



08 November 2017

Ms Katy Balmarks  
PGPA Act Review Secretary  
Department of Finance  
One Canberra Avenue  
FORREST ACT 2603

Dear Ms Balmarks

Thank you for the opportunity to provide a submission to the Independent Review of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and Rule.

Please find enclosed the Department of Immigration and Border Protection's submission.

The Department does not hold any objections to its submission being made publicly available.

If either you or the independent reviewers wish to discuss any aspect of the submission in further detail, please contact First Assistant Secretary, Enterprise Strategy, Reform and Performance, Peta Dunn [REDACTED]

Yours sincerely

[REDACTED]  
Chief Operating Officer  
Deputy Secretary, Corporate



Australian Government

Department of Immigration  
and Border Protection

## **Independent Review – *Public Governance, Performance and Accountability Act 2013* and Rule**

Submission from the Department of Immigration and  
Border Protection

November 2017

## Introduction

1. The Department of Immigration and Border Protection (the Department) appreciates the opportunity to provide a submission to the Independent Review (the Review) of the operation of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and Rule. The Department is available to discuss its submission in further detail, if required.

## Departmental response

### Impact of the PGPA Act

2. The implementation of the PGPA Act and Rule has resulted in an overall positive change within the Department. In particular, it has enabled the Department to better engage with risk and to adopt a more pragmatic approach to financial and performance reporting.
3. The integration of the Department of Immigration and Border Protection and the Australian Customs and Border Protection Service, which occurred a year after the commencement of the PGPA Act, resulted in a major review of the Department's foundational frameworks and systems. Integration was an opportunity to reflect on better practice, and has resulted in the development of an organisational culture focussed on good governance, transparency, accountability and performance.
4. In the spirit of the objects of the PGPA Act, to encourage Commonwealth entities to work cooperatively to achieve common objectives, the Act has given the Department a formal mechanism to engage and work collaboratively with entities that have joint responsibilities for shared outcomes under Australian Government initiatives.
5. While the Department has made significant progress towards mature governance, risk, financial and performance frameworks, further clarification of some aspects of the PGPA Act and Rule is needed to achieve greater consistency and transparency in reporting, and to embed accountability and governance across the Commonwealth.

### Implementation of principle-based legislation

6. The PGPA Act and Rule provide a strong legislative basis for the Department to report on its performance, financial and fraud and risk management frameworks. However, there are aspects of the PGPA Act and Rule that remain unclear and subject to interpretation by entities. Further, the absence of clear (or minimum) requirements can lead to inconsistent and risk adverse decision-making in regards to what is included in externally available publications. This, in turn, may limit the provision of meaningful (and needed) information to the Australian Parliament and the public.

### Lack of consistency and clarity of PGPA requirements

7. This is most evident in regards to entity's design and reporting of risk, capability and organisational performance. Reporting standards utilised by entities subject to the PGPA Act vary widely, resulting in inconsistency and varying levels of accountability and transparency across the Commonwealth.



8. While the Department is supportive of the principles-based legislation and the flexibility this affords, this places considerable reliance on entities to accurately interpret the PGPA requirements. However, the principles-based approach is contradicted by the prescriptive and detailed nature of financial and performance audits which are performed by the Australian National Audit Office (ANAO). This exposes entities to the risk of reported non-compliance with PGPA requirements, creates unnecessary confusion and could result in entities applying a stricter interpretation of requirements, and increasing costs, arising from ANAO findings (required by the PGPA Act and Rule). An example is when the ANAO published information regarding compliance in its *Interim Report on Key Financial Controls of Major Entities*<sup>1</sup>, that was not identified as significant, for the purposes of section 19 of the PGPA Act.
9. Another example of inconsistency in the PGPA Act is the definition of a bank. Under section 8(a) of the PGPA Act, a bank is defined as 'an authorised deposit-taking institution' (*within the meaning of the Banking Act 1959*). However, section 9(3) of the Banking Act states that 'The fact that a body corporate is granted an authority to carry on banking business in Australia does not mean it is entitled to call itself a bank.' The type of banking business an authorised deposit-taking institution (ADI) can perform may also be restricted. For example, although Paypal is an ADI, the banking business it is confined to providing is purchased payment facilities only. The inconsistent definition of an ADI leads to confusion and may result in inconsistency in its application across the Commonwealth. The Department recommends consideration be given to issuing further guidance to clarify the management of ADIs under section 53 of the PGPA Act.

#### Lack of available information

10. The Department of Finance's *Resource Management Guides* (RMGs) are helpful and allow the flexibility required to manage our resources in a way that works for the Department. However, these documents would benefit from greater specificity and inclusion of mandatory minimum standards.
11. The Department notes that while instructions published within Estimates Memoranda apply across entities, due to their restricted nature, the documents are not available to all staff. A specific example of this issue is the *Estimates Memorandum on Proposed Major Commitments of Relevant Money*. The mandatory requirements are therefore contained within multiple sources, for example, the PGPA Act, Rule and Commonwealth Procurement Rules. The Department recommends that instructions that apply across entities should be within publicly available documents (such as the Rule) to support compliance.
12. The Department also recommends that consideration should be given to providing more technical advice, where appropriate. For example, the advertising and market research explanatory information is obtained from section 311A of the *Commonwealth Electoral Act 1918* and minimal additional information or examples are provided in the PGPA Rule and RMG-135: Annual reports for non-corporate Commonwealth entities<sup>2</sup>. Specific training and / or opportunities to share approaches (at a working level) to these matters would also be highly beneficial.
13. The Department further notes that the very useful 'Better Practice Guides' once issued by the ANAO, are no longer available. The Department recommends that consideration be given to re-issuing or replacing these guidance documents.

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<sup>1</sup> <https://www.anao.gov.au/work/financial-statement-audit/interim-report-key-financial-controls-major-entities-2016-17>

<sup>2</sup> [http://www.finance.gov.au/sites/default/files/RMG-135\\_Annual\\_reports\\_for\\_non-corporates.pdf](http://www.finance.gov.au/sites/default/files/RMG-135_Annual_reports_for_non-corporates.pdf)



## Coordination of legal advice across the Commonwealth


14. The Department recommends that the Review consider the current arrangements for the coordination and interpretation of finance law (and its application to the PGPA Act and Rule). Currently, entities independently seek legal advice on matters concerning the interpretation of finance law from the Australian Government Solicitor (AGS).
15. The Department recommends that the Department of Finance support and coordinate requests for legal advice to the AGS. This would facilitate central visibility and coordination of the issues facing entities and resulting reforms to the PGPA Act, Rule. This would align well with the role of Department of Finance as a central agency.
16. It would also be beneficial for the Department of Finance to share expectations (and expected implications for entities) arising from their discussions with the Joint Committee of Public Accounts and Audit (JCPAA) and the ANAO.

## Linkage between Corporate Plan, Portfolio Budget Statements and Annual Report

17. It is the Department's view that the PGPA requirements that set out the content and structure of the Portfolio Budget Statements (PBS), Corporate Plan and Annual Report should be streamlined in order to improve external accountability, transparency and strategic alignment and remove duplication.
18. The separation of PBS 'Outcomes' and 'Performance Criteria' and the Corporate Plan's 'Purposes' and 'Key Performance Indicators' within the PGPA requirements has created a situation where the linkage between public expenditure and entity performance is no longer clear. External accountability and transparency are further diminished by the continuation of Senate Estimates hearings structured according to the outcomes and programmes, outlined within PBS.
19. Furthermore, the continuing requirement for performance indicators within the PBS (which may be separate and / or in addition to those required within the Corporate Plan) offers little additional value and is often confusing to stakeholders, who review both documents. From an entities perspective, this creates duplication, inefficiencies and lost productivity due to the ongoing management of two performance frameworks; one that is more directly linked to functional delivery for appropriations purposes, the other based more on outcomes for planned performance purposes.
20. In this context, the duplication of effort by entities to manage parallel frameworks and production activities for the PBS, Corporate Plan and Annual Report is also not ideal in an environment of constrained resources.

## Machinery of Government Changes

21. It is the Department's view that the provisions surrounding Machinery of Government changes (MoG) should be strengthened in order to provide greater clarity and avoid duplicative effort.
22. In light of the anticipated establishment of the Department of Home Affairs as a Commonwealth entity prior to 30 December 2017, the Department must issue a new Corporate Plan 2017-18 mid reporting cycle (as required by section 35 of the PGPA Act). Further, under the existing PGPA requirements, it is considered 'best practice' for the entities losing functions to vary their corporate plans.

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23. This situation could result in multiple corporate plans that require variation and / or re-issue across the Commonwealth. This creates duplication, lost productivity and resource burdens, particularly at a time when an entity is focussed on the broader implementation of MoG changes.
  24. The Department recommends consideration be given to allow accountable authorities the discretion to reissue, vary or retain existing corporate plans during a reporting period or to address accountability changes for minor functions in the Annual Report and Performance Statements, where announcements relating to these changes have been publicly made. Alternatively, a minimum requirement could require the entities impacted by MoG changes to issue a simplified formal acknowledgement of the functions gained or lost, in order to maintain accountability and transparency.

## Further considerations

25. **Earlier tabling date for annual reports:** The Department would have significant difficulty in complying with a requirement to deliver and table an Annual Report prior to October each year. As required by the Corporate Plan, the reportable period is from 1 July to 30 June, however much of the Department's performance and financial data is not available until after 30 June. If the tabling date were to be brought forward, this may affect the quality and completeness of the information reported to the Australian Parliament and the public.
26. **Business planning:** The PGPA Act, Rule and RMGs do not refer to corporate business planning activities. The Department views business planning as fundamental to ensure alignment between the Government's priorities and the Department's strategic objectives and deliverables. Through a comprehensive business planning process, entities can connect their purposes and planned activities (as reported in their Corporate Plan), with their achievements (as reported in their Annual Performance Statements). The Department recommends consideration be given to expanding the PGPA Act to include minimum standards for the implementation of business planning, in order to drive a culture of good governance, accountability and performance.