



10 November 2017

JOHN STANHOPE AM

Chairman

PGPA Act Review
Attention: Review Secretary
Department of Finance
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Dear Ms Balmaks

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

Thank you for inviting Australia Post to provide its observations as part of the independent review of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

Background

As you would be aware, Australia Post is statutory corporation incorporated in Australia under the *Postal Services Act 1975* and continued in existence as a statutory corporation under the *Australian Postal Corporation Act 1989*.

Australia Post is also a Corporate Commonwealth entity that is regulated by both its enabling legislation and the PGPA Act, the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule) and the *Public Governance, Performance and Accountability (Financial Reporting) Rule 2015* (FRR), and is prescribed as a Government Business Enterprise (GBE) under the PGPA Rule.

Prior to the operation of the PGPA Act, Australia Post was regulated by *Commonwealth Authorities and Companies Act 1997* (CAC Act).

The observations set out in this letter are provided in these capacities.

Observations

Impact of the PGPA Framework

At an holistic level, Australia Post supports the transition from prior regulatory arrangements to the PGPA framework. As identified on the independent review's webpage, operation of the PGPA Act involved a shift from the previous dual system of public sector management and accountability to a single framework that takes a more principles-based approach than the prior, compliance and process-driven focus. Australia Post considers these changes to be of considerable benefit, and notes that the principles-based approach is particularly appropriate in the context of the diverse range of industries, roles, and governance structures, that are covered by the many bodies regulated by the PGPA Act.

Accountability and Governance

The following points are made from an accountability and governance perspective, in the interests of identifying how the PGPA framework might be changed to foster even more efficiency and clarity:

The different standards of governance and accountability that apply between the PGPA Act and the *Corporations Act 2001* (Corporations Act) mean that slightly different rules apply to Commonwealth entities and Commonwealth Companies. For example, it may be appropriate to amend the duties of officials under the PGPA Act to align with the duties of officers under the Corporations Act to create a uniform standard of governance between Commonwealth Companies and Corporate Commonwealth entities, and for consistency with the Corporations Act.

The statutory duties of officials of Commonwealth entities under the PGPA Act are also more onerous and apply to a broader range of individuals (including employees) compared to the duties of officers of Commonwealth Companies under the Corporations Act. Further, an official of a Corporate Commonwealth entity who is also an officer of a subsidiary of a Corporate Commonwealth entity will be subject to slightly different statutory duties as an officer under the Corporations Act. This can create confusion about how these duties are discharged and whether different matters need to be considered in making a decision as an 'officer' of a Corporations Act company or as an official of the Commonwealth entity.

For example, there is currently no formal legislative guidance about the circumstances in which an official will satisfy the duty of care and diligence under section 25 of the PGPA Act. However, a director of a Corporations Act company can rely on the business judgment rule in section 180(2) of the Corporations Act to satisfy the duty of care and diligence under the Corporations Act and may reasonably rely on information and advice provided by employees and advisers in making decisions if it is done in good faith after making an assessment of the information or advice. No equivalent provisions exist in the PGPA Act or PGPA Rule.

The Explanatory Memorandum for the PGPA Act indicates that the PGPA rules would deal with the exercise of business judgment and the ability of officials to rely on advice when making decisions. A rule applying to GBEs should be prescribed under section 25(2) of the PGPA Act to reflect the provisions in sections 180(2) and 189 of the Corporations Act. This is consistent with the commercial environment in which GBEs are expected to operate and reflects the practical reality. It follows that decision makers in large commercial enterprises & GBEs should have the ability to reasonably rely on information and advice provided by employees and advisers.

The duties in sections 15, 16 and 17 of the PGPA Act do not apply to Commonwealth Companies. However, there does not appear to be a clear rationale for holding Corporate Commonwealth entities and Commonwealth Companies to different standards. In particular, GBEs are expected to run as commercial enterprises and return value to the Shareholder but this is somewhat complicated by the duty in clause 15(2) which requires the accountable authority to take into account the effect of any decisions on public resources and only the GBEs that are Corporate Commonwealth entities are subject to this provision.

It seems somewhat disproportionate that 'officials' of Commonwealth entities (which includes employees) are required to comply with the duties in sections 25 to 29 of the PGPA Act. In contrast, only limited duties apply to employees of Commonwealth Companies (i.e. in relation to the misuse of position and misuse of information). In addition, officials of Commonwealth entities (including employees) are required to disclose material personal interests, whereas the Corporations Act only requires directors to disclose material personal interests.

The PGPA Act could be amended to exclude employees from the definition of 'official' or by limiting the duties of employees to the duties contained in sections 27 and 28 (i.e. use of position and use of information) which is more consistent with the Corporations Act. The definition of 'official' could also be amended to align with the definition of 'officer' in the Corporations Act for consistency of duties of officers/officials between Commonwealth Companies and Corporate Commonwealth entities.

Section 61 provides that PGPA Rule may prescribe requirements relating to the grant of indemnities by Commonwealth entities but no such rule has been prescribed, despite the intention expressed in the Explanatory Memorandum that an equivalent provision to section 27M of the CAC Act would be prescribed.

Board members of corporate Commonwealth entities do not have an express statutory right to access the entity's books and records under the PGPA Act. Although rights to access certain information may be permitted under the Freedom of Information Act and may be dealt with contractually between the entity and the Board member, it may be appropriate for Board members to have statutory rights of access to the books and records which are similar to those contained in sections 198F and 290 of the Corporations Act.

Requirement for and the Role of Audit Committees

The Australia Post Audit & Risk Committee (Committee) is a sub-committee of the Board of Australia Post, and is established to assist the Board to discharge its responsibilities under the *Australian Postal Corporation Act 1989*, the PGPA Act, the PGPA Rule and *Resource Management Guide 126 – Commonwealth Government Business Enterprise Governance and Oversight Guidelines* (RMG 126). The Committee has a Charter which is published on Australia Post's website. That Charter, and the conduct and operation of the Committee is, as far as practicable, aligned with the ASX Corporate Governance Council's Corporate Governance Principles and Recommendations. In this regard, operation of the PGPA has not materially burdened or altered the role played by the Committee.

On a distinct but related matter, we note Australia Post's Internal Audit function has not noted any deficiencies in PGPA Act compliance for Australia Post, nor has it identified any improvement opportunities for the PGPA Act in the course of its work. It has, accordingly, not performed any specific compliance reviews relating to the PGPA Act over the past three years.

Subsidiary Governance

From the viewpoint of subsidiary governance arrangements, in parallel with the Commonwealth Public Management Reform Agenda (PMRA), Australia Post has continued to develop and enhance the Australia Post corporate group's subsidiary governance framework. Where required, adjustments to subsidiary practices and procedures have been implemented by Australia Post having regard to the requirements of the PGPA Act and PGPA Rule, without adverse impact on the Australia Post corporate group's overall performance or financial returns.

In our experience, *Resource Management Guide 126 - Commonwealth Government Business Enterprise Governance and Oversight Guidelines* (RMG 126) has been a useful tool to clarify the Commonwealth Government's expectations and reporting requirements in particular. We particularly acknowledge the support and guidance received from the PMRA from time to time on specific issues of detail.

We have identified three minor points of clarification to RMG 126 for consideration. These points are raised in the context of the PGPA Act objects of meeting high standards of governance, performance and accountability and to provide meaningful information to the parliament and the public:

- including a reference to section 72 of the PGPA Act in addition to the existing reference to section 19 (in footnote 3 on page 20) may help clarify the interrelationship between those two provisions; and
- connecting some concepts to legislation may provide further clarity on their meaning in RMG 126 (for example, clarifying the concept of a 'controlling interest' by reference to the Corporations Act).

Risk Management

We have reviewed key elements of the PGPA Act in relation to risk management and consider that, from Australia Post's perspective, the requirements are not onerous and are considered to set a standard of good practice for regulated entities.

We note that Corporate Commonwealth entities are not required to comply with the Commonwealth Risk Management Policy, but are required to review and align their risk management frameworks and systems with this policy as a matter of good practice. Australia Post's risk management frameworks are currently aligned to the Commonwealth Risk Management Policy, and has a mature set out supporting policies, processes and tools in place to support this alignment. We note also that Resource Management Guide 211 – *Implementing the Commonwealth Risk Management Policy – Guidance* is a fit for purpose, principles-based document that communicates requirements effectively and appropriately.

In relation to the PGPA Rule obligation to take all reasonable measures to prevent, detect and deal with fraud, Australia Post has a Fraud Management Framework, Group Fraud & Corruption Policy and Annual Fraud Control Plan in place for some time to support satisfaction of this obligation. Collectively, that infrastructure aligns to numerous benchmarks (including the Commonwealth Fraud Control Framework), and has not required significant change to accommodate the operation of the PGPA Act or PGPA Rule.

Executive Remuneration

Section 27 of the FRR sets out the minimum key management personnel (KMP) remuneration disclosure requirements for Commonwealth entities. The disclosure requirements are based on the disclosure requirements of AASB 124 *Related Party Disclosures*. In their current form, the FRRs do not require the disclosure of individual executive remuneration. This has resulted in a perceived lack of transparency by Commonwealth entities. This was highlighted in the recent Joint Committee of Public Accounts and Audit (JCPAA) *Report 463: Commonwealth Financial Statements*, which recommended that the Department of Finance, consistent with previous practice, re-establish a formal requirement for disclosure of senior executive remuneration by Commonwealth entities.

In response to the requests from the Minister for Finance and related correspondence, Australia Post has published remuneration reports for the 2016 and 2017 financial years. In addition, the 2017 Australia Post annual report includes additional disclosures of remuneration paid to each senior executive. The disclosures made by Australia Post are consistent with the requirements imposed on listed entities by Section 300A of the Corporations Act.

Australia Post supports best practice remuneration reporting by Commonwealth entities and, accordingly, is supportive of the JCPAA report recommendation to re-establish a formal requirement for disclosure of senior executive remuneration by Commonwealth entities.

In doing this, Australia Post recommends that the following principles are adhered to:

- the remuneration disclosure requirements should be aligned to what is expected of ASX listed entities, at least in the case of material entities;

- remuneration disclosures should be made on an accrual basis (rather than cash basis) to ensure consistency with the requirements of AASB 124 and the Corporations Act; and
- disclosures should be limited to 'key management personnel' (as required by AASB 124 and the Corporations Act) rather than applying an arbitrary quantitative threshold.

Associated Instruments

One of the objectives of the PGPA Act is to establish a coherent system of governance. There are a number of rules and principles that regulated entities are expected to comply with but that do not formally have the force of law. For certainty, ease of reference and consistency, it may be appropriate to enshrine these requirements in the PGPA Rule so there is clarity about which requirements are mandatory.

For example, RMG 126 does not have formal legislative force, but includes a number of mandatory principles that regulated entities and officials must do, and other actions or practices that entities and officials are expected to follow or implement. For example:

- section 3.2 includes a timetable that entities are expected to follow for providing Corporate Plans, Reports etc., to the Minister(s) where in some instances the PGPA Rule indicates that the information should be provided as soon as practicable (see e.g. Rule 16E(5));
- section 3.3(a) includes additional detail about matters that should be included in the Corporate Plan that goes beyond what is specified in PGPA Rule 16E(2); and
- section 3.3(b) contains a list of supplementary information that the Minister requires for the purposes of section 19(1)(b) of the PGPA Act.

For clarity and consistency, these principles from RMG 126 could be formally enshrined in the PGPA Rule.

Corporate Plans

In relation to Corporate Plans, we note that the requirement for an annual Corporate Plan that covers a four year planning period is largely aligned to the way we plan our business, and the Corporate Plan serves an important function as a primary strategic planning document for Australia Post.

We note, however, that Resource Management Guide 132 – *Corporate plans for Commonwealth entities* (RMG 132) sets out some guidance in relation to style and structure that Australia Post would not suggest of its own accord, and that may benefit from review. For example, RMG 132:

- suggests that granular performance information detail associated with somewhat low level business planning decisions and operations be included, whereas this level of detail is not practical or appropriate for a strategic planning document with a four year time horizon; and
- provides somewhat inconsistent guidance about the reporting arrangements for subsidiaries – noting in one place that a Corporate Plan does not need to identify each subsidiary, and in another place noting that a Corporate Plan must summarise how a subsidiary will contribute to achieving an entity's purpose.

Annual Reports

In relation to the potential benefit of bringing forward and potentially legislating an earlier annual report delivery and tabling date, Australia Post considers the current timing arrangements for the delivery and tabling of its annual report to be appropriate. We note that a significant volume of resources are associated with preparing and delivering quality annual reports under the current timing arrangements, in addition to the practical arrangements put in place to ensure the provision of hard copies to satisfy Parliamentary requirements, and to ensure the timely publication of the annual report online. That annual program of work would need to be significantly reviewed and truncated if current timelines were proposed to be brought forward.

Support Provided to Commonwealth Entities

Australia Post would like to acknowledge the valuable function provided to Australia Post and other regulated entities in the form of Resource Management Guides and related guidance. Notwithstanding the opportunities for clarification noted in this letter, the portfolio of Resource Management Guides published and maintained has to date provided an important and valuable source of information and guidance to our people for the purposes of understanding the PGPA framework and the associated expectations of Government in the manner in which we conduct ourselves as both a commercial entity and a community service providing GBE.

Also of significant value is the PMRA, and the associated Community of Practice workshops conducted on a periodic basis by the Department of Finance. These workshops provide valuable opportunities for our staff with critical involvement in Australia Post's PGPA framework to investigate aspects of the framework in detail, provide feedback to the Department of Finance, and to discuss the PGPA framework collaboratively with counterparts from other regulated entities.

Thank you again for affording the opportunity to provide this feedback. Our senior representatives would be happy to make themselves available to you or the Independent Reviewers to discuss this letter, or the independent review more broadly, if that would assist. Please contact Erin Kelly, Corporate Secretary on [REDACTED] in the first instance.

Yours sincerely

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John Stanhope AM