational understanding.</p> <p>The ATO is a large and complex organisation, which needs a fully functioning audit committee with knowledge and understanding of the organisation, as well as a mixture of skills and experience. The ATO is of the view that the current Audit and Risk committee membership provides a strong balance of independence, knowledge and expertise.</p> <p>While we appreciate the intent to establish best practice through comparison to the private sector, a key point of difference is Audit Committee membership of private sector entities is generally comprised of board members. Although independent</p>



#	Recommendation	Comment
		<p>from management, they have a strong understanding of the strategy, direction and current issues impacting the organisation.</p> <p>The ATO's Chief Internal Auditor, head of Fraud Prevention and Internal Investigations and Chief Finance Officer are all advisors to the ATO's Audit and Risk Committee. However as an advisor their role is significantly different to the role of an Audit Committee member. Our internal members are able to challenge presenters and advisors in a way that the advisors themselves cannot do. To require an equivalent contribution from advisors would, in our view, effectively deem them defacto members of the Committee.</p> <p>In light of the above, rewording the recommendation to encourage entities to 'consider' rather than 'require' independent membership is suggested.</p>
16.	The accountable authority and senior management of entities should be actively engaged with their audit committees, including attending meetings, to give their authority and imprimatur to audit committee activities in their entity. This will ensure that audit committees are briefed on the operations and performance of the entity and are able to question management on matters and information relevant to the role of the audit committee.	Agree.
17.	Accountable authorities should ensure: (a) their audit committee members, both individually and as a group, have the appropriate qualifications, knowledge, skills and experience to meet their responsibilities, as required in the PGPA Rule; (b) committee members are sourced broadly, with greater representation from other industries, sectors and locations; and (c) the remuneration of audit committee members is commensurate with the importance of their responsibilities	Agree.



#	Recommendation	Comment
	and the commitment required.	
18.	Accountable authorities should establish an audit committee membership rotation policy, with maximum appointment terms, to ensure regular rotation of committee membership.	Agree.
19.	Accountable authorities should ensure that independent members are inducted into the business of the entity and briefed on its operations and performance on an ongoing basis.	Agree.
20.	Smaller Commonwealth entities with limited resources and similar purposes should consider sharing an audit committee.	Agree.
21.	Finance should initiate a learning program similar to those offered by professional bodies such as the Chartered Accountants Australia and New Zealand, the Australian Institute of Company Directors and the Actuaries Institute, for audit committee chairs to facilitate sharing information about the performance of audit committee functions.	Agree.
22.	Audit committees should be subject to greater transparency by requiring disclosure in annual reports of their charter; membership; the qualifications, skills and experience of each committee member; details of each member's attendance at meetings; and the remuneration of each audit committee member, broadly consistent with the practice of Australian Securities Exchange (ASX) listed companies.	Agree.
Clarifying reporting requirements and reducing the reporting burden		
24.	The annual performance statement should be the primary vehicle for reporting the performance of Commonwealth entities. Duplicative performance reporting requirements – for example, those under the Regulator Performance Framework – should be reviewed and integrated to reduce	Partially Agree. Duplication of performance criteria and outcomes across two separate reports creates undue internal red tape for agencies. The Regulator Performance Framework self-assessment (RPF) report should be integrated as part of reporting



#	Recommendation	Comment
	the reporting burden and improve clarity.	<p>in the Annual Performance Statement. However, retaining the current external consultation requirements as mandatory for regulators creates further unwarranted duplication.</p> <p>The ATO undertakes considerable consultation with the community via multiple stewardship groups, open consultation processes, community surveys and user centred design activities with multiple stewardship, stakeholder relationship and special purpose working groups. In addition, the Commissioner of Taxation is a member of the Board of Taxation, which is the RPF Ministerial Advisory Council for the ATO. The Board meets regularly throughout the year providing opportunities to raise any issues of concern or identified improvements relating to the effectiveness of the ATO in regulating the taxation system.</p> <p>Suggest the mandatory requirement for external consultation of the RPF be removed and the decision for external consultation against the six key performance indicators of the RPF be at the determination of the Accountable Authority.</p>
26.	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.	<p>Agree.</p> <p>The performance criteria outlined in the corporate plan already shows projected targets over a rolling four-year period. The corporate plan covers a 12 month period with a view to the four year horizon. This is of value in setting direction and encouraging an engaged culture focussed on the future.</p> <p>The ATO is working to ensure clarity of delivery and expectations through the strategic initiatives for each year in the corporate plan, with a view to the longer term via the broader strategic objectives; recognising that detailed planning over a four year period is challenging when factoring in ongoing environmental changes.</p>
27.	Finance should clarify and explain the integrated performance reporting requirements and linkages in portfolio budget statements, corporate plans and annual reports to achieve transparency to the Parliament, with	<p>Agree.</p> <p>The requirement to link non-financial performance to financial performance (statements) requires detailed guidance, as this may be subject to interpretation</p>



#	Recommendation	Comment
	reference to the views of the Joint Committee of Public Accounts and Audit and in consultation with the Australian National Audit Office.	and subjectivity.
28.	Finance should explore opportunities to better link performance and financial information presented in entities' corporate plans and annual reports.	Agree. A consistent, standard format should be articulated as the content differs significantly across agencies.
Annual report timing and parliamentary scrutiny		
29.	[Subject to implementation of Recommendation 30, below] 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.	Agree. As submitted previously, this proposal would be reliant on the ANAO completing their audit of the financial statements earlier. This will require considerable forward planning from both the ANAO and the ATO to allow sufficient time to audit financial statements and associated processes. Earlier timeframes for delivery of the annual report would be highly dependent on early availability of financial information to inform performance reporting requirements, mutually agreed timeframe requirements of the Ministers Office and delivery of the Digital Annual Report project.
Reporting contracts and consultancies		
36.	The definition of 'consultancy' and the use of the 'consultancy flag' to identify consultancy contracts in AusTender should be clarified to ensure that spending on consultancies is reported consistently and accurately by non-corporate Commonwealth entities in their annual reports.	Agree. The definition of 'consultancy' works effectively in practice when supported by appropriate guidance from Department of Finance. Suggested enhancements: <ul style="list-style-type: none"> • guidance to be more concise and prescriptive to improve consistency of consultancy reporting across agencies. • AusTender would benefit from a warning message displayed if certain category (UNSPSC AusTender) codes are used without a consultancy flag.
37.	Non-corporate Commonwealth entities should provide the	Agree.



#	Recommendation	Comment
	following information on expenditure on contracts and consultancies in their annual reports: (a) total aggregate expenditure on contracts and consultancies and the number of new and ongoing contracts in the reporting period (extending the current reporting requirements for consultancies to contracts in general); and (b) lists of all organisations and/or individuals that receive 5 per cent or more of the entity's total expenditure on contracts and consultancies, respectively (or, where this includes fewer than five organisations/individuals, the five organisations/individuals that receive the greatest level of expenditure).	<p>Extending the current reporting requirements for consultancies to contracts is possible when supported by sensible reporting criteria, including dollar value thresholds.</p> <p>Reporting of the top 5 per cent of organisations and/or individuals expenditure could be further enhanced with an additional report covering the top 5 percentage share of total contracts for the entity. This would provide a more complete and balanced view.</p>
Technical and other matters		
45.	Finance, in consultation with relevant stakeholders, should review the existing Finance Minister delegation under section 63 of the PGPA Act in relation to waiver of debts to reduce red tape.	Agree, with consideration to allowing the ATO to waive debts.
46.	Finance, in consultation with relevant stakeholders, should examine introducing greater flexibility into the Finance Minister's delegation of section 53 of the PGPA Act in relation to banking by the Commonwealth.	<p>Agree.</p> <p>While not an ATO recommendation, would seek participation in stakeholder consultation.</p>