



Australian Government

Fair Work OMBUDSMAN

Office of the Fair Work Ombudsman
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22 June 2018

Ms Elizabeth Alexander AM
Mr David Thodey AO
PGPA Act Review
Attention: Review Secretary
Department of Finance
One Canberra Avenue
FORREST ACT 2603

By email: PGPAActReview@finance.gov.au

Dear Ms Alexander and Mr Thodey

Comments on the draft recommendations of the Independent Review of the Public Governance, Performance and Accountability Act 2013 and Rule

Thank you for the opportunity to provide comments on the draft report and recommendations of the Independent Review of the *Public Governance, Performance and Accountability Act 2013 (Cth)* (**PGPA Act**) and associated rule.

The Office of the Fair Work Ombudsman (**FWO**) forms part of a combined entity for the purposes of the PGPA Act, the Fair Work Ombudsman and Registered Organisations Commission Entity (**Entity**). The Fair Work Ombudsman is the Accountable Authority of the Entity.

The Entity supports the recommendations of the Independent Review aimed at recognising the resourcing challenges for smaller entities in ensuring effective management of PGPA Act and Rule requirements, and improving governance and risk maturity.

Some of the challenges faced by small entities were outlined in the Portfolio submission by the Department of Employment (now Department of Jobs). We are, in particular, supportive of recommendations 14, 23 - 25 and 38 that go some way to addressing these challenges. The Entity notes that in order to achieve the intended objectives, the focus of any standardised plans, templates and guidance provided by the Department of Finance to better support smaller entities, ought to be on providing tools that are practical and capable of being tailored to the operating environment of such entities.

The Entity provides the following additional comments on the draft recommendations:

1. Audit Committees

The Entity is supportive of the proposal to strengthen the role of audit committees in relation to oversight of risk, where smaller agencies may not have separate risk committees or a dedicated Chief Risk Officer.

The Entity agrees that the audit committee benefits from a mix of experiences of its members, including length of tenure, previous audit committee experiences and diverse professional backgrounds. These

factors position the committee to provide independent quality assurance and advice to the accountable authority of the entity.

We do not support the recommendation that membership of audit committees exclude officials and employees from Commonwealth entities for the following reasons:

- Excluding officials and employees from other Commonwealth entities risks the loss of diversity of thought and the perspectives offered by having both Commonwealth and non-Commonwealth audit committee members. Further, internal audit committee members can also provide key operational and business perspectives in the performance of their independent assurance role and benefit the audit committee as a whole.
- Where a 'whole-of-government' perspective is a key object of the PGPA framework there is great value to entities, and the officials who sit as independent members of audit committees, in the perspectives and knowledge Commonwealth experience brings. The loss of the opportunity to benefit from significant experience from within the Commonwealth would negatively impact a whole-of-government approach. In our experience as a smaller statutory agency, with a principal office outside of Canberra, having audit committee members from larger Commonwealth entities has provided significant value.
- The draft report does not identify sufficiently cogent reasons for the complete exclusion of membership from within the Commonwealth, noting that members of audit committees are required by frameworks such as the Audit Committee Charter and Resource Management Guide to act independently.
- There is a significant cost to smaller entities of remunerating audit committee members who do not hold a position within the Commonwealth.

It is also suggested that if such a recommendation is to be pursued, transitional arrangements be considered for those entities with audit committee members who are Commonwealth officials completing a current term.

Finally, the Entity notes that the proposed recommendation that smaller agencies consider combining audit committees is impractical. Each entity will have its own financial reporting, internal audit plan and strategic risks and it is unclear how, in practice, this would assist smaller entities from a resource perspective. The work required for the audit committee members would still require them to prepare for each entity and report to the respective Accountable Authority.

2. Reporting of executive remuneration

The Entity supports a consistent and clear direction on executive remuneration reporting requirements.

The Entity again highlights that there are differences between larger and smaller entities. For example, in smaller entities the current definition of 'key management personnel' adopted from Corporations law would encompass all senior executive service officers and potentially executive level APS staff whose remuneration information has generally been published on an aggregate basis according to their band/level and range of remuneration.

Requiring publication of individuals' remuneration arrangements in the interests of transparency, ought to be balanced against:

- the privacy rights of those individuals;
- the impact that individual reporting can have on an entity's capacity to negotiate individual remuneration for its most senior officers; and
- ensuring a degree of consistency across the Commonwealth of the level of remuneration to be reported, in recognition of the varying sizes and structures of entities.

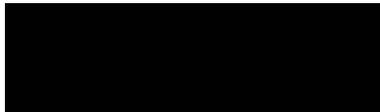
It is suggested that further consideration be given to this recommendation and ensuring that the any terms that will determine the requirements to report details of individuals' remuneration takes into account the difference in size of entities and provides clarity on which officials are considered 'highly paid'.

3. Reporting of contracts and consultancies

We support initiatives to remove duplication of reporting. The Entity is concerned that the proposed recommendations regarding the reporting of contracts and consultancies do not remove duplication of reporting items that would already be reported and available in AusTender.

We look forward to the final report of the Independent Review. If the Independent Review has any questions or requires any further information please contact me on (03) 9954 2654 or michelle.carey@fwo.gov.au.

Yours sincerely



Michelle Carey
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Office of the Fair Work Ombudsman