



Duties of accountable authorities and complying with government policies

Key themes

- The *Public Governance, Performance and Accountability Act 2013* (PGPA Act) imposes a number of legal duties on accountable authorities of Commonwealth entities.
- Accountable authorities may also be required to comply with government policies.
- In general, there is nothing in the PGPA Act that prevents an accountable authority complying with government policies. Any exceptions are likely to be limited to entities with specific enabling legislation, and only in very specific circumstances.

Accountable authorities and government policies

The PGPA Act imposes a number of legal duties on all accountable authorities of Commonwealth entities.¹ These duties apply specifically to accountable authorities because they govern and set the overall strategic direction of their entities.

These duties include promoting the proper use and management of public resources, promoting the achievement of the purposes of the entity and encouraging cooperation with others to achieve common objectives.

Government policies may also affect how an accountable authority governs their entity. Unlike the duties in the PGPA Act, which are made by Parliament, policy is made by the executive government. A government policy does not involve a directive to control a particular case. It necessarily has a level of generality in its potential application.

Government policies do not create legal requirements on accountable authorities. However, the PGPA Act does require accountable authorities of non-corporate Commonwealth entities to govern the entity in a way that is not inconsistent with the policies of the Australian Government.²

Corporate Commonwealth entities, which are legally separate from the Commonwealth, are only required by the PGPA Act³ to comply with government policies if they are subject to a Government Policy Order.⁴

¹ Sections 15-19 PGPA Act - General duties of accountable authorities.

² Section 21 PGPA Act - Application of government policy to non-corporate Commonwealth entities.

³ A particular corporate Commonwealth entity may be subject to government policies under other statutory provisions e.g. under a ministerial direction-giving power conferred by the Act establishing the entity.

⁴ Section 22 PGPA Act - Application of government policy to corporate Commonwealth entities.

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Can a government policy conflict with my PGPA Act duties?

Generally, no. The PGPA Act does not create obligations that require accountable authorities to pursue the interests of their entity above those of cooperation and meeting whole of government decisions and policies.

For non-statutory, non-corporate Commonwealth entities, such as Departments of State and executive agencies, the primary purpose of the entity is to give effect to the policies of the Government.

Entities that have statutory functions requiring independence from government could find there is inconsistency between their statutory purposes and a government policy, depending on the circumstance. The enabling legislation might expressly or, in relation to such matters as complying with government policy, impliedly qualify the ordinary application of the PGPA Act.

Whether a government policy conflicts with a statutory function will depend on the specific statutory function and the particular government policy. In these instances it is suggested that legal advice is sought.

Note: This document has been prepared as guidance by the Department of Finance in consultation with the Australian Government Solicitor and is not a legal document.

When do government policies apply to different types of entities?

Type of Entity	Description	Examples	Government policies and the PGPA Act
Non-statutory non-corporate Commonwealth entities	Non-corporate entities where ultimate legal authority over their operations rests with the executive government and the relevant Minister.	Departments of State for the purposes of the Public Service Act and the PGPA Act e.g. Department of Health, Department of Defence. Executive agencies established under the PS Act.	Government policies always apply as the primary purpose of the entity is to give effect to the policies of the Government. Section 21 of the PGPA Act further makes explicit this requirement in relation to the proper use and management of public resources.
Statutory non-corporate Commonwealth entities	Non-corporate entities who are created or recognised by legislation and whose functions are largely prescribed and regulated by legislation, and where ultimate legal authority does not rest with the executive government and the relevant Minister.	Under the Auditor-General Act 1997 the Auditor-General and the Australian National Audit Office support accountability and transparency in the Australian Government sector through independent reporting to the Parliament.	Statutory office-holders are generally subject to the requirements of the PGPA Act according to the terms of that Act. Sometimes the enabling legislation itself might expressly or, in relation to such matters as complying with government policy, impliedly qualify the ordinary application of the PGPA Act. Whether a government policy conflicts with a statutory function will depend on the circumstances.
Corporate Commonwealth entities	A corporate Commonwealth entity is a body corporate that has a separate legal personality from the Commonwealth. They generally have enabling legislation that establishes the scope of their activities and a multi-member accountable authority (such as a board of directors).	Body corporates such as the CSIRO, Commonwealth Superannuation Corporation, and the Reserve Bank of Australia	Corporate Commonwealth entities are legally separate from the Commonwealth and are only required by the PGPA Act to comply with government policies if they are subject to a Government Policy Order under section 22 of that Act. Current Government Policy Orders are available on the Finance website .