



Australian Government
Australian Taxation Office

ATO Submission

Independent Review of the Public Governance, Performance and Accountability Act 2013

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1. Overview

The Australian Taxation Office (ATO) operates as the Australian Government's principal revenue collection agency and is responsible for administering Australia's tax system and significant aspects of Australia's superannuation system. The ATO administers legislation governing tax, and support the delivery of government benefits to the community.

As a Commonwealth entity within the Treasury portfolio, the ATO is accountable under the *Public Governance, Performance and Accountability Act 2013* (the Act) and the *Public Service Act 1999* (PS Act). For the purposes of the Act, the Commissioner of Taxation is the accountable authority for the ATO.

Broadly, the principles-based design of the Act and the *Public Governance, Performance and Accountability Rule 2014* (the Rule) has provided flexibility to adopt systems and processes that are fit for purpose and support the achievement of policy and statutory objectives without adding unnecessary red tape (subject to some exceptions as discussed below).

In introducing the Independent Review (the Review), the Department of Finance (DoF) noted:

The public management reforms contained in the PGPA Act were expected to take several years to implement, mature and fully integrate into the practices and processes of Commonwealth entities. After three years, it is apparent that the practice in relation to individual aspects of the Act has matured differentially. There are variations between entities and in relation to different areas of practice. The enhanced Commonwealth performance framework is one example of a practice area that is still maturing.¹

The ATO supports this view, and notes the implementation and ongoing operation of the Act and Rule has overall been a positive experience. For example, the ATO's experience is that the PGPA framework appropriately supports effective and efficient enterprise risk management and has brought enhanced rigor to performance reporting.

This submission outlines a range of recommendations and feedback. In summary these are:

- > The intent and requirements of the RPF Self-Assessment report should be incorporated into the PGPA Act to streamline annual reporting requirements.
- > An amendment should be made to requirements for annual performance statement sign off by the Accountable Authority to include the word 'material' in relation to the accuracy of the performance statement.
- > Independent statutory bodies should be able to sign their own annual performance statements.
- > Bringing forward the delivery date for the annual report is possible subject to availability and integrity of data.
- > The role of the audit committee should continue to be centred on its assurance function and not stray into the realm of management responsibilities.
- > The accountable authority should continue to determine membership of the audit committee.
- > Support must be timely to allow large entities to reflect governance and performance guidance.

¹ Department of Finance, 27 October 2017, <http://www.finance.gov.au/pgpa-independent-review/#intro>

- > Reporting obligations under accounting standards and whole of government requirements should be consistent.
- > The ATO is supportive of additional principles-based guidance on requirements relating to 'value for money' and 'benefits'.
- > The Rule should be amended so that amounts owed to a deceased person should crystallise when an appropriate trigger event occurs, not at the time of death.
- > The delegation to waive certain departmental debts where they are uneconomical to pursue should be extended to the Commissioner of Taxation to reduce red tape.

Addressing these recommendations and feedback will support and strengthen a coherent system of governance and accountability for the public sector. On this basis, the Review is a timely and welcome process.

2. Recommendations and feedback

2.1 Commonwealth Performance Framework

- i. **Integrating the requirements of the Regulator Performance Framework into the Act.**

The intent and requirements of the RPF Self-Assessment report should be incorporated into the PGPA Act to streamline annual reporting requirements.

The ATO is required to deliver an RPF self-assessment report as well as an annual report. The vast majority of data and content is duplicated across both reports which are externally published on the ATO website.

Although there is some flexibility under existing arrangements to include the RPF as part of the annual report, efforts to do so are complicated by RPF consultation requirements and the earlier annual report delivery deadlines.

Moving forward with a single approach to performance reporting that delivers on the intent behind both overlapping regimes would reduce red tape and provide a simplified view of ATO performance for the community.

- ii. **Annual Performance Statement sign-off**

An amendment should be made to requirements for annual performance statement sign off by the Accountable Authority to include the word 'material' in relation to the accuracy of the performance statement.

The Rule requires that in the opinion of the accountable authority, annual performance statements must '...accurately present the entity's performance in the reporting period...'

The performance measures include complex calculations and estimations and on this basis the accountable officer should not be expected to provide such a positive and absolute statement. Rather, the level of assurance should be comparable with that of the financial statements, i.e. that the annual performance statements should be materially accurate and collectively provide a fair presentation view of the entity's performance.

- iii. **Annual Performance Statements of independent statutory bodies**

Independent statutory bodies should be able to sign their own annual performance statements.

Under the Act, performance reports for the Australian Charities and Not-for-profits Commission (ACNC) and the Tax Practitioners Board (TPB) have to be signed by the Commissioner of Taxation (as the accountable authority). ACNC and TPB are independent statutory bodies and have requirements to report under their own legislation.

To acknowledge the unique nature of independent statutory bodies and the responsibilities of their respective boards, they should be permitted to sign off their own annual performance statements. This would enhance the community's view of the independence of ACNC and TPB.

2.2 Annual Report – legislated delivery date

Bringing forward the delivery date for the annual report is possible subject to availability and integrity of data.

Timelines for the development the Annual Report are impacted by numerous dependencies. For example, completion of the annual performance statements are subject to the finalisation of the financial statements. The ATO is required to obtain signoff on the financial statements by both ATO's Audit and Risk Committee and the ANAO. In 2017 sign off by the ANAO was obtained in mid-September, with the annual performance statements finalised in early October.

Critical to the feasibility of any earlier finalisation of the annual report is the capacity of the ANAO to complete their audit in a shorter timeframe. A review of audit functions under the Government's Contestability Programme may identify efficiencies and savings that will allow the earlier tabling of annual reports.

Consideration would need to be given to the systems, processes, resourcing and assurance arrangements currently in place to ensure the integrity of data and analysis.

2.3 Audit Committees

i. The role of the audit committee

The role of the audit committee should continue to be centred on its assurance function and not stray into the realm of management responsibilities.

The audit committee plays a significant governance oversight role on behalf of the accountable authority in ensuring the entity is discharging its obligations. It is therefore important that a clear understanding exists as to the scope of the audit committee's role under the Act and Rule.

Recent guidance issued by DoF and ANAO put forward a view that audit committees should review the appropriateness of performance measures (a requirement under the Rule) by forming a view of the completeness and accuracy of the individual measures.

The ATO's accountable authority (the Commissioner) and the audit committee members have considered DoF and ANAO views in relation to the committee's role in setting of performance measures and have concluded:

1. It is a fundamental tenet that an audit committee's role does not extend to taking over management responsibilities. It should provide an independent view of the process undertaken to develop and produce performance measures and annual performance statements (the same role undertaken for the financial statements). It does this by examining the governance frameworks, processes and controls and satisfying itself that the risks are being appropriately managed.
2. It would be unreasonable and impractical to expect the audit committee to be able to determine how the ATO should measure its performance. This role should be performed by management and the executive.
3. Responsibility for the executive management of performance reporting should reside with the accountable authority.

The ATO is supportive of additional guidance, however:

- > guidance should clarify requirements under by the Act and Rule, but should not create new requirements (e.g. should not extend the role of the audit committee).
- > the consultation process for developing guidance should involve sufficient representatives of large entities to ensure full understanding of consequences prior to release.

- > advice and clarification must be timely, clear and concise.
- > it is important to differentiate between supporting guidance versus requirements mandated under the Act and Rule.

ii. Audit committee membership

The accountable authority should continue to determine membership of the audit committee.

The ATO supports existing arrangements enabling the accountable authority to appoint audit committee members and the chair.

2.4 Support provided to Commonwealth entities

Support must be timely to allow large entities to reflect governance and performance guidance.

Support from DoF has been valuable and responsive in relation to most elements of the PGPA framework. The Resource Management Guides (RMGs) are accessible, promote consistency in approach across government, and support best practice.

There have been issues regarding the timing of the guidance material (Primary Reporting and Information Management Aid, Financial Reporting Rules and PBS). Often the process for meeting ATO planning and reporting requirements had commenced before updated key guidance material and other tools were released.

The ATO acknowledges that the timely release of guidance is sometimes dependent on advice or approval from third parties such as ANAO.

2.5 SES remuneration reporting, accounting changes and balancing parliamentary accountability

Reporting obligations under accounting standards and whole of government requirements should be consistent.

Requests from parliament to report on SES remuneration differ to reporting requirements under the applicable accounting standards.

It would be beneficial to consider a holistic view of all reporting and, where possible, ensure alignment of requirements and timeframes. The current reporting requirements under accounting standards are reasonable and align to what the users of ATO financial statements would expect.

2.6 Guidance for new requirements

The ATO is supportive of additional principles-based guidance on requirements relating to 'value for money' and 'benefits'.

Key areas that would benefit from additional guidance until greater maturity is reached include:

- > instruments on 'value for money', such as measurement, reporting and assurance requirements.
- > the concept of 'benefits', which could be better defined, including more quantitative rather than qualitative measures.

2.7 Other Items

i. Payment of amount owed to person at time of death

The Rule should be amended so that amounts owed to a deceased person should crystallise when an appropriate trigger event occurs, not at the time of death.

Section 25 of the Rule applies to amounts owed to a person at the time of death. However, in the context of tax debts, amounts are generally not owed at the time of death as they crystallise after death as the result of a trigger event (i.e. tax assessment).

The Rule should be amended regarding when an amount is owed. The amount would only be owed once a trigger event (such as a tax assessment) has occurred, not at the time of death.

This could have broader application across the Commonwealth. There may be entitlements (i.e. employment or contractual) which have accrued before a person's death but an action (trigger event) needs to occur to crystallise the entitlement.

ii. Power to waive departmental debts

The delegation to waive certain departmental debts where they are uneconomical to pursue should be extended to the Commissioner of Taxation to reduce red tape.

Consider extending the existing delegation of the Finance Minister's powers relating to waiver in certain circumstances; allowing the Commissioner to waive a departmental amount owing by a staff member so that the amount ceases to exist (i.e. a legal extinguishment or forgiveness of the amount). This would simplify the current process which imposes additional red tape in order to expunge the Fringe Benefit Tax liability that remains where a decision has been made that an amount owing is uneconomical to pursue.

