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 are expected to take into account 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 (corporate entities) and wholly owned Commonwealth companies (wholly-owned companies) where a Government Policy Order (GPO) is created by the Finance Minister under section 22 (for corporate entities) or section 93 (for wholly-owned companies) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

Key points

This guide describes the:

- statutory mechanism imposed by sections 22 and 93 of the PGPA Act that places obligations on corporate entities and wholly-owned companies to comply with specified government policies; and
- process to be implemented by policy departments, on behalf of policy ministers, especially around the consultation required, before the Finance Minister creates a GPO.

Resources

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

What does the PGPA Act say?

1. Sections 22 and 93 of the PGPA Act provide a mechanism for applying policies of the Australian Government to relevant corporate entities / or wholly-owned companies. The process under the PGPA Act remains the same as the one that was implemented from 1 July 2008, through amendments made to the *Commonwealth Authorities and Companies Act 1997* (CAC Act).

2. Under sections 22 and 93, the Finance Minister can issue a GPO, specify the relevant corporate entities or wholly-owned companies to which it will apply, and specify the extent to which it will apply. Sections 22 and 93 are reproduced at Attachment A.

3. The PGPA Act requires relevant corporate entities¹ and wholly-owned companies² to comply with GPOs, made under sections 22 (for corporate entities) and 93 (for wholly-owned companies) of the PGPA Act. These sections also require the Finance Ministers to be satisfied that the policy Minister has consulted the relevant corporate entities and wholly-owned companies before creating a GPO. In order to limit issues raised by corporate entities and wholly-owned companies as part of the GPO consultation process, where possible, these entities should also be consulted during the policy development phase.

4. **Specific requirements for procurement policies:** A separate legislative power deals with compliance with government procurement requirements. Section 30 of the PGPA Rule 2014 prescribes the corporate entities and the wholly-owned companies that must comply with the Commonwealth Procurement Rules (CPRs).

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¹ Section 11 of the PGPA Act defines Corporate Commonwealth entity as a Commonwealth entity that is a body corporate.

² Section 90 defines a wholly-owned Commonwealth company as a Commonwealth Company, other than a company any of the shares in which are beneficially owned by a person other than the Commonwealth. A Commonwealth company is defined as a *Corporations Act 2001* that the Commonwealth controls. However, it does not include a company that is a subsidiary of a Commonwealth company, a subsidiary of corporate Commonwealth entity or a subsidiary of the Future Fund Board of Guardians.
Transitional arrangements

5. At 30 June 2014 there were no GPOs issued under section 48A of the CAC Act. General policy notifications issued to relevant CAC Act bodies prior to 1 July 2008 will not continue in force from 1 July 2014.

What is a general policy of the Government

6. A general policy of the Australian Government is a policy that is made by the government, usually by Cabinet or the Prime Minister, that applies to all or selected Commonwealth entities or wholly-owned companies subject to the PGPA Act. A GPO is the mechanism required to impose the government policy as a statutory obligation on relevant corporate entities and wholly-owned companies.

7. The department responsible for a policy (policy department) should, when developing the policy, liaise with Finance to discuss whether the government policy is best applied to corporate entities and wholly-owned companies through a GPO.

The GPO Process

8. Generally, a Minister is responsible for developing and administering a policy (the policy Minister). Accordingly, it is appropriate for the policy Minister to consider if a government policy should be applied to relevant corporate entities and wholly-owned companies.

9. The accountable authorities or directors of relevant corporate entities or wholly-owned companies are subject to legal duties and requirements regarding the oversight of the activities of their entities. Accordingly, requiring them to comply with a particular government policy involves a level of rigour and consultation, to help ensure that they are aware of the proposed policy and are able to comply with it once issued as a GPO. For this reason, the process for developing and consulting on the application of a potential policy is relatively detailed.

10. If a decision is made by the Government to apply a policy to relevant corporate entities or wholly-owned companies, the policy Minister, as part of the GPO process, should request all portfolio Ministers to consult relevant entities in their portfolios, on the application of the policy. The policy department, on behalf of their Minister, will need to administer the consultation process across government.

11. Portfolio departments, on behalf of their Minister, will need to administer the consultation process with relevant entities within their portfolio. Accordingly, the policy department will need to provide the portfolio departments with all relevant documentation and sufficient time should be allowed for effective consultation to take place. Generally, a two month consultation period for relevant entities to consider the effects the policy may have on their entity is considered appropriate. This time could be significantly shorter if all relevant entities were consulted as part of the policy development process.

12. After receiving responses from relevant corporate entities and wholly-owned companies, the policy Minister and portfolio Ministers should settle any exemptions (partial or full) that might be granted to individual entities. The policy Minister should then write to the Finance Minister explaining the consultation process undertaken with portfolio Ministers to support their request for a GPO to be issued. The Finance Minister may issue a GPO if satisfied that policy Ministers have implemented an effective consultation process with relevant corporate entities and wholly-owned companies.

13. The GPO will take effect once registered on the Federal Register of Legislative Instruments, including details of the policy and its application to relevant corporate entities and wholly-owned companies.
14. A flow chart of the process is at Attachment B and a template letter for the policy Minister to provide to portfolio Ministers, for consulting relevant corporate entities and wholly-owned companies on a government policy, is at Attachment C.

**Changes to a general policy**

15. If the government policy materially changes, a new consultation process needs to be undertaken in full. That is, the Finance Minister must be satisfied that the policy Minister has consulted with their relevant corporate entities and wholly-owned companies on the application of the altered government policy. Once this is complete a new GPO can be issued and the old GPO revoked by the Finance Minister.

16. Guidance can be issued on explaining, implementing and complying with a government policy that can be updated from time-to-time without issuing a new GPO. Such guidance cannot, however, seek to change the content or effect of a government policy. Accordingly, the policy Department should consider the role of guidance when developing a government policy applicable to corporate entities and wholly-owned companies.

**Changes to a GPO’s applicability**

17. If the applicability of an existing GPO is required to change (for example if an exemption for a particular relevant corporate entity or wholly-owned company needs to be granted after a GPO is made), then the Finance Minister can issue an amendment to the GPO. As with making a GPO, the Finance Minister can issue an amendment if satisfied that the relevant policy Minister has consulted with relevant corporate entities and wholly-owned companies affected by the proposed changes.

**Disclosure**

18. Corporate entities and wholly-owned companies must disclose in their annual report the particulars of any government policies applying to them under the PGPA Act. The Annual Reporting Rule, requires disclosure of government policies applicable to the corporate entities and wholly-owned companies, and the extent of, and reasons for, any non-compliance with a government policy.

19. Any potential or actual non-compliance with a government policy subject to a GPO should be raised with the relevant policy department in the first instance. Part of an accountable authorities or director’s role in discharging his or her duties includes ensuring that their relevant corporate entities or wholly-owned companies complies with GPOs issued under sections 22 and 93 of the PGPA Act, respectively.
22 Corporate Commonwealth entities

(1) The Finance Minister may make an order (a government policy order) that specifies a policy of the Australian Government that is to apply in relation to one or more corporate Commonwealth entities.

(2) Before making a government policy order that applies in relation to a corporate Commonwealth entity, the Finance Minister must be satisfied that the Minister responsible for the policy has consulted the entity on the application of the policy.

(3) If a government policy order applies in relation to a corporate Commonwealth entity, the accountable authority of the entity must ensure that the order is complied with:
   (a) in relation to the entity; and
   (b) in relation to any subsidiary of the entity, so far as practicable.

(4) A government policy order is a legislative instrument, but section 42 (disallowance) of the Legislative Instruments Act 2003 does not apply to it.

93 Application of government policy

(1) The Finance Minister may make an order (a government policy order) that specifies a policy of the Australian Government that is to apply to one or more wholly-owned Commonwealth companies.

(2) Before making a government policy order that applies in relation to a wholly-owned Commonwealth company, the Finance Minister must be satisfied that the Minister responsible for the policy has consulted the company on the application of the policy.

(3) If a government policy order applies in relation to a wholly-owned Commonwealth company, the directors of the company must ensure that the order is complied with:
   (a) in relation to the company; and
   (b) in relation to any subsidiary of the company, so far as practicable.

(4) A government policy order is a legislative instrument, but section 42 (disallowance) of the Legislative Instruments Act 2003 does not apply to it.
The policy Department consults with the Department of Finance (Finance) to check that the policy is an appropriate government policy to apply to relevant corporate entities or wholly-owned companies.

Requests portfolio Ministers to consult relevant corporate entities and wholly-owned companies.

Consult with relevant corporate entities and wholly-owned companies, seeking feedback on application of government policy and draft GPO.

Policy Minister requests a GPO for a government policy. The Finance Minister must have sufficient time and information to consider the request and be satisfied that policy Ministers have implemented an adequate consultation process with relevant corporate entities and wholly-owned companies before issuing a GPO. Finance will liaise with the Policy Department in finalising the drafting of the GPO.

If the Finance Minister is satisfied with the consultation process, a GPO can be issued. Finance registers the GPO on the Federal Register of Legislative Instruments. Finance will advise relevant corporate entities and wholly-owned companies and departments when the GPO is made.
Dear Chairperson,

**Government policy of the Australian Government - consultation**

I am writing to consult with you on the application of a policy of the Australian Government on *<describe policy>*. This government policy has been proposed by *<insert policy Minister’s title>*. The policy will potentially be applied to corporate Commonwealth entities and wholly-owned Commonwealth companies through a proposed Government Policy Order (GPO), issued under section 22 or 93 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

Sections 22 (for corporate Commonwealth entities) and 93 (for wholly-owned Commonwealth companies) of the PGPA Act provide that:

- The Minister for Finance (Finance Minister) may issue a GPO that specifies a policy of the Australian Government.
- Before issuing a GPO, the Finance Minister must be satisfied that the Minister responsible for the policy has consulted with relevant corporate Commonwealth entities and wholly-owned Commonwealth companies, through the relevant portfolio Minister, to which the GPO will apply.
- A GPO can apply in full or in part to: all corporate Commonwealth entities and wholly-owned Commonwealth companies; a class of corporate Commonwealth entities or companies; or specific corporate Commonwealth entities or companies.

This letter provides your entity the opportunity to raise any concerns about the application of the policy before the Finance Minister issues the GPO.

**The policy**

The policy requires *<outline key elements of the policy>*. The draft GPO is included at Attachment *<insert relevant attachment letter>*.

*<Include one of the following paragraphs as relevant. Delete the other>*

*<For CCEs with an accountable authority or a WOCC with a board>*

I ask that you, as chairperson, provide a copy of this policy to directors in order to consider the potential effect of the policy upon the operations of your organisation (and its subsidiaries if applicable). Any comments on the policy are welcome, including requests, with reasons, for exemptions from the application of the policy (in whole or part) that the directors may wish to seek. Your response will assist the Minister responsible for the policy, who will propose any exemptions in the application of the GPO to the Finance Minister. Your response is sought by *<insert date>*.
For CCEs that have a single member accountable authority>

I ask that you consider the potential effect of the policy upon the operations of your organisation (and its subsidiaries if applicable). Any comments on the policy are welcome, including requests, with reasons, for exemptions from the application of the policy (in whole or part) that you may wish to seek. Your response will assist the Minister responsible for the policy, who will propose any exemptions in the application of the GPO to the Finance Minister. Your response is sought by <insert date>.

Notification procedures

The Department of Finance will advise affected corporate Commonwealth entities and wholly-owned Commonwealth companies of the commencement of any GPO arising from this process. The GPO, if made, will only take effect, in law, once registered on the Federal Register of Legislative Instruments (accessible from the Comlaw web site: www.comlaw.gov.au/comlaw/comlaw.nsf/frli). As required by the PGPA Act, the GPO must state the extent of any exemptions granted to specific bodies.

Yours sincerely,

<insert name of portfolio Minister>