

10 November 2017

PGPA Act Review
Attention: Review Secretary
Department of Finance
One Canberra Avenue
FORREST ACT 2603

IP Australia Submission to the Independent Review of the PGPA Act

Thank you for the opportunity for IP Australia to provide observations and input to the *Public Governance, Performance and Accountability Act 2013* and Rule Independent Review.

IP Australia is the entity responsible for administering Australia's intellectual property rights system, specifically trade marks, patents, designs and plant breeder's rights. It operates as a listed entity within the Industry, Innovation and Science portfolio and recovers almost all of its costs by charging fees for its IP rights services. The Director General of IP Australia is the PGPA Act Accountable Authority.

Overall IP Australia believes there has been a smooth and effective transition to the PGPA Act and Rule, however we note that some of the benefits promised by the new Act have not been delivered. In particular we have not noticed a reduction in the compliance burden or a move to 'earned autonomy' as mooted when the new Act was introduced.

We believe there are opportunities for further improvement to realise the intended benefits of the new Act, in particular around the concepts of earned autonomy and greater engagement with risk as a means of increasing efficiency in program delivery.

On a positive note, the implementation of the PGPA Act and Rule provided IP Australia with the opportunity and impetus to review and improve governance practices. IP Australia has operated successfully during this three-year period and has negotiated outcomes with central agencies on key governance arrangements which are critical to the success of our business model, including:

- Changes to the operating loss rule for cost-recovery agencies as part of the Belcher red tape review; and
- Retention of the IP Australia Special Account for a further period of 10 years from 2017.

Corporate Plan/Annual Performance Statement and Portfolio Budget Statements

The implementation of Corporate Plan arrangements has settled into an acceptable format over the last two years, meeting legislative requirements as well as being accessible to stakeholders. While the increased scrutiny of performance information has provide greater assurance that measures are robust and appropriate, it has also increased workload within the business and presented ambiguity for audit committees. For example, the statement signed by the Accountable Authority for the Annual Performance Statement requires a level of assurance 'accurately reflects'; this is higher than the 'fairly represents' requirement currently provided on financial statements, which is then supported by a reasonable assurance opinion by the ANAO.

The linkages between the Portfolio Budget Statements and Corporate Plan documentation are still not entirely clear, and further consideration of how these documents complement each other could be worthwhile. While the different uses of the documents are understood (one focused on parliamentarians around the budget papers, and one for agency planning and communication to broader stakeholders), further consolidation would support the guiding principles of the Act.

Differential regulation approach - Earned Autonomy

The guidance for 'Differential regulation approach', initially called 'Earned autonomy' as a concept to support efforts within the government to stimulate innovation and provide professional autonomy to Accountable Authorities, should be developed and introduced to support greater engagement with risk to derive the expected benefits of the PGPA Act.

As it stands the main compliance-style workload drivers remain similar to those in place under the previous *Finance Management and Accountability Act 1997*. The promise of bold thinking and risk-based approaches which look pragmatically at the depth and regularity of external review for those agencies rated highly in their governance has not been realised. Approaches in this area should also examine the possibility that through technology advances, much of the resourcing put towards old-style compliance reporting could be repurposed for a broader overview of risk. Risk could be monitored through smart access to data via centralised procurement, human resources and accounting systems.

While IP Australia is not advocating the end of annual external audit nor effective internal audit controls, there is an opportunity to move towards ongoing, more risk-focused and efficient outcomes. As an ISO 9001 quality certified agency, IP Australia is used to calibrating the effectiveness and efficiency of its operations via an internal approach of setting standards and testing their efficacy.

Flexibility and change ownership

In response to customer feedback, IP Australia has been attempting to facilitate greater flexibility in the use of online payment options for our customers. For example PayPal was approached as a potential service provider, but PayPal was found to be in breach of section 19 of the PGPA Rule. This matter was largely left with IP Australia to pursue with the vendor, despite there being opportunity for efficiency across the APS by offering greater payment flexibility should agencies be capable of meeting the legislated requirements. There is value in taking a centralised and customer-focused approach to the ongoing consideration of these types of issues with consultation between stakeholders and agencies to find solutions, as the issues around their operating model apply to all agencies equally.

While Commonwealth procurement arrangements are outside the scope of this review, it is here that IP Australia feels there is the most opportunity for increased efficiency driven by more appropriate engagement with risk. The reasons for limitations of changes to the \$80,000 procurement threshold are well understood; however, it should be acknowledged that this is one of the greatest impediments faced by most agencies in maximising efficiency through improved engagement with risk.

IP Australia supports the efficient and timely review and modification of the PGPA Act, Rules and Resource Management Guides and would welcome any further opportunity to contribute to the review.

Yours faithfully

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Patricia Kelly
Director General
IP Australia