Consider:
- Does the Commonwealth have legislative power to undertake the activity?
- Where the Government does not have Constitutional power to perform an activity—then it cannot fund it or create a structure to undertake the activity, unless the power is referred to the Commonwealth by the States.

GATEWAY TEST 1
Is the activity within the Commonwealth’s Constitutional power?

GATEWAY TEST 2
Is the activity better placed to undertake the activity, in whole or in part (compared to an external provider)?

GATEWAY TEST 3
Can the activity be conducted within an existing Commonwealth entity or Commonwealth company?

A new Commonwealth entity can only be created with the approval of Cabinet or Prime Minister supported by a cost benefit analysis. A new Commonwealth company requires the Finance Minister’s authorisation.

Core Governance principles

Clarity of purpose and interactions
- What is the intended outcome of the activity?
- Who are the relevant stakeholders, both internal and external to the Australian Government?
- Who has the capacity to undertake the activity (e.g., requisite skill set, staff, infrastructure)?
- What level of funding is available?
- What are the risks associated with the activity?
- Who is best placed to manage them?

The following four principles are inter-related and may be given more or less weight depending on the nature of the activity.

Accountability to Parliament
- Does the activity require legislation to fulfil the intended outcome?
- How involved does the Government need to be?
- What level of accountability does the government require (e.g., higher level where there is a higher risk involved in the activity)?
- What reporting is required?

Transparency to the public
- How much transparency is needed?
- How does the level of transparency interact with the level of accountability to Parliament?
- Where should information be reported (e.g. on a website or in the annual report)?

Optimising efficiency
- What is the most efficient way to deliver the intended outcome?
- Can efficiencies be gained by leveraging synergies with already existing activities?
- What is the service standard required to be delivered? Can a more efficient standard satisfy the need that the activity is designed to meet?
- How does efficiency link with performance?
- What level of quality is required?
- How is the required level of quality best achieved, in the context of available funding?
- How will performance be measured, in the context of the risk involved with the activity? (need to consider the objective, input, process, output, outcome, impact)

Consider:
- Is the activity something that needs to be done or coordinated at the national level?
- Is the Commonwealth under an obligation to perform the activity? (e.g., treaty, legislative provision or public commitment)
- How directly or indirectly involved does the Government need to be?
- Can arm’s length options such as a funding agreement achieve the outcome effectively?

Consider:
- Is statutory independence from Government required for the activity?
- Is legislation required to set clear roles and responsibilities, as well as mandate accountability and transparency requirements?
- Is a Ministerial power of

Consider:
- Will the activity perform core government or policy activities?
- Will it be primarily budget funded?

Consider:
- Will the activity involve regulatory functions under a law of the Commonwealth, involving actions such as investigation, enforcement, registrations, collection of taxes or fees etc?

Consider:
- An entity should only be established as a corporate Commonwealth entity where these elements are required. If not a non-corporate Commonwealth entity is appropriate.

Government cannot undertake an activity that it does not have Constitutional power to do (specific head of power or executive power). It may need to consider an alternative mechanism outside of the Commonwealth Government.

The activity can be conducted within a Commonwealth entity or Commonwealth company. Options include:
- A division or section of a Commonwealth entity with distinct branding and separate reporting if necessary
- Regulatory functions can be performed from within an existing entity, with legislation providing the necessary independence for the regulatory activity
- Commonwealth companies are intended to undertake purely commercial activities. Only appropriately commercial activities should be considered to be undertaken by an existing Commonwealth company. The company constitution may need amending to take on an additional activity.

The entity may be best established as a corporate Commonwealth entity and employ its officials under the Public Service Act 1999 (PS Act), unless there is a persuasive operational need to employ staff outside the PS Act.

The entity may be best established as a non-corporate Commonwealth entity
- There is a preference for staff to be employed under the PS Act, unless there is a clear operational need to employ officials outside the PS Act.

The entity may be best established as a corporate Commonwealth entity under section 87 of the PGPA Act
- In limited circumstances it may also be appropriate to establish the entity as a Commonwealth company incorporated under the Corporations Act 2001.
- Both structures require Finance Minister approval prior to creation.

Government approval process