

9 November 2017

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

Dear Sir/Madam

Submission to the Independent Review of the Public Governance, Performance and Accountability Act 2013 (PGPA Act)

We refer to your letter dated 9 October 2017 to the Chair of the Clean Energy Finance Corporation (CEFC), Mr Steven Skala AO, inviting submissions to the Independent Review of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). We would like to thank you for the opportunity to provide input to this review.

The CEFC acknowledges the importance of the independent review of the PGPA Act and Rules and welcomes the opportunity, facilitated by this review, to identify improvements that will enhance public sector productivity, governance, performance and accountability arrangements. The CEFC also recognises that the review will provide an important prompt to revisit the merits of the legislative instruments, particularly in examining whether the implementation of the Act and Rules is meeting the intended objects, and whether they have appropriately supported the operations of Commonwealth entities.

We have reviewed the *Terms of Reference* for the review and how the implementation of the PGPA Acts and Rules has affected the Corporation's operations.

In general, the approach to consolidate the *Financial Management and Accountability Act 1997* (FMA Act) and the *Commonwealth Authorities and Companies Act 1997* (CAC Act) makes good sense, however, we do have some concerns that in that consolidation process, the independent nature of statutory authorities (or corporate Commonwealth entities under the PGPA Act) has been adversely impacted. To this end we offer the following specific observations:

1. The PGPA Act and Rules seem to be predominantly formulated assuming agency structures rather than independent statutory authorities. As a result, in some areas, they do not fully recognise the strong governance framework of statutory authorities who operate with an executive and non-executive arm.

For example, the requirements around the roles and responsibilities of Audit Committees (PGPA Rule section 17) are overly prescriptive and may prevent a non-executive Accountable Authority of a corporate Commonwealth entity from establishing a standalone Risk Committee simply because the Rules stipulate that the Audit Committees are responsible for risk oversight and management.

In our industry, it is now very common for standalone risk committees to be established. We are of a view that this could be enhanced by allowing more flexibility for corporate Commonwealth entities with non-executive Accountable Authorities. Similarly, the requirement that Audit Committees be responsible for performance reporting, might be better placed with a separate Committee. In the case of the CEFC, the Remuneration and Human Resources Committee of the Board has responsibility for overseeing the performance of the Corporation and its executive against the key performance indicators established by the

Board. This is then largely duplicative with the requirement imposed upon the Audit Committee.

We would recommend that rules such as these be revised to allow statutory authorities more flexibility to implement governance arrangements more in line with the private sector.

2. In some areas, we observe overreach in the administration of the Act and the Rules. We note that one of the key recommendations of the independent Review of Whole-of-Government Internal Regulation (*Belcher Red Tape Review*), was that mandatory requirements should be distinguished from better practice guides.

During the most recent financial year, the Department of Finance issued guidance advising that they expected audit committees to provide assurance in relation to the annual performance report. The ANAO then reinforced this, indicating this was now a requirement of the Audit Committee and yet neither the Act nor the Rules had been updated to reflect this.

At the CEFC, the Remuneration and Human Resources Committee is a committee of the Board that has responsibility for reviewing and recommending corporate key performance indicators to the Board for approval. That same Committee then reviews actual performance of the Corporation against these key performance indicators and makes a recommendation to the Board at the end of the financial year.

3. The process of printing and tabling hard copies of Annual Reports is antiquated and extremely wasteful of resources. In this day, a digital first approach would be far more appropriate both in terms of effectiveness, efficiency and emissions reductions.

Should you wish to discuss any aspect of the CEFC's contribution to the review, please contact Mr Simon Every [REDACTED]

[REDACTED]
Yours sincerely
[REDACTED]

Ian Learmonth
Chief Executive Officer