



SUBMISSION TO THE
INDEPENDENT REVIEW OF
THE PUBLIC GOVERNANCE,
PERFORMANCE AND
ACCOUNTABILITY ACT 2013

2 July 2018

Introduction

Indigenous Business Australia (IBA) pays respect to past, present and emerging Elders and welcomes the opportunity to provide comments on the Consultation Draft of the Independent Review of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and the *Public Governance, Performance and Accountability Rule 2014* (the Rule).

IBA generally supports and already adopts a number of the approaches proposed in the recommendations in the Consultation Draft.

Following are specific comments on some of the draft recommendations.

Draft recommendation 12

This recommendation proposes that:

- 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.*

The accountable authority of IBA for the purposes of the PGPA Act is the IBA Board. The IBA Board has established three ongoing committees to assist the Board effectively exercise its functions, one of which is the Audit and Risk Committee which provides independent assurance and advice to the IBA Board on IBA's risk, control and compliance framework, financial statements and performance reporting responsibilities.

A charter details the Audit and Risk Committee's constitution, responsibilities, functions and reporting and administrative arrangements. The Audit and Risk Committee comprises IBA Board members and external appointees (being persons with appropriate qualifications, knowledge, skills and experience). Currently three members of the IBA Board and one external appointee comprise the Audit and Risk Committee. To provide leadership and support the development of a strong and positive risk culture across IBA the charter of the Audit and Risk Committee provides that the IBA Chair and CEO are able to attend its meetings.

IBA agrees (as noted by Professor Peter Shergold AC, *Learning from Failure*, 12 August 2015) that dedicated leadership is needed to grow and nurture a culture of positive risk management.

In IBA's view this outcome can be achieved by ensuring appropriate accountability for risk at an Executive level within Commonwealth entities and resourcing for risk, rather than an approach which seeks to mandate specific positions within entities.

Draft recommendation 15

This recommendation proposes that:

- 15: *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*

IBA agrees with the observations in the Consultation Draft that the “independence of audit committees from the day-to-day activities of management is critical to the contribution they can make to good governance”.

IBA’s Audit and Risk Committee currently comprises three IBA Board members, and one independent member. The charter of the IBA Audit and Risk Committee provides independence from the IBA Executive.

It is IBA’s view that having an audit committee comprising Board members provides the committee with appropriate insight into and understanding of IBA’s business while still maintaining an appropriate level of independence from management, noting that IBA’s Board members are already independent and perform a non-executive role. Limiting membership of audit committees by such Board members, if that is what is intended, would, in our opinion, limit the committee’s effectiveness.

The discussion in the Consultation Draft as to the logic and supporting evidence for substantially broadening the meaning of “independent” to the proposal contained in the recommendation (that members of audit committees “must not be an official or employee of a Commonwealth entity”) is limited and should not extend to Board members who are already independent of management.

Draft recommendation 18

This recommendation proposes that:

- 18: Accountable authorities should establish an audit committee membership rotation policy, with maximum appointment terms, to ensure regular rotation of committee membership.*

The charter of the IBA Audit and Risk Committee presently enables a mix of insights and views of members, including through the ability to mix and rotate members with a longer tenure with new members who bring in fresh experiences, ideas and perspectives.

Members of the IBA Board are appropriately members of the IBA Audit and Risk Committee.

The ability of the IBA Audit and Risk Committee to set maximum appointment terms is limited by and needs to be balanced with the provisions of the *Aboriginal and Torres Strait Islander Act 2005* (Cth), which provides that IBA Directors are appointed by the Minister (s 157) – with the Minister required to be satisfied as to the person’s appropriate qualifications, knowledge, skills or experience prior to making the appointment – for a period no longer than 5 years (s 159).

Draft recommendation 29

This recommendation proposes that:

- 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.*

IBA notes the discussion in the Consultation Draft about amending the PGPA Act and Rule to require the responsible minister to present an entity's annual report in the Parliament by 30 September each year and agrees that a fully digital reporting platform will assist with timing.

However, any efficiencies generated by moving to a fully digital reporting platform will not offset the significant difficulty IBA will have in meeting the proposed new date for provision of annual reports for two reasons:

- (i) IBA is the parent entity for a large number of subsidiaries and IBA's financial statements in its annual report are presented on a consolidated basis with its subsidiaries; and
- (ii) the finalisation of the ANAO's audit of financial statements and the presentation of independent audit reports from the ANAO is a requirement for the completion of annual reports and accordingly, a change in tabling date would need to be accompanied with support for improving the capacity of the ANAO to complete the financial statement audit within the new timeframes.

Draft recommendation 43

This recommendation proposes that

- 43: *Finance should evaluate the merits of making a rule under section 61 of the PGPA Act, relating to indemnities, guarantees or warranties by corporate Commonwealth entities, in consultation with relevant stakeholders and the Finance Minister.*

The accompanying notes in the Consultation Draft for recommendation 43 refer to paragraph 322 of the revised explanatory memorandum to the PGPA Bill. This paragraph in the revised explanatory memorandum outlined that the policy rationale for such a requirement was to "*provide a mechanism for the Commonwealth to ensure that contingent liabilities are being effectively managed across corporate Commonwealth entities.*"

IBA is of the view that any amendment as proposed should involve consultations with Commonwealth corporate entities that have their own powers with respect to indemnities, guarantees or warranties. IBA would welcome the opportunity to participate in consultations about any proposed rule relating to indemnities, guarantees or warranties.