



**Australian Government**  
**Australian Renewable  
Energy Agency**

**ARENA**

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Ms Elizabeth Alexander AM and Mr David Thodey AO  
Independent Reviewers of the PGPA Act and Rule  
PGPAActReview@finance.gov.au

Dear Ms Alexander and Mr Thodey

**Independent Review of the Public Governance, Performance and Accountability Act 2013**

I am writing on behalf of the Australian Renewable Energy Agency (**ARENA**) in response to your request of 9 October 2017 seeking submissions to the independent review of the *Public Governance, Performance and Accountability Act 2013* (Cth) (**PGPA Act**) and the *Public Governance, Performance and Accountability Rule 2014* (**PGPA Rules**).

For ease of reference, our submission addresses the broad objectives of the review, with specific reference made to those provisions (applicable to ARENA) that we consider warrant amendment, clarification or comment.

***Impact of the new legislative framework***

It is ARENA's view that the new legislative framework has generally been successful in streamlining requirements for agencies, in particular through the consolidation of a range of instruments under the PGPA Rules. We note that technical amendments have been made to improve the operation of the Act and that in so doing, greater certainty has been provided to agencies such as ARENA as to their legislative requirements.

We do note, however, that not all equivalent provisions from the *Financial Management and Accountability Act 1997* (**FMA Act**) and the *Commonwealth Authorities and Companies Act 1997* (**CAC Act**) have been included in the PGPA Act. A director's statutory right of access to 'books' provided for under the CAC Act is not included in the PGPA Act or PGPA Rules. Under section 27L of the CAC Act, directors had a right to inspect and copy books for the purposes of a legal proceeding to which the entity is a party, that the director proposes in

good faith to bring or that the director has reason to believe will be brought against him or her. This right continued for seven years after the person ceases to be a director.

This provision should be included in the PGPA Act or PGPA Rules (as appropriate), to avoid the need for agencies to enter into deeds of access with board members to provide equivalent rights of access to such books.

### ***Accountability and Governance***

#### *» Commonwealth Risk Management Policy*

This Policy, and its accompanying guide, has been useful for agencies such as ARENA in implementing the requirements of section 16 of the PGPA Act in respect of systems relating to risk and control. Further refinement of the policy and additional guidance from the department of Finance in respect of risk management by agencies is supported.

#### *» Duty to encourage cooperation with others*

Section 17 requires an accountable authority to 'encourage officials of the entity to cooperate with others to achieve common objectives, where applicable.' We understand that this section was intended to achieve a cultural change in the way entities operate and becomes significant if two entities have conflicting or misaligned objectives under their respective legislation. This section requires clarification so that entities are clear as to their obligations under this section.

#### *» The Corporate Plan requirements*

ARENA supports the inclusion of the Corporate Plan requirements under 35 of the PGPA Act. There does appear to be some overlap with the Corporate Plan, and ARENA's responsibility for development of a 'work plan' under section 27 of the ARENA Act, both of which are to be provided to the Minister. We note however that written guidance from the Department of Finance as to how the corporate plan fits into entity level planning processes (such as RMG 132) has been provided which assists in managing these processes.

#### *» Duties of officials*

We support the inclusion of sections 25-29 of the PGPA Act which clearly sets out the standards to be met by officials, including the duty to disclose interests. Further guidance as to how and when to disclose interests is contained in Sections 13-15 of the PGPA Rule which has assisted ARENA in developing and reviewing its conflict of interest processes.

#### *» With respect to PGPA Rule - Section 10 (Fraud)*

This Rule has been of assistance for agencies such as ARENA through its inclusion of specific steps that should be taken to reduce the risk of fraud, such as conducting fraud risk assessments regularly and developing and implementing a fraud control plan.

#### *» Whether there would be benefit in bringing forward and potentially legislating an earlier annual report delivery and tabling date.*

We note the new requirement that Commonwealth entities must provide annual reports to

their Minister on the 15th day of the fourth month after the end of the reporting period and do not have any issues with that timeframe. We do not consider that any change to this timing is required. We also consider the detailed annual report requirements in Division 3A, Subdivision B of the PGPA Rule to be appropriate.

ARENA supports the work currently underway to develop an Annual Report Digital Prototype and has already commenced web-based digital annual reporting whilst also complying with the need for hard copies. We look forward to further developments in this regard.

» *Requirements for and the role played by audit committee*

Rule 17 sets out minimum requirements for audit committees of Commonwealth entities. The current wording of the functions of the audit committee is unclear. Of particular concern has been the use of the phrase “reviewing the appropriateness”- a vague term open to much interpretation. Department of Finance states that ‘appropriateness’ has its ordinary meaning of ‘suitable or fit for purpose’. This has led to much confusion by audit committees eg ANAO report 58 of 2016-17; “Implementation of the Annual Performance Statements Requirements 2015” para 30 states;

*“the need for further clarity in guidance, in particular for audit committees, has been acknowledged by the Department of Finance in recent discussions with audit committee chairs (Audit Committee Chairs Forum, 7 June 2017) and the need for the Department of Finance to provide further advice. Eg Department of Finance- Functions of audit committees: Reviewing the appropriateness of performance reporting, including the 2016-17 annual performance statements August 2017.”*

We understand that this further advice, rather than clarifying the position, has caused concern amongst audit committee chairs. As well as issues related to the use of ‘appropriateness’, the use of the term ‘assurance’ has also been confusing, particularly given the use of this term in auditing standards which relates to Assurance Engagement Providers. Generally audit committees are governance committees, who are the recipients of assurances from various parties, rather than providers of assurances. We therefore submit that a preferred wording would be that the audit committee ‘provide advice on financial reporting, Performance Reporting, risk and internal controls’.

We further submit that the requirements and proper role of the audit committee require clarification, with respect to the function of reviewing ‘performance reporting.’ Inclusion of more guidance as to the role of audit committees will assist members and provide greater certainty for agencies as to their obligations.

We consider that the statement signed by the Accountable Authority for the Performance Statement currently requires too high a level of assurance, namely that it “accurately reflects”. This is a higher level than that currently provided on financial statements, namely “fairly represents”, which is then supported by a reasonable assurance opinion by the ANAO. It is our submission that this requirement should be amended so as to confer no greater standard than that required for financial statements.

ARENA's audit committee would welcome further consultation by the Department of Finance in the development of PGPA guidance and advice, given the greater depth of experience and understanding within audit committees.

We are happy to have this submission published and thank you for the opportunity to make a submission.



Ivor Frischknecht  
Chief Executive Officer, ARENA