This guide contains material that has been prepared to assist Commonwealth entities and companies to apply the principles and requirements of the Public Governance, Performance and Accountability Act 2013 and associated rules, and any applicable policies. In this guide the: mandatory principles or requirements are set out as things entities and officials ‘must’ do; and actions, or practices, that entities and officials could do to give effect to those principles and/or requirements are set out as things entities and officials ‘should consider’ doing.
**Audience**

This guide is relevant to corporate Commonwealth entities that are not members of the Comcover self-managed fund.

**Key points**

This guide:

- provides advice to corporate Commonwealth entities on the placement of insurance to cover their directors and officers against liability claims
- describes the restrictions on corporate Commonwealth entities from insuring officials of the entity against liabilities relating to breach of duty
- comes into effect on 1 July 2014, when the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and Public Governance, Performance and Accountability Rule 2014 (PGPA Rule) also take effect.

**Resources**


Guidance on the general duties of officials is contained in Resource Management Guide No. 203 is also available on the Department of Finance website.

**Relevant legislation**

1. This guidance is issued pursuant to section 62 of the PGPA Act, which states that rules may be issued that prescribe requirements relating to the obtaining of insurance by corporate Commonwealth entities.

2. Section 23 of the PGPA Rule specifies the requirements relating to the obtaining of insurance by corporate Commonwealth entities.

**Public Governance, Performance and Accountability Rule 2014**

**Section 23—Insurance obtained by corporate Commonwealth entities**

1. A corporate Commonwealth entity must not insure an official of the entity against a liability (other than one for legal costs) arising out of:
   
   (a) conduct involving a wilful breach of duty, arising at common law, in equity or under the finance law (other than section 27 or 28 of the PGPA Act), in relation to the entity; or
   
   (b) a contravention of section 27 or 28 of the PGPA Act (which deal with the duties of officials in relation to use of position and use of information).

2. Anything that purports to insure a person against, or exempt a person from, a liability is void to the extent that it contravenes this section.
3. Corporate and non-corporate Commonwealth entities within the general government sector are required to be members of the Comcover self-managed fund, which includes cover for directors and officers against liability claims.

4. Corporate Commonwealth entities that are outside the general government sector should consider acquiring insurance cover for their directors or officers against liability claims.

5. Fundamentally, the purpose of section 23 of the PGPA Rule is to restrict corporate Commonwealth entities from insuring officials of the entity against liabilities relating to breach of duty. This restriction is consistent with section 27N of the Commonwealth Authorities and Companies Act 1997, and reflects the principle that public resources should not be used to protect officials for actions that are not legal under the finance law.

6. Sections 25 to 29 of the PGPA Act set out the general duties that apply to the officials of all Commonwealth entities, particularly in their management and use of public resources. These general duties are:
   - a duty of care and diligence
   - a duty to act in good faith and for a proper purpose
   - a duty in relation to use of position
   - a duty in relation to use of information
   - a duty to disclose interests.

7. Resource Management Guide No. 203 provides further guidance on the general duties of officials and is available on the Department of Finance website.

8. Corporate and non-corporate Commonwealth entities that acquire insurance cover are expected to comply with all applicable laws and policies.

9. Under Comcover’s Statement of Cover (section 8(7)(b)), corporate and non-corporate Commonwealth entities are not covered for any claim that arises from a wilful breach of duty or the improper use of inside information.

10. In order to comply with section 23 of the PGPA Rule, corporate Commonwealth entities that are not members of the Comcover self-managed fund should seek commercial directors’ and officers’ insurance that reflects Comcover’s Statement of Cover.

11. Accountable authorities of corporate Commonwealth entities that do not insure with Comcover will need to ensure that insurance does not cover an official of the entity against a liability (other than one for legal costs) arising out of the conduct or contraventions noted in section 23(1)(a) and (b) of the PGPA Rule.

12. Section 23(2) of the PGPA Rule requires that anything that purports to insure a person against, or exempt a person from, a liability is void to the extent that it contravenes section 23 of the PGPA Rule.
13. Steps that corporate Commonwealth entities could take to assist their compliance with the insurance rule include:

- undertaking a risk assessment to determine the appropriate level of insurance cover for their liabilities
- engaging a licensed insurance broker for advice on the class and quantum of cover required
- based on the advice received, exercising discretion on the level of insurance obtained.