



Australian Government

Department of Finance

Indemnities under the Public Governance, Performance and Accountability Act 2013

19 March 2015

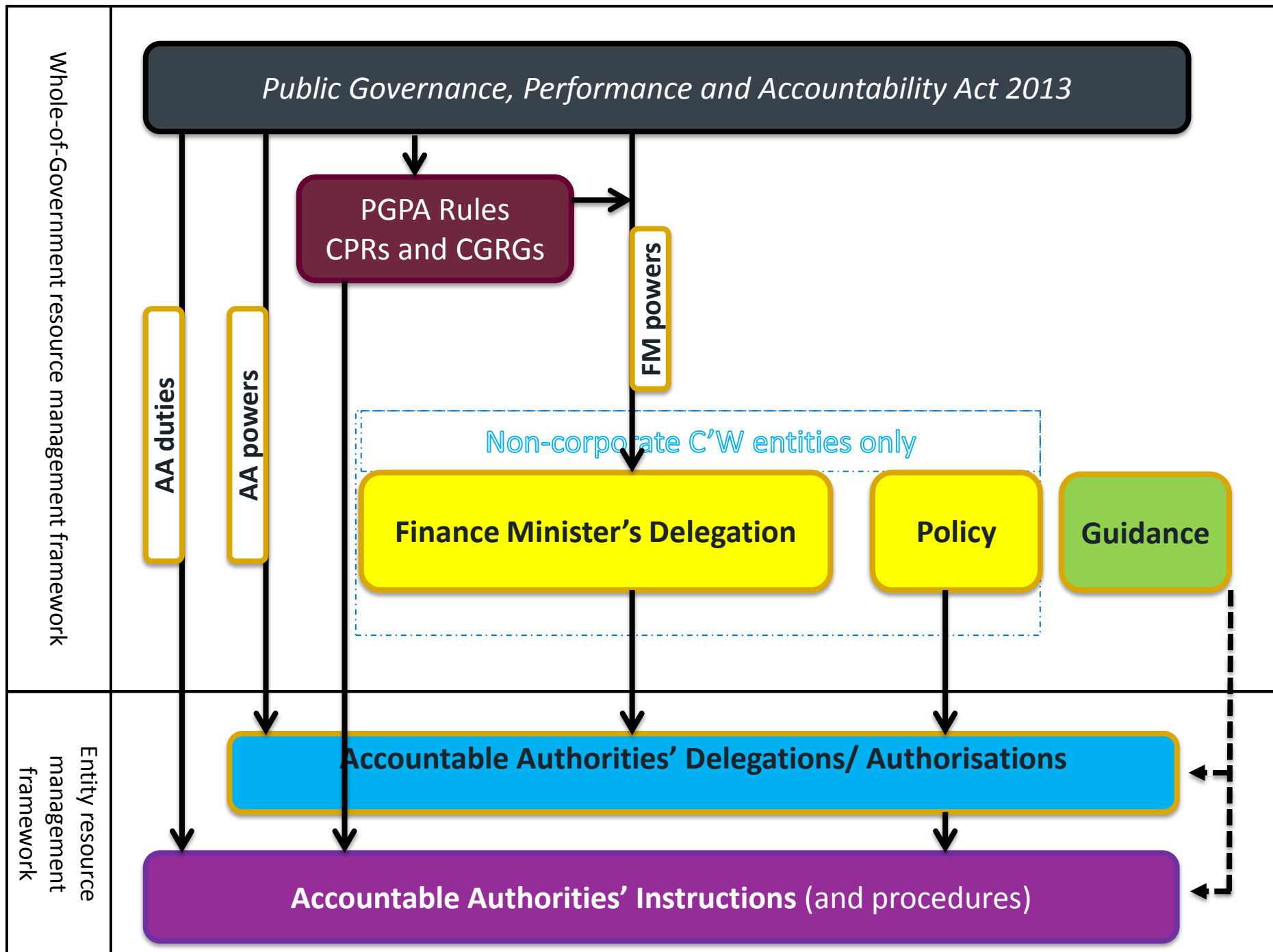
PMRA Implementation Branch

David Carton



Content

- Legislative and policy framework for indemnities
 - PGPA Act and Rules
 - Finance Minister's delegation
 - Accountable Authorities' delegation
 - Accountable Authorities' Instructions (AAIs)
- Finance Guidance and processes **RMG 414, *Indemnities, guarantees or warrantees granted by the Commonwealth***





PUBLIC
GOVERNANCE,
PERFORMANCE AND
ACCOUNTABILITY
ACT 2013

Act No. 123 of 2013

- ## PGPA Act
- Commenced on 1 July 2014
 - Replaced the FMA Act and CAC Act
 - Lines up Commonwealth entities under a common resource management framework that enables us to:
 - adopt a risk based approach to management
 - optimise planning and performance
 - seek opportunities to work better together



Uniform duties for accountable authorities

One set of general duties for all accountable authorities to:

- govern the entity: s15
 - proper use and management of public resources
 - achievement of the purposes of the entity
 - financial sustainability of the entity
- establish systems for risk and control: s16
- encourage partnering: ss17-18
- keep responsible minister & Finance Minister informed: s19

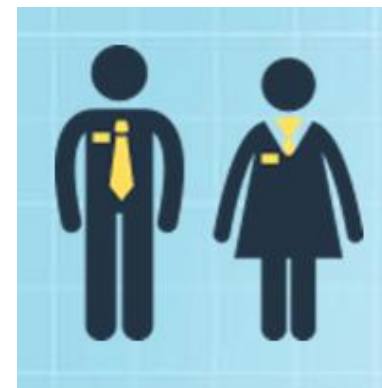




Uniform duties established for officials

General duties on all officials to promote high standards of governance, performance and accountability, include:

- a duty of care and diligence: s25
- a duty to act in good faith and for proper purpose: s26
- a duty not to misuse position or information: ss27 & 28
- a duty to disclose interests: s29





Focus on engaging with risk

- Overarching risk framework established
www.finance.gov.au/comcover/risk-management/
- Professional and focussed approach to risk management
 - establish a culture that engages with risk rather than avoids or transfers it
 - better understanding of material risks





PGPA Act - Indemnities

Division 6—Indemnities, guarantees, warranties and insurance

60 Indemnities, guarantees or warranties **by the Commonwealth**

(1) The Finance Minister may, on behalf of the Commonwealth, grant an indemnity, guarantee or warranty.

(2) The grant of the indemnity, guarantee or warranty must be in accordance with any requirements prescribed by the rules.

61 Indemnities, guarantees or warranties **by corporate Commonwealth entities**

The rules may prescribe requirements relating to the granting of indemnities, guarantees or warranties by corporate Commonwealth entities.



Indemnities

- Indemnities, guarantees and warranties are legally enforceable obligations which may be included in contractual arrangements between the Commonwealth (or a corporate C'W entity) and another party.
 - An **indemnity** is a legally binding promise whereby the Commonwealth undertakes to accept the risk of loss or damage another party may suffer.
 - A **guarantee** is a promise whereby the Commonwealth assumes responsibility for the debt, or performance obligations of, another party on default of its obligations.
 - A **warranty** is a promise whereby the Commonwealth provides certain assurances to the other party to an arrangement.
- **Key Issues:**
 - **Contingent liabilities**
 - **Acceptance of risk**



Finance Minister's Delegation

Delegated power

- To grant an indemnity, guarantee or warranty on behalf of the Commonwealth
- **Delegates**
 - Accountable authorities, of non-corporate Commonwealth entities
- **Directions**
 - Scope
 - Principles
 - Arrangements containing indemnities (remote and not significant)
 - Decisions of Cabinet
 - Determinations



Indemnities in entities

- Accountable Authority may delegate power to an official
 - Section 110 (non-corporates)
 - Authorisation (corporates)
- Accountable Authority may issue instructions to officials
 - Section 20A
 - Part of finance law

finance law means:

- (a) this Act; or
- (b) the rules; or
- (c) any instrument made under this Act; or
- (d) an Appropriation Act.



Indemnities outside the scope of the Finance Minister's delegation

- Request to the Finance Minister
 - Talk to Finance (Agency Advice Unit)
 - Talk to Comcover
 - Formal request from the responsible Minister
 - Include:
 - any legal advice,
 - the risk assessment
 - draft agreements
- Indemnity Grant Request Form



- **RMG 414, *Indemnities, guarantees or warranties granted by the Commonwealth***
 - Replaces FMG 6 – Indemnity Guidelines
 - Issues when considering granting indemnities
- Model Accountable Authority Instructions
 - Non-corporate
 - Corporate



Further information

The screenshot displays the 'Resource Management' page on the Australian Government Department of Finance website. The page features a navigation menu on the left with links to various sections like 'About the Department', 'Recruitment', 'Publications & Reports', 'Policy and Legislation', 'About Us', 'Contact Us', and 'Help'. The main content area is titled 'Resource Management' and includes a circular diagram illustrating the Resource Management Framework. The diagram is divided into six segments, each representing a key area of the framework: Planning & Performance, Managing risk and internal accountability, Managing money, Working with others, Managing property, and Using money. Each segment contains a list of related topics and a 'See more' button. The 'Managing risk and internal accountability' segment is highlighted with a red border. The 'Managing money' segment includes links to 'Banking', 'Central Budget Management System (CBMS)', 'Handling money by persons outside the Commonwealth (other CRP money)', 'Investment funds, including Future Fund and Nation-building Funds', and 'Investment by Commonwealth entities'. The 'Working with others' segment includes links to 'Cloud Computing Policy', 'Cooperation with other jurisdictions, including payments to states', and 'Public private partnership policy'. The 'Managing property' segment includes links to 'Commonwealth Property Management Framework', 'Acquiring and disposing property', and 'Two Stage Capital Works Approval Process'. The 'Using money' segment includes links to 'Charging, cost recovery', 'Approving commitments of relevant money', 'Commonwealth Grant Rules and Guidelines', 'Contingent liabilities, indemnities, guarantees, warranties', 'Discretionary financial assistance', and 'Commonwealth Procurement Rules 2014'. The 'Planning & Performance' segment includes links to 'Appropriations', 'Budget framework', 'Corporate plans', 'Financial reporting', 'Governance', 'Performance planning and reporting, including key performance indicators (KPIs)', and 'Resource Management'. The 'Managing risk and internal accountability' segment includes links to 'Accounts and records', 'Audit committees', 'General duties of accountable authorities', 'General duties of officers', 'Risk management policy and guidance (Comcover)', and 'See more'. The 'Managing money' segment includes links to 'Banking', 'Central Budget Management System (CBMS)', 'Handling money by persons outside the Commonwealth (other CRP money)', 'Investment funds, including Future Fund and Nation-building Funds', 'Investment by Commonwealth entities', and 'Managing debt: recovery and non-recovery of debt'. The 'Working with others' segment includes links to 'Cloud Computing Policy', 'Cooperation with other jurisdictions, including payments to states', and 'Public private partnership policy'. The 'Managing property' segment includes links to 'Commonwealth Property Management Framework', 'Acquiring and disposing property', and 'Two Stage Capital Works Approval Process'. The 'Using money' segment includes links to 'Charging, cost recovery', 'Approving commitments of relevant money', 'Commonwealth Grant Rules and Guidelines', 'Contingent liabilities, indemnities, guarantees, warranties', 'Discretionary financial assistance', and 'Commonwealth Procurement Rules 2014'.

PGPA Act:

- Act, rules and guidance
www.finance.gov.au/resource-management/

PMRA reforms:

- information – www.pmra.finance.gov.au
- questions – PMRA@finance.gov.au