



Deputy Secretary

Elizabeth Alexander AM
David Thodey AO
Department of Finance
1 Canberra Avenue
FORREST ACT 2603

Dear Ms Alexander and Mr Thodey

Public Governance, Performance and Accountability Act 2013 and Rule Independent Review

Thank you for the opportunity to provide input into the *Public Governance, Performance and Accountability Act 2013 and Rule Independent Review* (the Review).

We understand that the Review objectives are:

1. To examine whether the operation of the PGPA Act and Rule is achieving the objects of the PGPA Act in a manner consistent with the guiding principles.
2. To identify legislative, policy or other changes or initiatives, to enhance public sector productivity, governance, performance and accountability arrangements covered by the PGPA Act.
3. To examine whether policy owners' implementation of the PGPA Act and Rule has appropriately supported their operation in Commonwealth entities.

Please find the Department of Education and Training's response at [Attachment A](#).

The department's contact for this review is Ms Kym Partington, Acting Chief Financial Officer telephone [REDACTED]

Yours sincerely

[REDACTED]

Carolyn Smith
Deputy Secretary, Corporate Strategy
Department of Education and Training

/o November 2017

Opportunity through learning



Review Issue 1: Impact of the new legislative framework

Consideration of the impact on small entities and previous *Commonwealth Authorities and Companies Act 1997* bodies, how these entities are managing under the new framework and whether adjustments should be made for smaller entities.

The Department of Education and Training (the department) is a material entity and individual responses from portfolio agencies will be provided directly to the Department of Finance.

In general terms, the department supports differential management practices based upon size and risk. The maintenance of the framework can be difficult for small agencies to resource, both in terms of capacity and having staff with the detailed level of understanding and experience across a broad range of subjects. Information and resource sharing across the portfolio agencies should be encouraged to assist with mitigating these risks and provide access to training, advice and software tools.

The provision of training materials and other resources by the Department of Finance is welcomed and could be augmented by better practice, practical examples, that demonstrate how entities, both large and small, can use a more risk-based approach to the management and compliance with the framework.

Examination of how Commonwealth entities work cooperatively with others (in 'joined up' government), as emphasised by the PGPA Act principles and objects.

The department works across a number of sectors and collaborates with other government agencies and ministries to deliver education and training policies, programs and funding.

The department has strong relationships with service delivery agencies, such as the Department of Human Services for delivery of the Child Care Package, the Departments of Social Services and Industry, Innovation and Science for the delivery of grants, and the Department of Employment and the Service Delivery Office for the provision of corporate services.

The department has observed an increase in the sharing of information and resources, and engagement in the discussion of issues between entities. For example, the department participates in a number of inter-entity Communities of Practice for financial governance, financial reporting and PGPA training matters and has partnered with the departments to deliver various professional development forums across a number of agencies.

An examination of how Commonwealth entities work cooperatively with others would be of benefit to share better practice ideas and support greater collaboration.



Review Issue 2: Accountability and governance

Timely and transparent advice provided to Parliament:

- a. reporting on contracts and consultancies in annual reports
- b. the reporting of senior executive remuneration and changes to accounting standards while balancing parliamentary accountability
- c. whether there would be benefit in bringing forward and potentially legislating an earlier annual report delivery and tabling date
- d. Requirements for and the role played by entity audit committees.

Timely and accurate reporting is essential for effective decision making, more effective and timely management of public funds and enhancing public accountability. The reduced disclosure regime has made it simpler for smaller agencies to meet financial reporting responsibilities without compromising on quality or accountability. The current reporting framework could be reviewed to remove instances of overlap and duplication (eg. contractors, consultancies and executive remuneration) and allow for electronic tabling of Annual Reports.

Earlier publication of the annual report is dependent upon the preparation of financial statements and audit clearance by the Australian National Audit Office. Agencies have been broadly successful in performing early financial close procedures to support timely sign off on the financial statements. However, there continues to be scope for improvement. The structure and timing of agencies' financial processes and reporting and the ANAO's audit approach could be further aligned, perhaps into a rolling program, to achieve greater efficiencies and improvements.

The department values the role of the Audit and Assurance Committee to provide independent advice and assurance regarding the appropriateness of: financial reporting; performance reporting; risk and internal control.

Review Issue 3: Commonwealth Risk Management Policy

The Commonwealth Risk Management Policy, including risk maturity in entities, the Commonwealth, executive government and the Parliament.

Entities and accountable authorities are made aware of the risk management requirements of the PGPA framework through the Commonwealth Risk Management Policy (CRMP). The CRMP also identifies the mandatory policy elements that need to be included in enterprise level risk management frameworks and guidelines.

Many Government objectives are now being delivered through inter-departmental arrangements and there is scope for existing guidance to be reviewed and supported by case studies and practical examples of how shared risks could be better managed across the Commonwealth. This is of particular relevance to the development of ICT systems on behalf of policy agencies and the Streamlining Government Grant Administration Program.

The risk maturity of Commonwealth entities is assessed by the Comcover Benchmarking Survey tool (the survey). The survey seeks to identify the elements that comprise an entity's risk management



framework, but does not seek to test the quality, effectiveness and appropriateness of those frameworks.

The maturity ratings provided as an outcome of the survey support a culture that entities should be striving to attain the highest level (optimal) rating. However, the underpinning principle of the CRMP is that risk frameworks (particularly those for smaller entities) should be fit for purpose and commensurate with the scale and nature of their risk profile.

Finally, it would be of assistance to have the language used in the CRMP (including guidance and tip sheets) aligned with the language used in ISO:31000.

Review Issue 4: Commonwealth performance framework

The enhanced Commonwealth performance framework, including:

- a. Ongoing monitoring and public reporting of whole-of-government results for the framework
- b. Timely and transparent, meaningful information to the Parliament and the public, including clear read across portfolio budget statements, corporate plan, annual performance statements and annual reports.

The department views the alignment between the Corporate Plan, Portfolio Budget Statements and Annual Report (including performance statements) as important and is continuing to grow its maturity in this area.

Further clarification of the mandatory content requirements for corporate plans, especially with regard to the requirement to cover a four year outlook (in particular, in the purpose, environment and risk sections), would be of value.

Review Issue 5: Support provided to Commonwealth entities

Support provided to Commonwealth entities including:

- a. Review of the PGPA Act and Rule guidance issued by the Department of Finance (Finance) and others, including the Attorney-General's Department
- b. Consideration of other communication strategies such as Communities of Practice, utilised to support entities.

The Department of Finance provides various resources and links to support the application of the PGPA Act, rules and guidance. The Resource Management Guides and ongoing advisory support is particularly helpful, especially for smaller agencies and those located outside of Canberra.

The Department of Finance is in a unique position, being exposed to a large number of agencies frameworks, to play a greater role in highlighting and distributing examples of best practice or innovative solutions that will support agency efficiency and effectiveness.



Further specific guidance is sought in the following areas:

Requirement to obtain approval for contingent liabilities

The PGPA Act introduced a requirement to obtain section 60 approval for contingent liabilities (including ones that are low risk). Contingent liabilities most commonly tend to occur in the context of venue hire and IT software agreements, where the supplier often insists on the use of their standard terms and conditions. The requirement to obtain section 60 approval is occasionally misunderstood by officers in the department, who may not routinely enter into such contracts. The test for determining the existence of a contingent liability can be technical, and officers tend to have difficulty identifying contingent liabilities. Once identified, officers may have difficulty assessing the likelihood of the contingency event.

It would be useful if more ‘plain English’ guidance (including possibly a checklist) could be provided by Finance about dealing with contingent liabilities. In particular, to enable officers who only occasionally deal with contracts—that are also usually low risk and low value—to more confidently identify and address any contingent liabilities that may be contained within its clauses.

Interaction of debt and payment codes

The department, and other departments, administer legislation that contains specific provisions that apply as a financial accountability framework for administered funding, including on the issues of debt recovery, waiver and write-off. This is common for social welfare legislation in particular. For instance, Part 4 of the *A New Tax System (Family Assistance) (Administration) Act 1999* contains provisions that apply to child care payments and a similar set of provisions in social security legislation has been referred to as a “code” by the Federal Court (*Walker v Secretary Department of Social Security* (1995) (1995) 56 FCR 354).

As debt recovery codes have provisions that cover similar ground to the PGPA framework, but do so in more specific ways (e.g. powers exercised by officers with specific delegation under that legislation), it would be helpful if the PGPA framework clarified whether the PGPA law has limited application when these powers are being exercised.

Interaction with settlement of monetary claims

The PGPA framework could provide greater clarity about the interaction between the provisions in section 63 of the PGPA Act relating to waiver of debt, and the provisions which provide for settlement of legal proceedings at Appendix C of the *Legal Services Directions 2017*.

It is unclear whether, in some circumstances, a settlement of a ‘monetary claim’, as referred to under Appendix C of the *Legal Services Directions 2017*, may also constitute a partial debt waiver in the context of the PGPA Act (if the settlement results in only partial recovery). A question then arises regarding who has the authority to agree to the settlement, and whether it is necessary to fulfil the requirements for debt waiver in the PGPA Act (which may involve obtaining approval from the Finance Minister), or whether the settlement may occur under the delegation referred to in Appendix C of the *Legal Services Directions 2017*.



If not clarified in the law itself, we suggest that some direction on this could be included in guidance from the Finance, such as the *Resource Management Guide 401: Requests for discretionary financial assistance under the Public Governance, Performance and Accountability Act 2013*.

Reporting of section 83 breaches of the Australian Constitution

Section 83 matters are reported in the notes to the financial statements and will be briefed to the department's Minister where appropriate. The definition of 'finance law' doesn't currently include the Constitution and therefore section 83 non-compliance doesn't appear to be in scope of the 'significant non-compliance' reporting requirements outlined in *RMG 214 – Notification of significant non-compliance with the finance law*.

Further specific guidance on how Finance intends Section 83 non-compliance to be managed and reported would be helpful.