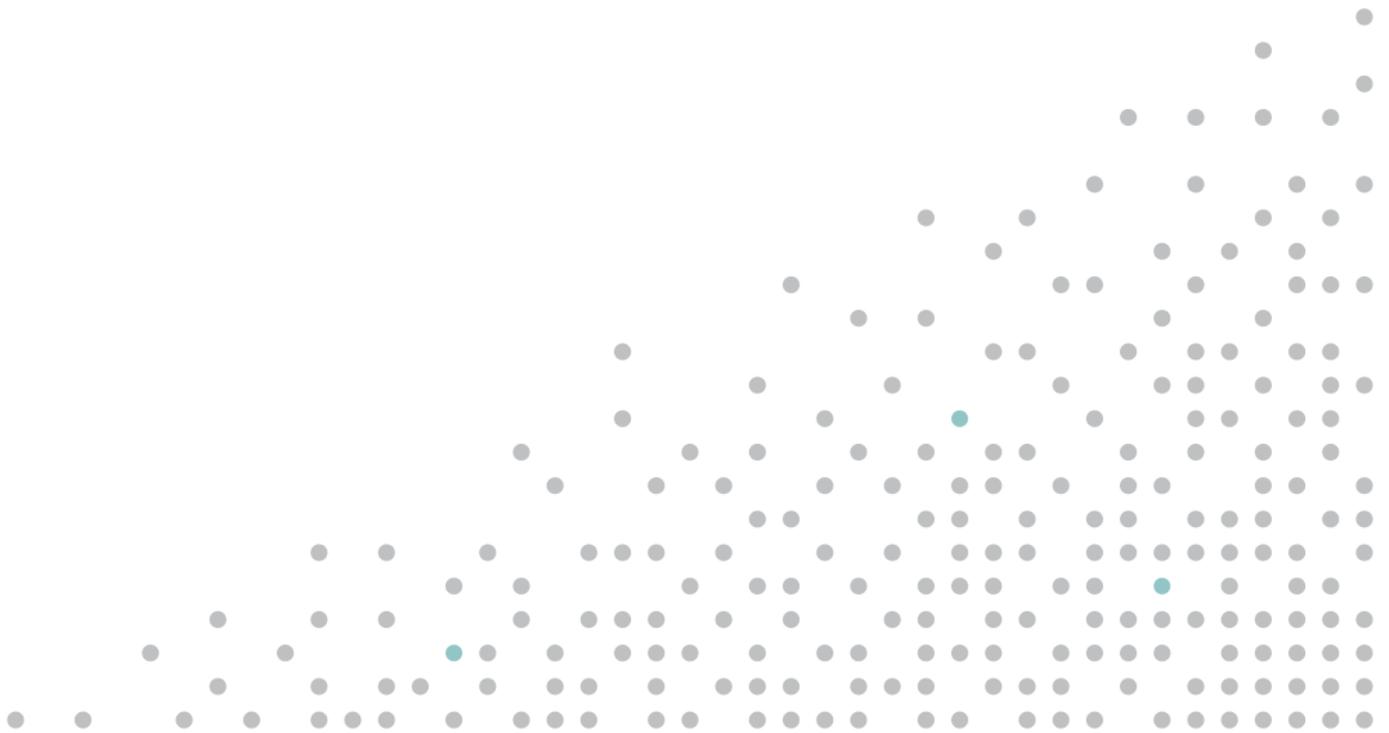




Australian Government
Department of Finance



The Role of Directors in Commonwealth Government Business Enterprises



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Introduction

This guide has been prepared by the Department of Finance (Finance), in consultation with portfolio departments and GBEs, as a guide for GBE Directors (Directors) of Commonwealth Government Business Enterprises (GBEs).

This guide is intended to assist Directors in familiarising themselves with GBE governance requirements by:

- identifying the features of a GBE that make it unique from private sector organisations and
- highlighting the key features of the GBE governance framework.

This guide is not a comprehensive statement of all governance arrangements that apply to GBEs and is intended as a starting point to understanding a Director's key roles and responsibilities.

Guidance on operational matters would be available from the GBE's executive.

This guide does not constitute legal advice and Directors should seek appropriate advice in relation to particular issues that may arise, if needed.

Further information on Australian Government boards is available on the AusGovBoards website at www.AusGovBoards.gov.au.

Key Concepts

Role of a GBE and its Directors

A GBE is a commercially-focussed government owned business that is established to fulfil a Commonwealth Government purpose.

GBEs make a substantial contribution to the Australian economy by supporting productivity, job creation and Government policy objectives.

Effective governance and stewardship frameworks are essential to ensure that GBEs make a positive contribution to economic efficiency, sector competitiveness and the delivery of services to the community.

The Board of Directors provides stewardship, strategic leadership, governance and oversight of GBEs, while also acting as a bridge between Commonwealth policy-making and operational implementation by GBEs.

The Board of Directors of a GBE has ultimate fiduciary responsibility for the performance of the GBE, and are fully accountable to Shareholder Ministers.

GBE Accountability and Governance

A GBE as a government-owned entity has high levels of scrutiny, sensitivity and accountability.

Whether a GBE utilises public resources or resources held in its own name, the operations and performance of a GBE, as a government-owned entity, can attract significant scrutiny within government and externally.

A GBE has a Shareholder Minister or Ministers who are accountable to the Parliament.

Shareholder Ministers have an oversight role which extends beyond that of a private sector company shareholder.

The key requirements for the governance, reporting and accountability for a GBE (and other Commonwealth entities), and the proper use and management of public resources is set out in the [*Public Governance, Performance and Accountability Act 2013*](#) (PGPA Act). The PGPA Act defines both a Director's core fiduciary (general) obligations as well as a number of GBE-specific duties.

The broader governance regime for a GBE includes other legislation, including any enabling legislation, and a number of policy instruments, such as orders, guidance materials, memorandums of understanding and agreements.

A GBE has specific Commonwealth reporting and disclosure of information requirements and is subject to legislation that places various additional obligations on it in relation to information management.

Key Sources of Regulation for GBE Governance

The core features of the GBE governance regime are:

- [PGPA Act](#) – sets a government-wide approach to governance and stewardship
- [PGPA Rule](#) – expands on the provisions of the PGPA Act in respect of specific issues, including for ‘listed’ entities
- GBE Company Constitution – establishes the framework for the operation of a Commonwealth Company under the [Corporations Act 2001](#) (Corporations Act)
- Enabling Legislation – a key source of policy guidance in ascertaining the ‘purpose’ of a Corporate Commonwealth Entity
- [Resource Management Guides](#) – these provide guidance to GBEs, Directors and officers on the application of PGPA Act and other machinery of government legislation including [Resource Management Guide No. 126 \(RMG-126\) Commonwealth Government Business Enterprise Governance and Oversight Guidelines](#)
- General Policy Orders – while none currently exist, these are notifications by the Finance Minister to one or more GBEs as to the application of an aspect of Australian Government Policy and
- Commercial Freedoms Framework / Funding Agreements / Statements of Expectation – where applicable, these provide guidance to Directors as to actions that can be taken without prior notification and/or approval of Shareholder Ministers.

Overview

GBE Structure

A GBE is legally separate from the Commonwealth. It is designed to foster private sector innovation and efficiency, although it does so to further government policy.

A GBE may either be:

- established as an entity under a specific Act of Parliament (a Corporate Commonwealth Entity), which does not have the same form as a company, but does have a separate legal personality or
- incorporated as a company under the Corporations Act, whose shares are owned by the Commonwealth, acting through Shareholder Ministers (Commonwealth Company).

Whether constituted as a Corporate Commonwealth Entity or a Commonwealth Company, a GBE is subject to the Commonwealth governance and accountability frameworks under the PGPA Act and related instruments. GBEs are also generally subject to Parliamentary oversight.

GBE Role and Purpose

The reasons for creating a GBE are usually linked to implementing government policy, where intervention was deemed appropriate due to:

- high barriers to entry
- market failure or no market at all
- infrastructure investments with lower rates of return and/or
- other policy considerations of Government.

The 'purpose' of a GBE will fundamentally inform the decisions made by its Board and Directors which must also have regard to financial sustainability and enhancing shareholder value.

Purpose could be conveyed in a number of different ways:

- in the constitution of a Commonwealth Company
- in the legislation establishing a Corporate Commonwealth Entity (Enabling Legislation)
- in formal notices issued by Shareholder Ministers from time to time
- in the letter of appointment of Directors
- in the statement of expectations from Shareholder Ministers and Commercial Freedoms Framework and
- as part of the corporate planning process undertaken by GBEs.

Purpose should be a key driver of the strategic plan for a GBE and may change over time in respect to changes in government policy.

GBE Accountability

Due to the higher levels of scrutiny, sensitivity and accountability, factors that influence a GBE's decision making are broader than for a private sector organisation.

Key differences between a GBE and a private sector company include:

- enhanced reporting and disclosure to Shareholder Ministers
- formal planning obligations, including as part of the annual budget cycle
- the application of the [Public Interest Disclosure Act 2013](#)
- in some cases:
 - the requirement to deliver Community Service Obligations to certain service quality standards and
 - application of the [Freedom of Information Act 1982](#)
- appearance at Senate Estimates hearings.

Depending on its structure, a GBE may also be subject to some or all of the accountability requirements that apply to a private sector company, including those specified in the Corporations Act.

However, all GBEs are subject to additional governance and accountability requirements under the PGPA Act and other legislation and related instruments, as well as issued guidelines such as the [Commonwealth Government Business Enterprise Governance and Oversight Guidelines – Resource Management Guide No. 126 \(RMG-126\)](#).

The Commonwealth frameworks that apply to the governance, reporting, financial stewardship and accountability arrangements for GBEs facilitate shareholder oversight and ensure that GBEs are managed in a way that:

- meets the Government's policy objectives effectively
- builds shareholder value and ensures the ongoing financial sustainability of the business
- utilises resources in an efficient, effective, economical and ethical manner
- balances management autonomy with regular reporting of performance and shareholder accountability and
- demonstrates similar efficiency, transparency and accountability as good practice private enterprises.

GBE Shareholder Ministers and their Departments

The Commonwealth's ownership interest in a GBE is represented by Shareholder Ministers, generally the Minister for Finance and the Portfolio Minister in which the GBE sits, or solely the Minister for Finance in some circumstances.

The Shareholder Ministers have a role in the governance of a GBE, engaging on strategic issues and setting clear objectives for the GBE in accordance with their accountability to the Parliament and the public.

GBEs can be engaged in areas of policy which attract significant public interest and Shareholder Ministers will often be called on to respond to queries, including those from the media. Shareholder Minister information requirements therefore need to take account of these.

Each Shareholder Minister is supported by one or more departments which provide expert advice on government policy formulation and are often responsible for implementing and administering the policy of the Government of the day.

The Shareholder Ministers' departments play an important role in providing advice to Shareholder Ministers on both GBE strategic issues and operational performance.

It is common for departments to allocate specific officials as liaison officers, to gain a detailed understanding of a GBE in order to facilitate timely information flow and advice.

Shareholder Ministers will be briefed on a regular basis by their departments on how the GBE is performing and whether it is meeting the Minister's expectations and its purpose by:

- analysing and commenting on the GBE's various reporting, including its Corporate Plan and
- monitoring the GBE's adherence to its purpose and as appropriate, its legislative obligations and/or statement of corporate intent.

GBE Board

Good governance is essential to ensure that GBEs continue to make a positive contribution to economic efficiency, competitiveness and the delivery of services to the community and Government.

The Board of Directors provides stewardship, strategic leadership, governance and oversight, while also acting as a bridge between Commonwealth policy-making and operational implementation by the GBE.

The Board of Directors are accountable to Shareholder Ministers for:

- governance and reporting
- promoting accountability for public resources and
- ensuring sound financial management and operation by the GBE.

The Board of Directors is responsible for developing business strategies that enable the GBE to implement government policy. As such, Directors are obliged to take Shareholder Minister views into consideration on strategic issues and discretion may be limited by the purpose set for the GBE.

Director Roles and Duties

The GBE Director – Role

Leadership and strategic direction

Directors have a pivotal role in providing GBE leadership and governance in the context of the operating framework for GBEs and developing business strategies.

Directors should seek the attainment of government policy objectives while promoting proper accountability for public assets and ensuring sound financial management.

Directors are obliged to minimise any divergence of interests between the GBE and its shareholders and the policy and governance expectations of Shareholder Ministers.

[\(RMG-126 paragraph 1.7\)](#)

Financial Management

Directors are responsible for the stewardship of public assets and the ongoing solvency of a GBE.

In the case of Commonwealth Companies, Directors bear personal responsibility for insolvent trading liabilities under Part 5.7B of the Corporations Act.

Oversight

Directors have an important role in monitoring the delegation of powers to the Chief Executive Officer (CEO) or Managing Director (MD) and the senior executives. There are a number of important elements to this role:

- assessing the current performance of the GBE against the agreed performance measures set out in the latest Corporate Plan
- ensuring a rigorous and effective risk management system is in place, with appropriate reporting lines and internal controls and
- considering the longer-term financial and organisational sustainability of the GBE, which includes having regard to the organisational culture and behaviours.

Risk Management

Directors have specific obligations to establish and maintain systems relating to risk and control.

The Commonwealth has outlined its expectations as to how Corporate Commonwealth Entities will engage with risk in the [Commonwealth Risk Management Policy 2014](#).

GBE risk management frameworks should be aligned with the Risk Management Policy as a matter of good practice.

Delegation

Consistent with standard commercial practice, Directors may delegate some of their powers to the CEO/MD, who will be charged with the day-to-day operation of the GBE.

Directors will be called on to directly authorise those transactions that fall outside of the delegation to GBE management, which are likely to be the largest and most strategically important transactions.

The GBE Director – GBE General Duties (Fiduciary)

The Corporations Act governs the fiduciary duties of Directors in Commonwealth Companies. The core fiduciary duties applying to Directors of Corporate Commonwealth Entities under the PGPA Act are based on the fiduciary duties set out in the Corporations Act and include additional requirements relating to the Commonwealth and other persons.

Duty of care and diligence

A Director must exercise his or her powers, perform his or her functions and discharge his or her duties with the degree of care and due diligence that a reasonable person would exercise if they were a Director of a GBE in the GBE's circumstances and held the position and had the same responsibilities in the GBE as the Director in question.

([PGPA Act s25](#), [Corporations Act s180](#) and [RMG-203 Part 3](#))

Duty to act honestly, in good faith and for a proper purpose

A Director must exercise his or her powers, perform his or her functions and discharge his or her duties honestly, in good faith and for a proper purpose. This duty largely aligns with the corresponding duty under the Corporations Act.

([PGPA Act s26](#), [Corporations Act s181](#) and [RMG-203 Part 4](#))

Duty in relation to use of position

A Director must not improperly use his or her position to gain a benefit or advantage for himself or herself or any other person, or to cause detriment to the GBE, the Commonwealth or other person.

This duty largely aligns with the corresponding duty under the Corporations Act, except that the duty requires Directors to prevent causing detriment to not only the GBE, but also to the Commonwealth and other persons.

([PGPA Act s27](#), [Corporations Act s182](#) and [RMG-203 Part 5](#))

Duty in relation to use of information

A Director must not improperly use information to gain a benefit or an advantage for himself or herself or any other person, or cause detriment to the GBE, the Commonwealth or any other person.

([PGPA Act s28](#), [Corporations Act s183](#) and [RMG-203 Part 6](#))

Duty to disclose interests

A Director who has a material personal interest that relates to the affairs of the GBE must disclose details of the interest. The concept of materiality is anything that has the capacity to impact on the ability of the Director to honestly discharge their duties to the GBE.

([PGPA Act s29](#), [PGPA Rule Part 2-2](#), [Corporations Act s191 and s195](#) and [RMG-203 Part 7](#))

Interaction with Corporations Act, other legislation and common law

The PGPA Act does not displace other Commonwealth legislation or the principles or rules of common law or equity.

Directors must still have regard to their duties and obligations under the GBE's enabling legislation (if any) and the Corporations Act (if applicable).

([PGPA Act s31 and s32](#), [PGPA Rule s23](#) and [RMG-203 Parts 9 and 10](#))

The GBE Director – GBE Specific Duties (Strategy, Governance and Oversight)

A key responsibility of Directors is to effect proper oversight of a GBE. This obligation resembles the obligation of a director of a private company, with an overlay of stewardship of public assets which is distinctive to Commonwealth entities and companies.

In exercising their powers in compliance with their fiduciary obligations, Directors should look at the underlying intent of the guidance and minimum requirements provided and not just technical compliance.

Duty to govern entity

The Directors of a Corporate Commonwealth Entity have an additional layer of responsibility in relation to the management of the GBE, being the fundamental duty to govern the GBE in a way that promotes the proper use and management of public resources, the achievement of its purpose and the financial sustainability of the entity. 'Proper' in this context means efficient, effective, economical and ethical.

The Board as a whole will therefore need to exercise its decision-making powers and oversight of management in ways that discharge this duty.

([PGPA Act s15](#) and [RMG-200 Part 4](#))

Duty to establish and maintain systems relating to risk control

The Directors of a Corporate Commonwealth Entity must ensure that the entity establishes and maintains an appropriate system of risk oversight and management and an appropriate system of internal controls. At a minimum, the entity must have policies and processes for identifying, measuring, managing and reporting material risks. The internal controls implemented will need to be commensurate with the level of risks applicable to the GBE.

Corporate Commonwealth Entities are encouraged, as a matter of good practice, to apply the Commonwealth Risk Management Policy published by Finance in relation to risk management frameworks and systems.

([PGPA Act s16](#) and [Commonwealth Risk Management Policy 2014](#))

Duty in relation to requirements imposed on others

Directors are required to ensure that, when imposing requirements on others in relation to the use or management of public resources for which the GBE is the responsible entity, they take account of risks associated with that use or management and the effects of imposing the requirements.

The duty seeks to ensure that any administrative, compliance or reporting requirements imposed on others is commensurate with the risks associated with the use or management of the public resources by the person, essentially to prevent excessive 'red tape'.

([PGPA Act s18](#), [RMG-001 Part 2.5](#) and [RMG-200 Part 7](#))

Duty to keep Shareholder Ministers informed

The Directors have an obligation to keep the Shareholder Ministers informed of the operations of a GBE in order that Shareholder Ministers may comply with their own obligations.

([PGPA Act s19 and s91](#) and [RMG-126 paragraphs 3.17 and 3.18](#))

Financial Management

GBE Financial Management Fundamentals

The Directors are responsible for the financial stewardship and the ongoing solvency of the GBE and must ensure that its resources are properly deployed to meet its purpose.

A key objective of a GBE, like that of a private sector company, is to add to its shareholder value.

In order to add to its shareholder value, a GBE should:

- operate efficiently – minimum cost for given scale and quality of outputs
- price efficiently – have regard to market forces, recognising there may be government imposed price conditions or community service obligations and
- earn at least a commercial rate of return, given its obligations to operate and price efficiently.

[\(RMG-126 paragraph 1.8\)](#)

Shareholder Ministers have a strong interest in the financial performance of the GBE and may set financial and non-financial targets.

[\(RMG-126 paragraphs 1.9, 4.7 and 4.13\)](#)

While a GBE can be funded in a number of ways, which may include:

- Commonwealth equity injections
- Commonwealth grants
- private debt and
- retained earnings,

it should be viewed as a public asset of which the Directors and officers are custodians.

Additional governance and reporting obligations may be imposed on a GBE depending on its source of funding, including government equity funding agreements and commercial debt covenants.

Specific Financial Management Issues for GBEs

Borrowing

The freedom of a GBE to borrow funds is tightly constrained.

Corporate Commonwealth Entities may only borrow money if it is either authorised by an Act of Parliament (e.g. through its enabling legislation) or by the Finance Minister in writing or authorised in rules made under the PGPA Act.

Exceptions exist in respect of credit card and voucher payment systems, provided that they are repayable within 90 days and, in the case of Corporate Commonwealth Entities, authorised by the Finance Minister.

(PGPA Act s56 and s57, PGPA Rule s21A and RMG-001 paragraphs 360 – 363)

Commonwealth Guarantees

While the Finance Minister is empowered to provide indemnities, warranties and guarantees on behalf of the Commonwealth, Directors should not expect that such Commonwealth protections would be given to a GBE or contractual counterparties.

The provision of such protections is rare and will only be considered in exceptional circumstances.

(PGPA Act s60-62 and RMG-001 paragraphs 369-375)

Planning and Reporting

GBE Planning and Reporting

A GBE has specific Commonwealth reporting and disclosure requirements set out in legislation that go beyond those of a private company. These include annual, periodic and ad hoc reporting mechanisms, as well as disclosure of information through Parliamentary mechanisms.

Corporate Plan

Each GBE must prepare a corporate plan and it is the responsibility of the Board to ensure this occurs.

Corporate plans must be given to the responsible Minister and the Finance Minister, and must be published on the GBE's website by the last day of the second month of the reporting period for which the plan is prepared (subject to non-disclosure of sensitive or commercially confidential information, or information prejudicial to national security). Published corporate plans that have been redacted can take the form of a Corporate Plan or a Statement of Corporate Intent (SCI).

([PGPA Act s35 and s95](#) and [RMG-126 paragraph 3.7-3.9](#))

The Board must ensure that a corporate plan is prepared at least once each reporting period, covering at least four reporting periods. The plan must cover the GBE's purposes and activities. The plan must also set out how the activities will contribute to achieving any relevant Government priorities and objectives, subject to the GBE's enabling legislation (if any).

([PGPA Rule s16E](#))

Directors of Commonwealth Companies have the same obligations as set out above, except in respect of references to enabling legislation.

([PGPA Act s95](#) and [PGPA Rule s27A](#))

Directors should look at the policy intent and not just technical compliance in responding to the requirement for a corporate plan.

A GBE's Corporate Plan should:

- provide an appropriate level of transparency e.g. expansion of services should clearly set out what the new services are; where they are to be provided and how they align with the 'purpose' of the GBE
- provide an appropriate level of quantification e.g. capital to be invested in acquisitions – how much and when; what are hurdle requirements and approval processes
- provide an appropriate consideration of risk and key mitigations

- clearly outline key assumptions, and new initiatives
- provide an appropriate outline of future reporting against key plan elements and
- highlight key sensitivities and considerations from a Government perspective.

Additional guidance in relation to the preparation of corporate plans is provided in:

- [RMG-126 Commonwealth GBE Governance and Oversight Guidelines](#)
- [RMG-132 Corporate Plan for Commonwealth Entities](#) and
- [RMG-133 Corporate Plan for Commonwealth Companies](#).

Other Reporting Requirements

Budget Estimates

The Board must ensure that budget estimates are prepared each reporting period and for any other periods as directed by the Finance Minister.

The estimates must cover the GBE's activities and must fairly present the estimated financial impacts of the activities for the period.

[\(PGPA Act s36 and s96\)](#)

Financial Statements

A financial statement must be prepared as soon as practicable after the end of each reporting period and, generally, must be audited by the Auditor-General.

For GBEs that are Commonwealth Companies, if the auditor's report is prepared by an auditor other than the Auditor-General, the GBE must also give a report by the Auditor-General on the financial statements of the GBE, in which case the Auditor-General will use the same Corporations Act rules as applied to the report by the other auditor.

Audited financial statements must also be prepared in respect of any subsidiaries.

[\(PGPA Act s42, s43, s44, s46, s28E, s28F and s97-s99, PGPA Rule s17BE and s17BF, RMG-001 Part 5.3 and RMG-126 paragraphs 3.13-3.16\)](#)

Applicable Accounting Standards

For GBEs that are Corporate Commonwealth Entities, financial statements are required to be prepared in accordance with the Australian Accounting Standards Board (AASB) standards as interpreted by the Public Governance, Performance and Accountability (Financial Reporting) Rule 2015.

[\(RMG-001 Part 5.4\)](#)

Performance Statements

Corporate Commonwealth Entities must include an annual performance statement on the GBE's performance for the relevant year, having regard to the planned performance measures set out in the GBE's corporate plan. The performance statement must describe the significant factors that influence the achievement of the intended results. Performance statements will need to be audited by the Auditor-General if requested by the responsible Minister or the Finance Minister.

([PGPA Act s39 and s46](#), [PGPA Rule s16F](#), [RMG-001 Part 5 and 6](#), [RMG-126 paragraphs 3.1 and 3.13](#), [RMG-133](#) and [RMG-134](#))

Periodic Reporting

Progress reporting

The Chair of a GBE is obliged to provide a confidential report to the Shareholder Ministers as to the performance of the GBE against the requirements of the corporate plan.

([RMG-126 paragraphs 3.2 and 3.10](#))

Annual Strategic Meeting

A GBE is obliged to conduct an annual strategic meeting at which Shareholder Ministers, or their delegates, are invited to attend in order to review the performance of the GBE over the last year and to engage in discussion on future strategy.

([RMG-126 paragraph 3.24](#))

Annual Report

The Board must prepare an annual report on its performance during the relevant period and issue it to the Shareholder Ministers for presentation to the Parliament.

The content of the annual report will vary depending upon whether the GBE is a Commonwealth Company or a Corporate Commonwealth Entity, however, in general terms it will include:

- performance statement which provides information regarding the Board's assessment of GBE's performance in achieving its purpose, including the objectives, functions or role of the GBE and
- financial statements that will be audited by the Australian National Audit Office.

([PGPA Act s42, s43, s44, s46, s28E, s28F and s97-s99](#), [PGPA Rule s17BE, s17BF and s28B-F](#), [RMG-001 Part 5.3](#), [RMG-136](#) and [RMG-137](#))

Ad-hoc Reporting

Obligations to keep Shareholder Ministers informed

Directors have an over-arching obligation to keep the Shareholder Ministers informed of the operations of a GBE in order that Shareholder Ministers may comply with their own obligations. Quantitative and qualitative thresholds for significance are determined by the Board, or set out in a ministerial order or in the company constitution. The definition of 'significant' will vary between GBEs.

(PGPA Act s19 and s91 and RMG-126 paragraphs 3.17 and 3.18)

Questions Raised in Houses

GBEs have a role in supporting Shareholder Departments preparing Question Time Briefings for Shareholder Ministers during parliamentary question time.

Attendance at Parliamentary Committee Hearings

Where requested, attendance at Parliamentary Committees and Senate Estimates is compulsory. Typically, the Executive rather than Directors will represent the GBE at Senate Estimates.

(Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters - February 2015)

The Australian National Audit Office

The ANAO publishes best practice guides aimed to "improve public sector administration by assisting entities to perform at their most efficient level, through the adoption of better practice to transform and improve business processes".

(<https://www.anao.gov.au/>)

The ANAO has published guides in relation to public sector financial statements and public sector governance, which are available through the ANAO website.

Governance Regulation

The PGPA Act

(<https://www.legislation.gov.au/Series/C2013A00123>)

The PGPA Act sets out the key requirements for the governance, reporting and accountability of Commonwealth entities and the 'proper' use and management of public resources where 'public' resources means relevant money, relevant property, or appropriations.

'Proper' is defined in Section 8 of the PGPA Act to mean 'efficient, effective, economical and ethical'.

The PGPA Act requires all GBEs, whether a Commonwealth Company or a Commonwealth Corporate Entity, to meet high standards of governance, performance and accountability.

The PGPA Act includes provisions addressing the following broad categories:

- structure of Commonwealth bodies – including type of bodies and organisational hierarchy
- powers and duties of the Board of Directors (when functioning as the 'Accountable Authority')
- powers and duties of Officials
- planning and budgeting requirements for entities
- reporting requirements for entities
- regulation on financial arrangements (including borrowing) for entities
- establishment of new entities (including subsidiaries of Commonwealth Companies) and
- interaction between PGPA Act and Corporations Act for Commonwealth Companies.

The PGPA Rule

(<https://www.legislation.gov.au/Series/F2014L00911>)

The PGPA Rule is a subsidiary instrument which adds detail to a number of the provisions in the PGPA Act.

In particular, it establishes the accountability and control mechanisms that support the transactions of Commonwealth entities and Commonwealth Companies.

For GBEs, it adds specific requirements relating to the following broad categories:

- disclosure of interests by Directors and Officials
- corporate planning and reporting and
- financial management, particularly in respect of banking, borrowing and investment.

Resource Management Guides and Other Governance Mechanisms

The Department of Finance has issued a number of Resource Management Guides (RMG) that provide practical guidance as to the way Corporate Commonwealth Entities and Commonwealth Companies should interpret and apply the Commonwealth Resource Management Framework.

[RMG-126 Commonwealth GBE Governance and Oversight Guidelines](#) is a key Guidance document on GBE board and corporate governance, planning and reporting, financial governance and other governance matters and is relevant for Directors of Corporate Commonwealth Entities and Commonwealth Companies.

Further guidance on planning, reporting and internal controls for Corporate Commonwealth Entities is at:

- [RMG-200 General duties of Accountable Authorities](#) and
- [RMG-213 Accountable Authority Instructions](#).

A GBE may also be subject to general statements of Australian Government Policy that may be notified to one or more GBEs by the Finance Minister.

([PGPA Act s22](#))

Shareholder Ministers may also work with a GBE to put in place Commercial Freedoms Framework (CFF), which provides qualitative and quantitative boundaries for the Board of Directors.

The Commercial Freedoms Framework approach resembles the shareholder approval that can be required by listed companies seeking to make significant changes to nature or scale of its operations under [ASX Listing Rule 11](#).

A GBE must notify its Shareholder Ministers of any 'significant' event, issue, decision or initiative. When determining what is a significant event or decision, Directors should be mindful of the key sensitivities and considerations from a Government perspective.

The definition of 'significant' will vary between GBEs. Quantitative and qualitative thresholds of what is 'significant' for a particular GBE will be notified by the Shareholder Ministers, often as part of a Commercial Freedoms Framework.

Importantly, a GBE is obliged to notify the Shareholder Ministers before entering into any identified business opportunities, including new business ventures, major contracts or capital raising – regardless of whether it is considered 'significant'.

([PGPA Act s19](#) and [RMG-126 paragraph 3.20](#))

The Board of a GBE must have an audit committee and must determine the functions of the audit committee by written charter, including the review of the appropriateness of the Board's financial reporting, performance reporting, systems of risk oversight and management and system of internal control.

(PGPA Act s45 and s92 and PGPA Rule s17 and s28)

The Board of a GBE is also expected to establish and maintain a code of conduct for Directors in undertaking their business, to avoid activities that could give rise to questions about their political impartiality.

(RMG-126 paragraph 2.5)

GBEs should observe the 'caretaker' conventions and practices unless doing so would conflict with their legal obligations or compelling organisational requirements. Caretaker conventions recognise the fact that once the House of Representatives is dissolved the Executive cannot be held accountable for its decisions in the normal manner.

(Guidance on Caretaker Conventions 2016: Department of the Prime Minister and Cabinet)

ARTC

<https://www.artc.com.au/>

Corporate form

ARTC is:

- an unlisted public company limited by shares incorporated under the Corporations Act and
- a Commonwealth Company for the purposes of the PGPA Act.

Enabling legislation

There is no separate Enabling Legislation for ARTC.

Constituent documents

ARTC has adopted a constitution, the key features of which include:

- a statement of objects
- the Company must not operate freight or passenger trains for reward
- an obligation that ARTC must comply with the GBE Guidelines and general policies of the Commonwealth that are subject to a General Policy Order issued by the Finance Minister
- a requirement that ARTC must, by no later than 15 April and October in each year (or such other date as resolved by ARTC members), make a recommendation to the members in respect of the payment of a dividend
- a requirement that any capitalisation of reserves or profits requires the consent of the Shareholder Ministers
- a corporate indemnity for Directors and Secretaries and
- ability for ARTC to obtain insurance in respect of its Directors and Secretary.

ARTC and its wholly-owned subsidiaries are subject to a Commercial Freedoms Framework.

Capital structure

ARTC only has fully paid ordinary shares on issue, all of which are owned by the Commonwealth.

ARTC has debt in issue in the form of:

- corporate bonds and
- syndicated revolving committed facilities.

Unique industry regulatory features

The ARTC was established under the Intergovernmental Agreement between the Commonwealth of Australia and the State Governments of New South Wales, Victoria, Queensland, Western Australia and South Australia. The two key features of the Intergovernmental Agreement were to establish the ARTC and aim to provide efficient and seamless access to the interstate rail network.

ASC

<http://www.asc.com.au/>

Corporate form

ASC is:

- an unlisted proprietary company limited by shares incorporated under the Corporations Act and
- a Commonwealth Company for the purposes of the PGPA Act.

Enabling legislation

ASC does not have enabling legislation.

Constituent documents

ASC has adopted a constitution, the key features of which include:

- a statement of objects
- restrictions on the power of ASC to do any of the following without prior written consent of the Shareholder Minister:
 - form a company or participate in the formation of a company
 - participate in a significant partnership, trust, unincorporated Joint Venture (JV) or similar
 - acquire or dispose of a significant shareholding in a company
 - acquire or dispose of a significant business or asset
 - commence / cease a significant business activity
 - make a significant change in nature or extent of its interests in a partnership, trust, unincorporated JV or similar
 - significantly alter ASC's corporate structure or
 - alter ASC's share capital structure.
- provision deeming that Directors are considered to act in good faith and in best interests of ASC (see general duty at Duty to act honestly, in good faith and for a proper purpose) if they act in good faith, in the best interests of the Commonwealth, within the power of ASC and the law and the company remains solvent
- a provision deeming that Directors are considered to act in the best interests of the Commonwealth if they act in accordance with the instructions, directions or expectations of the Commonwealth
- the ability of the Commonwealth to pass member resolutions by signed notice

- the ability for the Shareholder Minister to communicate expectations of the Commonwealth to inform the view of Directors
- the ability for the Shareholder Minister to direct Directors to exercise the powers of the company in a specified manner and
- a corporate indemnity for officers.

Capital structure

ASC only has fully paid ordinary shares in issue, all of which are owned by the Commonwealth.

The company does not presently have any financial borrowing.

Unique industry regulatory features

ASC has a number of contracts with the Commonwealth, represented by the Department of Defence. Further information about ASC can be found at <http://www.asc.com.au/>.

Australia Post

<https://auspost.com.au/>

Corporate form

Australia Post is a:

- statutory authority for the purpose of the *Public Service Act 1999* and
- Corporate Commonwealth Entity for the purposes of the PGPA Act.

Enabling legislation

The enabling legislation for Australia Post is the *Australian Postal Corporation Act 1989*, some key features of which include:

- establishes the main function of Australia Post in providing postal services
- establishes subsidiary functions to carry on businesses or activity relating to postal services
- establishes incidental businesses and activities functions
- confirms a broad range of powers for Australia Post which are relevant to its function
- establishes the role of the board in deciding the objectives, strategies and policies to be followed by Australia Post and to ensure it performs its functions in a proper, efficient manner which, as far as practicable, is consistent with sound commercial practice
- community service obligations including the requirement to ensure the letter service is reasonably accessible to all people in Australia on an equitable basis, and that the performance standards reasonably meet the social, industrial and commercial needs of the Australian community
- authorises the relevant Minister to issue directions to the Australia Post Board on certain matters
- factors to be considered in determining dividends and
- permits Australia Post to borrow funds from the Commonwealth or other persons.

Constituent documents

Australia Post does not have a separate constitution.

Australia Post and its wholly-owned subsidiaries are subject to a Commercial Freedoms Framework (CFF).

Capital structure

Australia Post is wholly-owned by the Commonwealth.

Australia Post is able to borrow funds from the Commonwealth or other persons.

Unique industry regulatory features

Australia Post has the exclusive right to carry letters (with some exceptions) and issue stamps within Australia, with a uniform service standard and price across the country.

Australia Post's performance standards in mail delivery are outlined in the [*Australian Postal Corporation \(Performance Standards\) Regulation 1998*](#).

Defence Housing Australia (DHA)

<https://www.dha.gov.au/>

DHA sits within the Defence Portfolio, reporting to the Minister for Defence and the Minister for Finance as joint Shareholder Ministers.

Corporate form

DHA is:

- a statutory agency for the purpose of the *Public Service Act 1999* and
- a Corporate Commonwealth Entity for the purposes of the PGPA Act.

Enabling legislation

The enabling legislation for DHA is the *Defence Housing Australia Act 1987* (DHA Act). The DHA Act:

- establishes the main function of DHA in providing adequate and suitable housing for, and housing-related services to members of the Defence Force and their families, which contribute to Defence retention, recruitment and operational goals
- establishes subsidiary functions in the provision of suitable housing and related services to officials of non-Corporate Commonwealth entities
- confirms a broad range of powers for DHA which are relevant to its function
- sets a maximum limitation on DHA's capacity to enter into a contract without the prior written approval of the Shareholder Ministers
- authorises Shareholder Ministers to issue directions to DHA, which must be complied with
- authorises the Board to establish committees to assist in the performance of its functions and the exercise of its powers, and
- establishes the DHA Advisory Committee an advisory committee which includes, among others, persons appointed by the Chief of the Defence Force.

Constituent documents

DHA does not have any separate constituent documents.

Capital structure

DHA is wholly-owned by the Commonwealth.

DHA does not receive funding directly from the Federal Budget. DHA has access to a government-provided debt facility and funds its operations through:

- the receipt of fees and charges from Defence for its services
- generating revenue from:
 - selling and leasing back properties through its Sale and Leaseback Program
 - the disposal of excess land and completed properties from its developments
 - the disposal of properties that no longer meet minimum Defence standards or requirements.

Moorebank Intermodal Company Limited (MIC)

<http://www.micl.com.au/>

Corporate form

MIC is:

- an unlisted public company limited by shares incorporated under the Corporations Act and
- a Commonwealth Company for the purposes of the PGPA Act.

MIC is wholly owned by the Australian Government represented by two Shareholder Ministers, the Minister for Infrastructure and Transport (being the Responsible Minister) and the Minister for Finance.

Enabling legislation

MIC does not have any specific Enabling Legislation.

Constituent documents

MIC has adopted a constitution, the key features of which include:

- a statement of objects
- a limitation on the powers of MIC by reference to Australian Government Policy and the contents of the Commercial Freedoms Framework (CFF)
- express restrictions on the power of MIC to do any of the following without prior written consent of the Minister for Infrastructure and Transport and the Minister for Finance:
 - borrow or raise money
 - grant security over any property of MIC or its uncalled capital
 - give security for a debt, liability or obligation of MIC or another person
 - form a company or participate in the formation of a company
 - participate in a significant partnership, trust, unincorporated Joint Venture (JV) or similar
 - acquire or dispose of a significant shareholding in a company
 - acquire or dispose of a significant business or asset
 - commence / cease a significant business activity
 - make a significant change in nature or extent of its interests in a partnership, trust, unincorporated JV or similar

- significantly alter MIC’s corporate structure or
- alter MIC’s share capital structure.
- a corporate indemnity for Directors.

MIC and its wholly-owned subsidiaries are subject to a CFF. MIC is party to an Equity Funding Agreement with the Commonwealth, which formalises the intention of the Commonwealth to provide equity funding in respect of the transaction it has entered into with Sydney Intermodal Terminal Alliance.

Capital structure

MIC only has fully paid ordinary shares in issue, all of which are owned by the Commonwealth.

The company does not presently have any financial borrowing.

NBN Co Limited (nbn)

<http://www.nbnco.com.au/>

Corporate form

nbn is:

- an unlisted public company limited by shares incorporated under the Corporations Act and
- a Commonwealth Company for the purposes of the PGPA Act.

Enabling legislation

nbn does not have any specific Enabling Legislation.

Constituent documents

nbn has adopted a constitution, the key features of which include:

- a statement of objects
- a limitation on the powers of nbn to do those things which are necessary or incidental to achievement of the objects and which are consistent with Australian Government Policy
- a provision deeming that Directors are considered to act in good faith and in best interests of nbn (see general duty at Duty to act honestly, in good faith and for a proper purpose) if they act in good faith, in the best interests of the Commonwealth, within the power of nbn and the law and the company remains solvent
- a provision deeming that Directors are considered to act in the best interests of the Commonwealth if they act in accordance with a resolution of the Commonwealth
- the ability of the Commonwealth to pass member resolutions by signed notice and
- a corporate indemnity for Directors.

nbn is party to an Equity Funding Agreement with the Commonwealth, which formalises the intention of the Commonwealth to provide equity funding to nbn.

Capital structure

nbn only has fully paid ordinary shares in issue, all of which are owned by the Commonwealth.

The company does not presently have any borrowings.

Unique industry regulatory features

Information on nbn's regulatory features is available from the Department of Communications and the Arts <https://www.communications.gov.au/what-we-do/internet/national-broadband-network/nbn-legislative-framework>.