



**Submission of the Fair Work Commission  
to the Independent Review of the *Public Governance,  
Performance and Accountability Act 2013 and Rule* by  
Ms Elizabeth Alexander AM and  
Mr David Thodey AO**

**June 2018**

## Introduction

The Department of Finance has released a consultation draft of an independent review of the *Public Governance, Performance and Accountability Act 2013* and Rule. The review was conducted by Ms Elizabeth Alexander AM and Mr David Thodey AO. Comments are sought by 22 June 2018.

The Fair Work Commission (Commission) wishes to provide comments concerning the recommendations outlined below.

## Recommendations

### Performance framework

**The PGPA Act and Rule provide a sound framework for the measurement and reporting of the performance of entities across the Commonwealth, but the quality of performance reporting needs to improve. To improve the quality of performance reporting, we recommend:**

4. Accountable authorities should ensure their audit committees have the skills, capability and resources to provide advice on the appropriateness of their performance reporting, in particular that audit committee members:
  - (a) are clear on the level of advice on performance reporting sought by the accountability authority, which is at least that required by the PGPA Rule; and
  - (b) have sufficient knowledge of the business of the entity and access to information and advice about the performance of the entity.

The Commission agrees with this recommendation but notes that, in its view, it is most appropriate for the Accountable Authority to continue to be responsible for ensuring that audit committee members have the requisite skills and capability in the particular context of the agency in question.

### Managing and engaging with risk

**Risk management and engagement remains immature across Commonwealth entities, particularly non-corporate entities. To improve risk management and engagement practices, we recommend:**

11. Accountable authorities should engage with key stakeholders to identify their risk appetite and explain how risks will be identified, accepted and managed. In doing this, adequate attention should be given to upside, as well as downside, risk. The Parliament could also acknowledge the complex environment in which government operates.

As an independent tribunal, exercising quasi-judicial functions, it would in many instances be inappropriate to engage with external stakeholders on these issues and in this way. Mandating such a requirement has the potential to undermine the tribunal's independence and impartiality, which are critical to effectively performing its functions.

## Audit committees

### **The effectiveness of audit committees is mixed, particularly in non-corporate Commonwealth entities. To improve their effectiveness, we recommend:**

15. The independence of audit committees should be strengthened by requiring all audit committee members to be independent, with independence defined as not being an official or employee of a Commonwealth entity.

The Commission disagrees with this recommendation. It is both impractical and potentially counterproductive if Commonwealth agencies required all audit committee members to be independent (meaning not an official or employee of a Commonwealth entity).

The current requirement of a majority of independent members is effective and strikes a good balance. However, requiring all members to be outside the public service would be unhelpful. To be effective, audit committee members need to acquire a good understanding of the entity. For small agencies, like the Commission, this already creates a challenge and takes extensive resources to equip members to be able to effectively discharge their responsibilities. As a smaller agency (of around 315 average staffing level), our lived experience is that current independent members who are from large statutory agencies have considerable difficulty understanding the scale, nature and risks of our operations as a small, independent statutory agency.

Our most effective audit committee members have a diverse range of experience from within the corporate and non-corporate public sector. Such audit committee members understand the broader Australian Public Service (APS) legislative and policy framework, as well as the delivery of public services to the community.

The context in which the audit committee operates is different in the public sector as compared with ASX companies. Individuals from outside the public sector face not only the challenge of understanding the entity, but have to also acquire an understanding of the broader public sector framework. This is a significant undertaking for both the entity and the individuals concerned; even greater if all audit committee members had to be outside the public service. This is not only an issue of resources; it is deep knowledge and experience that limits their capacity to effectively provide assurance to the Accountable Authority.

In a similar way, audit committee members who are employees/officials of other statutory agencies bring the benefit of their public sector background and expertise in understanding the context of operations, including risk. To exclude such expertise from the audit committee would significantly reduce the effectiveness of the committee.

17. Accountable authorities should ensure:
  - (a) their audit committee members, both individually and as a group, have the appropriate qualifications, knowledge, skills and experience to meet their responsibilities, as required in the PGPA Rule;
  - (b) committee members are sourced broadly, with greater representation from other industries, sectors and locations; and
  - (c) the remuneration of audit committee members is commensurate with the importance of their responsibilities and the commitment required.

Recommendation 17(c) refers to the remuneration of audit committee members. The Commission notes that audit committee members from outside the public sector are likely to expect to receive remuneration. Under current arrangements (given they are members of

other Commonwealth non-corporate agencies or corporate entities) the Commission does not remunerate audit committee members (including the chair).

There is no guidance on what would be considered 'reasonable' remuneration for audit committee members but, in any event, **any** remuneration will be an unnecessary impost on already stretched resources. The current remuneration arrangements for audit committees are providing a high level of support to the Accountable Authority, and are cost effective. Such remuneration may be an unnoticeable expense in the context of the budget of large entities, however that is not the case for small agencies.

20. Smaller Commonwealth entities with limited resources and similar purposes should consider sharing an audit committee.

The precise nature of this recommendation is not clear. While it would be practical for one person to chair a number of audit committees, in the Commission's view it is impractical to hold shared or combined audit committee meetings (if this is what is being recommended). The operating environment, resource allocation and risks are distinctly different from one agency to another, even for agencies within our own portfolio (that are established by, and administer, the same legislation).

## Reporting of executive remuneration

**Current arrangements for reporting executive remuneration across Commonwealth entities and companies does not provide sufficient transparency and accountability for the use of public resources for this purpose. To improve transparency and accountability, we recommend:**

34. Accountable authorities should disclose executive remuneration in annual reports on the following basis, as shown in Appendix C to this report:
  - (a) the individual remuneration, including allowances and bonuses, of the accountable authority and their key management personnel, in line with the disclosure of ASX listed companies; and
  - (b) the number and average remuneration (including allowances and bonuses) of all other senior executives and highly paid staff, by band, consistent with the reporting arrangements in place up to 2013–14.

The Commission agrees with this recommendation but notes that one of the key factors in transparency and accountability is ensuring that calculation methodology is consistent. This ensures that the user is comparing 'like with like'.

To date, there has been a lack of consistency in the methodology for executive remuneration disclosures in different contexts. Differing calculation methodologies have meant that published figures do not compare 'like with like', meaning that reported figures (while accurate) appear to be inconsistent.

By way of illustration, under Rule 17AG(4)(c)(2) of the Public Governance, Performance and Accountability Rule 2014, the Management and Accountability section of Annual Reports must disclose the 'full span of salaries available under ... subsection 24(1) determination' and a 'full description of the range of non-salary benefits provided' (refer to Resource Management Guide 135, May 2018, pages 22 to 24). Published salaries do not include superannuation or allowances. Further, consistent with the Financial Reports that are included in the Commission's annual report, figures are reported on an accruals basis.

In contrast, by 31 July each year the Commission publishes the remuneration of senior executives and other highly paid officials on its [website](#). This information, however, is prepared on a cash basis, consistent with Department of Finance requirements. This meant, for example, that in 2016-17 the published figures on our website for 'average reportable salary' included cash paid out to Senior Executive Service employees as cashed out annual leave or for acting at a higher classification. Reporting on a cash basis inflates what many readers would interpret as the 'salary' of executives and other highly paid officials.

Additionally, we note that, unlike for ASX listed companies, the remuneration of many executive or highly paid Commonwealth office holders is independently determined by the Remuneration Tribunal. Approximately 25% of Commission remuneration is externally determined by Remuneration Tribunal determinations. The public can readily access information about the total remuneration package of those public officer holders through Remuneration Tribunal instruments, which are published on its website.

## Reporting of contracts and consultancies

**Current arrangements for reporting spending on contracts and consultancies do not provide sufficient transparency to the Parliament and citizens. To clarify confusion on the reporting of consultancies and improve transparency on spending on contracts and consultancies, we recommend:**

36. The definition of 'consultancy' and the use of the 'consultancy flag' to identify consultancy contracts in AusTender should be clarified to ensure that spending on consultancies is reported consistently and accurately by non-corporate Commonwealth entities in their annual reports.
37. Non-corporate Commonwealth entities should provide the following information on expenditure on contracts and consultancies in their annual reports:
  - (a) total aggregate expenditure on contracts and consultancies and the number of new and ongoing contracts in the reporting period (extending the current reporting requirements for consultancies to contracts in general); and
  - (b) lists of all organisations and/or individuals that receive 5 per cent or more of the entity's total expenditure on contracts and consultancies, respectively (or, where this includes fewer than five organisations/individuals, the five organisations/individuals that receive the greatest level of expenditure).

The Commission agrees with this recommendation but believes that consideration should be given to broadening the recommendation to a review of the AusTender contract reporting rules.

Paragraph 1.3 of a December 2017 ANAO report on compliance with AusTender reporting requirements ([Australian Government Procurement Contract Reporting](#), page 7) reported that an audit of Limited Tender Procurements found that only 41 of 155 contracts correctly reported all details on AusTender. This is not surprising given the lack of clarity in reporting requirements.

For example, [the Contracts and Entity Agreements information about Buying for the Australian Government](#) (paragraph 3 of which is extracted below) provides guidance from the Department of Finance regarding what should be listed for reporting of contracts. Given the methodology, it is difficult (from the perspective of reports being systems generated) to have comfort that each contract is correctly reported within 42 days. Paragraph 3 provides:

*3. For the purposes of AusTender reporting the 42 day period begins from the date the contract is entered into. This is the date when the contract is signed or the date of the first provision of goods or services, **whichever comes first**. If there is no written contract, the date of the first provision of goods or services should be used. In the case of a contract (including an SON) which has two or more suppliers and each supplier is required to sign that contract, the date of commencement of the 42 day period is the date when the last signatory has signed that contract, or the date of the first provision of goods or services, whichever comes first.*

Along with requirements concerning the reporting of consultancies, agencies would benefit considerably from simpler requirements and guidelines. In the Commission's submission, the Rule could be refined to something as simple as 'The period begins from the date a PGPA section 18 commitment is entered into by the agency.'

## **Technical and other matters**

**The submissions received identified a number of technical and other legislative and policy matters (see Appendix A). In order to continue to streamline the application of the resource management framework, remove ambiguity, and strengthen coherence, clarity and consistency, we recommend:**

39. Finance should review and determine whether any aspect of the Commonwealth Risk Management Policy and the Comcover Benchmarking Survey Tool require changes to be made to improve coherence and operation, and consult with relevant stakeholders in making those changes.
40. Finance and the Attorney-General's Department should explore how legal advice on the PGPA Act and Rule can be shared across Commonwealth entities.

As a small agency, the Commission strongly supports such initiatives and collaboration. The Commission has realised the benefits of centrally developed Resource Management Guides, and template Accountable Authority Instructions.