



Resource Management Guide No.214

Notification of significant non-compliance with the finance law
(PGPA Act, section 19)

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Audience

This guide is relevant to accountable authorities of Commonwealth entities, their audit committees, Chief Finance Officers and officials responsible for promoting the entity's compliance with the finance law.

Key points

- This guide provides assistance to entities in reporting significant non-compliance with the finance law (significant non-compliance) under paragraph 19(1)(e) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and advises of the Finance Minister's request to receive copies of these reports under paragraph 19(1)(b) of the PGPA Act.
- Section 19 of the PGPA Act requires, among other things, that accountable authorities of Commonwealth entities notify their responsible Minister, as soon as practicable, of any significant issue that has affected the entity.
- Issues notified under section 19 include significant non-compliance with the finance law. Finance law includes the PGPA Act, the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule), instruments made under the PGPA Act (including Accountable Authority Instructions) and Appropriation Acts.
- What constitutes significant non-compliance is for the accountable authority to determine based on entity circumstances and in consultation with the responsible Minister, as appropriate. However, it would generally include:
 - failure to comply with the duties of accountable authorities (sections 15 to 19 of the PGPA Act);
 - serious breaches of the general duties of officials (sections 25 to 29 of the PGPA Act) including any fraudulent activity by officials;
 - systemic issues reflecting internal control failings or high volume instances of non-compliance; and
 - non-compliance issues that are likely to impact on the entity's financial sustainability.
- In accordance with a request of the Finance Minister under paragraph 19(1)(b) of the PGPA Act, accountable authorities must send the Finance Minister a copy of every notification of significant non-compliance provided to their responsible Minister.
- When notifying their responsible Minister under paragraph 19(1)(e), accountable authorities are encouraged to include a description of the remedial action taken, or proposed to be taken, by the entity to ensure that the effects of the non-compliance have been removed or eliminated, and/or to prevent or reduce similar instances from occurring in the future.
- Commencing from the 2015-16 reporting period, sections [17AG](#) and [17BE](#) of the PGPA Rule require that Commonwealth entities' annual reports must include a statement of any non-compliance issues notified to the responsible Minister under paragraph 19(1)(e) of the PGPA Act during the reporting period and an outline of the action taken to remedy the non-compliance.

Resources

This guide is available on the Department of Finance website at www.finance.gov.au.

Related Resource Management Guides (RMGs) and other guidance:

- RMG No. 135: *Annual reports for non-corporate Commonwealth entities.*
- RMG No. 136: *Annual reports for corporate Commonwealth entities.*
- RMG No. 200: *General duties of accountable authorities.*
- RMG No. 201: *Preventing, detecting and dealing with fraud.*

- RMG No. 202: *Audit Committees for Commonwealth entities and Commonwealth companies.*
- RMG No. 203: *General duties of officials.*
- Commonwealth Fraud Control Framework
- Commonwealth Fraud Control Policy
- Commonwealth Risk Management Policy

Introduction

1. Accountable authorities have a duty under section 15 of the PGPA Act to govern a Commonwealth entity in a way that promotes the proper use and management of the public resources for which the accountable authority is responsible. Section 16 of the PGPA Act places a duty on accountable authorities to establish and maintain an appropriate system of risk oversight and management, including by implementing measures directed at ensuring officials of the entity comply with the finance law.
2. Section 19 of the PGPA Act requires, among other things, that accountable authorities of Commonwealth entities notify their responsible Minister of any significant issue that has affected or may affect the entity.
 - In accordance with subsection 19(4A), if a Commonwealth entity has enabling legislation then subsection 19(1) applies only to the extent that compliance with that subsection is not inconsistent with compliance with that legislation.
 - Subsection 19(4B) states that section 19 is subject to any Commonwealth laws that prohibits disclosure of particular information.
3. In meeting their obligations under sections 16 and 19 of the PGPA Act, accountable authorities need to develop and implement appropriate processes to review the entity's compliance with the finance law and ensure instances of significant non-compliance are notified to the responsible Minister in accordance with paragraph 19(1)(e) of the PGPA Act.
 - The entity's audit committee can play an important role in providing advice and assurance to the accountable authority on these processes.
4. What constitutes significant non-compliance will depend on the nature and circumstances of each entity and the environment that it operates in. Accountable authorities and officials need to consider the circumstances of the entity, and develop systems and processes to identify and record compliance issues that are appropriate to them.

Reporting significant non-compliance to the responsible Minister and Finance Minister

5. Finance law includes the PGPA Act, the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule), instruments made under the PGPA Act (including Accountable Authority Instructions) and Appropriation Acts.
6. What constitutes significant non-compliance is for the accountable authority to determine based on entity circumstances and in consultation with the responsible Minister, as appropriate. However, it would generally include:
 - failure to comply with the duties of accountable authorities (sections 15 to 19 of the PGPA Act);
 - serious breaches of the general duties of officials (sections 25 to 29 of the PGPA Act) including any fraudulent activity by officials;
 - systemic issues reflecting internal control failings or high volume instances of non-compliance; and
 - non-compliance issues that are likely to impact on the entity's financial sustainability.

7. The responsible Minister would not generally be notified of non-material internal procedural issues. The focus of section 19 of the PGPA Act is on significant matters which go to the effectiveness of an entity's internal controls or represent material risks to the entity, based on the entity's risk management framework. Further information on risk frameworks can be found in the [Commonwealth Risk Management Policy](#).
8. The responsible Minister must be notified of significant non-compliance as soon as practicable, after the accountable authority becomes aware of the issue. What constitutes 'as soon as practicable' will vary with circumstances and may depend on the nature and risk associated with an instance of significant non-compliance. For example, some significant issues necessitate immediate notification whereas other notifications may be more appropriately grouped together and notified according to a schedule agreed with the responsible Minister.
9. How an entity notifies the responsible Minister of significant issues is for the accountable authority to develop, in consultation with their responsible Minister, as appropriate. As notification under paragraph 19(1)(e) applies to significant matters, the accountable authority would keep an appropriate record of what has been advised to the Minister, which would assist the entity meeting annual reporting requirements under the PGPA Rule.
10. In accordance with a request of the Finance Minister under paragraph 19(1)(b) of the PGPA Act, accountable authorities must provide the Finance Minister with a copy of every notification of significant non-compliance provided to their responsible Minister. This would generally align with the timing of notifications provided to the responsible Minister.
11. If a matter of non-compliance occurs that affects two or more entities, then each entity's accountable authority would need to determine whether the non-compliance is a significant matter affecting their entity, and whether to notify their Minister. One entity informing a Minister of a non-compliance matter would not absolve the accountable authority of another entity from notifying their responsible Minister of the same matter if it were considered significant for their entity.
12. When notifying their responsible Minister, accountable authorities are encouraged to include a description of the remedial action taken, or proposed to be taken by the entity to ensure that the effects of the non-compliance issue has been removed or eliminated, and/or to prevent or reduce similar instances from occurring in the future.

Relationship between non-compliance notification and fraud reporting under the Fraud Control Framework

13. Sometimes non-compliance with the finance law involves fraud. This guidance should be read in conjunction with the [Commonwealth Risk Management Policy](#) and the [Commonwealth Fraud Control Framework 2014](#).
14. For fraud to be established there must be evidence of intent to commit the fraud.
15. Fraud that involves systematic failure of internal controls is likely to represent significant non-compliance. Fraud by an official is likely to represent significant non-compliance as the official would have breached the general duty of an official under section 26 of the PGPA Act to act honestly, in good faith and for a proper purpose in perpetrating the fraud.
16. In such cases, notifying the responsible Minister of the fraud under paragraph 19(1)(e) of the PGPA Act would meet the Ministerial reporting requirements under both the [Commonwealth Fraud Control Policy](#) and the need to notify significant non-compliance.
 - The Commonwealth Fraud Control Policy also requires entities to report information on fraud to the Australian Institute of Criminology annually.

Case studies

Case study 1 – failure to report grants

An entity fails to publish information on a small number of grants on its website within the required timeframe due to a procedural oversight. No systemic issue is involved. The entity's internal controls detected the oversight and the failure to report the grants within the required timeframe did not create material risk to the entity. The responsible Minister **may not need to be notified** under paragraph 19(1)(e) of the PGPA Act in this instance.

However, if there was an internal control failing that resulted in a high volume of grants not being published within the required timeframe, this may constitute a significant issue affecting the entity, and the responsible Minister **may need to be notified** under paragraph 19(1)(e) of the PGPA Act and copied to the Finance Minister.

Case study 2– credit card misuse

An internal audit identified that an official used their Commonwealth credit card for personal purposes.

The accountable authority needs to determine whether the misuse by the official was accidental, or deliberate and, therefore, fraudulent.

- If the official's misuse of the credit card was accidental, the entity's internal controls detected the misuse and the accidental misuse did not create a material risk to the entity, this would generally not constitute significant non-compliance. The responsible Minister **may not need to be notified** under paragraph 19(1)(e) of the PGPA Act, but action would still need to be taken to recover the amount of money involved and mitigate the chance of reoccurrence.
- If the official's misuse was deliberate and therefore fraudulent, the use of the credit card is likely to constitute significant non-compliance and the responsible Minister **may need to be notified** under paragraph 19(1)(e) of the PGPA Act and copied to the Finance Minister. Notifying the responsible Minister of fraud under paragraph 19(1)(e) of the PGPA Act would meet the Ministerial reporting requirements under both the [Commonwealth Fraud Control Framework](#) and significant non-compliance.

17. In regard to the case studies above, there are a number of potential actions that could be taken in order to mitigate or remedy the non-compliance. The action proposed or taken would depend on the circumstances and would generally need to be proportionate to the non-compliance.

18. For example, the entity may revise its internal controls and delegations or authorisations, including its Accountable Authority Instructions and/or operational guidance or manuals. It may also take steps to improve staff capability through training to prevent non-compliance from ignorance or misunderstandings, and/or to assist staff to be better aware of and identify non-compliance issues.

Annual reporting requirements

19. Commencing for the 2015-16 reporting period, sections [17AG](#) and [17BE](#) of the PGPA Rule require that Commonwealth entities' annual reports must include a statement of any significant issues that the responsible Minister was notified about during the reporting period under paragraph 19(1)(e) of the PGPA Act that relates to non-compliance in relation to the entity. The PGPA Rule also requires that, if such a statement has been included in the annual report, the report must also include an outline of the actions taken to remedy the non-compliance. The format, wording and content of the statement is at the discretion of the accountable authority.

20. The level of detail that is included in an annual report will depend on the circumstances and generally would need to be proportionate with the nature and extent of the non-compliance. Entities need to consider the extent of public disclosure that would be appropriate, for example, taking into account the requirements of the *Privacy Act 1988* or where disclosing certain information could potentially prejudice investigations or legal action.
21. If a matter of non-compliance occurred which affected two or more entities, and resulted in two or more entities notifying their respective Ministers, then each entity would need to reference the non-compliance in their annual report.
22. If an entity has not notified its responsible Minister of any significant non-compliance during the reporting period, it may wish to consider including a comment to that effect in its annual report.