



Australian Government
Department of Human Services

[Redacted]

Secretary
Renée Leon PSM

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

Dear Ms Elizabeth Alexander AM and Mr David Thodey AO

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

Thank you for your letter of 9 October 2017 seeking submissions to the Independent Review of the PGPA Act. The Department of Human Services submission to the Independent Review is attached. It is set out in three sections aligned to the three objectives of the review.

The contact officer for this submission is Mr Mark Jenkin ,Chief Financial Officer. Mr Jenkin can be contacted at [Redacted]

Yours sincerely

Renée Leon
November 2017



Attachment A

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

Objective 1: Is the operation of the PGPA Act and Rule achieving the objects of the PGPA Act in a manner consistent with the guiding principles?

1. From the Department of Human Service's (the department) perspective, the PGPA Act and Rule are broadly operating in a manner consistent with the five guiding principles. We make particular comment as follows:

- a) **Government should operate as a coherent whole:** The duty of accountable authorities to encourage cooperation has been a welcome addition to the PGPA framework. It has given staff "permission" to seek out cooperative arrangements both within and beyond the Commonwealth.

Consideration should be given to further enhancing this requirement through the development of guidance, perhaps by way of a Resource Management Guide. The former National Collaborative Framework, a framework providing guidance and practical resources to support collaboration between entities, is not currently maintained by the Department of Finance and has been archived on its website. In our view there would be value in generating a contemporary set of collaborative principles and supporting resources.

- b) **A uniform set of duties should apply to all resources handled by Commonwealth entities:** The inclusion of the duties of officials in the PGPA Act has contributed to a more holistic resource management framework. Having the duties of officials in the PGPA Act has been useful in developing a culture of responsibility and accountability. It has also served to highlight key issues for officials to consider in their employment with the Commonwealth.
- c) **Performance of the public sector is more than financial:** In our view, work is ongoing on this aspect of the PGPA. The new corporate planning and performance framework initially required duplicate performance information to be included in the Corporate Plan, the Portfolio Budget Statements (PBS) and the Annual Report. This resulted in duplication of effort and created ambiguity around the role of the PBS. Recent changes have largely addressed this.

Notwithstanding these improvements, the amount of reporting required also needs to be considered in the light of the value added. Given the range in size and nature of Commonwealth entities, flexibility is required in the development of corporate plans, and in monitoring performance to ensure that the process is meaningful for a particular entity. The

department supports the inclusion in the PGPA framework of the requirement for corporate planning and performance monitoring and reporting, noting that excessive prescription around the process could potentially limit the benefits to Commonwealth entities and the Commonwealth.

- d) **Engaging with risk is a necessary step in improving performance:** The duty of an accountable authority to establish and maintain systems relating to risk has been useful in that it places risk management within the formal resource management framework. From the department's perspective, this has been useful for at least two reasons:
 - i. It sends a clear message to officials that risk management is important. It has also enhanced the ability of officials involved in developing risk management policies to initiate discussions associated with risk.
 - ii. Strategically, it contributes to the more holistic approach to resource management, something the department is encouraging more generally.

- e) **The financial framework, including the rules and supporting policy and guidance, should support the legitimate requirements of the Government and the Parliament in discharging their respective responsibilities:** From the department's perspective, the financial framework as it is constructed contributes to supporting the legitimate requirements of the Government and the Parliament. However, we consider there are opportunities for improvement which we elaborate upon throughout this submission.

Objective 2: What legislative, policy or other changes or initiatives, to enhance public sector productivity, governance performance and accountability arrangements could be made that are covered by the PGPA Act?

- 2. **Accountable Authority Instructions:** Section 110(2)(aa) of the PGPA Act prohibits the delegation of the power to issue Accountable Authority Instructions. The inability of the accountable authority to delegate the power to issue Accountable Authority Instructions (AAIs) means that the internal governance framework of an entity is less responsive to a changing environment because of the requirement to escalate all AAI changes to the accountable authority, irrespective of how significant they are. The delegation of this power was permitted by Section 53(1)(b) of the *Financial Management and Accountability Act 1997* (FMA Act). This provided flexibility at a level considered appropriate by the Chief Executive. The removal of this power seems to be inconsistent with the intent of the PGPA framework to be more risk and principles-based with greater flexibility.

- 3. **Contractors:** One of the issues currently facing Commonwealth entities is the increasing use of contractors. Under Section 13(4)(c) of the PGPA Act, contractors are specifically excluded from the definition of officials with limited exceptions. While Section 9(1A) of the PGPA Rule has been recently amended to prescribe contractors required to exercise a delegated power as officials, there is still a significant accountability gap for those contractors who work on a regular basis in Commonwealth entities and are not prescribed as officials by the Rule. For example, contractors occupying a staff role who are not required to exercise delegations are not subject to the same

requirements as their APS colleagues, such as the duties of officials. In practical terms, this creates a two-tier workforce from an accountability perspective. In our view this is not a good outcome for the Commonwealth. Consideration could be given to expanding the definition of officials to include contractors, or alternatively defining contractors and prescribing what obligations in the PGPA Act apply to them.

4. **Outsourcing:** Similarly, an increasing amount of work is being outsourced by the Commonwealth. Consideration should be given to acknowledging and addressing these arrangements in the PGPA framework. Where employees of outsourced providers have access to Commonwealth systems and information, there are unique risks, which are not necessarily anticipated in the current PGPA framework. Some of these risks can be managed contractually, but there may be a perception that this is less effective than legislative coverage. For example, should employees of such service providers be prescribed as officials, or something similar, where they have access to government systems or data?
5. **Shared Services:** A third area that is becoming increasingly common in the Commonwealth is the use of shared services arrangements. The department has not encountered any significant issues to date in respect of the PGPA Framework interacting with shared services arrangements. Nevertheless, it would seem timely to consider whether the PGPA framework should establish some guiding principles to underpin these types of arrangements.
6. **Committing relevant money and entering, varying and administering arrangements:** Section 23 of the PGPA Act currently imposes a legislative overlay over procurement and requires the authority of the accountable authority, or his/her delegate, to be exercised at two stages of the procurement process - when approving a commitment of relevant money; and when entering, administering or varying an arrangement. In the experience of the department, this unilateral two-step approach in section 23 complicates the procurement process. For low value, simple and non-complex procurements, the average official does not naturally view the purchase goods and services in this manner. Instead, they think in a simple one-step concept of buying something, just like they would when shopping in their personal lives. While training seeks to address this, it is challenging to continually teach a concept that is not natural.

It also creates other complications in terms of identifying which person actually performs the function. For example, who is really entering and administering arrangements (or approving the actual expenditure) when Executive Assistants (EA) book travel on behalf of their Senior Executive Service (SES) manager? An SES could simply provide an instruction to their EA to book travel on a particular date. The EA may then go into the booking tool and book the flight and accommodation without getting any further instructions. One interpretation of this scenario is that the EA is the one approving the expenditure and administering the arrangement, as the choice and cost of flights may be made without further reference to the SES member.

It could be argued that section 23 of the PGPA Act is redundant. In our view, section 16 of the PGPA Act which requires an accountable authority to put in place systems of control is sufficient. While we agree that more controls like the two-step process are required for procurements that are higher value, more complex or have a high level of inherent risk, appropriate controls can be

implemented within an entity and tailored to the specific needs of the entity. In our view, this approach would produce more effective controls than does a one-size-fits-all approach.

We note that section 23 does not apply to corporate Commonwealth entities, so presumably the same discretion around controls could be given to non-corporate entities. Additionally, in the context of increasing shared services arrangements it would be useful if the requirements applicable to corporate and non-corporate Commonwealth entities were more consistent.

If there is a prevailing view that section 23 should be retained, consideration should at least be given to simplifying the provision by removing the current requirements relating to 'entering, administering or varying arrangements' at least for low value transactions and leaving in place a single control requiring approval of commitments of relevant money. Beyond that, Accountable authorities would be well positioned to put in place appropriate controls commensurate with the value, risk and complexity of proposed arrangements.

7. **Banking:** Currently, section 19 of the PGPA Rule specifies that the banking of any relevant money must occur on the next banking day following receipt, or within a period of time prescribed in instructions from the accountable authority. As there is a general reduction in the use of cash within the community, and a commensurate lowering of risk, consideration should be given to updating the PGPA Rule to only require that relevant money received by the entity be banked as soon as practicably possible. It could be then be left to the accountable authority to maintain appropriate banking arrangements in the context of the entity and volume of receipts. At the current time, the prescription around banking times creates unnecessary restrictions. For example, in remote Commonwealth offices there may not be a bank in the relevant town. Further, in the event of unexpected circumstances that delay banking, such as emergencies, staff absence or other business demands, there is little capacity for flexibility which results in unnecessary non-compliance with the PGPA Act.

8. **Repayments by the Commonwealth:** Section 77 of the PGPA Act requires that the Finance Minister must be satisfied that there is no other appropriation for a repayment before a repayment can be made under the auspices of section 77. The corresponding requirement in the FMA Act did not include this requirement. The inclusion of Finance Minister consideration in this section has imposed additional red-tape around the administration of repayments. For example, if a person comes into a DHS Service Centre and inadvertently leaves money behind, once that money is in the possession of the department it becomes "relevant money" and therefore part of the consolidated revenue fund. This means that an appropriation mechanism is required to return it, which is Section 77 in this example, and a requirement for a decision by a delegate of the Finance Minister. Under the previous FMA framework, the money could be returned to the customer and the process to do so was only subject to the department's internal rules. Consideration should be given to removing this requirement as it has not added any value in terms of the controls around repayments, but merely added to the administrative burden.

9. **Annual Report:** There has been some suggestion that consideration may be given to an earlier due date for publication of Annual Reports. The preparation of the Annual Report requires a significant investment of resources. Any move to shorten the time frame available to prepare the annual report would increase the pressure already associated with this function – particularly for larger or more complex agencies – and would potentially increase the risk of mis-statement, as preparation and quality assurance processes would have to be truncated to meet shorter deadlines. Alternatively, if an earlier deadline was proposed, consideration should be given to reducing the amount of information required to be contained in the Annual Report. Additionally, consideration should be given to the possibility of red tape reduction by removing the requirement to publish and print hard copies of the annual report, given its accessibility online.
10. **Senior Executive Remuneration:** We note the scope of the review includes consideration of SES Remuneration reporting. These disclosures have been subject to constant review and regular change over many years. This reporting would be best served by stabilising the requirements and resisting changes from year to year, allowing for easier comparability between years and improving transparency.
11. **Audit Committees:** The requirement in the PGPA Act for majority independent membership of audit committees has enhanced the quality of the conversations at audit committee, and improved cross-agency cooperation through the opportunities to be appointed as independent members of other entities' audit committees. In our view, this has been a valuable addition to the PGPA framework. Our audit committee has concerns relating to the unrealistic level of assurance required around the performance statement, as discussed at the ANAO facilitated Chairs of Audit Committee 7 June 2017 meeting. Unlike financial statements, performance reporting is not subject to an established controls assurance framework or professional standards. We believe this assurance obligation over performance reporting would benefit from a full review of the requirement.

Objective 3: Has the Department of Finance' implementation of the PGPA Act and Rule appropriately supported their operation in Commonwealth entities?

12. The department is generally happy with the ongoing advisory support provided by Finance in support of the PGPA Act and Rules, noting that on occasion it may take some time for a response.
13. However, we believe many of the communication and training tools provided by the Department of Finance are too complex for general use. The Resource Management Guides provided by the Department of Finance have been a welcome tool to support the implementation of the PGPA framework. However, we believe the effectiveness and usefulness of these guides would be significantly enhanced if they were simplified and made more concise. While the updated versions issued in recent months provide clearer advice which can be utilised by our central finance team when developing our internal policies, they are still too complex and convoluted for general use within the department.

For instance section 9 of Resource Management Guide 400 – Commitment of Relevant Money is intended to provide guidance on exercising the power to enter arrangements. The wording utilised is legalistic, and in our view does not provide clear guidance to delegates. Targeting at least some materials for general staff use, rather than finance specialists or legislative enthusiasts, would greatly enhance their prospect of being used.