



Australian Government
Department of Defence

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PGPA Act Review
Ms Kathy Balmaks
Review Secretary
Department of Finance
One Canberra Avenue
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Dear Ms Balmaks,

Thank you for your letter of 9 October 2017. The Secretary has asked me to respond on his behalf.

I welcome the opportunity to provide feedback on the implementation of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule), related legislative instruments and policy guidance. As a large, operational entity, Defence has undertaken the challenge of designing and implementing the necessary internal reforms to meet the requirements of the Public Management Reform Agenda (PMRA).

Overall the key feature of the PGPA Act and Rule - being a principles based approach - ensures that Defence is empowered to adopt more effective and efficient practices proportional to the scale, scope and risk of our governance, performance and accountability activities (including procurement). It is important this approach be retained as it allows Defence to develop and implement operational guidance that reflects our particular circumstances, with these reforms supported as part of the implementation of the First Principles Review.

That being said, Defence has consolidated some lessons learnt during the implementation of the PGPA Act and Rule. Defence has worked with relevant areas in the Department of Finance over the years to implement appropriate solutions to meet the intent of the PMRA. A summary of these discussions has been drawn together and is provided for your consideration as part of the Independent Review.

If you have any concerns or questions in relation to the response provided, my point of contact is Mr Darren Box, First Assistant Secretary Governance and Reform, [REDACTED]

Yours sincerely

[REDACTED]

Rebecca Skinner
A/Associate Secretary

/s/ November 2017

Attachment:

1. Defence input into the 2017-18 Review of the Public Governance, Performance and Accountability Act 2013 and Rule 2014

DEFENCE INPUT INTO THE 2017-18 REVIEW OF THE PUBLIC GOVERNANCE, PERFORMANCE AND ACCOUNTABILITY ACT 2013 AND RULE 2014

BACKGROUND

1. Defence welcomes the opportunity to provide feedback on our lessons learnt over the past three years, in implementing the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule), related legislative instruments and policy guidance. As a large, operational entity, Defence has been challenged in designing and implementing the necessary internal reforms to meet the requirements of the Public Management Reform Agenda (PMRA).
2. Overall the key feature of the PGPA Act and Rule - being a principles based approach - ensures that Defence is empowered to adopt more effective and efficient practices proportional to the scale, scope and risk of their governance, performance and accountability activities (including procurement). It is important this approach be retained as it allows Defence to develop and implement operational guidance that reflects our particular circumstances.
3. The introduction of a performance approach to management in a risk-informed decision-making context is resulting in a shift in focus from accounting for outputs to measuring outcomes, delivering on more meaningful reporting to Government. Defence continues to assert the importance of outcomes-focussed performance management and is driving clear legislative, corporate and personal accountability. Defence has captured the lessons learnt over the three years since the release of the PGPA Act for the Review team's consideration.

DEFENCE CONSIDERATIONS

4. For Defence, implementing the PGPA Act and Rule has at times been complicated due to the timing and sequencing of the release of policy guidance, including the Resource Management Guides (RMG), Commonwealth policies such as the *Commonwealth Risk Management Policy*, Estimates Memoranda and Secretary Directives produced by the Department of Finance. For example, the introduction of 'purposes' and 'activities' in the Enhanced Commonwealth Performance Framework can be confused with 'outcomes' and 'deliverables' described in the Commonwealth Resource Management Framework.
5. Perhaps in tandem with the Independent Review of the PGPA Act, the Department of Finance could examine the supporting materials available on their website to ensure that they do not unduly restrict the flexibility allowed to Commonwealth entities, investigating the feasibility of introducing an automatic 'sun-setting' followed by critical reviews to ensure that the materials available are both current and still required.

The release of new policy could be synchronised and communicated more effectively, with existing requirements reviewed on a regular basis through the introduction an automatic 'sun-setting' clause.

6. This review provides an opportunity to examine how RMG-001 *Commonwealth Resource Management Framework Companion* and RMG-130 *Overview of the enhanced Commonwealth performance framework* can be made more complementary. By aligning these two documents, entities would be better supported in bringing together a complete performance story, which is more than just financial performance.

The RMG *Enhanced Commonwealth Performance Framework* and the *Commonwealth Resource Management Framework* to ensure they are complementarity with both the PGPA Act objects, guiding principles and with each other.

7. By balancing conformance and performance-based management approaches as part of risk-based decision making, senior officials can make better quality decisions around where to invest public resources to deliver greater public value. While some select professional development is provided by the Commonwealth to assist officials in improving their understanding of finance law, such as the professional development programs that support the *Commonwealth Risk Management Policy 2014*, many senior leaders remain unclear on how to best balance their obligations under the PGPA Act. For example, ComCover conducts education and professional development training on Commonwealth risk management however; there is no apparent equivalent for performance or assurance management.

The Department of Finance expand its education and professional development program for Commonwealth officials to cover all mandatory aspects of the PGPA Act and Rule.

8. As principles-based legislation, the PGPA Act and Rule devolve the responsibility for establishing appropriation systems of governance and strategic management to Accountable Authorities. While this is a welcome approach that enables each entity to manage itself in a way that is efficient, effective, ethical, and economic, it would be useful for the Department of Finance to continue to build a library of case studies and better practice examples that could be made available to the PMRA community. This would help entity governance and strategic management professionals to communicate more effectively with delegation holders and educate them about their responsibilities to their Accountable Authority. It would also help entities to produce performance, assurance and risk policy, process and practice that not only meet PGPA Act and Rule requirements but that support the more effective governance and management of their business.

The Department of Finance develop and make available to the PMRA community a library of case studies and better practice examples to support the development of better quality performance, assurance and risk policy, process and practice.

9. A key aspect of the PMRA was the concept of 'earned autonomy', where entities would be subject to less external scrutiny where they could provide evidence-based assurance that their internal controls were functioning effectively. That concept is no longer discussed in PMRA community of practice meetings or in policy guidance issued by the Department of Finance. Instead, we are seeing a move to 'full assurance' of entities' systems of internal controls, risk and performance management and financial management through external audit committees and the Australian National Audit Office. This creates a substantial cost to business to all Commonwealth entities in meeting assurance requirements; disproportionately so for the smaller portfolio entities and bodies.

A decision should be made as to whether the Commonwealth will pursue the introduction of earned autonomy, or whether the current full assurance approach will remain Commonwealth policy.

10. Several key terms are not defined in legislative instruments. For example, 'performance' is not defined as well as 'appropriate', 'significant', 'contractors' and 'consultancies' and impacts on agencies capacity to report. This creates issues around interpretation, where entities may diverge in their understanding of key terms from central agencies and the Australian National Audit Office. This has the potential to result in entities believing they have met the intent of the PGPA Act but are found through an audit process to have not met requirements.

Key terms are added to the definitions in the PGPA Act and reflected in relevant legislative instruments and policy guidance.

11. The consequences for Commonwealth officials who do not comply with PGPA Act mandatory requirements are unclear, especially in relation to non-financial requirements. Limited information about compliance requirements was provided in RMG-208 *PGPA Framework Compliance Reporting*; however, the document was rescinded and has not replaced. A document that clearly articulates an entity's key compliance requirements, support the Accountable Authorities and their advisers in driving the change required, supporting managers to appropriately balance their 'conformance' and 'performance' obligations in accordance with finance law.

The *RMG-208 PGPA Framework Compliance Reporting* is replaced, including information on what sanctions apply to Commonwealth officials who do not comply with the PGPA Act and Rule.

12. Late-notice changes to PGPA Act and Rule policy guidance have affected entities' ability to meet these new requirements. For example, the introduction in July 2017 of the new requirement for entity audit committees to provide assurance to Accountable Authorities about the 'appropriateness' of the 2016-17 annual performance statements, which were due to the portfolio minister by mid-October 2017.

The introduction of new requirements should be articulated well in advance of the end of the reporting period to enable entities to be able to build and implement the required policy, systems and processes to support the change. This is especially important for large, commonwealth entities, as it is difficult to effect quick changes due to the complexity of our business.

13. Under the section of 'timely and transparent advice provided to Parliament'. One of the dot points asks "whether there would be benefit in bringing forward and potentially legislating an earlier annual report delivery and tabling date". As with paragraph 15, changes to any policy guidance should be supported by early engagement with Commonwealth entities. In addition to this the annual report provides a verified accurate reflection of actual performance, linking non-financial and financial performance information.

14. If there was a change in tabling requirements to earlier than the current date, this decision will need to consider the availability of financial performance information any misalignment could decouple the reporting of non-financial and financial performance information. Unless there is a clear benefit or value to the annual reports being tabled in Parliament any earlier then 31 October, there should be no change.

That no changes be made to the tabling requirements for the annual report.

15. The introduction of the PGPA Act and Rule and the associated streamlined Commonwealth financial framework has, at a practitioner level, provided a reduction in red tape through the abolition of the requirement to exercise the FMA Regulation 9 Delegation. These changes provided entities with an opportunity to adopt their own risk-based and proportional processes to manage and monitor procurements prior to approaching to the market. In Defence's case, this has been achieved through the Endorsement To Proceed (ETP) process to address the greater risk associated with higher value procurement so that industry is not unnecessarily burdened with a non-compliant or immature request for tender. The ETP has worked well in Defence, and represents a tangible example of the benefits of providing a devolved principles-based framework that enables entities to adopt processes that meet their needs.

16. The new Capability Life Cycle and Smart Buyer principles, decision frameworks implemented as part of the First Principles Review are key initiatives to enhance early and

effective industry engagement, including associated relationship, commercial and capability outcomes. Defence's reforms are consistent with the PMRA and include initiatives to simplify and streamline procurement systems, processes and templates to ensure procurement approaches are tailored, proportional and are risk based.

That no changes be made to the PGPA Act and Rule as it relates to the implementation of principles based approach to procurement.

17. The provisions relating to audit committees (particularly Sections 45 of the PGPA Act and 28 of the PGPA Rule) could benefit from a close look at the role, value/benefit and composition of audit committees. Members of audit committees could be invited to participate in this Independent Review, noting their role in operating within the PGPA Act.

Section 45 of the PGPA Act and Section 28 of the PGPA Rule be reviewed focusing on the role, value/benefit and composition of audit committees. Members of audit committees could be asked to comment on this Independent Review.

18. In relation to corporate Commonwealth entities (CCEs) and companies, the current focus of the PGPA Act on significant governance matters appears to have devolved responsibility for such matters from the portfolio Minister to the individual 'Board of management' of the CCEs and companies. This therefore reduces options available to Ministers to provide appropriate guidance/direction, which can lead to poorer outcomes (including governance) for the relevant portfolio.

In relation to corporate Commonwealth entities and companies, consider the impact of refocusing responsibilities from the portfolio Ministers to the individual 'Board of Management' under the PGPA Act.

POINT OF CONTACT

19. Should further information be required, the Defence contact is First Assistant Secretary Governance and Reform, Mr Darren Box [REDACTED]
[REDACTED]