



Australian Government



TOWNSVILLE

DARWIN

PERTH

17 November 2017

Review Secretary
PGPA Act Review
Department of Finance

By email: PGPAActReview@finance.gov.au

Dear Sir/Madam

Independent Review of the Public Governance, Performance and Accountability Act 2013 (PGPA Act)

Thank you for the opportunity to provide input to the independent review of the operation of the PGPA Act and Rule.

1. Context

AIMS was established in 1972 near Townsville in Far North Queensland adjacent to the centre of the Great Barrier Reef in recognition of the Reef's significance to Australia. Subsequently, it expanded its operations and activities into Western Australia and the Northern Territory and now covers the entirety of northern tropical Australia which spans two oceans and three regional seas.

AIMS conducts intensive research into marine science and marine technology which enables both leading Australian and international researchers to undertake excellent scientific research. AIMS is a world leader in marine research (currently ranked second) and in the development of innovative scientific technology for its own facilities and experiments as well as both collaboratively and as a consultant for major national and international research institutions, industries and companies.

AIMS' primary mission is to conduct innovative, world-class scientific and technological research to support sustainable growth in the use and effective environmental management and protection of Australia's tropical marine estate. Its head office is located at Cape Ferguson 50 kilometres south of Townsville in Far North Queensland with major branch offices in Perth and Darwin and a smaller representative one in Canberra.

To be able to carry out this mission to the highest extent possible it has become apparent to AIMS that the PGPA framework needs to be amended.

2. AIMS' Legislative Basis

AIMS was established by the *Australian Institute of Marine Science Act 1972 (AIMS Act)*. It operates as a Corporate Commonwealth Entity under section 11(a) of the *Public Governance, Performance and Accountability Act 20-13 (PGPA Act)*.

Section 9(1) of the AIMS Act defines the scientific research functions of AIMS as follows:

(a) to carry out research and development in relation to:

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Townsville MC, Qld 4810
Tel: (07) 4753 4444
Fax: (07) 4772 5852

Darwin address: PO Box 41775,
Casuarina, NT 0811
Tel: (08) 8920 9240
Fax: (08) 8920 9222

Perth address: Indian Ocean Marine Research Centre
The University of Western Australia, M096,
35 Stirling Highway, Crawley WA 6009 Australia
Tel: (08) 6369 4000 Fax: (08) 6488 4585

- (i) marine science and marine technology; and
 - (ii) the application and use of marine science and marine technology; and
- (b) to encourage and facilitate the application and use of the results of research and development of that kind; and
- (c) to arrange for carrying out research and development of that kind; and
- (d) to co-operate with other institutions and persons in carrying out research and development of that kind; and
- (e) to provide any other institution or person with facilities for carrying out research and development of that kind; and
- (f) to collect and disseminate information relating to:
- (i) marine science and marine technology; and
 - (ii) the application and use of marine science and marine technology;
- and, in particular, to publish reports and other papers.

3. Corporate Plans and Financial Reporting

- 3.1 The previous governance of Corporate Commonwealth Entities (**CCEs**) was via the *Commonwealth Authorities and Companies Act 1997 (CAC Act)*. With the consolidation into the PGPA Act it has obviously made it easier to apply policies, rules and processes across both CCEs and non-CCEs. AIMS considers that this has led to certain issues that may not have been applied to CCEs in the past being now applied to them because:
- it is simple to do so ;
 - the over-development of a “one –size-fits-all” mentality; and
 - undue emphasis by the drafters of supporting materials for the PGPA framework as well as policy makers in regarding CCEs from a non-CEE perspective and the inherent bias associated from doing so.
- 3.2 AIMS agrees with the intent of the PGPA Act to improve the planning, and accountability of entities by linking performance intentions - identified in Corporate Plans and Portfolio Budget Statements - with performance achievements and outcomes subsequently reported in Annual Reports. AIMS also notes that Corporate Plans provide sufficient flexibility to allow entities to individually both determine and elaborate on what they respectively consider to be their key aspects of high performance corporate management. This is par excellence a reflection of the original principles-based approach to the PGPA Act and to the preservation of CCEs’ independence which AIMS and many other CCEs firmly supported then, as they do now.
- 3.3 In terms of financial reporting and compliance more generally, the very smallest CE agency is subject to the same structures, standards and level of reporting as the largest agency despite having far less resources. A differential reporting and compliance system should be introduced along the lines of the framework for differential regulation recommended by the Belcher Red Tape Review to lessen the administrative burden on small agencies and lower the associated costs.

4. Prescriptiveness

- 4.1 While the PGPA Act itself is principles-based and generally drawn so as to allow individual entities to exercise their own judgment as to how best to implement the principles so they achieve an appropriate balance between accountability, performance and flexibility, it is the

rules, resource management guides (RMGs) and other materials as they have been applied to CCEs that as a whole have overtaken the Act rendering it almost superfluous.

- 4.2 The RMGs in particular although supposedly non-binding are in practice the 'go-to' source for both the interpretation and implementation of the Act's principles. They have become key reference documents and are written in such a way that they are prescriptive and leave little room for interpretation and in fact have become de facto rules rather than mere guidance in many cases. This constricts agencies especially CCEs in arriving at their own conclusions and severely encroaches on their ability to exercise independent judgement.
- 4.3 Consultation prior to the release of rule amendments, RMGs and the like, whilst highly accessible though with extremely tight time frames in the early days of the Act, seems to have fallen by the wayside. It is understandable that RMGs (which now number over 70) are the preferred choice for quickly communicating DoF's view as to how the Act should be applied at the coalface. However as mentioned above this is not only DoF's view alone it is one seen through the prism of a non-CCE. The other problem is that many of the general principles enunciated in the PGPA Act are so broad as to offer many interpretations, any one of which could apply.
- 4.4 A recent example of where the distinction between CCEs and non-CCEs has been overlooked, is the amendment to the Senate Order on Entity Contract reporting. The secretary to the Senate noted that the passing of the PGPA Act had enabled the Senate Order to be applied to CCEs in the same way as it applied to non-CCEs. This occurred without consultation with CCEs and moreover relied on an RMG for the definition of one of the key terms in the Order namely "*an inappropriate confidentiality provision*" again without any prior consultation with CCEs.
- 4.5 AIMS, like many other CCEs and especially its larger research cousins, CSIRO and ANSTO, is run in a business-like manner and earns significant external revenue to increase its capacity to conduct its world-class marine science research and value add to industry. It is then restricted in its ability to exercise its own judgment with respect to traditional and innovative means of increasing that revenue further due to constraints such as the ASL cap, even though no additional appropriation funding would be necessary.
- 4.6 AIMS continues to have impact far beyond its size and ranks number 1 in Australia and number 2 in the World for Marine and Freshwater Biology, as measured by impact. Being a niche organisation, AIMS is dynamic and able to respond to industry's needs quickly. It is this level of response coupled with our strategic long term research that makes AIMS an invaluable partner to industry. In doing so, AIMS needs to be able to operate flexibly, quickly and in an agile manner, like a business would, while still ensuring we achieve the highest standard of legal and ethical conduct. For example, the market context is such that significant variations in contracted research occur on an annual basis, while in contrast it is not feasible to switch high end research capability on and off in response. It is a competitive global market for high quality staff and research infrastructure costs are relatively fixed. This context is manageable if we have the necessary cash management flexibility. By way of further example, an ability in some years to make profits and increase reserves and in other years to utilise these reserves to retain capacity, research outputs and value is of vital importance to AIMS. The current PGPA framework pressures a small organisation such as AIMS to get close to a zero operating cash position which reduces the very flexibility we need to continue to value add to industry (which results in more external revenue) and the other sections of the non-Australian Government community.
- 4.7 AIMS submits that the following changes in approach should be adopted:
 - The PGPA Rule, the RMGs and other supporting materials should as far as is practicable be principles-based rather than prescriptive or regulatory in nature.

- When any significant change or new initiative in the PGPA framework is intended to be introduced key contact personnel amongst the CCEs should be consulted and given a reasonable opportunity to review and respond.
- To avoid duplication and encourage co-operation between CCEs especially those with commonality this could be structured similarly to the Red Tape Rebels Network that DoF is commendably administering as part of its strategy to implement the Belcher Report.
- A representative working group of CCEs should be established to consult with DoF to amend existing Rules, RMGs and other instructive materials so they align with the following recommendation adapted from the Belcher Report:

“Regulation [capability improvement and good practice management] should be fit for purpose and not apply equally across [Commonwealth] entities if [appropriate and beneficial] policy outcomes can be achieved through application only to key entities without undue consequences for the policy framework [as a whole]. In particular, the cumulative compliance burden imposed on small and micro entities should be considered as part of the balance between benefits and cost.”

- Small agencies should be classified as those with 100-500 ASLs and micro agencies with 1-100 ASLs.

5. Earned Autonomy

- 5.1 AIMS fully supported the new concept of ‘earned autonomy’ based on the risk profile and performance of individual entities when it was first advocated. We do so much more now, after more than three years operating under the PGPA framework, especially given the high volume of regulatory-like materials published by DoF during this time as discussed in the previous section of these submissions.
- 5.2 So far as we are aware, none of the published materials have raised the issue of earned autonomy in any detail beyond the second reading speech when the Assistant Finance Minister acknowledged that this approach ‘*was akin to world leading practices in regulation adopted by APRA, ASIC and the ATO*’. The Finance Minister has power under section 101(2) of the Act to make rules which differentiate between both different Commonwealth entities and different classes of such entities.
- 5.3 For smaller entities like AIMS the development of a comprehensive system classifying CE in accordance with their risk profile and performance would go a long way towards addressing the problems of over-prescriptiveness and one-size-fits-all mentality which we have ventilated in these submissions. We wish to make clear however that we do understand the difficulties in introducing such a system as recorded at the time. However three plus years on all CEs would have sufficient data and other information from which risk profiles and performance metrics can be established.
- 5.4 In order to be more effective and efficient, AIMS believes its administrative and compliance burden should be calibrated to the level of autonomy which it is entitled to in accordance with its risk profile and performance. This should factor that Corporate Entities already have significant governance arrangements via their independent boards and councils (Accountable Authorities) and enabling legislation. This applies with equal force to all CEs. Accordingly, we submit that terms of reference be drawn up and a working group be formed to draft an appropriate system. This will be separate from differential reporting and compliance which we proposed above because that is dependent on the nature and size of each CE not solely on risk profile and performance, though there may be intersects between the two.

6. Co-operation

- 6.1 There is a high degree of co-operation among the public funded research agencies, the University sector and in AIMS' case also the Great Barrier Reef Marine Park Authority (GBRMPA). AIMS sees itself as a partner to many industry players and agencies and has regular formal and informal fora with them. Examples include regular Executive meetings of AIMS with GBRMPA, James Cook University and Agency Heads meetings within the Department of Industry, Innovation and Science. This co-operation extends to include many co-invested projects in the AIMS portfolio.
- 6.2 Our observation is that more effort and resources need to be garnered in the promotion of networks for functional services. In legal terms the Australian Government Legal Network, the Corporate Commonwealth Entity Legal Network, General Counsel Working Group and smaller spin-offs of these partly address these. However they need to be supported and resourced by having webcasts of in-house seminars and presentations on issues common to all CEs or of considerable importance. The technology exists and is relatively inexpensive but critically important needs to be utilised more heavily for CEs located outside Canberra and especially for those in regional areas.
- 6.3 Once the AGLN model has been fully developed it could and should be adapted into other parts of government service.

I hope that the foregoing submission assists in your review. If you have any queries in relation to the submission, please do not hesitate to contact me on 

Yours sincerely



David Mead
Chief Operating Officer