Independent Review of Whole-of-Government Internal Regulation

Report to Secretaries Committee on Transformation

Volume 2

Assessment of key regulatory areas

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2. Budget

Description

Requirements for the Budget process are covered in a range of documents including the Budget Process Operational Rules (BPORs) approved by Cabinet, a range of Cabinet and legislative requirements and supporting material in relation to various aspects of Budget activity and the resource management framework.

The Department of Finance (Finance) has overall responsibility for the management of the BPORs, with the Finance Secretary having responsibility under section 36 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) for the issuing of instructions to Commonwealth entities on the preparation of estimates and supporting material for the Budget and related estimates processes[1].

The Budget (and related) processes represent a material, annual event for the Government and the public sector that is both complex and time-consuming within stringent deadlines as material is prepared for consideration by Government and then finalised for presentation to Parliament. Feedback from Commonwealth entities and individuals has highlighted the difficulties arising from the complexity of the issues and processes involved. There are calls in a resource constrained environment from entities for the streamlining and simplifying of arrangements, including the preparation of reports and submissions.

However, it should be noted that any proposals for changes to Budget processes and rules in this context must seek to meet accountability obligations to the Government and Parliament in the most time and cost effective means possible, and may require agreement by Government and/or Parliament for some changes to proceed.

Summary of feedback on costs and benefits of the policy

Consultations and submissions revealed a concern with the complexity of Budget processes and the need for improved coordination and streamlining of requirements. These concerns are reflective of broader concerns about internal regulation within government relating to the activities of all policy owners.

These issues are taken up in over-arching recommendations by this review and, while not addressed in specific recommendations on Budget matters, underpin the recommendations that have been included and the need for further reform within the Commonwealth's resource framework. The key concerns can be summarised as involving:

- the need for improved coordination;
- the level of detail required in estimates preparation and the application of a one-size-fits-all approach to its collection;
- duplicated and overlapping reporting; and
- overly complicated and unnecessary processes.

Assessment against the Principles for Internal Regulation

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[1] Including estimates preparation and reporting requirements connected with the Mid-year Economic and Fiscal Outlook (MYEFO), preparation of additional Appropriation Bills such as Additional Estimates, and the Final Budget Outcome (FBO) report.

While entities operate in a devolved environment, seeking appropriation authority from Parliament is conducted in a consolidated fashion through the annual Budget process. In this context the role of Budget processes and rules is a necessary part of these arrangements, although there are questions about the effectiveness of some of processes and rules and the manner and consistency in which they are applied.

While there is always room for improvement it also needs to be recognised that the Budget process is one that happens at the direction of the Government of the day. In these circumstances there are limits on the degree to which streamlining of efforts can occur within the decision making arrangements and priorities that a Government may have.

The messages received during consultations were that these rules and processes achieve the overall purpose, but that more could be done to ensure that such regulation is based on better practice and simplicity of application. There is a need to streamline some practices and reporting requirements, and to improve coordination between Finance and entities, and between Finance, entities and their portfolio departments.

The Budget rules and Budget timetable are revised annually and considered by Cabinet as a joint Cabinet submission from Finance and the Treasury. There is recognition that incremental adjustment may not be sufficient and a more fundamental review of Budget framework processes is underway within Finance, as well as an upgrade of the Central Budget Management System (CBMS).

Given the scope and scale of the Budget process and its rules, feedback has also been broad. Where particular issues have emerged that warrant their own discussion a separate item has been prepared as Attachments 1 to 6 to this paper under the following headings:

    2.1 The BPORs;
    2.2 (Budget) training and education;
    2.3 Communicating and responding to requirements and deadlines;
    2.4 The treatment of small entities;
    2.5 Operating losses; and
    2.6 The resource management framework (RMF).

The Budget Process Operational Rules (BPORs)

Description

The BPORs are standing rules endorsed annually by Cabinet which set out the major administrative and operational arrangements that underlie the management of the Australian Government Budget process. The BPORs also identify the requirements that apply to all new policy proposals (NPPs) and other Budget proposals, including those brought forward for consideration outside of the Budget process. Finance has the lead responsibility for working with Commonwealth entities in relation to expenditure and non-taxation revenue issues, and the Treasury has responsibility in relation to taxation revenue matters and proposals from entities.

The BPORs also include direction in relation to a number of Budget management issues, including arrangements for approving the reallocation of funds between appropriation types and between financial years, the treatment of operating losses, and recognition of outcomes and programme structures within which funding decisions are made and resource use is reported.

Summary of feedback on costs and benefits of the policy

A considerable amount of feedback was provided through workshops, interviews and submissions in relation to the BPORs, some of which related to the BPORs but more often related to the processes supporting compliance with the BPORs and the way in which Finance assists entities meet their obligations. The feedback relating to the content of the BPORs can be summarised as:

- The need for clear rules around the preparation of the annual Budget is understood, but there are problems with the way these are expressed and applied.
    - While some aspects of the BPORs are clear and prescriptive, other aspects are dependent on the interpretation by Finance, with comments suggesting inconsistent application across portfolios.
    - The BPORs are a classified document, meaning that awareness of the content is limited. It would help if standard processes were more generally available, with only matters that are Budget in confidence being restricted.
    - While the BPORs assume to some extent a one-size-fits-all approach for entities, this creates difficulties in relation to some features for entities that are not departments, are corporate, or are non-material.
- Entities are meant to manage resources at the outcome and entity level but the focus of the BPORs is on NPPs and programmes.
- The inclusion of Budget management features in the BPORs was questioned by some. Do they really need to be there, and do they really need to be classified as Budget in confidence?
- The BPORs include approval and consideration thresholds for proposals that are rarely changed, leading to immaterial and low risk projects being caught up in major processes. These should be reviewed and amended to maintain relevance.

One aspect of the Budget process covered in the BPORs that attracted comment was the requirement to prepare a formal costing for any costs an entity proposes to 'absorb' within existing resources. This requirement was considered likely to lead to an additional administrative burden, especially for proposals where the absorbed costs are relatively insignificant. This point of proportionality is also raised in relation to Budget processes more generally.

Assessment against the Principles for Internal Regulation

Finance has already begun a process of reviewing the BPORs for the 2016-17 Budget process and in line with normal practice will circulate for comment before seeking Government endorsement.

Consistent with the aims of this review and other reform activities, Finance has been examining options to reduce and streamline the number of rules and apply a principle-based approach to their structure and content.

The reference to approval thresholds came up in a number of areas, mainly relating to how current those thresholds are and whether they add to the workload of entities (and Finance) as a result of the values falling below levels seen as being material. Examples highlighted included proposals to alter levies, approval of major commitments, and reallocations between programmes. Each of these thresholds has been set at their current levels for some time and the request was that these be reviewed (or at least that they be reviewed on a more regular basis).

However, the decision to amend thresholds rests with Cabinet and this must be acknowledged.

Given the limited time before the 2016-17 Budget process commences it is proposed that Finance examine these thresholds and if possible make recommendations where possible to Cabinet for variation. If this is not possible then consideration of thresholds should be included in work on the development of the 2017-18 BPORs.

It is acknowledged that a greater opportunity for streamlining and simplification of the BPORs exists for the 2017-18 Budget. While Finance is responsible for coordinating the Budget process, it is not responsible for the detailed preparation of Budget bids and management of their implementation. Given the diversity of entity structures and functions, and concerns in relation to a perceived one-size-fits-all approach, there is value in a wider range of views being taken into account. All entities have a stake in ensuring that the process is as streamlined and effective as possible in supporting Budget and government decision making.

Rather than Finance undertaking a review and then seeking feedback from entities prior to finalising the BPORs, it is proposed that consultation occur throughout the development process, with Finance developing the BPORs for 2017-18 in consultation with material and non-material entities in a manner that considers:

- the need for specific rules and whether the BPORs are their most appropriate location;
- their impact on the different types of Commonwealth entity;
- which, if any, aspects of the BPORs need to be confidential, and which are of a recurring nature and can be made public; and
- how requirements can be streamlined to avoid entities reporting the same or similar information on repeated occasions.

It is also proposed that Finance obtain professional drafting expertise to assist in drafting the BPORs to support an improved structure and focus for the document.

Recommendations:

2.1   Finance streamline the BPORs to the extent possible for the 2016-17 Budget including a review of thresholds to ensure their continuing relevance and materiality more generally.

2.2   Finance, in consultation with material and non-material entities during development, to consider the BPORs against the Principles for Internal Regulation with the aim of producing, with professional drafting expertise assistance, further streamlined BPORs and related requirements for the 2017-18 Budget process, including consideration of:

   o **how the structure and presentation of the BPORs can be improved to enhance accessibility and understanding; and**

   o **how to consolidate and streamline requirements to support a "report once, use often" approach, reducing duplication and double handling of data.**

2.3   As part of Finance reviewing the BPORs for 2017-18, Finance continue its work examining the current mix of rules on Budget preparation and Budget management, with a view to:

- o **restricting the use of the BPORs to matters directly relating to the preparation and consideration of New Policy Proposals (NPPs) and related matters in a Budget/Estimates context;**

- o **matters covering the ongoing or recurring management of Budget arrangements being removed and publicly released as directions from Finance to improve access to and knowledge of entity obligations; and**

- o **matters of a Budget in confidence nature that need to be classified continuing to be distributed through the use of Estimates Memoranda.**

Training and education

Description

Advice, guidance and training in relation to Budget processes and the broader RMF is provided by Finance through a combination of:

- material available on the Finance website including Resource Management Guides and material to assist training on Budget and resource management matters within entities;
- Estimates Memoranda (EMs) (that have limited circulation within entities);
- assistance from Finance staff within the Budget Group Agency Advice Units and from policy areas within other areas of Finance; and
- a panel of training providers that can be accessed to deliver training to entity staff.

Summary of feedback on costs and benefits of the policy

Feedback during consultations revealed a range of concerns relating to the advice provided by Finance as well as difficulties with understanding key aspects of the Budget process and the broader RMF. The comment was made during consultations that EMs are subject to inconsistent interpretation, application and advice - often within a spectrum ranging from literal to practical to unreasonable. All Budget advice needs to provide timely and achievable practical implementation/completion steps so any ambiguity is avoided.

Assessment against the Principles for Internal Regulation

Finance has an extensive range of products available to assist entities in their understanding of the framework, but the scale and complexity of the estimates processes requires a level of detail that is not necessarily available in a comprehensive fashion in existing materials.

Senior managers within Finance's Budget Group acknowledge the difficulties experienced by entities, both in terms of process and the complexity of requirements. To address these concerns the group is undertaking an outreach programme to enhance entity officials' understanding of the Budget process and the related framework, business processes, information requirements and systems obligations, with the aim of reducing compliance burdens and the need to rework and revalidate estimates data.

Budget Group also acknowledge that this needs to be accompanied by improvements in the knowledge and understanding of the framework by Finance staff and are introducing development initiatives to address concerns.

Recommendation:

2.4 **Finance's proposed Budget engagement strategy and outreach programme be endorsed as an important means to enhance entity officials' understanding of the Budget process and the related framework, business processes, information requirements and systems obligations, with the aim of reducing compliance burden and rework.**

Communicating and responding to requirements and deadlines

Description

EMs are a key means used by Finance to communicate requirements in relation to processes and deadlines relating to the Budget and the Mid-year Economic and Fiscal Outlook (MYEFO), but are also used to communicate other requirements during the course of the financial year.

The main concerns in relation to EMs related to the need to consider the burden imposed on entities, the need for timely and better coordinated release, and the need to consider the impacts of competing demands from different areas of Finance.

Summary of feedback on costs and benefits of the policy

A range of comments were made about the manner in which requirements are communicated by Finance. These comments related to:

- the timeliness of the release of requests and the need for reasonable notice to allow for planning and management of workloads;
- the related matter of concerns over the lack of appreciation of the effort associated with actioning of requirements, particularly when Finance may be imposing other deadlines or pressures at the same time;
- questioning why many of these requests are classified when they relate to recurring activities; and
- the use of EMs for matters not connected with the Budget process;
- the content of EMs and being subject to inconsistent interpretation, application and advice.

The number and timing of manual and system-based validation and sign-off processes, particularly during Estimates preparation were also a source of comment, including queries as why there was a need for manual sign-off processes when entities need to include estimates in CBMS that are then validated by Finance.

Assessment against the Principles for Internal Regulation

Finance issues a large number of requirements and deadlines, the most obvious of which relate to the Budget process and financial reporting, but also include other areas of Finance oversight and coordination such as property and Information and Communications Technology (ICT). EMs have been increasingly used to communicate requirements outside of Budget preparation purposes, leading to feedback that entities had difficulty identifying and keeping track of all of their requirements. The generally classified nature of EMs also meant that not all officials within an entity had ready and timely access to information or advice on the need to undertake some form of action.

Many of these requirements are regular and ongoing but difficult for entities to find and keep track of, particularly in small entities where small numbers of staff in key areas and regular turnover provide a limited capacity for corporate memory to be retained. Several comments were received about the difficulty of knowing where to find information on reporting obligations and other Finance requirements.

It is therefore proposed that requirements should be separated into clear categories and made public to the extent possible, improving access to and understanding by entities and placing a discipline through transparency on the volume and nature of requirements being imposed. This would mean that EMs would return their focus to the Budget and other estimates processes, with other requirements imposed by Finance communicated separately and, wherever possible, publicly.

Making these regular and ongoing requirements public would assist entities understand their obligations, as would the use of some form of online calendar and other supporting materials such as policy manuals. This would provide an opportunity to reduce the volume of material in and frequency of EMs and allow them to focus on core obligations connected to Government decision making in the Budget and MYEFO processes

The other area of concern in relation to communicating and responding to requirements related to sign-offs by entities. Estimates and actual results reporting require entities to provide a large volume of information to Finance to support whole-of-government processes. Much of this information needs to be entered into CBMS, and in many cases requires validation by Finance. In such circumstances the need to complete separate, manual sign-off processes appears highly duplicative and questionable. Consideration should be given to removing these requirements.

Recommendation:

2.5   Finance streamline and simplify the range of and access to its directions and guidance material it releases in relation to estimates preparation and resource management through:

o   **focusing Estimates Memoranda on directions relating to the preparation of estimates and related matters;**

o   **establishing a new category (possibly known as Resource Management Directions) to cover directions on matters addressing entities' resource management and ongoing governance and financial administration;**

o   **keeping the volume of directions in both categories to the minimum necessary for the effective coordination and direction of government operations;**

o   **wherever possible, communicating information on standard processes and data standards to entities through separate means such as policy manuals and guides that are made publicly available;**

o   **Finance reviewing the classification of matters currently included in Estimates Memoranda to ensure that matters of a procedural nature are not unnecessarily classified and thereby limiting timely access by staff in entities;**

- o **as a general approach, not classifying the proposed Resource Management Directions, and making them publicly available as well as communicating them directly to entities;**

- o **as a means of reducing the number of Estimates Memoranda (and future Resource Management Directions), Finance providing and communicating a readily accessible calendar of key dates and events to entities across its areas of responsibility, with further notification of dates limited to changes in deadlines; and**

- o **Finance taking opportunities to minimise the need for manual returns, clearances and sign-offs, given the volume of information included by entities in the Central Budget Management System and validated by Finance.**

The treatment of small entities

Description

The regulatory burden on Commonwealth entities is the subject of this review and has been considered in earlier exercises such as the Commonwealth Financial Accountability Review (CFAR), where the burden on smaller entities was raised as a serious concern. Many of the issues raised at that time still exist.

Summary of feedback on costs and benefits of the policy

Two related and recurring concerns communicated during the consultation process were the burdens imposed on small entities and more generally a scale of effort required to meet obligations that was out of proportion to the risk involved.

The focus of these concerns related to the level of detail required and what was seen as the application of a one-size-fits-all approach, with concerns involving:

- the high turnover of staff in corporate areas of small entities creates difficulties in maintaining corporate knowledge about Budget and other resource management obligations;
- due to the size of the entities the number of staff in corporate areas is also small, and given the complexity of processes and tight timelines, many small entities are overwhelmed by the workload associated with meeting requirements;
- the costings process and the need for streamlining of process and effort based on the scale of the proposal and associated risk – i.e. a need for proportionality; and
- the volume of reporting obligations and queries in relation to whether small entity contributions are material in a whole-of-government context.

Assessment against the Principles for Internal Regulation

Budget Group in Finance already distinguishes between material and non-material entities in terms of some aspects of the Budget process. Finance should consider extending this to other Budget processes as part of broader reform efforts Finance is undertaking to engage with entities and simplify and streamline Budget processes.

Recommendation:

2.6   Finance consider whether the material/non material classification could be further utilised in the conduct of the Budget process to reduce the burden on those smaller entities whose contribution would not affect whole-of-government outcomes.

Operating losses

Description

Entities are required to seek the approval of the Finance Minister to incur an operating loss in relation to the Budget year. The purpose of this requirement is to support maintaining central oversight and control of the financial position of the Commonwealth, consistent with the Government's Budget strategy.

Summary of feedback on costs and benefits of the policy

Feedback raised the process to seek approval of an operating loss as a matter for concern, overly bureaucratic and time consuming. This frustration was accentuated by the need for approval, regardless of whether the loss related to a cash shortfall or, more often, due to a technical adjustment such as a revaluation of assets. One group in particular affected by these arrangements is that of entities involved in cost recovery activities, such as the research and development corporations in the Agriculture portfolio. This small group of entities is dependent on funds in the forms of levies from industry to deliver a range of obligations. These amounts are not within general revenue and are tied to the purposes for which the entity is established, meaning that the difference between revenue and expenditure comes down to a matter of timing or volume (where the level of activity of the sector supported/regulated dictates the level of revenue received in a period).

Assessment against the Principles for Internal Regulation

It is proposed that changes to arrangements allow for entities involved in cost recovery activities to be more explicitly recognised in the criteria in assessing whether an operating loss should be approved, and there be an opportunity (given the nature of this business activity) to pre-approve operating losses within agreed thresholds for these cost recovery entities across the business cycle. It is not proposed at this stage to extend such an approach more broadly as there is a need to assess the impact on the overall framework and whole-of-government resource management. The operating loss arrangements are part of the control mechanism and should be considered within this broader framework (Recommendation 2.6.1).

Recommendation:

2.7   Finance consider whether the current annual approval process for operating losses be streamlined, or waived in specific circumstances, such as:

o   **allowing for a pre-approval of operating loss amounts within an agreed threshold for an entity that is funded mainly through cost-recovery or other external funding sources – the entity would operate within an envelope of multi-year equity results, with pre-approval for an annual operating loss of up to (for example) 5 per cent of revenue, where any losses are offset by subsequent surpluses over a four-year budget period; and/or**

o   **amending the criteria against which operating loss applications are assessed to allow entities dependent on cost-recovered activities to manage alignment of expenses and cost-recovery revenue over the business cycle of the cost recovered activity, provided this does not represent a risk to entity financial sustainability.**

The resource management framework

Description

Since its introduction in 1999 the accrual-based outcomes framework and related appropriation, funding and reporting arrangements of the Commonwealth have been subject to ongoing adjustment, leading to increasing complexity and inconsistency in application.

An example of difficulties with the framework and the interaction of appropriation and outcome arrangements relates to the coverage of the scheme and its broader impact - less than 7 per cent of all appropriations are tied to outcomes (and the majority of entities have a single entity-level outcome meaning only 5 per cent or so of appropriations are actually tied to the degree expected) and yet broader arrangements are focused on using outcomes (and related approval and reporting requirements) as a control measure on where funds are spent but the majority of spending operates a completely different paradigm in which outcomes are notional and special appropriations (the majority of spending) are tied to separate legislative requirements.

Another example is the Museum of Australian Democracy at Old Parliament House (OPH), which is an non-corporate Commonwealth entity (NCE). OPH, as its name implies, is a heritage and cultural institution that operates within a heritage building and is responsible for managing collections connected with the history of the building and Australia's national parliament.

Other Commonwealth heritage and cultural institutions such as the National Gallery of Australia and the National Library of Australia are corporate Commonwealth entities (CCE) and the distinction has a significant impact on their operations and ongoing ability to manage their finances. As CCEs they hold money in their own account and can retain the proceeds from exhibitions to support the running of their entities and the maintenance of buildings and displays.

OPH does not have this flexibility, with the proceeds from exhibitions needing to be returned to the Official Public Account. To support its operations and supplement its ability to maintain the building and displays, OPH needs to seek (and hope to gain) assistance in the Budget process. The difficulties of this situation and the resulting funding and appropriation complexities arise from OPH being classified differently to similar entities. While the obvious response is to reclassify OPH to CCE (and this is recommended), it highlights the implications of governance

structure choices and how this impacts on the way an entity is able to manage resources in the delivery of the purposes determined by Government and the Parliament.

Summary of feedback on costs and benefits of the policy

Feedback received during consultations to the review indicated that these issues with application, together with relatively low levels of understanding about the RMF (including Budget processes and other elements), led to unnecessary complexity within entities and across government. This included difficulties with applying a one-size-fits-all approach to regulation in many areas of the framework given the diversity of entity roles and governance structures. This also extends to balancing the need for centralised resource coordination at the whole-of-government level and individual entity accountabilities.

Assessment against the Principles for Internal Regulation

It is proposed that a structural recommendation be included in this review's proposed actions.

It became apparent in a number of areas that any lessening of the regulatory burden could only occur effectively if current misalignments in the framework were addressed first, thereby removing impediments preventing substantive changes to existing processes or reporting requirements. An illustration of this problem can be found in the use of controls in relation to operating losses and capital budgets as a proxy for sustainable resource management practices across government. However this needs to be part of a broader consideration of the effectiveness of the RMF within the Budget year and across the business cycle.

To allow for reductions in internal regulation sought through this review in relation to resource management and governance matters to have their greatest opportunity to occur the structural improvements at the heart of the Public Management Reform Agenda (PMRA) need to be advanced and embedded within the practices of government and within individual entities.

PMRA (and its earlier form CFAR) within Finance was established to review and address concerns about the governance, performance and accountability arrangements for the Commonwealth including the framework from first principles. It has established a single RMF via legislation, rules, instruments and guidance within which Commonwealth entities have the flexibility to adopt appropriate, proportionate and risk-based business processes and systems and how they can be streamlined and better focused. It builds on many of the strengths of the previous financial framework, but seeks to strip away unnecessary process and red tape requirements. Many elements of the framework, however, have still to be reviewed, including but not limited to:

- Balancing whole-of-government Budget management with the responsibility of entities to manage their operations in a sustainable manner
    - A balance sheet approach to the management of resources
    - Improving alignment and integration of framework elements such as property management, ICT and procurement with the broader framework and its guiding principles
    - Budget year versus business cycle management of resources and longer term approaches to resource management
    - Use of the operating loss rule, capital management and financial sustainability;
- Aligning whole-of-government resource and appropriation reporting and entity level performance reporting;
- Processes relating to the development, presentation and reporting of the Budget;

- Appropriation structures, classifications and arrangements;
- Outcome and programme structures and arrangements;
- The effectiveness and sustainability of the Budget funding model for entities including:
  o Baseline funding arrangements, efficiency dividends and parameter adjustments
  o Dealing with changing business models, including shared services and alternate service delivery arrangements
  o Employee liabilities management
  o Capital expenditure and the sustainability of asset bases
  o Movement of funds between operating and capital budgets;
- Whole-of-government cash management practices and their application to entities including:
  o Cash flow forecasting and release of appropriations
  o Whole-of-government and entity banking arrangements
  o Revenue collection and management
  o Liability management and
  o Foreign exchange management.

The design and implementation of structural reform is a medium term endeavour, requiring effective coordination and extensive consultation by and between policy owners, and with entities across the public sector. It is suggested that the PMRA consultative model provides an example of how the reform efforts could proceed in developing options to simplify arrangements that are fit-for-purpose and proportionate to the circumstances in which Commonwealth entities operate.

Recommendation:

2.8   Finance, in consultation with entities and other stakeholders:

o **continue to review and reform the Commonwealth resource management framework and its key components to address misalignments and inconsistencies within the framework and its application within entities including:**

– **balancing whole-of-government Budget management with the responsibility of entities to manage their operations in a sustainable manner;**

– **aligning and streamlining whole-of-government resource, appropriation and performance reporting with entity level performance reporting;**

– **processes relating to the development, presentation and reporting of the Budget;**

– **appropriation structures, classifications and arrangements;**

– **outcome and programme structures and arrangements;**

– **the effectiveness and sustainability of the Budget funding model for entities; and**

– **whole-of-government cash management practices and their application to entities.**

Constitutional considerations and legislative authority

Description

Since the *Pape* decision in 2009,[2] NPPs have been required to include information about the constitutional basis of the activity, based on advice obtained from the Australian Government Solicitor (AGS). Such legal advice is 'tied work' under the Legal Services Directions 2005 (LSDs), and therefore performed by AGS. Mandatory requirements and guidance in relation to the development of such NPPs are provided through the BPORs and an EM.

Drafting for *Schedule 1AB* of the *Financial Framework (Supplementary Powers) Regulations 1997* is tied to the Office of Parliamentary Counsel (OPC). OPC and AGS work closely in developing draft items. Entities are required to reimburse Finance for OPC's fees for the registration of amending regulations on the Federal Register of Legislative Instruments and compilations of the principal regulations, as well as urgent registration and OPC's peak period surcharges. OPC does not charge for the drafting of the Schedule 1AB items.

Summary of feedback on costs and benefits of the policy

Some entities have argued that new or updated AGS assessments on constitutional support and legislative authority should be required only for NPPs that relate to new or significantly changed spending proposals, and not for proposals for savings, cessations, revenue, reductions in policy scope, or matters which are commonly considered to be within the scope of the 'ordinary and well recognised functions of government' including scoping studies and research. They argue the exemptions should be included in the guidance and not require engagement with AGS to confirm that the exemption applies, as this confirmation still has a cost impact.

Some entities have also suggested that AGS is not able to supply advice (or at least comprehensive advice) in peak periods due to the demand. They suggested AGS should supply a general advice on the constitutional support relevant to a portfolio, rather than against each NPP. They argued that entity legal advisers should be able to provide advice and undertake drafting.

Entities argue they should be able to undertake drafting of legislative instruments with their own drafters.

Assessment against the Principles for Internal Regulation

The BPORs and EM set out a reasonably light touch and streamlined process by which Government is informed of fundamental constitutional considerations associated with different policy options, and can concurrently agree to the creation of legislation to authorise spending in a particular area. NPP and Cabinet Submission templates appear to adequately support these policies and processes.

Undertaking legislative drafting and legal advice on constitutional and legislative support centrally is important in mitigating risks of diffusion of approach, facilitating consistent constitutional policy development, and supporting whole-of-government briefing on constitutional considerations. Any perceived issues regarding AGS capacity at times of peak demand should be addressed by entities engaging with AGS earlier in the NPP development process. More broadly, the issue of tied work will be considered as part of the Attorney-General's Department (AGD) Secretary's Review of in-house legal services and the LSDs.

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[2] Pape v Commissioner of Taxation [2009 HCA 23]

The full scope of possible exemptions to the requirement to get legal advice should be discussed and agreed between AGS and the Office of Constitutional Law and reflected in guidance which supports the BPORs. For example, AGD could consider whether a legal advice assessing constitutional support is required for NPPs which solely relate to savings measures, revenue measures, programme cessations, and reductions in programme scope. AGD could also consider whether NPPs dealing solely with research or scoping studies to inform government decision-making should also be considered for exclusion from the mandatory requirement to provide a new or updated legal advice.

Recommendation:

2.9   AGD to clarify whether there are circumstances in which, generally, new or updated legal advice in relation to constitutional considerations and legislative authority is not required and reflect any such 'exemptions' in guidance for entities.

3. Investment and assurance process

Gateway Reviews

Description

The Gateway Reviews Process aims to improve delivery and implementation of large and complex policies, projects and services, while building the Australian Public Service's (APS) capability to deliver and implement Government programmes and projects.

In 2005, Cabinet endorsed the adoption of the United Kingdom's (UK) Gateway Review Process, phasing Gateway reviews in over three years from the 2006-07 Budget and focusing initially on a representative cross section of projects. Gateway Reviews were extended to programmes from 2011. In July 2013, Finance formally reviewed the Assurance Reviews Framework (Risk Potential Assessment Tool (RPAT), Implementation Readiness Assessments (IRA) and the Gateway Reviews Process) as part of the Review of Commonwealth Assurance Tools. Finance undertakes regular internal reviews and updates to the Assurance Reviews Framework.

The Gateway Review Process applies to proposals undertaken by entities which require government approval, are assessed to be high risk, and satisfy certain financial thresholds. The financial thresholds for procurement or infrastructure projects are that the project must involve expenditure greater than $30 million, and for ICT projects, greater than $30 million with an ICT component of greater than $10 million. The financial threshold for programmes is greater than $50 million.

The Gateway Review Process is composed of six Gate reviews for projects, and three Stage reviews for programmes. Each Gate or Stage is a five day intensive onsite review by a team of independent reviewers, triggered by these critical lifecycle points and focusing on different stages of the project/programme investment lifecycle.[3] Independent reviewers examine existing project/programme documentation and interview key stakeholders focusing on key delivery inhibitors. Project/programme Senior Responsible Officials (SROs) are the primary beneficiary of this information.

Where a programme/project is given a red rating, or two sequential amber or amber/red ratings, a framework of three stage escalation, called the enhanced notification process, is triggered. Of the projects/programmes that have reached completion point (Gate 5 or Final Stage) and have also been the subject of an enhanced notification, 70 per cent have gone on to be delivered fully or partially on time, on or below Budget with 100 per cent fully or partially delivering benefits after this process.

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[3] For projects, this means examining:
1. Business need
2. Business case
3. Delivery strategy
4. Investment decision
5. Readiness for service
6. Benefits realisation

For programmes, this means:
1. First stage (before/soon after Government approval)
2. Mid stage (assesses programme execution)
3. Final stage (programme closure)

Since 2007-08, over 70 Gateway reviews have been commissioned, with over 2,500 recommendations made. The majority of these reviews were on projects, not programmes.[4] In 2011, 74 per cent of Gateway reviews were ICT enabled projects, 22 per cent infrastructure projects and 4 per cent procurement projects.[5] Since 2011-12, approximately 97 per cent of Gateway recommendations (750 of 774) have been either partially or fully implemented, with 100 per cent of SROs identifying that Gateway and IRAs have constructively contributed to their project.

Summary of feedback on costs and benefits of the policy

Small entities with experience with the Gateway Review Process have expressed support for Gateway and the assistance it provided in running projects.

A number of stakeholders identified that Gateway reviews have, at times, been unable to identify when major projects were going off track and/or can be a slow way to trigger escalation and intervention. Other entities have suggested that Gateway can be too focussed on the project management process, including the existence of documentation, rather than making judgements about the effectiveness of actions to achieve the desired benefits of programmes and projects.

Assessment against the Principles for Internal Regulation

Gateway assessments are principle-based, providing flexibility for refining and adapting to changing environments. A review is a point-in-time independent assessment intended to be supportive and forward looking, taking into account future plans to deliver the intended outcomes. The use of experienced senior Australian public servants in Gateway reviews also improves the project delivery capability of APS officers, creating a central pool of project implementation specialists to conduct assurance reviews.

However, a percentage of proposals may concurrently require the application of both Gateway and ICT Two Pass and Two Stage Capital Works Approval processes, creating the potential for duplication.

A tiered approach to applying Gateway reviews, where the initial gates/stages are not applied to proposals that meet other criteria (e.g. ICT Two Pass) would lower the burden for project managers.[6] Allowing some projects to opt-in to a Gateway process, or using other sources of assurance such as through independent consultants, may also reduce the whole-of-government reporting burden that many projects face.

Gateway applies to proposals which are assessed by the RPAT to be high risk and which satisfy certain financial thresholds (noting that Gateway does not apply to Defence Capability Plan projects assessed by Cabinet under the Kinnaird Two Pass approval process). Gateway review reports provide the SRO with a delivery confidence assessment (a rating of green, green/amber, amber, amber/red, red) which represents an overall assessment of the health of the project/programme, taking into account the timing of the review and the stage within the lifecycle of each of these proposals. There is whole-of-government benefit to better leveraging this data to inform Government of its portfolio of high risk investments across entities. This

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[4] Noting that the Gateway Review Process was only extended to programmes in 2011.
[5] ANAO Audit Report No.22 2011-12, *Administration of Gateway Review Process*, 14.
[6] The reverse is not possible, as ICT Two Pass develops a business case and provides that for government consideration, while Gateway Gates 0 and 1 (which create and review a business case) do not include government consideration of that business case. .

would enable better assessment of the level of risk across Government of major programmes and projects.

Thresholds across Gateway, ICT and (non-Defence) Capital Works Two Pass processes were aligned in 2012 at $30 million (plus an assessment of risk). The aligned thresholds largely reflect the existing practice. Consideration could be given to mandating that Gateway and Two Pass processes are required only for those projects which are higher value than the current thresholds. Whatever the threshold set, these should be considered regularly to ensure they remain relevant.

There is also a fragmented approach across investment and assurance processes to programme and project risk. The RPAT is required for the purposes of identifying whether a Gateway or IRA process is required, but does not form the basis of the risk assessment for the ICT Two Pass Review process (ICT2PR), nor the risk self-assessment for grant guidelines which triggers review by Finance. The RPAT is not required to be attached to a proposal for Government consideration; however, the overall risk rating for the RPAT and the strategic risk that could derail or severely affect the proposal are required. These gaps and duplications in risk assessment methodologies can complicate the NPP process.

The potential benefits of the Gateway process will be further realised as the application of Gateway to programmes (which are high risk and greater than $50m) increases. Gateway supplies a three stage methodology for reviewing programmes which could be better promoted to SROs as a way to reduce risk and increase the benefits achieved by large programmes. As with the comment on thresholds above, the threshold for programmes (at $50m plus high risk) could be considered unnecessarily low.

Recommendations:

3.1   **Finance develop an evidence base and review the effectiveness of the investment and assurance framework, including Gateway and Implementation Readiness Assessments, ICT and Capital Works Two-pass, and the ICT Investment Framework, against the Principles for Internal Regulation, to determine the most appropriate and effective approach to assuring major project and programme implementation and improving capability, reporting to the relevant Secretaries Board subcommittee by July 2017.**

3.2   **Finance work to streamline and make more coherent investment and assurance processes, including:**

    o   **removing duplication and, where appropriate, inconsistency in risk criteria between the Risk Potential Assesment Tool (RPAT), grant guidelines, and thresholds for Gateway and ICT and Capital Works Two Pass as informed by the Commonwealth Risk Management Policy;**

    o   **creating a central inception point for major project or programme assurance processes, and enabling tiered assurance based on proposal size and complexity;**

    o   **allowing entities with a successive Green rating for Gate 0, Gate 1 and Gate 2 to apply to opt-out from further Gateway reviews;**

      o   **removing the mandatory requirement for Gateway Gate 0 and 1 for proposals that have been through ICT Two Pass or through Capital Works Two Pass; and/or**

      o   **lifting the ICT threshold for Gateway above $10 million in line with lifting the ICT Two Pass thresholds.**

3.3   **Finance better use existing Gateway data to provide a portfolio view of the number and status of high-risk programmes/projects across government, to inform government decisions on additional high-risk programmes/projects.**

ICT Two Pass Review process (ICT2PR)

Description

The ICT2PR is a two stage review of major ICT-enabled investment, to assist entities to plan their investment decisions and provide Cabinet with better information to support their decision-making. The process applies to NPPs, as well as internally funded proposals.

The ICT2PR was implemented in response to the Gershon *Review of the Australian Government's Use of ICT*. The ICT2PR has been applied to an estimated $90 billion in ICT funding since it was introduced in 2009-10, with the Government approving $1.97 billion in ICT investment in the most recent Budget.

ICT2PR applies to proposals whose outcomes are highly dependent on an underpinning ICT system that meets a cost and a complexity threshold. The cost threshold is over $30 million whole-of-government costs, with over $10 million of ICT components. The complexity threshold is high-risk (based on cost, technical complexity, workforce capacity or schedule) as assessed by Finance's Investment Reviewers when the investment intention is identified.

The first pass review is Government's initial consideration and approval of a proposal, based on an assessment of options and alignment with Government's strategic direction. The second pass review comprises a final investment decision of Government, based on robust cost, risk and benefit information on the selected option, contained in a thorough business case reviewed by Finance. Finance also assesses the cyber security of ICT proposals through the ICT2PR.

Summary of feedback on costs and benefits of the policy

Some entities acknowledged that while ICT2PR is useful, the process has lost its flexibility. In particular, the first pass has become burdensome as it has moved further away from a business case assistance tool. They suggest that documents requested as part of the first pass have become mandatory as opposed to better practice. Entities reported that the process of developing initial and detailed business cases is lengthy and prevents agile implementation of new capability.

Other entities reported that the ICT2PR thresholds are too low and proposals are being designed to keep ICT costs under $10 million to avoid the process.

Assessment against the Principles for Internal Regulation

A thorough evaluation of business proposals before approval has been shown internationally to optimise project success.[7] However, ICT2PR does not explicitly measure its outcomes and is therefore unable to demonstrate whether large and complex ICT-enabled investments have been improved through the application of the ICT2PR. Anecdote suggests that the process has been useful and large project failure has decreased since the ICT investment and assurance processes have been in place. However, ICT2PR continues to overlap with the Gateway Review process in the type of proposals reviewed, resulting in duplication in assurance reports.

While the ICT2PR threshold is nuanced to incorporate an assessment of complexity and risk, the threshold of ICT at $10 million (within a total project cost of $30 million) is arguably too low and captures too many proposals. To reduce regulatory burden while focussing Government attention on the most important decisions, ICT2PR should only be concerned with larger and more complex proposals, excluding relatively simple but expensive upgrades.

It would appear that the first pass assurance process in practice is a burdensome process as it requires more documentation than is required to seek government approval for conceptual agreement. Much of the first pass documentation could be made non-mandatory and suggested only, to increase the speed and agility of a first pass consideration of new ideas and options.

Finally, while the risk is assessed through the RPAT, there is a fragmented whole-of-government approach to programme and project risk. For example, the risk rating that is part of the ICT2PR is not based on RPAT or criteria consistent with RPAT, nor is the risk self-assessment for grant guidelines which triggers review by Finance. Constitutional risk issues are addressed in the RPAT. These gaps and duplications in risk assessment methodologies can complicate the NPP process, lead to mistakes and poor advice.

Recommendation (specific to ICT2PR)[8]

3.4   Finance lift the ICT-component threshold of ICT2PR above $10 million and the non-ICT threshold above $30 million to ensure greater focus on high risk proposals.

Risk Potential Assessment Tool (RPAT)

Description

The RPAT assists entities to identify and assess the potential risk of a proposal against a consistent set of criteria, and communicate that to Government. The RPAT also informs whether additional assurance processes (e.g. Gateway or an IRA) should be applied.

The RPAT must be completed when submitting an NPP. In July 2013, Finance formally reviewed the Assurance Reviews Framework (RPAT, IRA and the Gateway Reviews Process) as part of the Review of Commonwealth Assurance Tools. Finance undertakes regular internal reviews and updates to the Assurance Reviews Framework.

While entities are required to complete an RPAT for every proposal, only RPATs that show a level of risk (before mitigation) of medium or higher are required to be provided by the entity to Finance. Where a submission contains multiple NPPs contributing to a single policy objective

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[7] Value for Money in Government—Australian 2012 (OECD)
[8] Other recommendations that impact on ICT2PR are included in the assessment of Gateway.

presented to Cabinet as a package, an RPAT must be completed for each NPP, and an additional whole of submission RPAT must be submitted to Finance.

The RPAT is a Microsoft Word template which automatically calculates overall risk-based on the answers to 21 questions. Respondents assign each question a risk rating between very low and very high, with free text capturing the assumption underpinning each response. Questions are either on the strategic context or the implementation complexity. For example, questions focus on the financial impact, impact on the market, stakeholders and citizens, as well as focusing on the ICT component, innovative component, organisational/cultural change required, and the construction or procurement hurdles.

Summary of feedback on costs and benefits of the policy

Entities suggest the RPAT is of little value to them, adds little value to central entity or ministerial consideration, except to the policy-holder and parts of the Department of the Prime Minister and Cabinet (PM&C), and is often not used by Government in making funding decisions.

Entities acknowledged that identifying, communicating and managing project and programme risk is essential, and that the RPAT provides a methodical way to do this. However, some entities identified that the current form of the RPAT (as a macro-embedded Microsoft Word document) is restrictive and overly complicated, especially where the free text sections are not used by entities in their planning, nor do entities perceive they are used by Finance. This perception is compounded as only the risk rating is included in the NPP.[9] One entity considered the RPAT questions repetitive. Entities suggested that simplified guidance on key risks and specific high risks for inclusion in NPPs may be a better approach.

Assessment against the Principles for Internal Regulation

The RPAT is a useful tool for some entities to assess the risk of NPPs and their implementation, and has evolved to be more flexible. Its strengths lie in creating a consistent methodology for assessing and rating risks across government, which can then be used by central entities to determine if other assurance processes are required, and to make recommendations to Government. It also, in theory, assists in strengthening entity risk management planning and capability, and should support Government decision-making. Under the new Commonwealth Risk Management Policy, risk should be embedded in normal business decision-making and policy design processes.

However, some entities suggest that the current approach is treated as a compliance checkbox exercise that does not achieve the above aims. The complexity of the current form of the RPAT assessment template (as a macro-enabled Microsoft Word document) may act as a barrier to entities understanding and mitigating the risks in their proposal.

In addition, the requirement for all NPPs to complete an RPAT assessment creates unnecessary burden for small proposals and is not consistent with imposing the minimum possible regulation.

Finally, while the RPAT is a comprehensive tool, it is supplemented in many different areas of policy. For example, the risk rating that is part of the ICT2PR is not based on RPAT or criteria

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[9] The NPP template requires the inclusion of the RPAT risk rating and also that 'the strategic risks that could derail or severely affect the proposal and how they will be managed' be included. The RPAT template assists with determining these risks. Prior to the 2015-16 Budget, the top 5 risk summary from RPAT was included in the NPP template.

consistent with RPAT, nor is the risk self-assessment for grant guidelines which triggers review by Finance. Constitutional risk issues are addressed in the RPAT. These gaps and duplications in risk assessment methodologies can complicate the NPP process, and lead to mistakes and poor advice.

Recommendations:

3.5 **Finance require only proposals with an estimated financial implication of $30 million or above to complete a RPAT. The RPAT may still be used as an opt-in better practice measure for NPPs with financial implications of less than $30 million.**

3.6 **Finance engage with key stakeholders, including Cabinet Ministers and the Secretaries Committee on Transformation, to scope ways to improve consideration of risk in Government decision-making, including simplifying and increasing the usefulness of the RPAT template.**

Implementation Readiness Assessments (IRA)

Description

IRAs provide assurance to government that necessary implementation planning activities have taken place and that significant issues have been identified early in the development phase. IRAs were first introduced in the 2011-12 Budget, with only ten conducted since then. Since 2011-12, the policy owner reports that 100 per cent of SROs believe that IRAs have constructively contributed to their project. In July 2013, Finance formally reviewed the Assurance Reviews Framework (RPAT, IRA and the Gateway Reviews Process) as part of the Review of Commonwealth Assurance Tools. Finance undertakes regular internal reviews and updates to the Assurance Reviews Framework.

IRAs are only commissioned for high risk proposals. Each IRA is a short review, generally carried out over five working days by a team of independent reviewers, typically conducted in the final stages of developing a proposal. IRAs strategically determine the capability and preparedness of entities to implement a proposal.[10] The IRA report provides an assessment of the challenges to successful implementation of a proposal and assigns an assessment of each key focus area with an indication of the potential challenges to successful implementation varying between very low and very high. The IRA review may occur before or after Cabinet deliberation.

The IRA report is given to the responsible Minister, the portfolio secretary and/or entity accountable authority, the SRO, Finance, PM&C and Treasury. Finance briefs government on the outcome of the IRA.

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[10] The IRA specifically focuses on six high level topic areas:
- Policy design
- Implementation planning
- Governance arrangements
- Risk management
- Stakeholder management and communication
- Evaluation and performance

Summary of feedback on costs and benefits of the policy

Entities expressed a preference for a more integrated and clearer investment assurance process across whole-of-government, particularly with regard to management of risk. Entities commented that the current fragmented approach to project/programme assurance is confusing and difficult to navigate.

Assessment against the Principles for Internal Regulation

IRAs limit the burden placed on entities by relying on interviews and existing documentation and appears to be reasonably light touch, only being implemented where there is substantial risk identified. IRAs may replace early Gates where a Gateway Review Process is commissioned for a proposal in addition to an IRA.

The IRA is similar to many processes across government which do not have a consistent risk methodology. The assessment and rating of implementation readiness in the IRA should be informed by a consistent project and programme risk methodology which is also reflected in the RPAT, ICTPR and Gateway risk criteria.

The IRA assesses capability and preparedness of the entity in planning to implement a proposal or programme, including broader entity capability where appropriate. However, the IRA is not designed to assess the overall capability of an entity with respect to managing projects, programmes and portfolios, including governance structures and risk management capability. Some of the capability assessed by IRAs is also targeted through the Agency Capability Initiative (ACI) and other project, programme and portfolio management methodologies.

Agency Capability Initiative (ACI) – Portolio, Programme and Project Management Maturity Model (P3M3®)

Description

The ACI aims to improve organisational capability to commission, manage and realise benefits of ICT-enabled investments.

The ACI was implemented as part of the Gershon *Review into the Australian Government's Use of ICT* in 2008. The ACI requires entities with an annual ICT spend of more than $2 million a year to commission an assessment based on the P3M3®, as a common (mandated) methodology for assessment. Smaller entities are encouraged to consider conducting reviews. Entities conducted their initial assessment in 2011 and set target levels for organisational capability improvement. From 2011 to 2014, entities were required to conduct P3M3® assessments yearly. In 2014, the requirement to report to the former Secretaries ICT Governance Board (SIGB) changed to every three years.

Under the P3M3® assessment framework, reviewers assess the processes in place, the competencies of people, the tools deployed and the management information available within the entity. Reviewers then allocate a maturity score between one and five to each aspect of an entity's portfolio, programme and project capability. Entities then set target P3M3® maturity levels in a Capability Improvement Plan. If capability does not improve, an explanation of reasons was required to the former SIGB. Entities reported their progress to the former SIGB prior to that body's abolition in December 2014.

Where a new ICT investment is subject to an ICT two-pass process, an independently verified P3M3® assessment must be conducted within the previous 12 months as part of the first pass business case.

Summary of feedback on costs and benefits of the policy

Some entities identified the mandatory assessment and reporting requirements of the ACI as not particularly useful, and ineffective in improving the maturity of capability in entities. Capability improvement plans in particular were seen as checkbox activities. A lack of tailoring of the P3M3® assessment tool to the Australian ICT context was also raised as an issue. Some noted that the credibility of assessors and assessments could be low, which may be a result of the mandatory nature of the requirement.

Other entities noted that the existence of the requirement kept senior leadership informed about the need to focus on benefits realisation and allocate energy and resources to project management and project management offices, leading to the maintenance of quality standards. These entities noted that the methodology helped to provide a realistic independent assessment that overcomes 'rose coloured' views of internal capability. They suggested it also helped to maintain perspective on the project management maturity required for the business needs of the organisation, and to not over-invest.

The requirement applies to all large, medium, and small entities. Small entities have suggested that they do not have a business need for a project, programme and portfolio management methodology, or a dedicated project management office, as they do not manage medium or large projects, the dominant purpose of the methodology.

Some entities have suggested that a shared project management office, either from a large entity, portfolio entity, or a shared services provider, would strengthen their capability to manage projects.

Entities noted the inconsistency between ACI through the ICT2PR, where a review from the last 12 months was required, and the three-yearly reporting requirement. The need to update the review for budget purposes can add effort to an already cumbersome process. ACI reviewers must also be certified in P3M3® methodology, which can require entities to seek a contractor to conduct the review. Contractor P3M3® assessments may cost up to $50,000.

Assessment against the Principles for Internal Regulation

Project, programme and portfolio management capability for large projects, particularly ICT investments, continues to be an area of weakness across government, although there are pockets of expertise in some entities. Adoption of a methodology to improve this, where there is a business need, would appear to be good practice project governance. However, mandating the improvement of capability is no longer required in the devolved environment where accountable authorities are responsible for the use of their resources.

In particular, mandating a specific commercial methodology for entities represents an unjustified burden and would appear to unnecessarily constrain entities in their governance choices. In particular, P3M3® has been criticised as being too extensive for the cultures of many entities. This may mean the methodology is completed by specialists, and project management is not socialised across the organisation as a core skill and valued capability. In practice, Finance does not solely rely on the P3M3® assessment to inform ICT two pass business cases or other major project/programme considerations.

Choice of whether to improve capability, and by what methodology (such as from a range of pre-assessed options), should also be available unless there is a proven need for a whole-of-government business workflow based on a consistent methodology. This has not been proven. If P3M3® adds value, entities will continue to adopt it.

Recommendations:

3.7   Finance cease the mandatory Agency Capability Initiative (P3M3®).

3.8   Finance enable flexibility in demonstrating capability through removing the requirement to have a P3M3® assessment completed in the prior 12 months for the ICT Two Pass first pass business case.

3.9   Finance, in consultation with PM&C, investigate alternative approaches to building project and programme management capability. This may include continuing the current community of practice or assessing the feasibility of offering a voluntary shared Project Management Office for use by small entities and small users of ICT to strengthen project management capability and assist with compliance activities (consistent with the shared services model).

4. Grants and programmes

Grant administration arrangements

Description

The Commonwealth Grants Rules and Guidelines (CGRG) provide the overarching policy framework, expectations and mandatory requirements for NCEs, as well as requirements of ministers. The grants policy framework was reviewed in 2013, with prescriptive requirements removed, resulting in a minimum number of requirements (31) and guiding principles now reflected in the CGRGs (July 2014). These include:

- the development of grant guidelines for all new and significantly revised granting activities, with modified and minimal requirements for one-off or ad hoc grant guidelines;
- making grant guidelines publicly available on entity websites;
- publishing information on individual grants on entity websites, no later than 14 working days after the grant agreement takes effect; and
- ministerial reporting obligations which include the requirement for Members of Parliament approving grants in their own electorate to write to the Finance Minister informing him of such.

The process for seeking the Finance Minister's agreement before the release of new or revised programme guidelines (noting that grants are only one programme type) includes a requirement that entities undertake a self risk assessment, which is to be agreed by Finance and PM&C prior to the responsible portfolio minister writing to the Finance Minister:
- advising of their intention to release the guidelines in ten days for low risk guidelines; or
- seeking agreement to release the guidelines for medium and high risk programme guidelines.

The Continuing Order of the Senate of 20 June 2001, as amended, for the production of documents relating to departmental and entity contracts (the Murray motion) requires that all contracts greater than $100,000 entered into, including in relation to grants, be made available on entity's websites no later than two months after the last day of both the calendar and financial years.

The Continuing Order of the Senate of 24 June 2008, for the production of a list of departmental and entity grants (the Minchin motion) requires a list of all grants approved in each portfolio or entity to be tabled in Parliament three times a year (by no later than seven days before the commencement of the budget estimates, supplementary budget estimates and additional estimates hearings), including information on the value of the grant, recipient of the grant and the programme from which the grant was made. The Minchin motion was created prior to the creation of the CGRGs and its requirements for continuous publishing. The Minchin motion seeks to gather information on the approval of the grant which may occur significantly before the contract is entered into.

Finance is developing a centralised web-based system (grants.gov.au) to publish the range of grant information required under the CGRGs and assist users to discover grants, download guidelines and view grant reporting, and eventually, apply for grants electronically and securely. The facility will be based on the same functionality as AusTender (for procurements). Grants.gov.au will allow entities to monitor and review grant programmes, and to publish and

amend information on grants awarded. It is expected significant savings for both grant applicants and entities will flow from the new system, including the capacity to generate single reports to meet the Murray and Minchin motions. All NCEs will be required to use this facility when it is fully operational by 2017.

In addition, a significant cross-entity grant administration transformation project has commenced under the coordination of the Digital Transformation Office (DTO). The project will create two grant administration hubs (one for businesses run by the Department of Industry and Science (Industry) and one for individuals and community organisations run by the Department of Social Services (DSS)). The new hubs will provide more systematised, streamlined processes for grant administration for the 10 to 12 main grant administrating entities (excluding the National Health and Medical Research Council and the Australian Research Council). Administration will be based on the Industry and DSS Information Technology (IT) platforms and include application processing through to contract administration and acquittals. Grant policy, development of guidelines and potentially milestone acquittal will continue to be undertaken by policy areas in the granting entities.

Summary of feedback on costs and benefits of the policy

Entities provided feedback on the duplication in reporting requirements between the Minchin motion and the continuous reporting required by the CGRGs. Entities also found that the requirement for Finance to review grant guidelines rated by entities to be medium or high risk takes time. Entities queried whether a review should be required if the guidelines are consistent with government policy or election commitments.

Assessment against the Principles for Internal Regulation

The CGRGs have been redesigned to reflect the PGPA Act and the Principles for Internal Regulation and represent a reasonably light touch approach. A significant number of the requirements focus on public transparency for grants, including in relation to ministerial decision making, publication of grant guidelines and information on grants awarded. Almost half of the 31 CGRG requirements reference obligations already covered in legislation (including subordinate legislation) or Senate Orders. While grant guidelines must be developed for all new or significantly changed granting activities, the CGRGs provide flexibility over the format and complexity of these guidelines, proportionate to the activity. Finally, NCEs have discretion to develop their own specific grants administration practices based on the guiding parameters of the framework.

As a result of streamlining undertaken in 2013, the Government introduced a tiered system for approving the release of programme guidelines. Agency Advice Units, with input from the Grants policy team (where the programme involves grants) and PM&C, review all new and significantly revised programme guidelines and risk assessments, and provide advice to the Finance Minister where the guidelines are rated as high or medium risk. Advice is provided to entities to encourage improvements before the guidelines are formally submitted to Ministers. For programmes rated by entities to be medium or high risk (on average less than 10 per cent of the approximately 120 programmes reviewed each year), Finance generally reviews in less than 10 days and the Finance Minister within a further 10 days. This is not considered an unreasonable review period. Finance advises that high and medium risk guidelines usually involve substantive comments (depending on entity capability) and may involve the imposition of conditions by the Finance Minister.

With respect to low risk programmes, however, arguably the requirement for the relevant Portfolio Minister to write to the Finance Minister should not be automatically required and instead, the onus could be on Finance, in consultation with PM&C, to dispute the risk rating and/or escalate a set of guidelines for the Finance Minister's attention. This would enable the Finance Minister to intervene (as has rarely occurred) without requiring unnecessary correspondence from the responsible Minister.

A potential issue is that the risk assessment above is undertaken against a set of criteria specific to programmes, which is not directly aligned to the RPAT or the Commonwealth Risk Management Policy, or vice versa. This may create confusion in the requirements for advising Government as to risk associated with programmes. This should be reviewed to identify if a more consistent approach would be effective, while building risk management capability.

Duplication in reporting could potentially be removed when grants.gov.au is fully operational. The Senate could be asked to amend the Senate Order to allow reliance on grants.gov.au for the required reporting. This has recently occurred in relation to procurement contracts on AusTender. It should be noted that this may require slightly different business processes to meet both the Murray motion (in relation to contracts entered into) and the Minchin motion (in relation to the approval of the grant). The compliance burden would be reduced if the data is entered into grants.gov.au after the grant agreement is entered into, but also displays information on the grant approval.

The transition to grant administration hubs offers a number of opportunities to improve the outcomes from grant programmes, while lowering costs and administrative burden for entities and users. However, consideration should be given to allowing entities to opt-in and/or transition more slowly rather than mandating the approach across the current 12 granting entities. An alternative or supplementary approach would be for low risk or simple programmes to be transitioned more rapidly and higher risk programmes to be delayed. This would allow DSS and Industry to work with interested entities to design and implement sound business processes, further develop the IT capability, and manage risks, before requiring that other entities or programmes be incorporated into the approach.

Recommendations:

4.1   **Finance continue to work with entities to develop a set of templates for guidelines, applications and agreements, in particular addressing issues of low risk, cross-entity, ad hoc or one-off grants.**

4.2   **Finance work with entities to explore opportunities to streamline entity acquittal and reporting processes.**

4.3   **Finance develop a proposal for the Government to consider changing the role of the Finance Minister in reviewing low risk programme guidelines to allow escalation by exception rather than notification of all low risk guidelines.**

4.4   **Finance develop a proposal for the Government to engage with the Senate to seek amendment of the Senate Orders 13 (Murray motion) and 16 (Minchin motion) to enable reliance on grants.gov.au, once it is fully operational.**

4.5 **Finance develop a proposal for the Government to review the reporting timeframe for grants awarded in order for agencies to be able to better align grants reporting with other entity reporting requirements.**

5. Procurement

Commonwealth Procurement Framework

Description

The Commonwealth Procurement Rules (CPRs) have been developed over more than 35 years to support about $40 billion of procurement undertaken by the Commonwealth each year. The current CPRs focus on principles and the Australian Government's commitments under international trade agreements.

The CPRs are a legislative instrument issued by the Minister for Finance under the PGPA Act. Compliance is mandatory for NCEs and twenty prescribed CCEs but the CPRs do not contain penalty provisions. The CPRs contain two divisions: Division 1 provides the rules for all procurements, principally in relation to non-discrimination and the achievement of value for money; and Division 2 provides the rules for all procurements above the relevant threshold (currently $80,000[11] for general goods and services, and $7.5 million for construction services), principally the requirement to approach the open market.

The CPRs have been reviewed most recently in July 2014, resulting in a reduction in the number of pages of rules and guidance, a streamlining of language, and greater clarity of mandatory and voluntary requirements. The CPRs are complemented by web-based guidance and Resource Management Guides. The CPRs themselves are now 38 pages involving 67 requirements, the major requirements including:

- value for money,
- to undertake an open tender for all procurements of greater than $80,000,[12] as is required under multiple international agreements,
- to use mandated whole-of-government coordinated procurement arrangements where they exist, unless an exemption is granted,[13]
- to publish a procurement plan on AusTender on significant planned procurements,
- to publish all procurements of greater than $10,000 on AusTender within 42 days (NCEs), and for prescribed CCEs, to publish all procurements of greater than $400,000 other than for construction services which required for greater than $7.5 million, and
- to consider other policies in conducting a procurement (for example, in relation to legal services, fraud control, security, and environmental sustainability). The Government disconnected 14 out of 18 of these policies from being required to be actively considered in procurement decision-making in August 2015. However, these policies continue to exist and must still be complied with.

Policies which are likely to continue to be required to be considered in a procurement decision include:

- the Indigenous Procurement Policy (2015), under which Indigenous businesses must have the opportunity to demonstrate a value for money offering before the broader market is approached, where the procurement ranges from $80,000 to $200,000. The Policy requires portfolios to meet a target of 0.5 per cent of domestic contracts to be awarded to Indigenous businesses by 2015-16, increasing to 2.5 per cent by 2018-19.

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[11] The procurement threshold for prescribed CCEs (listed in section 30 of the PGPA Rule) is $400,000.
[12] Other than for construction, where the threshold is $7.5 million
[13] This exemption is reviewed in the whole-of-government ICT opt-out assessment.

- Workplace Gender Equality Procurement Principles and User Guide (2013), which requires businesses with 100 or more employees to annually report to the Government on six gender equality indicators. NCEs are unable to enter into contracts with relevant businesses that have failed to comply with their annual reporting requirements. The Minister for Employment has conducted a public consultation process to identify opportunities to streamline reporting requirements to ensure gender reporting drives results in the workplace and represents value for effort.
- Australian Industry Participation (AIP) Plans for Government Procurement (2010), which requires tenderers and grant applicants to prepare and implement AIP plans for large Commonwealth procurements and grants (generally over $20 million). AIP plans must detail how businesses will provide full, fair and reasonable opportunity for Australian industry to participate in the project. The effectiveness of AIP plans is currently being reviewed by the Minister for Industry. AIP plans are also the only current Grants Connected Policy.
- Building Code (2013), which requires officials to apply the code in relevant circumstances. The Building Code is supported by the *Supporting Guidelines for Commonwealth Funding Entities*. These supporting guidelines assist funding entities to understand how the Building Code affects them and their Commonwealth procurement obligations. Consistent with the Government's election commitment, the *Building Industry (Improving Productivity) Bill 2013* will, if passed, allow a building code to be made that directly places obligations on funding entities.

Other policies of relevance to procurement administration include:

- RMG 417 – Supplier Pay On-Time or Pay Interest, which requires NCEs to pay suppliers within 30 days for contracts valued up to and including $1 million or pay interest;
- RMG 416 – Facilitating Supplier Payment Through Payment Card, which requires NCEs to use payment cards as the preferred method to pay suppliers, for eligible payments valued below $10,000; and
- the Commonwealth Contracting Suite (CCS), which provides a standard set of tendering and contracting documents for procurements valued at less than $200,000. This will streamline the way the Commonwealth conducts procurements and creates greater consistency for suppliers, reducing administrative burden for both parties. In August 2015, the CCS was mandated for use in most procurement contracts of less than $200,000 by all NCEs and encouraged for CCEs (other than for ICT, construction, defence and non-domestic circumstances).

Summary of feedback on costs and benefits of the policy

Generally, the CPRs are seen as principles-based, but procurement processes within some entities (and related Accountable Authority Instructions (AAIs) and delegations) are disproportionate to the scale, scope, and risk of the procurement. Some entities appear to be placing additional compliance burden on suppliers in addition to the CPRs.

Entities thought that procurement thresholds in relation to AusTender publication ($10,000) and open tender generally ($80,000) should be raised. The amounts have not kept pace with inflation and changes in business dynamics. In relation to contracting above $200,000, entities (particularly small entities) suggest there is a need for coordinated guidance, support, and templates. Reporting in multiple places (AusTender, Parliament, annual reports) on contracts in slightly different formats was also seen as time consuming and inefficient, particularly for small entities.

Other entities questioned why the use of AusTender was mandated for publishing open tenders while other transparent, reliable and competitive market processes are in place. One entity Chief Financial Officer contrasted a quote from a vendor of $14,000 to run a tender process compliant with the CPRs and AusTender requirements with previous experience in the private sector using an industry online auction system, which could achieve a better rate per unit and cost only $400.

Business and the community have supported the CCS as reducing transaction costs. Most entities have also been generally supportive of CCS but some have legal issues with particular terms (e.g. indemnities, liabilities, termination for convenience) or note that there may be circumstances (outside of the existing exemptions) that bespoke contracts may be appropriate. Some entities argued that indemnities and liabilities in contracts between NCEs and CCEs should be removed or streamlined.

One entity commented that for small entities and their vendors, the value of the annual procurement plan is limited and generates vendor enquiries about the status of each procurement. That entity explained that they are expected to forecast procurements when the type of approach to market had not been settled. This causes difficulty where the procurement is listed as open tender but, on detailed review, is better suited to a panel arrangement. It also causes difficulties when procurements were delayed or cancelled due to budget or timing issues, where entity time and resources must be expended responding to vendor queries. That entity detailed that it did not have the capability to coordinate and update the listing.

CCEs have noted a particular concern with the new Indigenous Procurement Policy, which will require them to record separately all contracts with Indigenous organisations, other than those already recorded on AusTender which are over $400,000. However, the policy only requires prescribed CCEs to use best endeavours to meet the Indigenous Procurement Policy.

Assessment against the Principles for Internal Regulation

Regulation of government procurement practices, including in relation to transparency of opportunities and open tendering, is required by commitments in international trade agreements, such as the Australia–US Free Trade Agreement which commenced in 2005. These agreements contain obligations for the publication of government procurement opportunities above certain thresholds (currently $80,000 for goods and services). Future international agreements may alter these commitments, enabling greater flexibility in the Commonwealth procurement framework. Finance has recently reviewed the CPR requirements for procurement plans and has allowed these to be updated on a rolling basis. Consideration should be given to Finance providing guidance on what might be considered by the market and partners to an international treaty to be a 'significant procurement'. This would address risk that entities are listing too many low value procurements in procurement plans which raise expectations of vendors (when often panels are later used).

Policy and guidance in relation to the CPRs appears to be appropriately principles-based, balanced and flexible and proportionate to scale, scope and risk. However, entities have repeatedly reported that their internal systems for procurement reflect a risk averse and unnecessarily burdensome process, with procurement decisions signed off at multiple points in the procurement process and at too high a level in the organisation. For example, entities reported that they frequently breached the CPR requirement for publishing procurement contract information on AusTender because, in addition to the procurement/contracting decision chains, there is a separate form and process to approve the words to be reported on AusTender. The procurement AAI could be updated and extended to provide sample processes for low and high

risk procurements, which entities could adopt depending on the risk profile of their entity or the procurement.

The four procurement related policies which are proposed to remain connected to procurement decisions have recently been approved, are currently under review by their respective Ministers, or are subject to the passage of legislation. Whole-of-government requirements mandate that respective Commonwealth entities must complete the Regulatory Impact Analysis process as part of any requests for introduction of new policy or relaunch of existing policy, which will reduce the burden of these policies.

The creation of the CCS is a step forward in reducing re-work, avoiding unnecessary regulation for parties contracting with the Commonwealth, and supporting smaller entities in contracting. Legal risk associated with contracts under $200,000 is usually considered low and can usually be addressed through standard contract provisions, informed by legal policy as to intellectual property, indemnities etc that is proportionate to the risk. However, if accountable authorities had concerns about legal risk associated with the CCS clauses, the requirement to use the CCS could represent a barrier to managing that risk. Finance should continue to consult with procurement and contract managers in entities to continuously improve the CCS.

In relation to contracting above $200,000, entities (particularly small entities) suggest there is a need for coordinated guidance, support, and templates. Policy owners and heavy users in the area of indemnities, intellectual property, and legal and implementation risk generally should work together to develop flexible guidance and templates that will allow entities to better develop contracts that appropriately manage risk, consistent with the Government's desired intention for flexible service delivery. This is particularly important for small entities who do not have significant experience in managing large procurements and contracts. This would avoid each entity developing their own contracts which inconsistently manage legal risks and require vendors to obtain legal advice with each contract.

Recommendations:

5.1 **Finance update and extend the procurement Accountable Authority Instructions (AAIs) or other guidance for internal entity procurement to provide sample processes for low and high risk procurements, which entities could adopt depending on the risk profile of the procurement.**

5.2 **Policy owners review the requirement for the Indigenous Procurement Policy, the Workplace Gender Equality Procurement Principles and User Guide, the Australian Industry Participation Plans for Government Procurement, and the Building Code to be connected to a procurement decision by mid-2017 against the Principles for Internal Regulation. The reviews should also focus on identifying the costs and benefits of the current approach, and alternative options for implementing the government policy in a more efficient and effective manner.**

5.3 **Finance in consultation with entities, develop guidance and flexible templates to support entities' management of contracts and associated legal risk for contracts above $200,000.**

Procurement contract reporting (including AusTender and Murray motion)

Description

AusTender is a centralised web-based facility which publishes a range of procurement information required under the CPRs and provides secure electronic tendering. AusTender also allows entities to monitor and review procurements, and to publish and amend contracts and multi-use lists.

Entities have been required by the CPRs to use AusTender for mandatory contract reporting since 1 July 2007. The main CPR requirements for NCEs are to publish on AusTender:

- all contracts or contract amendments valued at more than $10,000 within 42 days.
- all standing offers or multi-use lists.
- an annual procurement plan for significant planned procurements.

The main CPR requirements for the 20 prescribed CCEs[14] are to publish on AusTender:

- all contracts or contract amendments valued at more than $400,000 within 42 days, other than for construction services.
- all contracts or contract amendments for construction services valued at more than $7.5 million.
- all standing offers or multi-use lists.
- an annual procurement plan for significant planned procurements.

The Continuing Order of the Senate of 20 June 2001, as amended, for the production of documents relating to departmental and entity contracts (the Murray motion) requires that ministers table a letter of advice within 2 months of the end of the calendar and financial years that the entity's webpage has been updated with a list of all contracts (procurement, grants and other funding) greater than $100,000. Previously, ministers were required to table each entity's contract report in Parliament. Amendments in May 2015 mean entities can now rely on reporting in AusTender (for procurement contracts only) however a separate report is still required for non-procurement contracts, with the minister's letter confirming this has occurred.

In addition, recent amendments to the Murray motion require, from 1 July 2017, to include CCEs to report on all procurement contracts over $100,000 (only prescribed CCEs are currently required to report contracts on AustTender at a higher threshold of $400,000).

Summary of feedback on costs and benefits of the policy

Many entities noted that much of the AusTender reporting information duplicates the Murray motion reporting. Some entities making this comment were not aware of recent changes to the Murray motion which enable AusTender to supply reporting on procurement contracts for NCEs.

Multiple entities commented that the $10,000 threshold for reporting contracts on AusTender is out of date with modern contracting, captures too many unimportant contracts, and is administratively burdensome. One entity found AusTender difficult to use.

Multiple entities also suggested that the requirement to report on AusTender within 42 days after contracts have been signed or amended has added administrative burden to the procurement

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[14] Entities are prescribed under rule 30 of the *Public Governance, Performance and Accountability Rule 2014*.

process. The policy-owner has informed the Review that the 42 day reporting requirement has been in place since at least 1989 to provide contract transparency in a timely way, and that international obligations require the reporting of procurements within 60 days of commencement.

Some entities suggest that their internal processes for AusTender approvals are not aligned to the procurement/contracting approvals, requiring separate forms and approval processes. It would appear much of the non-compliance with this requirement arises from timing of entry of the contract information into the entity Financial Management Information Systems (FMIS), contract or credit card registers, which are then uploaded in bulk to AusTender. The data entry and uploading may not occur sufficiently frequently to meet the 42 day requirement due to limited resourcing.

Assessment against the Principles for Internal Regulation

The current AusTender/CPR reporting threshold for NCE contracts ($10,000) creates a significant compliance burden for a questionable return, given the number of low importance, low risk contracts that are captured. Entities already capture this information in internal contracts registers and FMISs which can be audited by internal audit and the Australian National Audit Office (ANAO). Senate estimates questions on such contracts are rare and more likely to be asked in themed ways, such as in relation to coffee machines, which require reference to internal contracts registers rather than AusTender as procurements under $10,000 are not required to be reported on AusTender. The reporting threshold does not contribute to the transparency required for tendering and is not required by international agreements, which require only the publication of contracts.

The reporting requirement also appears to have led to additional internal regulation in some entities, including production of a separate form which is completed at a different time to contract documentation and financial delegation forms, and requires additional levels of approval.

A single, higher reporting threshold, at a minimum $20,000-30,000 but preferably higher, would reduce unnecessary burden while ensuring most important contracts were notified for scrutiny. This would result in a reduction reported on AusTender of 20,000 transactions per annum, representing a reduction of 0.7 per cent or $280 million of the $39 billion in 2012-13. A threshold of $20,000 would also align with the credit/debit card policy in force since 1 July 2014. Alternatively, reporting thresholds could be varied for different types of procurements, so that a higher threshold could occur for ordinary services of government, such as building maintenance, and a lower threshold for procurements considered less routine. However, this approach could lead to inconsistent reporting and a greater burden in evaluating whether reporting is required. Either change should be considered against the government's priorities for reporting including in relation to small business and Indigenous contracting.

The expansion of the Murray motion requirement will require CCEs to report contracts above $100,000 represents an additional burden that is not readily addressed through AusTender. Only prescribed CCEs are required to currently report contracts on AusTender (at a higher threshold of $400,000 and above).

Recommendations:

5.4 **Finance reinvigorate its efforts to introduce a higher reporting threshold in the CPRs for mandatory reporting of non-corporate Commonwealth entity procurement contracts to reduce the compliance burden by decreasing publication of low value contracts.**

5.5 **Entities review their AusTender notification systems and processes to ensure appropriate approval and correct data entry with the minimum necessary process.**

Whole-of-government coordinated ICT procurement arrangements, and entity ICT panels

Description

Whole-of-government arrangements aim to reduce the cost of supply and tendering of procurement and provide a consistent contractual framework including an escalation point and providing better practice information. Prior to establishing most panels[15], Finance undertook independent scoping studies and savings analysis to validate that the strategic objectives of the government could be achieved from establishing whole-of-government coordinated procurement arrangements.

Whole-of-government coordinated ICT procurement arrangements are mandatory for NCEs and optional for CCEs. Entities must source goods and services from approved providers on set terms for procurement covered by the following panels:[16]

- Data Centre Facilities Panel*, Data Centre Facilities Supplies Panel*, Data Centre Migration Services Panel*,
- Desktop Hardware and Associated Services Panel*,
- Microsoft Volume Sourcing Arrangement*,[17]
- Internet Based Network Connection Services Panel*,
- Telecommunications Management Panel* and Mobile Panel*.

Optional panels include:

- Cloud Services Panel, Data Centre as a Service Multi Use List, and Telecommunications Invoice Reconciliation Services Panel.

The number of mandatory ICT arrangements has expanded as the productivities of scale and reduced transaction costs have been proven. For example, Finance estimates that the Internet Based Network Connection Services Panel has resulted in savings of $86.7 million since 2011, the Microsoft Volume Sourcing Arrangement $209 million since June 2013, while the Desktop Panel has resulted in savings or costs avoided savings to be above $30 million since 2010.

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[15] Other than the advertising and fleet panels which have been available for some time.
[16] Panels with an asterisk (*) have an opt-out available using the Process for Administration of Opt-outs from whole-of-government ICT Arrangements discussed in a separate assessment. Exemptions are not common, but continuing exemptions for certain types of entities (e.g. intelligence and security agencies) or particular types of procurements (eg overseas and development procurements) are more common, and tend to be established through the CPRs.
[17] This is mandatory to NCEs only if the entity chooses to use Microsoft software.

A central feature of the whole-of-government ICT procurement has been rationalising the number of portfolio ICT panels. The Portfolio Panels for IT Services Policy has done this by requiring portfolios to limit their ICT services panels to a maximum of three per portfolio and to promote multiple entity use of remaining panels. An estimated 58 per cent of portfolio ICT panels now contain multi-entity access provisions.

There are no additional reporting requirements on the use of panels, as reporting is through AusTender. ICT whole-of-government arrangements are available for opt-in by local and state and territory governments (other than the Microsoft arrangement). The ACT Government has opted in and a number of other jurisdictions (Northern Territory, Victoria, New South Wales) are investigating the cloud arrangement.

Summary of feedback on costs and benefits of the policy

Some entities believed that whole-of-government coordinated procurements, including for ICT, did not provide value for money in comparison to the open market. For example, one expressed frustrations with the mobile phone handset panel because after completing the associated paperwork which was seen to be onerous in comparison to direct contracting, the price paid was the same as the retail price. Several entities noted that they perceived the savings to the entity to be outweighed by delays and complications, resulting in double handling and needing to work through Finance to resolve issues. Some entities noted this was a particular issue with the data carriage and desktop arrangements.

Other entities suggested that ICT procurement processes were unnecessarily labour intensive and also resulted in some flexibility being lost. For example, one entity described its frustration with the internet based connection services panel when seeking additional bandwidth for specific events. This was negotiated between the vendor and the entity, but then needed Finance approval.

Finance's policy area advises that the most common source of complaint to Finance is in relation to fees charged in relation to panel usage, although these are often less than the projected saving arising from the whole-of-government arrangement.

Entities sought more consistent ICT procurement advice and support, particularly in the area of contracting. Entities also suggested that a short form contract for ICT license agreements less than $30,000 would assist to alleviate the burden. Several entities commented that the (voluntary) Source ICT contract suite is obsolete and does not reflect recent developments in ICT contracting or whole-of-government ICT policies, particularly in relation to sharing of risk and indemnities. However, Finance notes that the SourceIT model contracts were updated and republished in December 2014. It is unclear whether the entity's comment was made in knowledge of this update.

Entities noted that preparing cross entity contracts to the current requirements is resource intensive, time consuming and inefficient, particularly given the absence of a legal capacity to enforce the contract.

Assessment against the Principles for Internal Regulation

Whole-of-government ICT procurement panels are reasonably well calibrated to balance the whole-of-government benefits of procurement with the burden imposed on individual entities. This is demonstrated by the voluntary adoption of many whole-of-government panels, arrangements and policies by CCEs and the ACT Government. Whole-of-government ICT procurement has demonstrated a significant use and a reduction in costs associated with

procurements of common business items. However, not all ICT coordinated arrangements are able to demonstrate a record of savings achieved or benchmarking against direct procurement.

The whole-of-government ICT coordinated procurements have marginal impact on productivity but result in significant whole-of-government savings. While governance and administration arrangements differ between coordinated procurements this reflects the different levels of maturity of each of the panels, and the need for panels to be fit-for-purpose based on the technology procured and entity capability. Coordinated procurements appear to be regularly reviewed to determine if each arrangement continues to fit public sector and market conditions. However, the number of complaints about the marginal cost/benefit of the coordinated procurements suggests there is a need to better communicate the savings the arrangements have achieved, and the benchmarking undertaken.

Whole-of-government coordinated procurement arrangements, and entity panels

Description

Whole-of-government arrangements aim to reduce the cost of supply and tendering of procurement and provide a consistent contractual framework including an escalation point and providing better practice information. Prior to establishing most panels,[18] Finance undertook independent scoping studies and savings analysis to validate that the strategic objectives of the government could be achieved from establishing whole-of-government coordinated procurement arrangements.

The mandatory whole-of-government coordinated procurement arrangements agreed by Cabinet for NCEs (optional for CCEs) include:

- Finance's general coordinated procurements include Travel Phase 1 on Domestic and International Air Travel and Travel Management, Major Office Machines, Stationery and Office Supplies, Travel Phase 2 on travel and related payment card, accommodation and car rental services, Motor vehicle fleet,
- AGD's Legal Services Multi-Use List (separately reviewed), and
- Australian Public Service Commission's (APSC) Learning and Development Panel (not reviewed).

Finance also runs the coordinated procurement arrangements for Government advertising and the Australian Government Communications Multi-Use List (not reviewed). Exemptions from mandatory coordinated arrangements can be obtained through agreement between the Portfolio Minister and Finance Minister. The use of exemptions is not common beyond those applicable through the CPRs.

Finance actively manages the whole-of-government coordinated arrangements to ensure that contractual obligations are being met, including negotiating adjustments where entities have identified requirements that had not been identified during the approach to market and shaping improved approaches to market based on feedback from entities.

A central feature of recent procurement policy has been to encourage the development of panels (by individual entities) that can be used by multiple entities. Common access provisions are being encouraged, and AusTender is being updated to enable more effective searching for a panel relevant to the business need. Approximately 430 of 1,033 entity standing offer notices

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[18] Other than the advertising and fleet panels which have been available for some time.

contain multi-entity access provisions, a trend that has increased in recent years. If administered well, the consolidation of panels can simplify procurements for vendors and reduce tendering costs for entities.

Summary of feedback on costs and benefits of coordinated procurements

Some entities commented that whole-of-government procurement arrangements provided only marginal savings (or even cost more). Several entities observed that whole-of-government arrangements force the adoption of panels which do not deliver value for money and do not meet their business needs, particularly in regional and remote areas. Other entities thought the additional processing burden from some whole-of-government panel arrangements could be significant, adding a level of complexity to what should be a streamlined process.

For the Stationery and Office Supplies panel, entities criticised the use of national suppliers, which may not have local distributors, meaning that efficient small businesses miss out. Entities believed they received a better deal through local small business and that some staff bypass the whole-of-government provider list for their stationery of choice, leading to more unnecessary administration through reimbursement processing.

For whole-of-government accommodation arrangements, some entities believed they received a cheaper price from last minute deal accommodation services such as Wotif, and should be able to avoid paying the $14 whole-of-government arrangement service fee. As with the whole-of-government travel arrangement, this may not be a direct comparison, given last minute deal services do not have the same terms and conditions (including in relation to cancellations and reserved availability) as panel products.

Finance has advised that the intent of arrangements of this type is to aggregate purchasing power to achieve better stable pricing for all participants across the range of goods and services, and to provide other benefits including simplified and centralised management, centralised reporting for government and a focus on opportunities to change behaviours or services to increase efficiencies and savings for government. Entities and industry also realise savings from not having to approach the market individually and from consistent terms and conditions.

For the travel panels, a regular comment from entities was that internal processes for travel approval (which requires a quote to be attached to a brief about the travel) take too long and the quote is often superseded with a higher priced option by the time it is signed (requiring re-approval). One entity identified their internal domestic and international travel approval forms as being several pages when they were likely not required at all. Most acknowledged that this relates to entities' internal regulation on travel approvals, or the previous requirement for Prime Ministerial approval for international travel costing $50,000 or more, rather than the whole-of-government arrangements per se. One entity suggested it can be difficult for entities to compare products, terms or conditions offered by different vendors on the panel, with added complexity from the industry creating different classes of product.

Finance has identified that some of the above views are not consistent with the high level of satisfaction for the panel arrangements shown in customer satisfaction surveys, forums, and governance committee meetings. For example, earlier this year the Finance Secretary sought and obtained support from her colleagues to exercise extension options for the accommodation and hire car arrangements. Another example is the survey of entities in July 2014 found that 98 per cent of respondents agreed that the Stationery and Office Supplies arrangement meets all their stationery business needs, 96 per cent were happy with their panellist and 90 per cent said it was easy to use.

Entities also thought the panels established by other entities which incorporate piggyback provisions were not sufficiently visible, and that piggybacking on existing entity panel arrangements, especially those set up with different terms, conditions, access clauses, offers, deeds, can be difficult. Several entities report that they waited up to three months to get information on the terms and conditions of other entities' panels.

Assessment against the Principles for Internal Regulation

Feedback in relation to the whole-of-government non-ICT coordinated procurements has tended to focus on the perceived marginal cost difference per transaction, and the outcome where there is no local supplier. The significant savings arising from the panels would suggest that the panels are competitive on a cost basis. Savings and benchmarking evidence include:

- the whole-of-government travel arrangements have established a single contract for travel booking and payment, with air travel panels returning a saving to the budget of $250 million between 2010-11 and 2014-15. Whole-of-government coordinated procurement also demonstrates a $2-3 million per year in reduced tender costs for travel.

  o Benchmarks of the top 50 domestic and international routes against other governments and corporate shows that 96 per cent of domestic route fares were best in class, with 44 per cent of international fares as best in class and 28 per cent highly competitive. Best in class was determined against a database of $30 billion of air travel expenditure for Australian and international markets covering sectors as diverse as energy, resources, marine, financials, banking, consulting, logistics, state governments and pharmaceutical, with a broad range of client travel volumes and expenditures.

  o The whole-of-government airline arrangement has created a negotiating position that has delivered policy outcomes such as the suppression of frequent flyer points to prevent individuals acquiring points due to official travel. It has also obtained fixed fares for frequently flown routes, and other advantages that would be problematic for individual entities.

- the Major Office Machines panel returns savings of approximately $1 million annually, while the Stationery and Offices Supplies Panel is estimated to save $7 million annually.

Whole-of-government non-ICT coordinated procurements appear to be reasonably well calibrated to balance the whole-of-government benefits of procurement with the burden imposed on individual entities. This is demonstrated by the voluntary adoption of many whole-of-government panels, arrangements and policies by CCEs and the ACT Government. There appears to be sufficient flexibility in current policy and practices to enable variation of the approaches to market to address particular entity business needs, or the capacity for an entity to argue to opt-out of a particular arrangement where business needs require.

While some entities have expressed the view that travel arrangements are unnecessarily complex, this does not appear to be as a result of unnecessary process in the panel arrangement. Rather, this appears to result from internal clearance processes for travel (particularly international travel). This would likely arise whether using a coordinated procurement, entity panels with multi-access clauses, or direct sourcing.

Entity panels with multi-access clauses, while not necessarily maximising savings, represent a way to enable entities to reduce procurement, tendering and contracting costs while having

flexibility in service offerings. Finance is improving outcomes from multi-access clauses and providing greater support to entities who supply panels and those who use them.

Recommendation:

5.6 Finance review the whole-of-government coordinated procurements against the Principles for Internal Regulation:

- o **periodically or at appropriate trigger points;**

- o **in consultation with entities;**

- o **including with respect to cost/benefit and governance arrangements;**

- o **to ensure that they are fit-for-purpose given market conditions and entity capability; and**

- o **to communicate review outcomes to entities and the public.**

Refer to whole-of-government ICT opt-out policy (Recommendation 7.12).

6. Property

Reporting and information requirements

Description

Finance collects a range of property-related information through the Budget process and at various times during the year to support the oversight of public resources and support the implementation of Government decisions. The two major collection exercises relate to the Budget and details of office space used by Commonwealth entities.

Budget reporting

As part of preparing estimates for the annual Budget process, entities are required to prepare a capital management plan detailing their expected asset information, including property, into the medium term. In addition there is a requirement to prepare a Property Capital Expenditure Forecast (PCEF), which is aggregated by Finance to form the Property Capability Plan, as a rolling ten-year programme of major government property expenditure pressures and forward timetable of property procurement decisions.

Australian Government Property Data Collection (PRODAC)

Data is collected through the PRODAC tool, which establishes an evidence base for office space leased and owned by the Commonwealth, and to assist NCEs identify opportunities for better practices and improve management and use of office space. NCEs must provide data in two PRODAC files:

- a property file (with information about office space leased and owned by Government as of 30 September each year); and
- a cost file (with information on expenses and revenue related to office space leased and owned by the Australian Government on a full financial year basis).

Property owned or leased in regional and remote Australia generally is not of sufficient scale to fall within the scope of PRODAC.

Summary of feedback on costs and benefits of the policy

The need to produce a PCEF to the level of detail required over a 10 year period attracted strong criticism. The extent to which the data is used was questioned by entities, as was the need for the report in addition to the Capital Management Plan.

Many entities criticised the PRODAC tool as imposing a large impost with little value and feedback provided to entities. Entities saw this process as unnecessary and not used by Finance, and significantly resource intensive. Entities suggested PRODAC be moved to once every two, three or five years, and/or in response to trigger events, such as on the signing of a new lease or failing to operate within allocated funding.

Multiple entities observed that leases often locked in for five years or more, so this data does not change yet is still requested. Entities asked if a risk-based approach to compliance might be better suited.

Entities described the difficulties with PRODAC data not being comparable across government because of differing roles and obligations; for example, due to the need for public areas (conferences and hearing rooms) that the entities was required to maintain to perform their

functions. Similarly, entities operating from special purpose buildings (such as courthouses and heritage-listed buildings) are not dealt with well in the data collection. This meant those entities had a bigger property footprint but could do nothing to address any perceived concerns.

Assessment against the Principles for Internal Regulation

The PCEF data collection exercise appears to represent a duplication of information being provided in Capital Management Plans and through other reporting requirements. The need for its continued use is questionable.

Criticisms of the PRODAC data collection process indicate that current arrangements are neither proportionate nor the minimum necessary regulation. The lack of value demonstrated to entities is of most concern, given the process imposes a significant burden on all included entities, particularly when little change in entity size or location is anticipated.

Advice from Finance is that property information is necessary to support the Government's aims of office consolidation (known in the media as Operation Tetris) and that its ongoing availability is therefore important. However, Finance also acknowledges that the current range of information collected should be refined to focus better on information that aids Government decision-making. More generally Finance agrees that it should review its current range and frequency of data collection and reporting requirements to streamline efforts and focus on high value information.

Recommendations:

6.1 Finance discontinue the requirement for the preparation of a Property Capital Expenditure Forecast Report.

6.2 Finance review the need for the current number and range of other property-related reports required as part of the Budget process and during the course of the year to:

o **assess the continuing need for such reporting informed by the extent to which the information collected is used;**

o **assess whether reports can be combined or consolidated, and whether increased access to and availability of a central property data repository could reduce reporting requirements; and/or**

o **reduce manual preparation and reporting processes.**

Management of Commonwealth lease holdings

Description

The Commonwealth Property Management Framework Lease Endorsement Process aims to ensure that entities make decisions in consultation with Finance to lease property by the government are based on a cost-benefit analysis using whole-of-life costs. Consultation with Finance is aimed to ensure a whole-of-government perspective is taken, including consideration of existing Commonwealth owned and leased property before entering into other arrangements.

Where an entity's cost-benefit analysis of options has identified that the preferred option is a new lease, NCEs must seek the endorsement of the Finance Secretary prior to entering into property leases. This applies only to leases with whole-of-life costs more than $30 million (or $100 million for the Department of Defence (Defence)). Exemptions are provided where the entity is both landlord and tenant, or where an urgent or unforseen event occurs. Finance provides a template for cost-benefit analysis for property.

Summary of feedback on costs and benefits of the policy

Feedback from entities focused on frustration with approval processes and delays rather than the need to consider existing Commonwealth holdings before leasing new property.

Entities expressed frustration that the lease endorsement process can take significant time due to review by Finance and the secretary sign-off process (the general advice is to allow three weeks of consultation with Finance for cost-benefit analysis, and three weeks from the date of seeking the endorsement to receive a formal response, but this can take longer).

One entity in particular highlighted identifying surplus space within their leasehold that could be sub-let to a small Commonwealth entity, reducing the Commonwealth footprint. The proposal made financial sense to both parties but took a considerable amount of time to gain clearance from Finance. The frustration expressed was that "if there is a good business case and it is within the scope of the Government's intended policy, then why the need to be held up?"

Comments received on the design of the scheme included the observation that the approach to leases is too Canberra-centric, focusing on the ACT property market which is very different to other markets, such as Sydney.

Assessment against the Principles for Internal Regulation

The current process aims to achieve whole-of-government benefits through a reduction of new leasing arrangements where existing leasing or Commonwealth-owned property may be used. As part of these arrangements, Government policy requires NCEs to seek the Finance Secretary's endorsement in all leases over $30 million.

The consideration of Commonwealth property holdings at the whole-of-government level has the potential to achieve efficiencies in property use and accountable authorities are required through the PGPA Act to make resource decisions that give regard to the effect of their decisions on public resources more generally (section 15). The question arises within this framework as to whether the processes and clearances imposed are supportive of streamlined arrangements that encourage and maintain reduced internal regulation.

The need for the current level of Finance and Finance Secretary involvement at the transactional level is the result of Government decisions but this should continue to be reviewed as arrangements mature. The longer term aim should be one within which Finance facilitates

whole-of-government property management, advising and encouraging entities to identify and adopt alternative cost effective approaches.

Recommendation:

6.3 **Finance take on a greater facilitation role regarding the consolidation of Commonwealth lease holdings that, over the longer term, allows it to focus more on strategic property management and encourages entities to co-locate and/or sub-lease rather than needing Finance to review and approve each transaction.**

Public Works Committee

Description

The Parliamentary Standing Committee on Public Works (PWC) scrutinises Commonwealth funded public work decisions on planning and capital expenditure. Established by the *Public Works Committee Act 1969* and in operation since 1913, the PWC considers public works which are:

- estimated to cost more than $15 million, except in certain circumstances;[19]
- estimated to cost more than $15 million as part of a public private partnership; or
- estimated to cost between $2 million and $15 million, which are only notified to the PWC, who may decide to enquire.

These thresholds were last reviewed in 2006.

Parliamentary approval through the PWC is given after six steps:

1. Referral to the PWC
2. Public consultation
3. Site inspection
4. Public hearing and in-camera hearing on cost estimates
5. Preparation and tabling of committee's report
6. Parliamentary approval by the House of Representatives for work to commence

As part of referral to the PWC, entities must submit two submissions: one public and one confidential. These documents outline the need for works, the purpose, the cost-effectiveness and public value, the revenue expected, as well as cost estimates, risks, confidence levels and whole-of-life costs. These requirements are lessened for public private partnerships and works between $2 million and $15 million are only required to notify the PWC. Specific minimum requirements are specified for the notification.[20]

Over the past 10 years, 191 proposals worth $20.7 billion have been referred for consideration by the PWC; 34 related to fit-outs and 157 related to other capital proposals.

Summary of feedback on costs and benefits of the policy

Feedback from entities focused on the level of the thresholds and the need for review. The value of $15 million was worth considerably more in 2006 than it is in 2015, meaning that relatively

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[19] Public works estimated to cost more than $15 million may commence without PWC referral where the House of Representatives has resolved it may continue, the Governor-General has declared the work is for defence purposes or the work has been declared as repetitive work.

[20] PWC Manual p 26.

low value proposals now fall within the scope of PWC consideration. The focus of the PWC on behalf of the Parliament is to ensure that public works are subject to proper oversight and represent an appropriate use of public resources. Entities considered that current thresholds led to review of low value, low risk proposals, rather than public works with significant public impact.

Similarly entities questioned whether the need to notify details of proposals between $2 million and $15 million continued to reflect a range within which the PWC needed to maintain oversight as costs have escalated since 2006.

Entities also questioned why Canberra-based office accommodation fit outs, which are generally low risk with little public impact, warrant the current level of scrutiny of Parliament.

Assessment against the Principles for Internal Regulation

The public works process is clearly explained through a procedures manual (the PWC Manual), with checklists and a flowchart providing a simple summary of the process. However, the threshold for public work inclusion has not been periodically reviewed to determine whether it reflects a proportionate focus and captures higher value and higher risk proposals. Given it has not been reviewed since 2006, and given movements in property prices, it is questionable whether it still proportionately focuses on high risk and high value. Should this threshold be closer to the $30 million used as a threshold for seeking the Finance Secretary's agreement prior to entering into a lease? Similarly, consideration should also be given in setting any threshold to the existence of additional assurance processes since thresholds were last reviewed (for example, the Gateway review process, the two-stage approval process, and Risk Potential Assessments). With this range of processes in place, there would appear to be grounds to lift thresholds.

Should an increase occur, a mechanism to ensure the threshold continues to reflect current circumstances in future years may also assist in ensuring an appropriate balance is maintained between streamlined administration and Parliamentary oversight.

In addition, the current PWC process does not currently consider the nature of the public works being planned. Low risk public works with little public impact, such as office fit outs, would not appear to be the main focus of the PWC, and incorporation of a risk-based approach to the presentation of public works proposals to the PWC may be beneficial.

Recommendations:

6.4 Finance examine whether the threshold for projects to be referred to the Public Works Committee (the Committee) could be increased to allow the Committee to focus on higher risk and higher value proposals with more significant public impact.

6.5 Finance examine the need for the inclusion of fit-outs within the scope of the Committee's consideration and if they are retained, consider increasing the level of the thresholds involved, as for Recommendation 6.4 (above), to allow for a focus on higher risk and higher value proposals.

6.6 Finance propose to the Committee that project risk be incorporated into the criteria for referral of projects to the Committee.

Lands Acquisition Act 1989

Description

The *Lands Acquisition Act 1989* (LAA) is the primary legislation governing acquisition and disposal of interest in land by the Commonwealth and is administered by Finance. The LAA also includes provisions for determining compensation to be payed for compulsory acquisitions. The LAA is applicable to all Commonwealth entities with certain exceptions.

The LAA prescribes a process for Commonwealth entities to acquire or dispose of interests in land. For example, the LAA sets out the process for acquisition of an interest in land through compulsory acquisition or by agreement. Where acquisition is by agreement, the LAA sets out a process requiring a pre-acquisition declaration, authorisation and agreement. By contrast, compulsory acquisition requires pre-acquisition declaration and an acquisition declaration. Reconsiderations are available for these actions and specific requirements for each of these steps are identified in the LAA.

Any or all of the powers under the LAA may be delegated by the Minister or Attorney-General may be delegated to *Public Service Act 1999* (PS Act) appointments or the executive authority of a Commonwealth authority, subject to certain exceptions. The Special Minister of State is the relevant Minister for the administration of the LAA.

Summary of feedback on costs and benefits of the policy

Feedback in relation to the LAA focused on two aspects; the legislation itself and the arrangements in place to support its administration. Entities observed complexity in the interaction of the LAA and the Commonwealth Property Management Framework and other property requirements. Entities believed that the requirements were cumbersome, creating delays in approval processes and processes that did not support streamlined decision making and resolution with other parties.

Opportunities were also identified for streamlined approval and delegation arrangements for the transfer of property from the Commonwealth to States, where agreement had been reached between jurisdictions but LAA arrangements still required detailed processes to occur.

Assessment against the Principles for Internal Regulation

The LAA was passed by the Parliament in 1989 in an era of public administration considerably different to 2015. The legislation prescribes detailed processes that need to be read in conjunction with policies, delegations and guidance in order to understand requirements, and applies a one-size-fits-all approach regardless of the nature of the transaction, its scale and the level of agreement of parties.

A review of the legislation and its approaches to modernise the LAA would assist in reducing regulatory burden and improve the ability of the Commonwealth to respond more effectively in its dealings with other jurisdictions and the public.

Recommendation:

6.7   Finance review the *Lands Acquisition Act 1989* and related administrative and delegated arrangements with a view to simplifying arrangements and removing unnecessary processes relating to the acquisition and disposal of properties.

7. Information and Communications Technology (ICT)

Cloud Computing and related ICT policies

Description

Finance administers three whole-of-government ICT policies that support ICT procurement:

- the Australian Government Cloud Computing Policy,
- the Australian Government Open Source Software Policy, and
- the ICT Customisation and Bespoke Development Policy.

Cloud Computing Policy

The Australian Government Cloud Computing Policy commenced in April 2011 and aims to reduce costs, lift productivity and develop better services. The policy was updated in October 2014, to reflect the *Coalition Government's Policy for E-Government and the Digital Economy*.

The policy now mandates that NCEs use cloud services for new or replacement ICT services, where cloud is fit-for-purpose, offers the best value for money (under the CPRs), and adequately manages the risk to information and ICT assets (under the Protective Security Policy Framework (PSPF)). Entities self-assess against these criteria to determine whether cloud is suitable and are required to update the Agency Solutions Database on GovShare when they procure a cloud service.

Finance established a non-mandatory Cloud Services Panel in January 2015. The Australian Signals Directorate (ASD) lists cloud services on their Certified Cloud Services List which have been certified under the Information Security Registered Assessors Programme (IRAP). Four cloud providers are currently listed. Entities are required either to use a listed cloud service or to independently seek an IRAP assessment of their cloud service provider. This may cost up to $25,000 and take months.

The Australian Government Open Source Software Policy

Since 2010, the Open Source Software Policy has aimed to promote the use of open source software in Government ICT. The policy requires that, when procuring a software solution, entities must add specified clauses to their procurement plans, Request for Quotations/Select Tender checklists, Request for Tenders and Request for Tender assessment checklists. These clauses include, for example, for assessment checklists: 'Have you considered all types of available software (including but not limited to open source software)?' and for documentation: 'Open source software will be considered equally alongside proprietary software.'

The ICT Customisation and Bespoke Development Policy

Since 2009, the ICT Customisation and Bespoke Development Policy has aimed to reduce the number of customised and bespoke solutions across government, promote government and commercial off-the-shelf solutions, and increase the standardisation of government business processes and systems. The policy has no mandatory requirements, but entities are requested to continually update the Agency Solutions Database on GovShare. The Agency Solutions Database lists existing government and commercial off-the-shelf software, and is designed to

help entities know what solutions are available rather than creating bespoke and customised software.

Summary of feedback on costs and benefits of the policy

Entities were complimentary about the sophisticated and mature approach of the Cloud Policy, particularly in mandating adoption of 'cloud-first' before non-cloud technologies but allowing sensible exemptions. Some entities were cautious, believing the cloud computing environment remains ambiguous. Some entities commented that they were receiving inconsistent advice from AGD, Finance and the ASD. It appears this inconsistency is greatest at the intersection of the Finance Cloud Services procurement panel and the Certified Cloud Services List, noting that the organisations on the two lists are not aligned (ie, there are non-security certified providers on the procurement panel and security certified suppliers who are not on the procurement panel).

Entities suggested the Open Source Software policy is a process-driven approach to promoting the use of open source software, and could be reviewed and updated. While anecdotal evidence suggests the policy has provided some opportunities for small and medium enterprises to access government ICT procurement, it is questionable whether this would have occurred irrespective of the regulation. One entity suggested the Agency Solutions Database might be better configured to measure the effectiveness of this policy.

Entities observed that these policies could be simplified through being combined into a unified set of requirements. Finance has informed the review that work is being progressed within Digital Government Strategy branch to achieve this outcome.

Assessment against the Principles for Internal Regulation

The Cloud Policy requires entities to engage with an emerging and potentially cost-saving approach to procuring ICT capabilities. The policy is flexible and adaptive, providing entities with caveats where cloud is not fit-for-purpose, does not provide value for money or is inappropriate for the information involved, balancing the whole-of-government benefits of cloud adoption with entity-specific considerations to improving service delivery.

However, despite the cloud policy being supported by a suite of ancillary arrangements, such as an optional procurement panel and specific better practice documents, uncertainty about security continues, and is exacerbated by perceived inconsistency of advice by AGD, ASD and Finance.

In relation to the Open Source Software Policy, while anecdotal evidence suggests that open source software is increasingly being adopted, there is no evidence to demonstrate that the specific and mandatory approach of the policy has been or continues to be necessary.

While GovShare's Agency Solutions Database has potential value, inconsistent completion and lack of data validation undermines its usefulness. It is unclear whether it achieves its primary aim - that entities refer to it before commissioning solutions and thereby avoid bespoke solutions. The inadequacy of the data means the Agency Solutions Database is not able to contribute to the evaluation of the cloud policy, the customisation and bespoke development policy, and the open source software policy. Although continuous updating is requested and not mandatory, the requirement to update and the misconception that it is mandatory form part of the reporting burden on entities.

Recommendations:

7.1   Finance consolidate the Australian Government Cloud Policy, Australian Government Open Source Software Policy and ICT Customisation and Bespoke Development Policy into a single policy promoting better practice through a principles-based approach where practical and appropriate.

7.2   Finance cease the Agency Solutions Database.

7.3   Finance work with Defence (Australian Signals Directorate) to clarify, integrate and streamline the web presence and guidance, particularly to make clear the relationship between the Certified Cloud Services List and the Cloud Services Panel.

Data Centres

Description

The Australian Government Data Centre Strategy 2010-25 aims 'to avoid $1 billion of future data centre costs' by improving the efficiency and effectiveness of data centre operation.

Since 2010, NCEs who have not opted-out (and CCEs who opt-in) have been required to use three mandatory data centre panels at certain trigger events.[21] No entities have formally opted out of these arrangements. At these trigger events, entities must either acquire commercial data centre facilities and services (large entities) or adopt aggregated arrangements (small entities). The panels set up to support this are the:

- Data Centre Facilities Panel,
- Data Centre Facilities Supplies Panel, and
- Data Centre Migration Services Panel.

The first panel allows entities to lease data centres, the second allows for flexible service contracts. Most entities contract through the second panel. The Data Centre Migration Services Panel will lapse in June 2016 and is proposed to be reviewed to determine if it will continue.

Finance handles the request for quote for both Data Centre Facilities panels, while entities directly negotiate terms with the vendor. Finance reviews the final agreement to ensure the agreement complies with the head agreement under the panel. Finance provides support to entities through two Govdex communities, with contract material, templates, process guidance, Frequently Asked Questions and meetings to share lessons learnt.

To 30 June 2015, 69 contracts have been signed under the data centre panel arrangements totalling $617 million with an estimated avoided cost of $74 million. In particular, changing market conditions and whole-of-government procurement have reduced the price per rack from $8,500 to $2,600 over six years.

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[21] Entities are required to re-evaluate their data centre usage when:
- current arrangement nears lease expiry,
- outsourcing contract expiry,
- replacing major assets,
- moving building,
- approaching the end of lifecycle for data centres, or
- significantly increasing data centre capacity.

Entities must also achieve technical targets for data centre utilisation and power usage under the Data Centre Optimisation Targets Policy. This policy lapsed in June 2015. An estimated $24 million in data centre costs have been avoided through entities meeting the targets.

Summary of feedback on costs and benefits of the policy

Entities noted that financial pressures are already driving cost reductions and efficient behaviours, such as consolidating data centres. They suggest that the extent of the mandatory requirements of the policy, with opt-outs requiring Expenditure Review Committee (ERC) approval, is unduly costly for entities. For example, an entity identified the whole-of-government data centre panels as adding an additional level of complexity and duplication, with one recent request for quote requiring engagement with multiple areas within the entity and Finance, causing delays and confusion for the entity and the vendor.

Assessment against the Principles for Internal Regulation

The current approach appropriately encourages the whole-of-government benefits of increasing data centre utilisation and avoiding power usage costs, while allowing some flexibility to meet diverse needs. The smallest entities are excused from using the panel by default, as they do not own enough ICT nor do their operations justify the use of a data centre. This is not clearly stated in the policy.

Entities are required to select appropriate services from three panels. However there is evidence to suggest that the Data Centre Migration Services panel should be optional, if there is a business need for a specific migration services panel at all, to enable entities the flexibility to choose to adopt the panel if needed. This should be considered if entities request services that the panel provided after its abolition.

The requirements for opting out of the data centre panel arrangements could be better calibrated. As discussed in the separate assessment on the whole-of-government ICT opt-out arrangements, a business case meeting the opt-out criteria could be prepared for consideration of the Finance Secretary or Finance Minister, rather than the unnecessarily high burden of submitting the issue for ERC consideration.

The Data Centre Optimisation Targets Policy has achieved its objective and appears to be no longer required in the current circumstances.

Consultation with the policy owner also identified additional burden that could be reduced. For example, the governance arrangements for panels may need to be streamlined where risk, entity capability and market conditions no longer justify an approach with significant central control.

Recommendations:

7.4   Finance amend guidance on the application of the Data Centre Strategy to clarify its application to small entities, and to clarify Finance's role in the Data Centre panels process to vendors and entities.

7.5   Finance cease the Data Centre Migration Services Panel.

7.6   Finance remove the requirement for entities to:

o   **confirm to Finance that an appropriation exists to support a request for quote through the panel arrangements; and**

o **use the Data Centre Migration Services Panel, making this arrangement opt-in if the panel is not ceased.**

7.7   Finance not reissue the Data Centre Optimisation Targets Policy.

ICT Benchmarking

Description

The ICT Benchmarking programme (ICTBM) benchmarks ICT activities across whole-of-government (NCEs), to measure the efficiency and effectiveness of Government ICT, and to inform other whole-of-government ICT policy initiatives. It was implemented in 2009 following the Gershon *Review of the Australian Government's Use of ICT*.

ICTBM collects data annually based on a common ICT taxonomy. The current data collection focuses on three areas: ICT expenditure, ICT personnel, and ICT infrastructure. There are currently 746 data items collected from each of the twenty large entities that represent 85 per cent of the Government's ICT expenditure. Fewer data items are sought from entities with medium expenditure (representing 10 per cent, 225 data items), small expenditure (representing 4 per cent, 58 data items), and micro expenditure (representing 1 per cent, 9 data items). Completion of ICTBM annually has been estimated to require approximately 7,823 FTE hours and cost approximately $509,000.[22]

A data collection template is sent to entity Chief Information Officers in July, with completed templates collected in October. Benchmarking reports identifying the entity's outcomes in comparison to like sized and all other NCEs are provided to entities in the third quarter of each financial year. Finance publishes a whole-of-government, aggregated ICT expenditure trends report by the end of the following financial year.

ICTBM is currently being reviewed as part of the Government's *e-Government and the Digital Economy* election commitment, which focused on increasing the transparency and value of the data collected.

Summary of feedback on costs and benefits of the current policy

A significant number of respondents to the review commented on ICTBM and most noted that the current approach is overly burdensome.

A majority also noted that the value of current ICTBM data to entities is low. Some entities reported that it is not clear how the information is used, whether the benefit outweighs the cost of collating the data, and its value. The current data was also seen as not useful for comparisons, given the unique ICT cost drivers of each entity.

Some entities noted that they are required to adapt their internal processes to enable them to provide data to Finance in the form Finance prescribes. Some entities suggest a reporting tool linked to SAP General Ledger would deliver the majority of required data automatically. Many agencies use such a tool, including the DSS which has designed this as part of upgrades to SAP, reducing compliance burden associated with ICTBM. However other entities operate different FMIS including different versions of SAP and this functionality may, where appropriate, need to be developed over time. Entities may consider adding this functionality to their FMIS at refresh points.

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[22] This represents approximately 0.01 per cent of the Government's annual expenditure on ICT.

The annual nature and set timeline to undertake the activity is difficult for some entities. Some suggested it can take up to six weeks to complete every financial year. Late returns are common. Entities suggested that the timing of surveys, such as ICTBM, could be better done cyclically (e.g. every three years).

One respondent submitted that Finance takes a long time to release the ICTBM results to entities and to the public, with the 2011-12 data released in May 2013, the 2012-13 data released in January 2015, the 2013-14 data released on 23 June 2015. Timing is often affected by late returns. With this time gap, the data has little more than historical value for entities.

Assessment against the Principles for Internal Regulation

ICTBM is unnecessarily burdensome in its current form, given that the benefits of benchmarking at both entity and whole-of-government levels are not fully realised. This is particularly acute for small entities with minimal ICT investment. Some of the current data collected is valuable and could be made more valuable, however overall the data is too extensive, is not effective in informing entity and whole-of-government investment decisions, and production of analysis and comparative data is limited or too delayed.

Finance has been working with entities of different sizes to design a revised ICTBM framework. If agreed by government and implemented, this would reduce the amount of data to be reported by all but four entities, better target high value data, and enable tailored reporting on entity benchmarking results. Consulted entities have suggested that the new methodology would deliver useful information to inform entity and whole-of-government investment decisions. The whole-of-government benefits appear to be large, but the additional data items will create a whole-of-government benefit in identifying high cost, duplicated, fragmented, beyond life, or transportable applications, infrastructure and services across large and medium entities (who represent 90 per cent of ICT expenditure). This will create opportunities to reduce costs, optimise spend, consolidate, or outsource ICT including the move to cloud computing.

The new methodology is proposed to be collected annually, given the pace of change in ICT. Given the consultation that has occurred has generally supported the new approach as being useful and more streamlined, the review believes it should be trialled.

Recommendations:

7.8   Finance implement current reforms to the ICT Benchmarking Framework (ICTBM) by:

   o **reducing the ICTBM burden on small and micro entities by collecting only total ICT expenditure, total numbers and cost of internal and external ICT FTE, and total expenditure on services outsourced to both Commonwealth entities and external providers from those entities, whilst encouraging these entities to opt-in to additional data collection where they see value; and**

   o **supplementing data with data from AusTender, Budget Papers, entity performance reporting and global benchmarking.**

7.9   Finance commit to validating whole-of-government benchmarking data within two months of data being received, releasing it to entities within one month of validation,

and releasing whole-of-government aggregate data to data.gov.au in a searchable format within three months of receipt.

7.10 Finance work with selected entities to investigate options to build automated data collection systems leveraging the Common and Shared Services Enterprise Resource Planning (ERP) consolidation.

7.11 Finance review the revised ICTBM for value and effectiveness against the Principles for Internal Regulation and report to the relevant Secretaries Committee by July 2018 on whether the ICTBM should cease.

Whole-of-government ICT arrangements opt-out process

Description

The *Process for Administration of Opt-outs from whole-of-government ICT Arrangements* provides a standardised way for NCEs to opt-out of some mandatory whole-of-government policies or procurement panels on ICT.

The process was implemented as part the Gershon *Review of the Australian Government's Use of ICT*, which created mandatory policies to drive efficiencies.

Under the process, entities must seek approval from the ERC to opt-out from mandatory whole-of-government ICT arrangements.[23] Until the abolition of the former SIGB, entities could also seek approval to opt-out from that body. ERC's consideration is informed by a short business case which must demonstrate a genuine business need approved by the entity's accountable authority.

Entities are able to request opt-out if: the policy cannot be implemented legally; the policy has a measurable adverse impact; the policy's application creates a tangible threat to national security; the opt-out improves the ability to respond to external ICT related issues and trends; the opt-out improves the ability to manage and leverage the Government's information assets, having due regard to privacy concerns where appropriate; the opt-out reduces the compliance costs and regulatory burden on citizens and business.

Summary of feedback on costs and benefits of the policy

Entities reported that the opt-out process can be onerous and costly. This has been particularly acute since the abolition of SIGB in December 2014. One submission suggested that it is unclear whether the policy is flexible enough to enable the opt-out for specific business lines or particular contracts. For example, it is unclear whether entities may seek an opt-out for staff and offices not in capital cities.

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[23] Examples of current policies and panels with mandatory requirements using the opt-out process are the:
- Australian Government Data Centre Strategy 2010-2025 and three associated panels;
- Web Accessibility National Transition Strategy;
- Whole-of-government Desktop Hardware and Associated Services Panel;
- Whole-of-government Common Operating Environment Policy;
- ICT Customisation and Bespoke Development Governance Requirements;
- Australian Government ICT Sustainability Plan 2010-2015; and
- Common Parliamentary Workflow Language Taxonomy.

Other entities noted the opt-out policy is positive, forcing entities to evaluate their processes and the whole-of-government arrangements to determine suitability.

Assessment against the Principles for Internal Regulation

The whole-of-government ICT arrangements opt-out process provides a standardised mechanism to seek exemption from whole-of-government measures. The opt-out criteria themselves are broad and flexible, although a further criterion could be added. For example, an entity's experience in managing ICT investment, procurement and capability development in the relevant area could be considered.

However, the removal of the SIGB opt-out approval process means that all approvals must go through ERC, which has increased the burden of opt-outs. The same, relatively burdensome process is now required regardless of entity or project size or capability. Seeking ERC approval to opt-out is appropriate in some circumstances given the savings some of the whole-of-government arrangements often demonstrate. However, this has a disproportionate impact on small entities, who may not have the resources or time to develop a business case and manage the extensive process to opt-out.

The policy does not enable some business units, as opposed to a whole entity, to opt-out. A lower threshold allowing entities to seek an opt-out for only some business lines would add flexibility and enable the removal of requirements for mandatory arrangements which are not fit-for-purpose.

A sliding scale of opt-out approval requirements, based on the size of the investment or nature of the policy, may alleviate this burden. For example, opt-outs could be achieved through an exchange of letters between the responsible Minister and Finance Minister (in consultation with the Communications Minister as relevant), or a decision by the Secretaries Committee on Transformation.

Consideration should also be given to extending a consistent opt-out process for other whole-of-government mandatory policies, other than those relating to Budget or implementing legislative and parliamentary requirements. Within Finance policies and coordinated procurements, there are a number of different opt-out processes with different approvers. A more considered and consistent approach to opt-out across these policies, with tiering in approvers to ensure the process is proportionate to the risk and impact, would avoid ad hoc exemptions and redress the balance between regulating and regulated entities, as well as being consistent with the Principles for Internal Regulation.

Of course, initiation of an opt-out process should occur only after engagement with the regulator to explore the source of the problem and whether the policy or coordinated procurement can be adjusted to address the business need. For example, coordinated procurement service offerings can be adjusted reasonably rapidly to respond to an entity's particular procurement needs. Such engagement could also clarify the purpose, scope, costs and benefits of the policy or misunderstandings about the requirements, and provide advice to entities on ways to reduce the burden of compliance.

Recommendations:

7.12   Finance create an updated opt-out policy for ongoing mandatory ICT and procurement policies and coordinated arrangements, excluding those implementing Budget, legislative and parliamentary requirements, which:

- o **enables consideration of an opt-out business case for the entity, a line of business, or a particular programme, project, transaction or contract;**

- o **is based on consideration of a business case against consistent criteria, e.g. in relation to business need, capability, value for money, risk and impact on whole-of-government outcomes; and**

- o **is considered by tiered approvers which are determined following consideration of consistent criteria (e.g. relative roles of the Expenditure Review Committee, Ministers, the Secretaries Committee on Transformation, responsible Secretaries in relation to the policy area, risk, impact, and compliance burden);**

noting that better practice suggests policy owners should be given the opportunity to explore whether the policy can be clarified or adjusted before an opt-out process is initiated.

Other compulsory ICT policies

Description

Other than those policies addressed in other assessments, Finance and the Department of the Environment (Environment) have issued mandatory policies on Government's use of ICT. Some of these transferred to the DTO from 1 July 2015. This includes:

- The Common Parliamentary Workflow Language (Finance)*
- Protective Markings in Email Standard and Implementation Guidance (Finance)*
- Portfolio Panels for IT Services Policy (Finance)
- Engagement of an Individual Process Patterns (DTO)
- Gatekeeper Public Key Infrastructure Framework (DTO)*
- Third Party Identity Services Assurance Framework (DTO)
- ICT Sustainability Plan 2010-2015 (Environment)

The asterisked (*) policies above continue to impose mandatory requirements. The rest are out of date, have lapsed, or have not been reviewed to ensure their continuing relevance.

Finance is currently reviewing the whole-of-government ICT policies for which it has responsibility.

Summary of feedback on costs and benefits of the policy

Where entities were aware of these policies, there was ambiguity about their status and requirements. This ambiguity is reflected on the Finance website, which discussed some of these requirements as mandatory despite no longer being in effect.

Assessment against the Principles for Internal Regulation

Finance and the DTO are working together to review the remaining whole-of-government ICT policies and should do so in accordance with the Principles for Internal Regulation, as the continuing existence of redundant or spent policy creates ambiguity for entities.

Recommendation:

7.13 Finance and the Digital Transformation Office (DTO) retire or update exhausted Australian Government Information Management Office circulars, policies and frameworks, including:

- o **The Common Parliamentary Workflow Language;**

- o **Protective Markings in Email Standard and Implementation Guidance;**

- o **Portfolio Panels for IT Services Policy;**

- o **Engagement of an Individual Process Patterns;**

- o **Gatekeeper Public Key Infrastructure Framework; and**

- o **Third Party Identity Services Assurance Framework.**

8. *Public Governance, Performance and Accountability Act 2013 (PGPA Act)*

PGPA Act (excluding compliance and Enhanced Commonwealth Performance Framework)

Description

The PGPA Act aims:

> (a) to establish a coherent system of governance and accountability across Commonwealth entities; and
> (b) to establish a performance framework across Commonwealth entities; and
> (c) to require the Commonwealth and Commonwealth entities:
>> (i)   to meet high standards of governance, performance and accountability;
>> (ii)   to provide meaningful information to the Parliament and the public;
>> (iii)   to use and manage public resources properly; and
>> (iv)   to work cooperatively with others to achieve common objectives, where practicable;
> (d) to require Commonwealth companies to meet high standards of governance, performance and accountability.

The PGPA Act provides the legislative basis for the RMF of the Commonwealth. [24] The Act defines Commonwealth entities (non-corporate and corporate) and Commonwealth companies, their accountable authorities and officials it sets out general duties on accountable authorities and officials.

The PGPA Act explicitly requires entities to engage with risk to operationalise the requirements of the PGPA Act. It sets principles in relation to the resource management cycle. This starts with requirements for corporate plans and budgets, and ends with annual performance and financial statements and annual reports and includes audit committees. Importantly, it leaves much of the detail of day to day financial management to the accountable authority to manage consistent with their duty to establish an appropriate internal control framework, and enhanced planning and reporting provisions.

The PGPA Act also sets principles relating to the use and management of public resources. These provisions include funding, expenditure, banking, borrowing, investment, indemnities, guarantees, warrantees, insurance, waivers, modification of payment terms, set-offs and act of grace payments.

As part of the PGPA Act, accountable authorities may issue internal instructions to apply the requirements of the RMF. [25] Finance provides Model AAIs to demonstrate better practice instructions that entities may adopt. Each AAI is composed of three parts: contextual information, model instructions on core requirements, and additional suggestions. The AAIs

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[24] This includes the PGPA Act, PGPA Rules and policy on resource management. The central tenet of the Commonwealth resource management framework is the PGPA Act. The PGPA Act replaced the *Financial Management and Accountability Act 1997* and *Commonwealth Authorities and Companies Act 1997* on 1 July 2014. It is a holistic system of governance and accountability for Commonwealth entities and companies, focussing on planning, performance and reporting on the use of public resources. The PGPA Act is supported by the PGPA Rules, rules on grants and on procurement, and other policy instruments.
[25] These must be made in writing under s 20A of the PGPA Act.

cover 11 topics with 38 different subtopics. However, the AAIs are not exhaustive and additional instructions on other topics may be issued.

Summary of feedback on costs and benefits of the policy

Entities expressed concern about the lead-time for PGPA Act implementation. Related to this was the concern expressed about the extent of change required in response to the PGPA Act, without any perceived benefit to entities. This comment appears to be directed more towards accountable authority decision-making than PGPA Act requirements. The policy owner has informed the review that a July 2015 PGPA Act benefits realisation survey showed that:

- 37 per cent of respondents thought understanding and compliance under the PGPA Act was easier or much easier (while 35 per cent saw no change);
- Costs associated with the PGPA Act have been largely transitional and episodic rather than ongoing;
- Risk management cultures are improving and many entities are taking the opportunity to review and update risk management frameworks;
- 39 per cent of respondents indicated the PGPA Act framework had greatly clarified or helped to clarify roles/responsibilities of officials;
- 46 per cent of respondents indicated their entity had made changes to establish appropriate and proportional internal controls;
- 68 per cent of respondents indicated that entities had clarified the duties and responsibilities of officials; and
- 58 per cent of respondents indicated that entities had revised their delegations to the lowest practicable level.

A number of entities raised issues relating to AAIs and delegations as being a source of burden. Some entities describe the length and complexity of the model AAIs as hindering their engagement with them, given they total 119 pages, with the Chief Executive Instructions totalling 110 pages before them. The review notes that AAIs are internal controls and as such are the responsibility of individual entities rather than the framework.

In relation to 'governance' policy issues raised related to lack of clarity in relation to policy requirements. Entities saw that guidelines were still evolving and there is a lack of clarity in some areas.

Entities expressed concern about the arrangements that replaced *Financial Management and Accountability* Regulation 10 and 10A. The majority of these concerns related to contingent liabilities and the incorrect perception that the PGPA Act places additional requirements on entities. The PGPA Act framework places the same obligations on entities in relation to contingent liabilities as the FMA Act did. Related to this, entities also expressed concern regarding insurance cover for indemnities between $5 million and $30 million dollars – there has been no change in the coverage provided by Comcover.

A few entities raised issues relating to harmonisation in the context of human resources – they saw the PGPA Act RMF and the APS Code of Conduct process as duplicative.

Entities advise that while the PGPA Act and Rule provided opportunities to simplify internal controls and processes they did not feel confident that internal and external auditors would accept simplified control approaches. This was said to be based on their previous experience of audit recommendations, such as to raise sign-offs to a very senior level, require inclusion of non-mandatory notes in financial statements, prescriptive documentation requirements, and a lack of

willingness to consider the entity's risk appetite as informing the appropriateness of internal controls.

Assessment against the Principles for Internal Regulation

The PGPA Act is principles-based legislation that covers areas necessary to ensure the proper management of public resources. In developing the PGPA Rule a set of design principles were developed and followed. These principles are consistent with the Principles for Internal Regulation. The PGPA Act RMF is designed to enable accountable authorities to manage their entity in a manner that takes account of the risk associated with the functions of the entity.

There is scope for enhanced communication and guidance about how entities might successfully transform their approach to internal controls to more effectively accommodate risk and realise the benefits inherent in the PGPA Act.

The FMA Act and *Commonwealth Authorities and Companies Act 1997* (CAC Act) framework imposed 56 substantive regulations on Commonwealth entities. Under the PGPA Act there are a total of 38 rules (excluding grant and procurement), including new requirements relating to corporate plans and annual performance statements. The combined FMA Act and CAC Act included 400 pages of primary and subordinate legislation, under the PGPA Act and Rule this has been reduced to 174 pages.

Finance has advised that in developing the suite of guidance material to support the PGPA Act and Rule, it sought to explain the requirements of the framework and not include details that go beyond the minimum requirements. This is quite different to other approaches to guidance which have focussed on better practice principles, processes and examples, including the ANAO's better practice guides. Entities have commented that much of this guidance is designed to address the issues faced by large, complex and high risk entities, and is not adaptable or scalable for the needs of smaller entities. Entities have repeatedly advised that they perceive such guidance documents as being mandatory or setting minimum standards for audit review, notwithstanding that, at least with the ANAO's better practice guides, they are clearly identified as not being mandatory. Entities advise that internal and external auditors have tended to conduct audits against this guidance (and make recommendations based on such guidance which would impose processes unsuited to the entity), which reinforces this perception.

Finance advise that it has discussed the role of different guidance material, and the impact it has on entity behaviour with the ANAO. Finance and the ANAO have expressed a willingness to continue to work together to ensure that clarity of requirements, including the source of the requirements against which audits should be conducted, is achieved, and properly reflect PGPA Act and Rule requirements and the risk of individual entities.

Recommendations:

8.1 **Finance continue to work with the ANAO and entities, both directly and through bodies such as Secretaries Board and the Efficiency Working Group to clarify the principles-based approach and to fully achieve the potential efficiencies/benefits provided by the PGPA Act.**

8.2 **Finance re-examine the Model Accountable Authority Instructions with a view to reducing the model instructions on core requirements, streamlining to avoid unclear duplication and overlap with the PGPA Act, regulations, and re-examining each section for clarity.**

8.3 **Finance and the APSC continue to examine opportunities to harmonise the PGPA Act and Public Service Act frameworks. In addition to legislative change this might involve joint guidance (for example on officials' duties).**

Resource management framework (RMF) compliance reporting

Description

The RMF compliance reporting process aimed to improve understanding of and compliance with the RMF's requirements, strengthen entity processes and identify issues of non-compliance in Commonwealth entities.

NCEs and prescribed CCEs were required to certify their compliance with relevant legislation since 2006-07. [26] This process was developed in response to a number of audit findings in 2004 and 2005 which showed significant non-compliance with the RMF in place at the time. In 2008-09, Finance began capturing and reporting the aggregate results to Parliament.[27] Entities are required to report compliance against the PGPA requirements for the 2014-15 year as a transitional requirement.

The Certificate of Compliance process required accountable authorities to provide certificates to their portfolio Minister and the Finance Minister by 15 October each year. Compliance was self-assessed, and all instances of non-compliance reported. Not all transactions had to be checked, however, as long as the accountable authority was confident there are sufficient processes and controls in place to promote compliance. Using the certificates provided to the Finance Minister, Finance prepared a consolidated report to Parliament. Finance issued six public reports since 2006-07. Finance will use the data collected from the 2014-15 compliance reporting process to evaluate the transition to the PGPA Act and Rules.

Compliance reporting was a prominent feature of the FMA Act/CAC Act frameworks and was continued in 2014-15 only as a transitional measure to assess progress in implementing the PGPA Act. Compliance reporting is not a feature designed for the PGPA framework. Finance is currently considering whether some form of central mechanism to monitor entity capability is required under the PGPA Act. In June 2015, Finance issued a discussion paper as part of the

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[26] Eight data collections have now been completed since 2006-07, with 109 NCEs required to prepare Certificates in 2013-14. In 2013-14 there were 8,712 reported instances of non-compliance across the 109 NCEs. The majority (80.6 per cent - 7021) of instances of non-compliance was in relation to the commitment of public money by entities, with the next closest being the proper use of financial resources (7.5 per cent - 655).

[27] This process has had a positive impact on entity behaviour: ANAO, 'Management of the Certificate of Compliance Process in FMA Act Agencies' (Report number 30, 2010-11), 84.

PMRA, proposing not to replicate the FMA Act/CAC Act compliance reporting framework into the PGPA Act.

Summary of feedback on costs and benefits of the policy

Multiple entities identified the requirement to provide data on breaches to the Finance Minister as creating an administrative burden. The process to collect this data also leads to internal regulation, as some entities seek lower level certification. Some entities suggested the compliance reporting framework duplicates the PGPA Act's audit and assurance requirements, and that ANAO scrutiny is able to promote integrity of the RMF for less cost. Entities also noted that the compliance burden is not scaled to reflect the resourcing of small entities, and that there were no materiality thresholds for reporting breaches. Serious breaches are reported alongside technical breaches, giving no weighting to the reported data.

The value of the data collected by compliance reporting was also questioned. Due to entity self-assessment, there is no standard approach to capturing data, making comparison difficult. Entities questioned whether the process assists entities to understand their performance and believe it has merely become a compliance exercise.

Assessment against the Principles for Internal Regulation

The current approach, with mandatory certification and centralised reporting, does not meet the policy objective of assisting entities comply with the RMF and ensuring Ministers and accountable authorities are kept informed of compliance issues.

The devolved assessment system has inherent limitations in informing policy development arising from inconsistent approaches to determining non-compliance and difficulty in validating entity data. However, it is consistent with the devolved responsibility for resource management in the PGPA Act. Responsibility is placed on accountable authorities to have sound systems and assurance mechanisms in place to give confidence that legislation and government policies are adhered to and, where non-compliance is identified, to encourage entities to improve systems to avoid recurrence.

The reporting requirements are also not the minimum necessary. There is no scaling of reporting for small and medium entities, disproportionately burdening their resources. There is also no consideration of the materiality or impact of the non-compliance, resulting in the capture of a significant number of minor breaches.[28] The data captured is not targeted or based on sampling. The data also has little value to entities, as it is presented with little deeper analysis or context.

The Certificate of Compliance report, published annually, has indicated that technical compliance has increased significantly in the time the Certificate has existed. It is questionable, however, whether it provides a valuable whole-of-government contribution as it focuses on numerous minor technical breaches rather than assessing systemic failings. The Certificate now imposes burden without additional benefit and does not reflect increased entity maturity. It also does not reflect the stronger focus on entity self-management through the PGPA Act, particularly the obligation of accountable authorities to create internal systems to manage risk, to implement a system of controls and to create an Audit Committee, which will ensure that material non-compliance is detected and rectified.

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[28] One example is failing to report on AusTender within 42 days of entering into (or amending) contracts at or above the reporting threshold.

A continuing focus on technical compliance is a major barrier to cultural change towards better performance and risk management. It appears that limited entity resources, including ICT systems and capability improvement, continue to be allocated to supporting and maintaining a compliance monitoring and reporting capability which could be allocated to more mature risk and performance outcomes.

If some form of the feedback on the financial framework is desired, the process should be developed in line with the Principles for Internal Regulation.

Recommendation:

8.4 Finance cease centrally mandated compliance certification, monitoring and reporting.

Organisation and appointment registers

Description

Finance currently administers several mechanisms to collate and publish information on Australian Government organisations, appointments and key personnel, including:

- The Australian Government Organisations Register (AGOR),
- AusGovBoards, and
- The Government Online Directory.

In addition, ministers report directly to Parliament (in accordance with Senate Standing Order 15) by tabling a list of appointments and vacancies to statutory authorities, executive agencies, advisory boards and other government bodies.

AGOR (www.finance.gov.au/resource-management/governance/agor/) is a searchable online data register which provides information on the function, composition, origins and other details of approximately 1,200 Australian Government entities, bodies and relationships.[29] It was created in 2014 by Finance as part of the *Smaller Government Reform Agenda* and replaced the previous static, hard copy *List of Government Bodies and Governance Relationships*, published most recently in 2009. Prior to AGOR, the information sources were considered by the Government to be unreliable.

The AGOR provides a snapshot of the body, its background and purpose, and a range of basic information including: the portfolio the body falls under, type of body, Government Financial Statistic (GFS) Sector Classification/ Function, whether it is a PS Act Body, establishment and average staffing level (ASL), materiality, creation date, auditor, Australian Business Number (ABN), parent body, location, links to website, strategic, corporate, organisational plan and annual reports. In addition, the AGOR lists the maximum number of board members and whether there is paid membership.

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[29] There are twelve types of bodies on AGOR:
- Commonwealth entity bodies: NCEs, CCEs, Commonwealth companies, non statutory Australian government bodies;
- Bodies which are not Commonwealth entities: Australian government advisory bodies, statutory office holders, offices and committees, ministerial councils and related bodies, inter-jurisdictional and international bodies, subsidiaries of CCEs and companies, joint ventures and partnerships, national law bodies; and
- Bodies linked to the Australian Government through statutory contracts, agreements and delegations.

The register excludes four types of bodies: internal management, advisory and administrative bodies, the High Court of Australia, Parliamentary committees and those bodies announced but not yet established by government.

AGOR is updated a minimum of twice a year (February/March and September/October), but also after each major machinery of government change and on major legislation commencement dates which impact on the status of entities (for example 1 July and 31 December) where relevant. Finance pre-populates some changes and, as part of the above updates, writes to entities asking that they advise Finance of any other required changes. Finance undertakes quality assurance of the AGOR to achieve the high level of reliability required.

AusGovBoards (www.ausgovboards.gov.au) has a public website that provides information on Australian Government boards (based on the Office for Women definition of a board), board membership, and vacancies, as well as government policy on the promotion of board diversity. AusGovBoards also provides information for those interested in becoming a member of an Australian Government board and allows applicants to express an interest in advertised board vacancies.

It currently lists 417 active government boards and provides a brief description of each board's purpose, state/territory location and an email contact. It includes information on current board appointments, including the appointee's name, position, gender, start and end date, and current vacancies. Significantly more information is collected on the restricted backend of AusGovBoards including information on single appointments (e.g. judges).

Each portfolio is required to keep its data up-to-date ensuring completeness and accuracy by making changes to the backend of AusGovBoards. Portfolios are also required to coordinate updates to facilitate Senate Order 15 reporting requirements (generally February, May and October), the Office of Women's gender balance report (30 June), and ad hoc ministerial reporting requirements. System administrators make entries to reflect Administrative Arrangements Order (AAO) changes as they occur. Finance may ask entities to review their entries where public feedback has noted errors or omissions.

The *Government Online Directory* (www.directory.gov.au) has been available since 1996 as an online tool, replacing previous hard copy directories in existence since 1918. One of the main purposes of the directory is to encourage government transparency and for the public to access and understand the structure and organisation of the Australian Government. The directory includes 481 bodies excluding Parliament, Governor-General and Courts/Judges listings, comprising 234 departments and entities, and 247 Councils, committees and boards. In addition, the directory also records a breakdown of the body's organisational structure, additional advisory boards and senior positions beneath these bodies.

Entities are required to maintain data and undertake quality assurance for the directory, and Finance facilitates access to enable this. Finance system administrators make entries to reflect AAO changes as required. Otherwise, entities update in real time, most commonly after major AAO changes or organisational restructures, and daily in relation to Senior Executive Service (SES) movements. Finance may quality review data on an ad hoc basis depending on resource availability and workloads. Finance may ask entities to review their entries where public feedback has noted errors or omissions.

The *Continuing Order of the Senate of 24 June 2008*, as amended, for the production of a list of departmental and entity appointments and vacancies requires that portfolio ministers table in Parliament no later than seven days before the commencement of the budget estimates, supplementary budget estimates and additional estimates hearings:

- a list of all appointments made by the Government (through Executive Council, Cabinet and ministers) to statutory authorities, executive agencies, advisory boards, government

business enterprises and all other Commonwealth bodies including the term of the appointment and remuneration for the position and the place of permanent residence by state or territory of the appointee; and

- a list of existing vacancies to be filled by government appointment to statutory authorities, executive agencies, advisory boards, government business enterprises and all other Commonwealth bodies.

This information is currently held in AusGovBoards in fields that are not available online. Each entity uses AusGovBoards to generate a report of these fields which is then tabled in Parliament.

The *Australian Government Boards (Gender Balanced Representation) Bill 2015* was introduced to the Senate by Senators Xenophon, Lambie, Lazarus and Waters on 24 June 2015 as a Private Members' Bill. The Bill would, if enacted, require Commonwealth officials making appointments to Government boards to ensure that each board is made up of at least 40 per cent men and at least 40 per cent women. This is consistent with current government policy.

PM&C has for a number of years produced an annual statistical report on gender composition on Australian Government boards, using AusGovBoards data. In June, entities are reminded to ensure that board membership, particularly gender composition, is accurately recorded, to enable the generation of the report on 30 June of each year. AusGovBoards generates all of the information required by the *Australian Government Boards (Gender Balanced Representation) Bill 2015* (other than the reasons for a board not being gender balanced and the certification by the Accountable Authority).

Summary of feedback on costs and benefits of the policy

Entities note that they regularly provide very similar information on government appointments to the AusGovBoards website, to PM&C, to Finance and to the Senate (under Senate Order 15). This is a key example of central entities and Parliament asking for similar but slightly different information in similar time periods, which requires re-work by entities.

One entity noted that the quality of data on AusGovBoards was inconsistent.

Assessment against the Principles for Internal Regulation

The Government Online Directory, AGOR and AusGovBoards have significant similarities in the information collected, particularly in relation to government entity lists and government appointments. This results in entity officials being required to provide updates on very similar information in relation to bodies and appointments for three different systems, all now administered by Finance. In addition, the data is updated in a variety of ways across the three systems, but could result in up to 10 update requests a year between the two main reporting systems, AGOR and AusGovBoards. In addition, entities are required to table information on appointments in Parliament in accordance with Senate Order 15 up to three times a year, replicating information available on AusGovBoards.

The different requirements for updating, and the frequency of requests, is seen as unnecessary regulation by entities and is very likely contributing to data quality issues and the need for more extensive quality assurance by policy owners.

If enacted, the *Australian Government Boards (Gender Balanced Representation) Bill 2015* would require entities to generate another report from AusGovBoards and table it, duplicating the PM&C statistical report which is published. It would also require the creation and tabling of

a separate annual report on gender, which, due to the legislative time frames, would be in addition to normal entity annual reports. This represents a significant further reporting burden.

Arguably, much of the information contained in these databases could be maintained by the entity and be available on entity websites, as currently occurs with grant contract information pursuant to the CGRG. However, the amount of effort required to do this would be the equivalent of providing the information centrally. The central mechanisms were introduced to reduce costs associated with entities managing their own reporting mechanisms and to improve consistency. A similar publication system for grants is being developed and has strong support from entities. Collection and publication of the information centrally also informs cross-entity governance policy development, better facilitates external scrutiny by Parliament, and enables the government to make rapid and informed decisions when organising the public sector in the way it wants to deliver its objectives. On that basis, some form of regulation to require central publishing is justified.

Administrative burden could be reduced and transparency improved if the three reporting mechanisms were amalgamated. Adding a capacity for public users to interrogate the data and generate tailored reports in real time could also assist this. Moving to a single digital platform with increased user functionality presents the best argument for moving beyond the static, hard copy tabled reporting required by Senate Order 15.

Finance advises it is aware of the duplication in the three existing systems and has been working for some time with users and internally to explore options for a technical solution to address the issue. Finance has also worked to minimise reporting burdens by working closely with PM&C to integrate ministerial reporting needs with respect to government appointments into automated AusGovBoards reporting functionality, and to reduce the number of reporting dates by coinciding with Senate requirements.

Recommendations:

8.5   Finance develop a single digital source of publicly available information on organisations and appointments, which:

- o **at a minimum provides publicly the same scope and depth of information as that provided by the Australian Government Organisations Register (AGOR), AusGovBoards, and the Government Online Directory;**

- o **enables interrogation of data and generation of reports by users;**

- o **is updated sufficiently frequently to meet the Parliament's requirements under Senate Order 15 and government policy in relation to gender reporting;**

- o **finds innovative ways to use IT, business process changes, governance arrangements and other sources of data (e.g. automatic links to update remuneration information from the Remuneration Tribunal) to reduce the frequency of updating by agencies and ensure the appropriate quality of the data for its different uses; and**

- o **has been evaluated to confirm that information requested is the minimum necessary to provide transparency and inform policy development.**

8.6 **Following the implementation of the above recommendation, Finance support the Government to engage with the Parliament to seek modification of Senate Order 15 to rely on information and reports published on the single digital source in place of hard copy tabling, as has occurred recently with the Murray motion in relation to AusTender.**

9. Risk Management

Commonwealth Risk Management Policy (including survey)

Description

The Commonwealth Risk Management Policy aims to embed risk management as part of the culture of Commonwealth entities to improve decision-making. The policy was released on 1 July 2014 to support entities to establish a system of risk oversight and management as required under section 16 of the PGPA Act.

For NCEs,[30] the policy has nine mandatory elements:

1. Establish and maintain an entity risk management policy.*
2. Establish a risk management framework.*
3. Define responsibility for managing risk*
4. Embed systemic risk management in business processes
5. Support a positive risk culture via their risk management framework
6. Communicate and consult about risk in a timely and effective manner with internal and external stakeholders
7. Implement arrangements to manage shared risks
8. Maintain capability to manage risks and implement the risk management framework
9. Review risks, risk management framework and application of risk practices and implement improvements.

Requirements with an asterisk (*) have content which must be included. Comcover advise that the policy was developed with a principles-based approach in mind, avoiding prescriptive elements.

To improve entity risk management capability, Comcover runs an annual Risk Management Benchmarking Survey which is mandatory for Comcover Fund Members[31] and optional for CCEs who are not Fund Members. A number of these have opted to complete the survey to benchmark their RMF, to compare with similar entities and to identify a target risk management maturity state.

The survey methodology has recently been reviewed, with the 2015 survey changed from 177 questions in 2014 to 52 in 2015, with less subjective assessments and more competency based questions. The questions are designed to show entities what actions they may take to reach a higher level of risk management maturity (if that is their preference). As a result of the survey, entities receive a current and target rating of maturity in six bands, and a report which analyses their outcomes. An important part of the improvements is to move to a greater focus on the descriptive labels for the bands, rather than a score. This was done to encourage entities to adopt an appropriate risk maturity level which is reflective of their size and risk profile, rather than aim for high risk maturity which may require significant resources and may not be required.

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[30] CCEs are not required to comply but are encouraged to align their risk management with the policy as good practice. Feedback suggests a number of CCEs have adopted the framework voluntarily.
[31] Comcover is the Australian Government's general insurance fund for normally insurable risks (other than for workers' compensation which is managed by Comcare). The Comcover self-managed insurance fund operates by collecting premiums from participating Fund Members (mandatory for all entities in the General Government sector- approximately 160 entities), accumulating reserves, and meeting future losses from those reserves. .

While a better practice guide from 2008 is available, a new better practice guide, risk management tools, templates and other guidance are currently under development. As part of this, an interactive tool is being developed which will allow entities to compare their benchmarking results to similar entities, through Communities of Practice and peer group analysis which will help them to test whether their risk management capability is appropriate. Comcover also offers risk management training.

Summary of feedback on costs and benefits of the policy

Requests for better practice guides were common across entities contributing to the review. Entities suggested that guidance should be segmented by size (large/small entities) and by risk profile (high/low risk) and demonstrate better practice for each of these segments. Entities expressed a desire for templates for risk management and risk registers for smaller entities and those with different functions, such as policy, regulatory, and service delivery, who may not have the resources to engage with the policy in the same manner as large entities.

One entity commented that the risk management framework lacks detail and does not link well with project management, particularly stakeholder engagement processes. Another entity suggested that the framework's definition of risk appetite does little to support or encourage agencies to engage with risk. They suggested the policy focuses on minimising and avoiding risk and could be improved by further aligning it to international standard for risk (ISO31000:2009), to encourage agencies to actively pursue an optimum level of risk. Other entities suggested that the framework's principles focus enabled flexible approaches to implementation which was desirable, and has well supported a more objective approach to internal risk decision-making.

Some entities noted that they found the Comcover benchmarking survey to be burdensome and were confused when told the survey assessed entities against compliance with the policy and better practice guide, when the new guide was not yet available. Finance has advised the review that a draft revised better practice guide was provided as part of the survey, with the benchmarking exercise conducted against the nine elements of the policy.

Entities expressed generally that the benchmarking survey did not appear to be designed or used by Finance in a coordinated way with other benchmarking exercises, surveys and information requests.

Comcover has undertaken a data validation phase and in this process, entities reported that the survey is easier to complete than previous years and has been a useful exercise in understanding the required actions to achieve a more mature capability.

Assessment against the Principles for Internal Regulation

The Commonwealth Risk Management Policy is a flexible, scalable approach to managing risk in the public service. Entities are encouraged to scale nine core requirements to the size and risk profile of their entities. The requirements are detailed enough to enable broad identification of what is to be achieved, while flexible enough to enable small, low risk profile entities to adopt a simpler approach. Entities are encouraged to tailor existing risk management systems and practices to reflect the scale and nature of their risk profile.

Entities have also suggested there is a need for greater focus in the framework (both policy and guidance) on supporting entities to identify a risk appetite and accept optimum levels of risk. This is central to entities' developing risk management capability, reducing internal and external

red tape, and embracing innovation and productivity, and opportunities to strengthen this should be considered as a matter of priority.

The policy is not currently well supported by guidance, with better practice guidance and templates currently under development in consultation with entities. This may create a burden on entities to individually determine what the policy means in their context, particularly smaller entities which do not have the resources to participate in policy development forums. This is partially mitigated by the other advisory and support services provided by Comcover, such as project work to improve capability, presentations to audit and risk committees and development and delivery of targeted education programmes. However, given the importance of sound risk capability to informing red tape reduction decisions, the development of better practice guidance and flexible templates should be prioritised to support rapid implementation of this review.

Like similar benchmarking tools, the Risk Management Benchmarking Programme does not scale reporting obligations to reflect the different size of entities. The turn-around time from data capture to reporting is rapid and the data validation through sampling enables minimum burden to be placed on entities. Comcover have advised they are reviewing the effectiveness of the benchmarking programme from July-December 2015, once all the data has been collected and compiled. This will include consultation with internal audit committees, particularly independent experts on these committees, to determine how useful the survey has been in improving capability.

Recommendations:

9.1 Finance prepare better practice guidance templates and examine opportunities to develop capability improvement tools, tailored to individual entity risk profiles and functions.

9.2 Finance review the Risk Management Benchmarking Programme to:

- **ensure entities derive value from the benchmarking process; and**

- **identify opportunities for entities to use existing sources of data to complete parts of the survey.**

10.   Financial accountability and resource management

Monthly reporting of expenditure

Description

Monthly financial statements are prepared at the whole-of-government level by Finance and released by the Minister for Finance. To support the preparation of these reports Commonwealth entities include information in CBMS along with variance explanations in relation to differences between planned and actual expenditure and revenue collection for the period in question. The monthly financial statements:

- are required by section 47 of the PGPA Act to be published by the Minister for Finance in a form consistent with the budget estimates, as soon as practicable after the end of each month;
- show how actual expenditure is tracking against the monthly profile and full year estimate;
- enable the delivery of actual results against the Budget and provide an opportunity to utilise the benefits associated with accrual budgeting and reporting by:
    - delivering reports on accrual measures such as operating result and financial position as well as the use of cash
    - being an integral component in forming the annual Consolidated Financial Statements (CFS) and
    - providing an important budget tracking mechanism for the Government.

The monthly statements also meet obligations under the International Monetary Fund's (IMF) Special Data Dissemination Standard (SDDS), to which the Commonwealth has subscribed, which requires:

- central governments to publish financial statements on a monthly basis;
- within one month of the period close; and
- on a basis consistent with that reported in the annual Budget.

Under accrual accounting, the IMF has granted some flexibility in the release of June and July monthly statements to allow for the release of the Final Budget Outcome by the end of September.

The statements are also used by the Australian Bureau of Statistics (ABS) for inclusion in the Australian National Accounts.

Summary of feedback

Feedback during review consultations revealed a small but consistent set of low level concerns from entities and within Finance. The first of these related to the need to provide monthly information and the level of detail required. The importance of this information for the monthly whole-of-government reporting did not appear to be widely understood, or the importance of the variance explanations on which Finance relied in preparing supporting explanations from a whole-of-government perspective to accompany the Finance Minister's release of the monthly statements.

One entity suggested streamlining the CBMS monthly reporting requirements to report balances at an aggregated level (for example, reporting related entity transactions at year end only).

A concern that was raised several times was that of the need to supply the same information given to Finance through CBMS in a separate exercise to portfolio departments. While portfolio

departments and their Secretaries have a valid and ongoing role in advising portfolio Ministers on matters relating to the portfolio, the value of duplicative reporting was queried.

A further concern raised was in relation to a requirement that is expected to be included in the next upgrade to CBMS. This new requirement is for agencies to report their balance sheet details each month by programme. The value of such information for decision making was questioned, as was the effort required to provide such information if such information was not going to be used.

Assessment against the Principles for Internal Regulation

Information is required to meet international and legislative requirements, and these obligations will continue. Against this background there would appear to be a number of points worth pursuing:

- the need to better explain to entities why the information is needed and how it will be used;
- the information should only need to be reported once, rather than supplying separate reports to Finance and the portfolio department – i.e. a 'report once, use often' approach;
- what options are available in terms of streamlining monthly reporting at programme level by entities?

A review of material on the Finance website indicates that information on monthly reporting obligations is available, but feedback from entities would indicate they are either unaware of this information or do not fully appreciate its content. There may be value in Finance reviewing the content and presentation of its material to improve access to and understanding of the nature of financial reporting obligations and why these exist.

Entities are required to enter monthly financial performance information and variance explanations into CBMS. It is not certain from feedback during consultations how onerous the requirement to also provide this information to departments happens to be, but any instances of duplicative reporting should be examined.

Portfolio departments and their Secretaries have a valid and ongoing role in advising portfolio Ministers on matters relating to the portfolio, and access to information of this general nature does not appear unreasonable. However, in viewing this requirement in accordance with the Principles for Internal Regulation consideration could be given to other options. For example, to avoid the need for entities to report separately to Finance and their portfolio department as part of whole-of-government monthly expenditure performance reporting, consideration could given to providing portfolio departments, where they do not already have so, 'read access' on CBMS to have ongoing visibility of portfolio entity financial performance.

Government is briefed on underlying cash performance at the programme level, something that requires both income statement and balance sheet information in order to derive a cash result. As this is an ongoing requirement the question could be posed as to how obligations can be met in as simple a manner as possible and whether any factors in current arrangements constrain this option. This may include the current programme structures for an entity in CBMS and if so in the first instance the entity should discuss options with the relevant areas of Finance.

Recommendation:

10.1 Should entities wish to remove the need to report separately to Finance and to their portfolio department as part of whole-of-government monthly expenditure performance reporting, they could consider requesting Finance to provide to their portfolio departments view access to their information on the Central Budget Management System (CBMS) to:

  o **The Appropriation and Cash Management (ACM) module; and**

  o **The monthly estimates and monthly reporting components of the Budget Estimates and Actuals Management (BEAM) module.**

No other specific recommendations are proposed in relation to improving the level of understanding of arrangements for monthly reporting, as there are already a number of observations and recommendations included in the report in relation to regulating entities reviewing their guidance to simplify and streamline requirements where possible as well as guidance on the relevant parts of the policy owner's framework.

Reduced disclosure regime (RDR)

Description

Obligations on the Commonwealth Government and Commonwealth entities

The Commonwealth Government and entities within the Commonwealth public sector are required to prepare financial statements in a manner consistent with Australian Accounting Standards (AAS), with Commonwealth entities (excluding Commonwealth companies) also being required to comply with the Public Governance, Performance and Accountability (Financial Reporting) Rule (PGPA FRR) (sections 48 and 42 of the PGPA Act refer).

Financial statements prepared in accordance with AAS and the PGPA FRR are included in entities' annual reports. As AAS are sector neutral where possible, Commonwealth entities comply with AAS applicable to both private and public sector entities. One key exception is the public sector specific standard Australian Accounting Standards Board (AASB) 1055 Budgetary Reporting (applicable from 2014-15) that requires entities to disclose budgeted face statements per their Portfolio Budget Statements, as well as explanations for major variances.

Reporting requirements for the CFS are set out in AASB 1049 whole-of-government and General Government Sector Financial Reporting.

Level of disclosure concerns

The level of financial reporting disclosure has been the subject of ongoing concern for Commonwealth entities, being raised in a number of fora and consultations including as part of CFAR and related papers[32].

Two connected concerns were raised in these consultations; the overall level of disclosure imposed on Commonwealth entities, and the level of effort required by small entities within the existing one-size-fits-all approach.

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[32] Department of Finance 'CFAR Position Paper: Sharpening the Focus' (November 2012) pp35-36

These calls were widespread and already the subject of consideration of the Commonwealth regulator (Finance) and the Commonwealth's auditor (the Auditor-General and the ANAO). One key issue for both of these organisations has been how to implement reduced disclosure arrangements in a manner that reduces workloads on entities but does not compromise the ability to prepare whole-of-government financial statements that meet audit requirements.

The call to address what may be described as a disclosure burden has also been recognised by the AASB, which revealed as part of an Accounting Standards Update in late November 2014 at the Certified Practicing Accountants (CPA) Public Sector Congress in Canberra that a medium term research project was being progressed to consider the issue of the volume and range of disclosures accompanying financial reporting[33].

Finance engagement with the AASB

Finance has been proactively engaging with the AASB, directly and through the Heads of Treasuries Accounting and Reporting Advisory Committee (HoTARAC), with an aim to improve public sector financial reporting and disclosures.

Following Finance's suggestions as ways to improve RDR, the AASB is undertaking a review of the principles underlying the RDR. In a letter to the AASB for public sector standard-setting actions, the HoTARAC recommended the AASB to clarify the application of 'materiality' in financial reporting as an effort to make financial statements more concise.

Finance is also seeking to contribute to the AASB review of the Australian financial reporting framework and will recommend that the AASB look into the disclosure issue with public sector entity-level financial statements. Other options that Finance will recommend for the AASB's further consideration include adoption of another tier (a third tier) for micro public sector entities (as used in New Zealand) and application of RDR at consolidated level.

Summary of feedback to this Review

Feedback to the review confirmed earlier information obtained through the CFAR consultations, with two common observations being:

- "The level of disclosures required to be presented in the department's financial statements are burdensome"
- "The most resource intensive impact of internal government regulation is reporting and the financial audit process."

Consultations with representatives of smaller entities highlighted the associated workload of this 'one-size-fits-all' approach, which they felt did not add value to the readers of the financial statements. Feedback also indicated concerns in relation to the applicability of some standards (with their private sector focus) in the public sector (for example, the fair value of assets without an obvious market, such as heritage and cultural assets and Defence weapons platforms) and the added workload associated with these arrangements.

International and Australian trends

Australian reform efforts

Efforts to reduce the level of disclosure connected with the preparation of financial statements have been ongoing for some time, both within existing standards and through changes to the

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[33] Refer to AASB website http://www.aasb.gov.au/Work-In-Progress/AASB-Work-Program.aspx

standards framework. AASB 1053 *Application of Tiers of Australian Accounting Standards* and AASB 2010-2 *Amendments to Australian Accounting Standards arising from Reduced Disclosure Requirements* introduced a differential reporting framework concerning disclosures into AAS in 2010. These apply to annual reporting periods beginning on or after 1 July 2013.

Efforts have been made to reduce disclosure within existing accounting standards. Finance has been reviewing, and continues to review financial statement disclosures to identify opportunities for streamlining and clearer presentation, while still complying with AAS. In addition, the Auditor-General demonstrated in the production of his financial statements for 2013-14 that the number of pages of disclosure could be reduced by 30 per cent in comparison with the previous year. This experience was drawn upon in updating the ANAO's *Public Sector Financial Statements Better Practice Guide* in March 2015.

Finance and the ANAO have been working through issues relating to implementation of the AASB RDR in the public sector. The PGPA FRR issued by the Finance Minister currently specifies that compliance with full AAS reporting obligations are required, which represents Tier 1 under the RDR. To move to allowing Commonwealth entities to reduce disclosure obligations (Tier 2 for RDR) would require amendments to the PGPA FRR. This would aim to achieve a reduction in the length of, and resources required to prepare and to audit, most entity financial statements.

Finance is currently working with the ANAO to assess the impact of RDR on the production of the whole-of-government CFS.

As the RDR would not apply to the CFS, entities would still be required to provide additional information to Finance to support the preparation of the CFS.

During consultations with the incoming Auditor-General it was indicated that a general willingness to pursue reduced and differential disclosure arrangements existed across all Australian jurisdictions.

The issue is to be addressed in the coming months through meetings involving the AASB, and the relevant Finance/Treasury departments and Auditors-General for the national and state/territory levels with the aim of introducing streamlined and differentiated arrangements before the end of this decade.

Developments in New Zealand

The International Public Sector Accounting Standards Board (IPSASB) promotes the development and adoption of accounting standards for the public sector, with a range of countries having adopted either the cash-based or accrual-based standards.

New Zealand moved to an accounting standards framework from 2014-15 that incorporates both a move to accounting standards with a public sector focus and differential reporting based on the materiality of the entity. The framework uses the accrual IPSAS standards as a basis, modified to address local circumstances in specific instances (e.g. insurance contracts) but with a focus on their use by public sector entities.

Disclosure requirements are multi-tiered and influenced by the materiality. While the scale of the thresholds is problematic in an Australian context, they provide a basis for considering how

differentiation in Australia may be applied if consideration was given to going beyond the two levels of the Australian RDR.

Table: New Zealand Public Sector Public Benefit Entity Standards Structure

	Tier Criteria
Tier 1	• Has public accountability (as defined); or • Has total expenses (including grants) > $30 million
Tier 2	• Has no public accountability (as defined); and • Has total expenses (including grants) ≤ $30 million *and elects to be in Tier 2.*
Tier 3	• Has no public accountability (as defined); and • Has expenses ≤$2 million *and elects to be in Tier 3.*
Tier 4	• Has no public accountability (as defined); and • Has total operating payments of less than $125,000 in each of the previous two reporting periods (i.e. not a 'specified not-for-profit entity'); and • Is permitted by an enactment to comply with a 'non-GAAP' Standard *and elects to be in Tier 4.*

Further information on the New Zealand initiative is available on the New Zealand Treasury website[34].

Assessment against the Principles for Internal Regulation

The message received during consultations was that current disclosure loads were extensive and out of proportion to meeting accountability obligations to the Parliament. This situation applied to all entities, and was further accentuated for smaller entities by the need to meet the same obligations as larger entities under the 'one-size-fits-all' approach.

Meetings with the incoming Auditor-General and the Chair of the AASB also highlighted concerns over the current disclosure requirements and indicated their support for reform efforts to be actively pursued in this area. The Auditor-General in particular also highlighted the recent changes in New Zealand and the possible use of a similar approach in Australia.

Concerns were also raised during consultations in relation to not only the overall level of disclosure but also the applicability of some of the AAS' in a public sector context (and the associated workload to fit public sector circumstances into a model with private sector focused principles). There may be value in further investigating whether there are additional benefits (including regulation reduction benefits) from the combined effect of a multi-tiered reporting approach together with a greater focus on standards designed for public sector circumstances. The introduction of RDR should reduce overall reporting requirements. Could adoption of multi-tier arrangements produce additional benefits for smaller entities?

Recommendation:

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[34] New Zealand Treasury website at http://www.treasury.govt.nz/publications/guidance/reporting/ipsas/overview

10.2 **Finance continues to work with the ANAO, Australian Accounting Standards Board and entities to develop and implement a differential approach to financial reporting to optimise benefits at both the entity and whole-of-government levels.**

11. Planning and reporting

Annual report and other reporting obligations

Description

Annual Reports

The PS Act sets out annual reporting requirements for PS Act entities under section 63 and section 70, including a requirement that reports be prepared consistent with guidelines approved by the Joint Committee of Public Accounts and Audit. The responsibility for these guidelines, most recently the *Requirements for Annual Reports for 2015-16*, was transferred from the Prime Minister to the Minister for Finance on 9 July 2015. It is likely that the new annual performance statement will replace corresponding sections of the annual report in the 2015-16 financial year.

For PS Act entities, the most recent *Requirements for Annual Reports for 2015-16*, issued by PM&C in June 2015, contains 48 mandatory requirements and 19 suggested requirements. The mandatory requirements include:

- An overview of the purpose of the entity, its structure and programmes;
- A report on the entity's performance, against the performance measures outlined in the Portfolio Budget Statement of the entity, as well as its financial performance;
- Corporate governance of the entity, including in relation to governance structures, fraud detection and response, information on governance structures and committees;
- Significant developments in external scrutiny including judicial decisions and reviews;
- An assessment of the effectiveness of its HR strategies, including staffing statistics as to gender, Indigenous identification, employment arrangements, and performance pay;
- Assessments of performance in asset management, purchasing, and Small and Medium Enterprise (SME) procurement practices;
- Detail on the use of contractors and consultants, contracts without ANAO access clauses or in relation to AusTender exempt contracts;
- Reports on compliance by the entity with legislative requirements imposed on Commonwealth entities, including in relation to environmental sustainability, work health and safety, advertising and market research, and carer programmes and services;
- Statements referring to other websites which provide mandatory information, including in relation to small business contract reporting, small business on time payments, disability reporting mechanisms, Information Publications Scheme (IPS) reporting, and grants; and
- A list of the mandatory and suggested annual report requirements showing where the report addresses these in the report.

Non-PS Act entites are required, under section 7AB and 7AC of the *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Rule* to continue to report under the Commonwealth Authorities (Annual Reporting) Orders 2011 and the Commonwealth Companies (Annual Reporting) Orders 2011 for annual reports for the 2014-15 reporting period. These orders impose a lesser burden than the NCE requirements above.

Since 1 July 2014, the PGPA Act has created a consistent requirement for Commonwealth entities, including CCEs and NCEs, to prepare an annual report on the entity's activities during the year. This is to be given to the entity's responsible Minister for presentation to Parliament under section 46 of the PGPA Act. The report must include the annual performance statement produced under subsection 39(1)(b) and the annual financial statements produced under

subsection 43(4) and be prepared in accordance with any requirements contained in the PGPA Rule. The PGPA Act's requirements apply to all Commonwealth entities, including those to which the PS Act applies.

Other Reporting Obligations

In addition to the mandatory requirements in the annual report, entities are required to either plan or report during the year and annually (via plans, surveys, statements, published reports) on compliance with a number of other Government policy agenda. These relate to issues as diverse as energy efficiency, sustainable ICT procurement, *Fair Work Act 2009* (Fair Work Act) compliance, capital management plans, cash management plans, multiculturalism, digital transformation, ICT strategic investment intentions, Indigenous recognition plans, procurement intentions plans, ICT Capability/P3M3®, deregulation, fraud, and payments to small business.

Further, central agencies require entities to undertake ad hoc surveys and requests for information, most notably in relation to programme reporting, ASL, expenditure, and entity functions (for example, for the contestability and shared services reviews).

A particular issue arises in relation to the requirement to report on consultancies in the annual report. This requires that entities identify the total number and total expenditure on new and continuing consultancy contracts in the prior financial year. To meet this requirement, entities must keep records independent of AusTender to capture:

- expenditure data (as compared to total contract value data as AusTender provides); and
- consultancy contracts with a total value which are less than $10,000 (which are not required to be reported on AusTender).

In addition, consultancy contracts are a frequent Question on Notice following Senate Estimates, requiring data collection for the period between the end of financial year and Senate Estimates. This can lead to data collection and reporting in three formats: continuously on AusTender, annually in annual reports (by 31 October rather than 31 August as the Murray motion requires), twice a year to Parliament under the Murray motion,[35] and up to three times in relation to Questions on Notice/Senate Estimates. Maintenance of consultancy information outside of AusTender leads to creation of parallel systems, and manual re-work for each report as to total numbers and up-to-date expenditure data.

Summary of feedback on costs and benefits of the policy

The majority of comments in relation to annual reports focussed on the belief that annual reports are not read or used by the Parliament and public, but required a significant application of resources by entities. This has a particularly significant impact on small entities, which are required to report against the same requirements imposed on large entities despite lacking the corporate resources, or these requirements being irrelevant.

The other major theme related to the significant duplication that exists between in-year reporting and annual reporting, as well as duplication arising from reporting requirements imposed by policy owners or Parliament that are duplicated in annual reports. These reports are often in slightly different formats that require complete re-work.

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[35] Noting that the recently amended Senate Order 13 (the Murray motion) allows entities to simply refer to AusTender for the purpose of meeting obligations in relation to procurement contracts.

Consultancy contract reporting was identified as being particularly burdensome. It was noted that contracts for individuals to provide labour (directly or through a firm which primarily exists to provide the services of that individual) are exempted from the consultancy reporting requirements, potentially encouraging labour hire rather than seeking independent advice.

Other comments related to the desirability of electronic tabling of annual reports. E-tabling, entities believed, would reduce costs associated with printing, improve compliance and accessibility, and enable more sophisticated data presentation and analysis.

Assessment against the Principles for Internal Regulation

The current approach to annual reporting absorbs executive and Parliamentary scrutiny on low value, transaction focussed, point in time reporting.

Annual reports provide a range of corporate information, for example on entity structure and key personnel, which is often duplicated on websites. Other corporate information provided include certifications of compliance with policies or legislation, or statistics, only some of which is useful to stakeholders including Parliament. However, this corporate information often needs to be supplemented by other reports, data collection exercises, or analysis to generate useful cross-government information in a particular area - such as occurs in human resources for the State of the Service Report, AusTender in relation to procurement, or the gender statistical bulletin. This absorbs significant entity resources in duplicating reports for annual reports and policy owners in slightly different forms.

In principle, policy owners should collate and publish much of the mandatory policy reporting currently reported in their annual reports (such as in relation to compliance with disability, multicultural, or environmental policies). This detail should be removed from entity annual reports. This would enable entities and policy owners to work together to collect and publish information once, in a format which allows analysis both at entity and whole-of-government levels, as has occurred with the AusTender report on procurement contracts, and is recommended with respect to gender composition on boards.

Transition to digital by design annual reports, with e-tabling, would enable other mandatory information to be provided outside the main report, and accessible via weblinks. This would reduce the length and complexity of the tabled report, focussing attention on its core purpose- to report on performance, while allowing these reports to be co-located and amalgamated with those of other entities, enabling real-time manipulation of data, and more detailed analysis. Co-location of this information on a single website would also enable a consistent approach to archival and retrieval of these documents, which is important for Parliamentary and academic scrutiny.

Externally imposed requirements for consultancy reporting are particularly burdensome and duplicated, creating the perception that consultancies are high risk and require approvals at higher levels in organisations, resulting in additional internal burden. The imposing of temporary procurement 'freezes' for contractors and consultants, as have occurred over the past five years, contributes to this perception. This is problematic for creating the public service the Government wants, which is evidence based and draws from multiple sources of advice including academia, consulting, thinktanks and the not for profit sector. The duplication in consultancy reporting could be avoided if the requirement were amended to enable production of a report by AusTender which tracked the total number and value of the contracts, preferably those greater than $100,000 (consistent with the Murray motion) but, if necessary, at a minimum $10,000 (the AusTender minimum threshold).

Recommendations:

11.1 Finance re-focus the annual report which is tabled in Parliament around the entity's performance in achieving its purposes, and remove unnecessary detail that obscures this primary purpose. This would include:

o **retaining in the tabled report an assessment of the effectiveness of the entity's organisational strategies in contributing to achieving its purposes, and the financial statements of the entity; and**

o **requiring that entities remove useful but not essential detail from the published annual report, potentially placing it on websites if complete removal is deemed inappropriate, including the current mandatory departmental overview, corporate governance information, notes to the financial statements, and other detailed mandatory reports.**

11.2 Finance work to remove duplication in reporting on consultancies by:

o **removing consultancy reporting from annual reports; and**

o **engaging with the Parliament to seek agreement that AusTender be used to provide reports on the contract value of consultancy contracts.**

11.3 Regulators review in-year and annual planning and reporting requirements (whether associated with annual reports or not) to determine whether:

o **they continue to be required and are the minimum necessary, including whether small and micro entities could be relieved of the reporting obligation;**

o **data can be made available online in a format accessible to and manipulable by users, and published concurrent with annual reports; and/or**

o **such reports can be removed from annual reports.**

11.4 Finance and the DTO work together to progress the co-location of common entity documents, including annual reports, corporate plans, budget documents and other mandatory reports. As a first step, this could be accessible via links from a central portal to entity websites if required but in time transitioning to a single location which facilitates central archiving.

12.   Publishing and tabling

Australian Government Web Publishing

Description

Australian Government publishing involves the following policies:

- *Digital Service Standard* (DTO) includes all mandatory requirements for digital services to meet. There are 16 criteria to meet,[36] with all services with high volume transaction services (with >50,000 transactions) and digital information services (such as entity websites and publications) required to meet the standard before they may be launched. The standard is supported by Digital Service Design Guides on 13 different topics.

- *Web Content Accessibility Guidelines (WCAG) 2.0* (DTO) is an international standard to be applied to all government online information to promote better accessibility for persons with a range of disabilities, including in relation to vision, hearing, cognitive impairment and photosensitivity.

- *Guidelines for the Presentation of Documents to the Parliament* (PM&C) which is developed in consultation with the Joint Committee on Publications (JCP) and supports the *JCP's Printing standards for documents presented to Parliament* (requiring any document presented to Parliament be included in the Parliamentary Papers Series). Compliance with these policies are mandatory for all documents tabled in Parliament.

Unlike New South Wales and Queensland Parliaments which have reformed to require tabling of only two and ten hard copies respectively (and these are not required to be formally printed), the Australian Parliament requires up to 274. There is a large amount of non-discretionary printing to meet requirements such as for legislation, regulations, convention or government policy.

The *Guidelines for the Presentation of Documents to the Parliament* encourage restraint on the presentation and quality of documents presented to the Parliament. For example, the use of black ink or two colour printing is encouraged. However, there is no prohibition on using full colour if it does not significantly increase printing costs, is consistent with the purpose and audience of the document, and still achieves value for money. Despite this advice, entities continue to exceed the basic requirements and consequently increase costs. In part this is attributable to entities and ministers deciding that as the annual report is required to be printed and produced to a certain standard to meet the JCP's printing standards, it can also be used for other purposes, such as a marketing tool for the entity. Due to this, more copies are printed, and the aesthetic quality of the report, in terms of paper, design and colour, increases. The costs of printing additional copies represent a very small proportion of the total print costs, however, using full colour, higher quality paper and more complicated design does increase production costs.

Moves to digital provision of documents present opportunities to save printing costs, reduce requirements for external graphic design and setting, and better preserve records. Other costs include distribution, storage, and disposal of excess material. Data collected by Finance showed that the Australian Government entities spent approximately $101 million on printing alone in 2011-12.

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[36] These have been adapted from the UK Government's Digital by Default Service Standard.

Collaborative work is underway between the JCP and related departments to explore possible options for electronically distributing, storing, managing and archiving documents presented to Government. In 2013, the Department of Parliamentary Services implemented a project to put the Parliamentary Paper Series (PPS) online, which has reduced the PPS printing requirements from 135 to 40. An electronic system for tabling is being considered, but progress in its development has been slow. The JCP has agreed to consider removing the requirement for tabled hard copies once the system is fully operational and evaluated, although it should be noted that the changes were concurrent in New South Wales and Queensland.

Summary of feedback on costs and benefits of the policy

Printing

Entities have suggested there would be immediate benefits in reducing requirements for non-discretionary printing, such as tabling documents for Parliament.

The majority of entities advised that they are reducing their discretionary printing by better using online resources, email and short message service (SMS), as well as reviewing the need to produce certain publications. Entities noted two key impediments to reducing their discretionary printing: the ability of printed material to reach certain stakeholders; and the persistent preference to maintain printed material by some ministers and APS senior executives.

It may be the case that continued demand for printed documents is assumed, based on past practice, rather than being tested. Some entities have achieved efficiencies by questioning whether continuing provision of printed documents remains appropriate for their stakeholders.

At the request of entities consulted in relation to printing, Finance in 2014 issued a good practice checklist on digital and printed communications which outlines high-level principles for consideration by entities to support the achievement of further efficiencies, in particular through potential reductions in printing and increased reliance on digital communications.

Web Content Accessibility Guidelines (WCAG)

Entities have explained that WCAG compliance delays electronic publication. As entities are required to produce a printed document, they work to present the hard copy in the most attractive format to a certain deadline (for example, tabling in Parliament of annual reports by 31 August). Entities then retrofit the document to achieve WCAG compliance, stripping away the attractive features and functionality. Entities have advised that documents designed from the start to be digitally formatted have the ability to include much more structural information so that the content of a publication can be interpreted by any device accessing it (Portable Document Format (pdf) is particularly challenging for WCAG compliance). For some entities, full compliance has only been achieved after months of re-work and employment of specialised IT contractors to work with the available software. Entities have also suggested it is difficult to reconcile WCAG compliance with other requirements for consistency between electronic and hard copy versions. However the Department of the House of Representatives has indicated this relates to content rather than form.

Some entities (particularly smaller ones) report they do not have the resources to become WCAG compliant. Other entities have reported receiving varying advice on the WCAG requirements, with some advised that they could choose not to be compliant in certain areas, despite the policy not providing for this. For example, advice has reportedly been given that an electronic version of the hard copy could be put online while the WCAG compliant version is being developed, or

that financial tables may not need to be made compliant given the limited number of users who use them and the difficulty of e-readers being able to read such tables.

Entities have also explained that some whole-of-government templates are not WCAG compliant (for example, Primary Reporting and Information Management Aid (PRIMA)), requiring duplication of WCAG modifications in each entity. The Portfolio Budget Statement templates for 2015-16 have been modified to increase WCAG compliance, with instructions on how to make further (minimal) modifications once the calculations are complete. This has significantly reduced time in those entities that are taking efforts to be WCAG compliant.

Assessment against the Principles for Internal Regulation

The *Printing standards for documents presented to Parliament* sets overly prescriptive requirements which require entities to undertake formal printing, which includes subsequent re-work to put the printed document into a WCAG compliant electronic format. Significant savings in publication and handling costs, and improvements in WCAG compliance, could be achieved if publications could move to digital by default, with either no, or a very minimal number of hard copies provided to Parliament.

WCAG implementation appears to be more flexible than the official policy allows. Moving to digital by default, reducing the number of reports required to be hard copy tabled, and reducing the quality standards for hard copy reports, will significantly aid WCAG compliance. Noting that WCAG is an international standard, policy with respect to its interpretation and implementation could allow for exemptions from the policy with respect to time frames and the needs of anticipated users.

Recommendation:

12.1 Where templates and sample reports are offered, regulators and policy owners should ensure that they are compliant with the Digital Service Standard or, where not completely compliant due to functionality (e.g. calculations in financial tables), should be accompanied by guidance on the steps required to achieve compliance in the final product.

Parliamentary tabling requirements (electronic tabling)

Description

Tabling is the presentation of documents to the Parliament. For government documents, tabling involves the transmission of hard copy documents to the custody of the Parliament.

Entities are required to table government documents in hard copy to meet the requirements of the *Guidelines for the presentation of documents to the Parliament*. While PM&C is responsible for the guidelines, they draw together a number of parliamentary and other requirements rather than being standalone requirements.

The guidelines refer to printing standards set by the JCP, which include requirements for paper, size, colour and illustrations, covers and binding in order to have to table government documents tabled in the Parliament. Any document that is tabled must also be published online and be identical to the tabled document in accordance with other requirements. Nearly 200 hard copies of government documents are generally required to be provided to different locations

(Parliament House, Hume and Canberra City) to meet tabling and publishing requirements, as follows:

Destination	Copies
PM&C tabling officer	5
Senate Table Office	40
House of Representatives Table Office	30
Parliamentary Press Gallery	40
Parliamentary Library	9
Parliamentary Paper Series	40
Commonwealth Library Deposit and Free Issue Schemes	29
Total	**193**

Variations to these printing requirements apply to particular government documents.

Separate printing requirements also apply for Bills, legislative instruments and associated documents as referenced in the Legislation Handbook

Parliamentary Publications Scheme (PPS)

The PPS is a collection of documents of a substantial nature presented to the Parliament.

A document becomes a parliamentary paper as a result of a motion being agreed to by either house of Parliament.[37] Entities may not know at the time of tabling and must provide sufficient copies in the appropriate format for PPS (B5 international portrait, bound and trimmed, with the paper of archival quality and up to 100 gsm etc). The number of copies required for PPS reduced from 100 copies to 40 for government documents from 2014. The PPS also requires government documents to be lodged electronically, through the ePPS.

Commonwealth Library Deposit and Free Issue Scheme (LDS)

The combined Commonwealth Library Deposit and Free Issue Scheme (LDS) is intended to enhance public access to Australian Government publications. Under the LDS, Finance requires that entities provide one copy of each publication they publish in hard copy to each participating deposit library.

Legal deposit

The LDS supplements legal deposit, a statutory requirement of the *Copyright Act 1968* (Copyright Act) and equivalent state legislation, administered by the National Library of Australia and state reference libraries respectively. By complying with the LDS, entities also meet legal deposit requirements under the Copyright Act. Currently government publications that are published only online are not required to be printed for the purposes of legal deposit. In June 2015, the Parliament passed legislation amending the Copyright Act which, when implemented in early 2016, will enable electronic lodgement of a document for legal deposit purposes where a document is published in both electronic and hard-copy forms.

Review of printing requirements and correspondence with the Parliament

Finance conducted the *Australian Government Printing and Publications Review* in 2012 to investigate potential efficiencies in printing and publishing by entities, including possible reductions to printing requirements to assist in publishing more information online. As part of

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[37] House of Representatives Standing Order 202(a) and Senate Standing Order 169(1)(b).

this review, Finance considered requirements for tabling of government documents. Key findings of the review involved:

- the capacity to achieve significant savings in this area is dependent on the number of hard copy requirements being reduced sufficiently to make it viable to print copies 'in-house' rather than use an external printing service; and
- if significant reductions in the print quantities and quality standards required for documents presented to parliament could be achieved, there is potential for savings on printing costs exceeding $1 million annually.

The review understands that JCP has previously indicated to government that electronic tabling of parliamentary documents would be possible only after an electronic system was fully implemented and proven to be reliable and accessible.

Developments in other jurisdictions

The New South Wales Government in 2012 changed the publication standards for entity annual reports, encouraging electronic publication and limiting printing requirements for tabling to two printed copies.[38] The Queensland Parliament from 2013 reduced previous requirements to copies for annual reports (various print requirements apply for other tabled documents).[39] Printed copies in these jurisdictions can now be done in-house.

Summary of feedback on costs and benefits of the policy

While large numbers of hard copies of paper documents are required for tabling government documents, the review heard parliamentarians and journalists do not make extensive use of tabled material and increasingly use electronic devices if interested in particular documents. However, the review heard that legislation and documents relating to legislation (second reading speeches etc) were still commonly referred to in a hard copy format.

Entities suggested that delivering printed copies to Parliament House, Hume and Civic might not be an appropriate use of officers' time.

The review heard there have been a number of efforts to reduce the numbers of hard copies of government documents tabled in the Parliament, but that measures to date have made only a marginal difference.

The review heard there have previously been issues with electronic tabling involving compliance with web accessibility requirements. There is greater capacity to produce an online version that meets web accessibility requirements if the hard copy is not required or is not required to be set, printed and bound. Digital by default enables different design approaches to be adopted early in the development of a document.

The review consulted with the chairs of the JCP and the Joint Committee on Public Accounts and Audit, the Clerk of the House of Representatives, and the Clerk of the Senate to discuss and identify possible strategies for introducing electronic tabling.

Assessment against Principles for Internal Regulation

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[38] See http://arp.nsw.gov.au/m2012-11-production-costs-annual-reports, accessed 17 August 2015.
[39] See https://www.parliament.qld.gov.au/work-of-assembly/tabled-papers/tabling-procedures-guidelines, accessed 17 August 2015.

The review considers that hard copy printing requirements involve a significant and unnecessary administrative burden and cost across entities. Hard copy printing is no longer the only way in which the Parliament operates internally. Further use of electronic documents would be consistent with government operation being increasingly digital, as well as developments in the parliaments of other Australian jurisdictions.

The review considers that the time is right to develop and implement a system to enable government documents to be tabled electronically. The review suggests PM&C administer the electronic system. The system would need to be able to provide documents under embargo and meet other requirements of the Parliament.

Scoping for the system would need to address the point at which a document lodged electronically would become a document of the Parliament, and the means by which this would occur. It is important that the Parliament is consulted closely about how this would occur in scoping the system.

The system should also be designed to manage electronic distribution of tabled documents for the purposes of the PPS, the LDS and the legal deposit scheme, without requiring documents to be printed.

To reduce the compliance burden associated with meeting disability accessibility requirements, the review suggests establishing centrally managed templates for commonly tabled documents which comply with the Digital Service Standard, including with respect to disability accessibility.

The review suggests legislation and related documents, such as explanatory memoranda and second reading speeches, continue to be tabled in a paper format. The process for legislation and related documents should be reviewed after the electronic tabling system has been in place for reasonable period of time to determine whether hard copies continue to be required for tabling. Ideally the system should be designed to cover legislation and related documents to enable transition if the Parliament agrees in the future to electronic tabling for those documents.

The review proposes that the system be developed to commence at the beginning of the next Parliament, a time which was well received during the review's discussions. Consultations identified that a pilot or trial of an electronic system would not be necessary or help with parliamentary acceptance of the system.

Once a system is implemented, the review suggests PM&C approach the JCP to remove the requirement for documents to be printed in a B5 format and bound. The review notes the use of B5 paper in the printing standards makes it difficult for entities to print documents in-house where A4 size paper is commonly used. Entities need to be aware that A4 copies will be required for the physical act of tabling (probably two for each chamber) and, particularly in the months following the change, the chamber departments might need some additional A4 copies to meet requests from individual parliamentarians.

The review notes there may be an upfront cost involved in developing a system for electronic tabling, but the significant reduction in administrative burden for staff and lower administrative costs will more than offset this cost over time.

Recommendation:

12.2 PM&C and Finance work with relevant entities and the Parliament to:

o **scope and develop a system, to commence at the beginning of the next Parliament, for centralised electronic tabling of government documents (not including legislation documents at this time); and**

o **once a system has been developed:**

– **remove or substantially reduce the current requirements for hard copies of government documents to be printed; and**

– **approach the Joint Committee on Publications to remove the requirement for documents to be printed in a B5 format.**

13.   Senate orders of continuing effect

Description

Procedural orders of continuing effect issued by the Senate have recurrent mandatory obligations for public servants. These orders are made under section 50 of the Constitution. Eleven of these orders are directed towards the production of documents by the public service. Senate orders of continuing effect considered by the review include:

- **Harradine motion** – order 12 of 30 May 1996, as amended, requires entities to provide an indexed list of titles and parts of files created over the preceding six months on their website twice each calendar year.
- **Murray motion** – order 13 of 20 June 2001, as amended, requires NCEs to place a list of all contracts (procurement, grants and other funding) greater than $100,000 on their website after each financial year.
- **Appointments motion** - order 15 of 24 June 2008, as amended, requires entities to produce a list of relevant appointments and vacancies to be tabled in the Parliament three times a year.
- **Minchin motion** – order 16 of 24 June 2008 requires a list of all grants approved in each portfolio or entity to be tabled in the Parliament three times a year.

The Murray, appointments and Minchin motions are covered in more detail in other assessments as part of this review. Other continuing orders require entities to produce additional information, for example, on entity advertising and public information projects.

Summary of feedback on costs and benefits of the policy

Entities commented that the value of the data for some Senate orders is questionable while the reporting burden is high. Entities questioned whether this reporting is useful or is used at all.

The review received significant feedback that the Harradine motion requires entities to devote significant resources biannually to compile an index of questionable value to the Parliament or the public. Some entities reported going to significant effort to evaluate material to meet the criteria for responding to the motion. One entity questioned whether the motion appropriately balances the administrative burden with achieving its purposes. Other entities suggested the motion be revised to require annual rather than biannual reporting to reduce the burden it imposes.

Entities generally expressed frustration with the requirements of the continuing orders of the Senate not aligning with other related government requirements.

Entities believed some of the information required by Senate orders was duplicative or a subset of other information already publically available, and could be provided on an ongoing, rolling basis without diminishing accountability. For example, information on appointments is currently published in different locations.

Entities, while acknowledging that this was not an issue over which the executive had control, supported a review of the continuing orders of the Senate to:
- ensure they continue to be relevant; and
- determine whether they can be ceased or better targeted to reduce the reporting burden.

Assessment against the Principles for Internal Regulation

Senate orders of continuing effect require information to be produced by entities for the executive to be accountable to the Parliament. However, these orders are not routinely reviewed for their ongoing relevance to the Parliament, nor do they take into account whether there are more effective ways to provide the relevant information.

Repealing the Harradine motion

Then Senator Brian Harradine moved the Harradine motion in 1994 with the purposes of:
- making freedom of information (FOI) more workable by enabling parliamentarians and the public to have transparency of what information exists in government;
- to improve coordination across the public service; and
- for parliamentarians to benefit from public service IT expenditure.

The review notes that the Harradine motion appears to have last been reviewed by the Parliament in 1998. Among other things, the Senate Finance and Public Administration References Committee found that despite being a partial solution to a perceived problem of access to government information, open government principles supported it continuing. The committee also suggested the administrative burden of the motion would be reduced through more sophisticated record keeping systems over time.

The Harradine motion has been overtaken by other transparency measures across government. Entities are more accountable to the Parliament and the public than in the 1990s, such as through annual reports, estimates hearings and parliamentary inquiries now all being available online. FOI is now better supported by the IPS which was implemented to increase transparency and accountability of government, and to reduce the number of FOI requests. In addition, other transparency measures have been implemented, such as continuous reporting online on grants, procurements and appointments. File names also do not provide a useful insight into the operations of government and are not documents for the purposes of making an FOI request.

The review therefore suggests that the Harradine motion is of little or no value to parliamentarians or the public and is an unnecessary administrative burden that should be repealed.

If it does not prove possible to repeal the Harradine motion, the review suggests seeking to change the requirement from biannual to annual to reduce the administrative burden on entities, but that would be a disappointing outcome.

Reviewing Senate orders of continuing effect

More broadly, the review suggests Senate orders of continuing effect should be evaluated for continuing relevance or usefulness to the Parliament and to ensure the administrative burden imposed on entities is proportional to their objectives. The lack of a standing review mechanism means there is no integrated approach to reporting requirements. As a result, requirements to produce information under the orders duplicate existing reporting requirements across government or do not align with other reporting timeframes.

The review suggests initiating a process that would enable Senate Orders of continuing effect to be reviewed and reported on by the end of each Parliament. Options could include seeking to attach a review requirement or sunset period for these orders.

The review suggests PM&C have overall responsibility for initiating this process with the Government and work with Finance on the specific Senate orders.

Recommendation:

13.1 PM&C and Finance initiate a process to enable the Government to seek the Senate's agreement to:

- o **repeal the Senate order of continuing effect implementing the Harradine motion for biannual production of file lists; and**

- o **review existing Senate orders of continuing effect at the end of each Parliament.**

14.   Cabinet processes

Cabinet

Description

Cabinet is the council of senior ministers empowered by the Government to make decisions on its behalf. The Cabinet Secretariat operates within PM&C to support the Prime Minister, Cabinet Secretary and chairs of Cabinet committees.

The Cabinet Handbook is a publicly available document of principles and conventions by which the Cabinet system works to fulfil its central purpose of informed decision-making. It sets out requirements and guidance for ministers and officials on the different forms of Cabinet business. The Cabinet Handbook states that further guidance is provided in the Cabinet Manual, Cabinet Circulars and in the Cabinet submission template.

The Cabinet Manual is intended to assist officials who are involved in Cabinet processes by setting out rules and practical advice designed to support good decision-making. The Cabinet Manual is not publicly available.

Departments must comply with a significant number of requirements when developing a submission for their Minister to bring forward to Cabinet. Requirements include:

- obtaining authority to bring the matter forward (from the Cabinet or the Prime Minister);
- all NPPs are to be brought forward consistent with the BPORs. This includes all financial implications to be agreed with Finance, and the Treasury where relevant;
- facts are agreed across departments;
- Regulation Impact Statements (RIS) agreed with the Office of Best Practice Regulation (OBPR) or exempted;
- comply with page limits - recommendations no more than two pages and supporting analysis no more than five pages;
- an assessment of the constitutional and legal implications of any proposals;
- due diligence checklist completed;
- implementation plan for significant implementation matters, or exempted by the Cabinet Secretary;
- potential impacts on families, Australia's regions, small businesses and Indigenous Australians; and
- consult with the relevant areas of Finance, Treasury and PM&C regarding any payments to states and territories and conform with the *Intergovernmental Agreement on Federal Financial Relations*.

The former Cabinet Implementation Unit (CIU), now part of the Cabinet Division in PM&C, published a toolkit to assist drafters of Cabinet proposals with implementation elements involving planning, governance, engaging stakeholders, risk, monitoring, review and evaluation, and resource management, and management strategy. The toolkit does not contain mandatory requirements.

Summary of feedback on costs and benefits of the policy

While the Cabinet template has been simplified, there is complexity in the number of fields and templates required overall, as well as the number of areas that require approval. In particular the review heard that the portfolio budget submission (PB submission) process is lengthy and duplicative, with large amounts of work going into developing the submission which is not necessary given the focus of the process being on individual budget measures and adds little to the process.

The review heard feedback from entities that it was resource intensive and frustrating to go to multiple places within central agencies and across government for relevant approvals before being able to bring forward a Cabinet proposal. For example, currently drafters are required to liaise with OBPR, (there is no longer a requirement to consult separately with the CIU; that was changed earlier this year when the CIU was merged with the Cabinet Division), the Cabinet Secretariat and the Cabinet, Legislation and Parliamentary Section in PM&C for guidance on submissions. Entities cited the new policy proposal template and the relevant impact statements as the main source of frustration.

The review heard that some of the Cabinet processes are administratively burdensome, and that while steps have been taken to simplify templates, the current template for NPPs could be further refined.

The majority of departments use paper distribution of Cabinet documents. The review heard this was administratively burdensome and reduces the time available for considering and commenting on Cabinet documents.

The review heard that the Cabinet Manual was not widely referred to by line areas as it is not widely available, and needed to be updated to reflect the current edition of the handbook.

Assessment against Principles for Internal Regulation

Requirements that are part of the Cabinet processes underpin fundamental principles supporting operation of executive government in Australia. While the purpose of these requirements is to ensure good governance and sound decision-making, elements are unnecessarily burdensome and are potentially not as useful as they could be in assisting ministers to make decisions.

Portfolio Budget submissions (PB submissions)

The PB submission is a vehicle for portfolio ministers to present a strategic picture of the priorities and pressures across their portfolio, as well as present specific budget proposals. The PB submission uses the existing Cabinet submission template and has mandatory headings and sections that must be completed. Despite the requirements in the submission, PB submissions usually exceed the page limits of the template.

It is difficult to develop an overarching narrative for the PB submission as, unlike submissions on specific policy proposals, it contains a series of potentially disparate budget proposals. Individual NPPs attached to the PB submission individually present an explanation of the minister's recommendation, which is duplicated in the supporting analysis section of the PB submission. In addition, the review also observed that other non-budget policy matters can sometimes be 'shoehorned' into the PB submission for endorsement. While some departments may benefit from not requiring a separate process to progress a proposal, it results in a more cumbersome PB submission, and can result in ineffective consultation across departments unless relevant stakeholders are alerted.

The review considers that ministers should be provided with all the information required to make a fully informed decision. The review understands that in practice the green brief Finance develops, in consultation with central agencies, contains the necessary information ministers need to make decisions.

The review suggests that to reduce the administrative burden in developing and consulting on PB submissions, PM&C should streamline the Cabinet submission template for PB submissions to limit the supporting analysis to one page of strategic information, including about applicable risks, and enforce this limit more strictly. Matters that do not relate to the NPPs should generally be excluded from the submission. The review suggests these two measures would improve the usefulness of advice portfolio ministers provide to the Cabinet for decisions as part of the budget process.

Recommendation:

14.1 The review recommends that, to reduce the administrative burden in preparing portfolio budget submissions and recognising the role of the green brief to provide summary information and support decision-making, PM&C should streamline the portfolio budget submission template to:

o **limit its purpose to presenting portfolio NPPs to ministers; and**

o **provide only essential information to assist ministers to make a decision without duplicating material in the relevant NPPs.**

Streamlining processes for approval of Cabinet documents and documents for Cabinet

The review queries whether approvals as part of the Cabinet process could be streamlined, including whether:

- approval processes could be centralised, either within the relevant departments that require them or as part of a 'one-stop-shop' for approvals required for Cabinet proposals in the future; and
- all of the relevant documents that form part of the Cabinet process are useful to ministers.

The review was pleased to hear that the due diligence checklist that forms part of the Cabinet submission template was recently dropped from Cabinet documents presented to ministers as its compliance focus did not assist them to make decisions.

If elements that form part of the Cabinet process or documents the public service develops are not useful to provide to ministers in the Cabinet process, the review suggests exploring whether the administrative burden involved in creating them could also be reduced.

One option to reduce the amount of documentation generated could involve replacing the PB submission and NPPs with a one page strategic statement by the portfolio minister and the green briefs for relevant budget measures.

Recommendation:

14.2 The review recommends that PM&C work with departments to:

o **streamline and consolidate processes for approval of Cabinet documents; and**

o **consider rationalising documents required to be developed and presented to ministers.**

Electronic distribution of Cabinet documents within departments

The review understands that departments with internal electronic distribution of relevant Cabinet documents have been able to realise significant efficiencies, such as:

- multiple copies of draft Cabinet documents no longer have to be printed, logged, delivered, collected and destroyed;
- more effective consultation on Cabinet documents as a result of the additional time available to line areas to consider issues and prepare comments; and
- enhanced security arrangements as the documents are locked down to particular users. Where printing is enabled, it is limited and electronically recorded against an individual user.

The review understands that there are technical challenges for some departments to ensure their relevant IT system would meet appropriate requirements to at least the Protected classification level and an appropriate platform be used for circulation. The review suggests that productivity gains and enhancements in security justify prioritising implementation within departments.

Recommendation:

14.3 The review recommends that departments with internal processes for hard copy distribution of Cabinet documents work with PM&C to prioritise implementing a system for secure electronic distribution of such documents.

The review notes that the 8th edition of the Cabinet Handbook was published in 2015 and replaced the 7th edition from 2012. As the Cabinet Manual provides more specific rules and guidance to officials involved in the Cabinet process, the review suggests it be updated to ensure it is used to ensure officials understand what is required for their role in the process.

Recommendation:

14.4 The review recommends that PM&C update the Cabinet Manual to reflect the current Cabinet Handbook.

The review notes that Cabinet Circulars play an important role to update or implement changes to the Cabinet process. However, their role is sometimes confused with other mechanisms for communicating changes in government process, in particular in the context of Budget process. The review suggests requirements set out in Cabinet Circulars are developed and closely aligned with matters listed in Estimates Memoranda and the BPORs.

Recommendation:

14.5   The review recommends that PM&C and Finance ensure requirements set out in Cabinet Circulars, Estimates Memoranda and the BPORs are coherent and consistent.

15.   Legislation processes

Legislation processes

Description

The legislation process involves steps which need to be completed consistently and carefully to ensure policy is translated into law-making in the Parliament.

PM&C is responsible for managing and supporting the legislation process across government. PM&C sets out requirements and provides guidance for departmental officers on the steps required to get legislation into the Parliament in the *Legislation Handbook* (published in 1999 and updated in 2000). PM&C also coordinates arrangements for the Parliamentary Business Committee of Cabinet to determine a programme of government legislation in each sitting period as well as variations to that programme. Departments are required to provide legislation bid or variation forms to PM&C after seeking their portfolio minister's approval to bid for measures in Bills. PM&C also requires legislation profile and questionnaire forms to be completed before a Bill is introduced into the Parliament.

Departments support ministers to seek policy approval for measures they wish to bring forward in legislation through a process set out in the *Legislation Handbook*, which PM&C coordinates. Approval requirements vary for measures in Bills with significant policy implications (Cabinet), minor policy significance (Prime Minister), technical amendments with no change of existing policy (responsible minister) and technical corrections suitable for a Statute Law Revision Bill (First Parliamentary Counsel). Where a proposed measure affects another portfolio's interests or legislative responsibilities, the handbook requires the sponsoring minister to write to the affected minster to seek agreement.

PM&C is also responsible for coordinating arrangements and setting requirements for the Federal Executive Council (ExCo), which it documents in the *Federal Executive Council Handbook* (September 2009). ExCo advises the Governor-General in the government of the Commonwealth. This includes where the Governor-General makes regulations for the executive, which is a form of delegated legislation.

Summary of feedback on costs and benefits of the policy

The review received feedback about the *Legislation Handbook* and elements of the legislation process. The review heard that the handbook contains information that would be more valuable to officers involved in the legislation process if it were updated. It was suggested some mandatory elements in the handbook could be modified to better reflect actual practice.

The review heard there was scope for making approval of measures in Bills more flexible where they do not fall within a government policy, but are consistent with the intention of the policy.

The review also heard there are significant advantages where entities contact PM&C to discuss a policy proposal for legislation at an early stage. Similarly, the review heard that departments should consult with OPC before seeking further policy approval for measures proposed for legislation.

Entities identified duplication in requirements to complete similar forms as part of the legislation process (in particular, legislation questionnaire and profile forms).

The review heard that users appreciated the templates for the ExCo process which made it easier to navigate an otherwise prescriptive and complex process.

Assessment against Principles for Internal Regulation

The review considers that the *Legislation Handbook* and *Federal Executive Council Handbook* are necessary to support ministerial processes. However, the review identified some opportunities for requirements and guidance on elements of the legislation process to be updated to better reflect administrative practice and provide greater flexibility for officers.

Update the Legislation Handbook

The review considers the *Legislation Handbook* should be updated to better inform departmental officers responsible for developing and managing legislative proposals. Some of the mandatory elements of the handbook could be adjusted to take a more flexible approach by reflecting what happens in practice when developing legislation. It would also encourage officers to refer to the handbook if it were made contemporary and as user friendly as possible.

For example, the handbook currently requires officers to instruct OPC on a Bill following a Cabinet decision within five days, or 10 days if there are major changes. Similarly, departmental officers are required to provide comments on a Bill drafted by OPC within five days, or 10 days if consultation is required. The review suggests timeframes are context dependent and should not be requirements. Instead, the review suggests timeframes reflect the priority of the relevant policy measures. In practice, instructing officers in departments and drafters should already be discussing the work involved in the relevant Bill.

Policy approval of legislative measures

As a general observation, the review encourages entities to engage with PM&C at an early stage to identify the expected approval mechanism for measures proposed for inclusion in a Bill. Early engagement can avoid the administrative burden involved in an unnecessary formal approval process which could have been avoided by a conversation, or potential delay where the sponsoring department does not realise another portfolio may be affected by a proposal. It can also assist in delivering positive responses to minsters' requests to the Prime Minister.

The review heard there may be scope to reduce the administrative burden on entities of seeking policy approval for measures in Bills that are consistent with the intention of existing policy. For example, Bills implementing consequential changes following a primary Bill generally contain policy measures consistent with the intention of government policy to implement the relevant changes, but extend beyond merely technical matters. The handbook requires correspondence from the sponsoring minister to be sent to the Prime Minister for approval of such measures, despite such measures being unlikely to involve significant risks or sensitivities. In practice, there is some discretion for PM&C to explore with the relevant department whether a request for policy approval needs to progress to the Prime Minister.

The review suggests that the handbook be amended to broaden the current category of policy approval by the relevant minister from technical matters in Bills to measures consistent with the intention of government policy. The review considers this broadening would reduce the administrative burden on departments by officers no longer being required to prepare draft correspondence for the relevant minister to send to the Prime Minister. However, it would be important for departments to check with OPC (and PM&C if necessary) at an early stage about whether particular legislative measures would fall into this category of approval by the relevant minister.

Providing OPC with drafts of documents to go to ministers for policy approval

The review heard that it was important for OPC to be consulted on draft letters seeking policy approval for measures in a Bill to ensure that policy approvals match the draft provisions and that nothing is overlooked. While the current handbook suggests consultation with OPC should occur at an early stage to ensure that policy can be reflected in the legislation, it does not articulate OPC being part of the process for developing a ministerial request for further policy approval.

The review suggests the handbook be revised to encourage departments seeking further policy approval as part of the legislation process to show a draft to OPC prior to submitting the request to ministers. Consulting OPC before additional policy authority is obtained would reduce the likelihood of the department needing to seek further additional policy authority to cover matters that are not included in the request for additional authority or that are not accurately described.

Approval of measures affecting another portfolio

The review suggests that PM&C remove the requirement in the handbook for ministers to seek agreement to legislative measures affecting another portfolio minister's interests or legislation in appropriate circumstances where such measures are agreed between departments. Guidance should be provided in the handbook about what would be appropriate circumstances for departments to agree to measures to be included in a Bill.

While the review suggests PM&C remove the requirement in the handbook and provide guidance, it would be a matter for each portfolio department to determine an appropriate practice with its minister's office to ensure the scope for such discretion is clear. Similarly, it is important that departments ensure their minister's office is informed about measures that impact on the portfolio's interests to ensure it has visibility of such measures.

Information required from departments to manage the legislation process

Departments are required to complete forms for PM&C to coordinate and manage the legislation process. The review heard that this information is necessary, and that the nature of the process involved tracking where all Bills were up to during policy approval and parliamentary processes.

The different purposes of the legislation questionnaire and profile forms may not be clear to entities as the questionnaire form is not referred to in the handbook. This form relates to the introduction of legislation in the relevant week of the parliamentary sitting period to assist PM&C manage the legislation process.

The review suggests PM&C amend the handbook to reflect the purpose for requiring a legislation questionnaire form from departments, and for users to better understand the different purposes of this form and the legislation profile form.

The review suggests considering whether there is scope to streamline processes for managing the legislation process, from bids to introduction of Bills, by developing an electronic information management system. An electronic system could facilitate more efficient and effective management of the legislation process, as well as reducing the administrative burden on staff in PM&C and across departments. An ideal time to implement a new system would be immediately after the Parliament is dissolved ahead of an election.

Recommendations:

15.1 PM&C update the Legislation Handbook published in 1999 and amend it to:

- o **reflect contemporary practice and be as user friendly as possible;**

- o **clarify that the relevant minister can give policy approval to measures in Bills, technical or otherwise, that are consistent with the intention of existing policy;**

- o **encourage departments seeking further policy approval as part of the legislation process to show a draft to OPC prior to submitting the request to ministers;**

- o **where measures proposed in a Bill would amend legislation administered by another minister, enable the affected department to agree to the amendments in appropriate circumstances, rather than requiring correspondence between ministers; and**

- o **explain the purposes of forms required in the legislation process.**

15.2 PM&C consider whether there is scope to streamline information required to support the legislation process, including whether an electronic system could be developed to reduce the administrative burden on staff managing the process across departments.

16.   Deregulation policy

Regulation Impact Statements (RIS), Regulator Performance Framework (RPF) and regulatory offsets

Description

The Government's deregulation agenda aims to meet its commitment to reduce the costs and regulatory burden imposed by unnecessary red tape on businesses, individuals and community organisations. Key elements include:

- reducing the Commonwealth's regulatory stock by a net $1 billion every year, from which PM&C allocates targets to each portfolio;
- the Parliament holding two 'repeal days' each year, dedicated to repealing redundant or unnecessary legislation/regulation;
- requiring a RIS to be completed for all Cabinet decisions, and decisions made by the Government and its agencies that are likely to have a regulatory impact (except for minor or machinery changes); and
- improving regulator performance by supporting Commonwealth regulators to adopt risk-based approaches to administering regulation, and measuring regulator performance by implementing the RPF.

The deregulation agenda initially required deregulation units in each portfolio department to conduct one-off audits of the regulatory footprint of the portfolio. It now requires them to report progress on towards portfolio deregulation targets. Deregulation reporting to PM&C requires deputy secretary level approval. The current reporting schedule requires departments to produce two types of reporting:

- internal quarterly reports of progress towards deregulation targets, which involves a list of all regulatory measures for the quarter, including a brief description of major measures (above $2 million or significant) and costings. This information feeds into whole-of-government public biannual reports of progress for each repeal day; and
- an internal annual prediction of future achievement (forward work programmes) by calendar year.

PM&C develops the Australian Government Annual Deregulation Report from departments' internal reporting processes. The whole-of-government report outlines the achievements of the Australian Government in reducing external red tape.

Portfolios are also required to develop and publish their own annual deregulation reports. Portfolio annual reports are intended to be a more detailed reconciliation of the individual measures in portfolios contributing to the Government's deregulation target. They are required to be published on departmental websites.

RIS assist decision-makers to make more informed choices and ensure external regulation is not adopted as a default position. There are three types of RIS – long form, standard form and short form. Departments decide what form of RIS depending on the nature of a proposal. Standard and long form RIS are assessed by the OBPR. They are required to be signed-off at a deputy secretary or secretary level before lodgement with OBPR for assessment. Short form RIS are not assessed by OBPR and do not have a specific approval requirement.

The RPF was also an election commitment and was developed to establish a common set of performance measures that allow for comprehensive assessment of regulator performance and engagement with stakeholders. The RPF encourages regulators to minimise their impact on those they regulate, while simultaneously giving business, the community and individuals the confidence that regulators effectively and flexibly manage risk. The first assessment period under the RPF commenced on 1 July 2015 and is based on the financial year.

The review notes that a Review of the Government's Red Tape Reduction Framework (Deregulation Review), led by Treasury on behalf of the members of the SES Deregulation Reference Group, and provided to PM&C in July 2015. The group represents the interests of deregulation units across all portfolio departments and the report involves a consensus view across portfolios. The report's recommendations have been developed to improve consistency in the framework and reduce the internal administrative burden of the Government's deregulation agenda, while maintaining its rigour, transparency and scope. The Deregulation Review was developed in parallel with this review. PM&C advised the review that it will seek Government agreement to changes to the Red Tape Reduction Framework in late 2015. Deregulation Review recommendations are set out at in <u>Appendix A</u>: *Recommendations of the Deregulation Review.*

Summary of feedback on costs and benefits of the policy

The review heard that the implementation of the deregulation agenda to reduce external red tape had led to considerable internal regulation within government, and could be implemented in more flexible ways with a lower compliance burden on entities.

Reporting

The review was advised that reporting annual and quarterly deregulation compliance cost savings are onerous, fragmented and duplicative. The volume of compliance reporting to the OBPR was noted as an issue, including a one-off survey for the RPF and quarterly deregulation progress reports.

Some departments questioned the need for separate portfolio annual reports on deregulation, believing there is duplication between the reporting processes for the portfolio annual report on deregulation and the Australian Government Annual Deregulation Report.

RIS/OBPR/regulatory costing

Entities advised that RIS requirements are not adaptable or flexible. Examples provided to the review suggested that a RIS should not be required for policy proposals that the Government has already announced, for example election commitments. Another example is the requirement for each RIS to contain three policy options even if the response is binary, such as to implement a treaty or not. Feedback also identified that detailed costings are required for all regulatory proposals, regardless of the likely quantum of costs or savings.

Some entities suggest that PM&C should provide more clarity on thresholds for short-, standard- or long-form RIS. Similarly, RIS processes have changed several times in recent years as a result of adjustments to the framework, and some entities have struggled to follow these developments.

Regulatory offsets and targets

Some entities advised that it is not clear why it is necessary to identify specific deregulatory offsets for each new regulatory proposal if the portfolio meets its broader red tape reduction target. The review heard that deregulation targets seem arbitrary and affect how entities plan to perform functions. Rigid offset requirements have inhibited sound regulation approaches within the relevant year in some portfolios, and skewed regulatory decision-making due to the lack of available offsets at a given time. The review also heard of difficulties in identifying future regulatory savings, as they are not able to carry over regulatory offsets to future years.

Interaction with the PGPA Act, the RPF and broader deregulation

Some entities suggested that the RPF's focus on reducing regulatory burden, without a corresponding assessment of effectiveness against mandate and objective risks, could present an unbalanced view of performance. The review also heard of inconsistency between the PGPA Act Enhanced Commonwealth Performance Framework and the RPF resulting in additional administrative burden.

Assessment against Principles for Internal Regulation

The review supports the recommendations of the Deregulation Review, which address the majority of the concerns raised with this review. The review considers it important the recommendations are implemented as closely as possible to reduce the regulatory burden on entities.

Deregulation reporting

The frequency of reporting was a significant concern to entities. The review considers that the Deregulation Review's recommendations will address many of these issues (see Deregulation recommendations 9, 11, 12 and 13).

The review notes that portfolios currently appear to duplicate reporting information for the purposes of the Australian Government Annual Deregulation Report and their own portfolio annual reports on deregulation. The review considers that reporting on meeting the Government's target for reducing the costs and burden of red tape should be done centrally in PM&C's report.

The review notes that the Deregulation Review recommended easing requirements on portfolio annual reports on deregulation, with minimum reporting for portfolios on summary data on regulatory impacts and a list of measures (see Deregulation recommendation 10). While this may reduce the reporting burden, significant measures would still be reported in the Australian Government Annual Deregulation Report.

The review suggests removing the requirement for portfolios to publish data. The intention would be to reduce the effort in entities to publish a deregulation report and remove duplication with centralised reporting of significant measures. To avoid shifting the burden, the review suggests the centralised report continue to focus on significant measures. The review notes that some portfolios may still choose to publish such information online to assist businesses and individuals affected by the relevant measures.

Regulatory Impact Assessment

A RIS is a tool designed to encourage rigour, innovation and better outcomes from the beginning of the policy development process. Based on feedback from entities, the review considers that PM&C's compliance-based approach for managing the RIS process has not been sufficiently flexible for NPPs. The review considers that these concerns will be addressed by recommendation 4 of the Deregulation Review to adjust the Regulatory Impact Analysis framework to reflect a more facilitative role for OBPR in the system.

In the context of issues about providing more clarity on thresholds for different types of RIS', the review was advised that it is not possible to implement a single simple threshold that could be consistently applied to all portfolios, especially between standard and long form RIS', as proposals are all currently considered on a case by case basis to take into account differing impacts on business, community organisations and individuals.

Further changes to the RIS requirements and processes need to be effectively communicated to line areas of departments to ensure they properly understand what the changes involve. In this context, the review was pleased to hear that OBPR is also developing a 'Massive Open Online Course' which will provide guidance to policy officers developing regulatory proposals, and ultimately better quality RIS processes.

Delegation for RIS approvals

Currently all RIS, except for short-form RIS, need to be approved by a deputy secretary or secretary regardless of their significance before they are submitted to OBPR for assessment. The review heard that these delegation requirements resulted in senior sign-off, rather than senior consideration and ownership of the material contained in the RIS.

The review recognises that the secretary/deputy secretary sign-off requirement was introduced to ensure RISs were developed with sufficient quality. However, the review suggests it is a disproportionate response to the objective of improving quality.

The review suggests there should be scope for departments to determine an appropriate level of sign-off for RIS requirements based on its assessment of business needs, regulatory context and risk for each RIS.

The review considers it important to foster a culture that responsibility for work be delegated to the lowest level appropriate to take responsibility for that work.

Regulatory costing

The review supports the measures in the Deregulation Review that address issues associated raised with this review about regulatory costing (see Deregulation recommendation 8).

Deregulatory targets and offsets

The review supports the Deregulation Review's recommendations for deregulation targets and offsets (see Deregulation recommendations 1, 2 and 3) and notes that, if implemented in combination, these recommendations would broadly address concerns raised with the review about offsets and portfolio targets.

The review understands that implementing these recommendations would enable portfolios effectively to have a 'running balance' of portfolio achievement, which would be 'debited' when bringing forward measures with a regulatory impact, rather than identifying individual offsets for

those measures. The review supports this approach as it would reduce the unnecessary administrative burden in developing regulatory proposals.

Interaction between the PGPA Act and the RPF

The review heard that the RPF risks over-emphasising reducing the regulatory burden at the expense of considering the effectiveness of an entity's regulatory objectives. As a result, this risks an unbalanced assessment of performance for regulators under the RPF.

The RPF states that the framework is not intended to increase the administrative burden on regulators. It also states that reporting and accountability measures under RPF should be built into the existing performance architecture, and adopt an appropriate risk-based approach consistent with the PGPA Act framework. The RPF asserts that integration with the PGPA performance assessment requirements will:

- minimise the administrative burden on regulatory agencies;
- deliver a single consistent report on regulator performance;
- allow for comprehensive, comparable and easily contrasted performance information, efficient analysis of the results; and
- articulate a clear message on the expected performance of a regulator to regulated entities and the wider community.

Both the RPF and PGPA Act Enhanced Commonwealth Performance Framework are new performance reporting frameworks for the Commonwealth. Each framework has been operating for less than 12 months and their implementation is an ongoing task for entities.

The review considers that while attempts have been made to integrate the RPF into the broader Enhanced Commonwealth Reporting Framework, there is still a significant risk of inefficient process and confusion in integrating performance reporting and elements of the two frameworks. While the PGPA Act Enhanced Commonwealth Reporting Framework adopts a principles-based approach, the RPF was developed with six key performance indicators with the intention they operate in a principles-based way. The RPF includes measures of good performance and activity-based evidence as examples. Regulators have designed performance metrics and measures to assess their performance against the RPF that are targeted to their individual operating and legislative environments.

It was suggested that a consolidated approach to reporting could reduce unnecessary duplication. There is no structural reason preventing integrated reporting under the two frameworks. However, the review understands entities may find it challenging to complete their RPF self-assessment as required by Cabinet in time to meet publication deadlines under the Enhanced Commonwealth Performance Framework.

The review suggests PM&C and Finance review the operation of the two frameworks after they have both been through a full cycle. With the evidence base gathered after the end of the first cycle, the PM&C and Finance review should consider whether the two frameworks could be merged.

Recommendations:

16.1 **PM&C implement all recommendations of the Review of the Government's Red Tape Reduction Framework, prepared by Treasury on behalf of the SES Deregulation Reference Group, as closely as possible to reduce the regulatory burden imposed on entities.**

16.2 **In recognition that measures implementing the Government's deregulation agenda impose a significant administrative burden on entities, PM&C approach Government to remove the requirement:**

o **for comprehensive portfolio annual reports (whether public or for internal reporting purposes) on deregulation, with only significant deregulation measures being reported centrally in the Australian Government Annual Deregulation Report; and**

o **for Deputy Secretary or Secretary level approval of Regulation Impact Statements, to give departments flexibility to determine an appropriate level of clearance for individual measures.**

16.3 **PM&C and Finance review requirements under the PGPA Act's Enhanced Commonwealth Performance Framework and the Regulator Performance Framework after a full cycle and consider whether they could be merged.**

Recommendations of the Deregulation Review

Key issue 1: The value and effect of regulatory burden reduction targets

Recommendation 1: At the earliest opportunity, the Government should re-state the annual whole-of-government target as being to achieve a reduction of '$3 billion over 3 years' (or for the term of the Parliament) instead of '$1 billion per year'.

- Moving to a cumulative net target such as '$3 billion over three years' will better recognise the 'lumpiness' of major policy development, remove a possible incentive to defer announcing reforms once the year's target is met, and encourage portfolios to focus on long-term proposals that will deliver wider benefits.
  - It is possible that a $3 billion cumulative net regulatory cost reduction may be achieved this year. If so, the current $1 billion dollar per year commitment will have effectively been met for this term of Parliament and the new target could be announced immediately, or from the beginning of the next Parliament.

Recommendation 2: Provide individual portfolios with indicative, rather than binding, targets.

- Portfolio targets that are indicative rather than formally binding will recognise that the search for red tape reductions has become part of 'business as usual' and that the formal targets were practically unenforceable. Portfolios will of course continue efforts to reduce the red tape burden but will do so without the reputational risk of missing a target because, for example, a large and complex policy decision missed the deadline for a target period. The collegiate approach to delivering the agenda (through regular SES Reference Group meetings) will continue to assist the pursuit of the whole-of-government target.

- Accountability for reducing regulatory burden could be achieved by reporting progress to PM&C as necessary and publishing progress on a portfolio basis regularly (Section 4 canvasses changes to the reporting burden that could lessen reporting frequency). This transparency, along with the whole-of-government target plus review mechanisms such as the Regulator Performance Framework, Ministerial Advisory Councils and other stakeholder scrutiny, will continue to provide the necessary incentive to minimise regulatory burdens.

- While many portfolios are of the view that a consolidated Forward Work Programme need not play a formal role under indicative portfolio targets, views are divided on whether an annual (or once a Parliamentary term) scan of key opportunities would be sufficient to inform Cabinet.

The requirement to 'offset' new regulatory burden

Recommendation 3: Do not re-set the stock of available offsets annually. Consider the offset requirement to be satisfied as long as a portfolio can demonstrate satisfactory progress towards any (indicative) net reduction target that might be allocated (see Recommendation 2).

- Removing the requirement to offset all measures individually at the point of decision will reduce the burden on portfolios and Office of Best Practice Regulation (OBPR) without affecting the primary goal of red tape reduction, as net progress will effectively demonstrate that any increase in regulatory burden has been fully offset by red tape reductions elsewhere.

- To further streamline the process, Deregulation Units should be responsible for warranting that net progress towards reduction will be achieved in the reporting period, rather than requiring OBPR to approve offset decisions. Portfolios' warrants will be subject to verification at the conclusion of the reporting period.
  - Where a portfolio brings forward a proposal that it considers would result in progress turning net negative for the reporting period, the proposal can only proceed provided the portfolio Deputy Secretary warrants that the net cost will be wholly offset by the end of

the following reporting period. This exemption would not be available in the final reporting period of the three year target period.
– Frequency of reporting periods is addressed at Recommendation 11.

Key issue 2: Streamlining Regulatory Impact Assessment (RIA)

Recommendation 4: Adjust the RIA framework in the ways identified below to reflect a more facilitative role for OBPR in the system.
- Where a proposal in a Cabinet Submission is non-regulatory or of minor/machinery regulatory impact, a statement to that effect must be made to Cabinet by way of checking the 'minor/machinery' box on the new Submission coversheet. Where an explanation as to why a Submission is not regulatory is required, a *Minor* RIS comprising a sentence or two should be provided. (The term '*Minor* RIS' is used to avoid the natural but unhelpful assumption that a 'Short Form' RIS is a merely a more convenient alternative to a 'Long Form' RIS.)
    – Recommendation 8 further simplifies requirements for costings of minor proposals.

- Where the proposal is regulatory and more than minor/machinery in nature, a RIS must be drawn up, to the highest standard the portfolio considers appropriate given:
    – the significance of the proposal
    – the stage of decision-making
    – the available time frame, and
    – any other considerations that make it appropriate to modify the general requirements for a *Standard Form RIS*.
        ▪ 'Other considerations' include those that currently justify using a *Short Form* RIS (see p12 of *The Guide*) and the Special Cases (see p 56–58 of *The Guide*).
    – Where the decision point for a regulatory proposal is anything other than the final decision point, this *Interim RIS* can be used to inform key aspects of the early assessment decision. A *Standard Form* RIS can then be completed for final assessment.
    – Where a *Standard Form* RIS is not subsequently completed and published, the Interim RIS will be published *(subject t*o the usual redaction rules), thereby making portfolios accountable for *decisions no*t to complete a *Standard Form* RIS at critical decision points.

- For all *Interim* RISes accompanying Cabinet Submissions, OBPR will continue to provide coordination comments on what else (if anything) may need to be done to bring the statement up to 'best practice' standard by the time of the final decision. *Interim* RISes that OBPR assess to be not best practice must contain an explanation of how the RIS will be completed.
    – Cabinet Secretariat has advised that they will not generally defer a Submission with a compliant RIS merely because it is not best practice.

- OBPR will continue to advise the circumstances where the nature of the proposal would require the RIS to include a full quantitative cost benefit analysis.
    – To avoid confusion (and on the basis that all RISes should contain a level of detail commensurate with the significance of the matter at hand), the often misused or misunderstood term *Long Form* RIS should be dropped.

- The '3 options' RIS requirement should be replaced with the principled approach (currently contained in *The Guide*) that the number of options to be included should reflect the significance of the matter at hand, noting that at least three viable options is a good rule of thumb. Having only one regulatory option (in addition to the 'no change' option) will suffice where there is only one viable alternative that can be considered. However, this would generally only occur where:
    – the decision is whether to agree to something that the Government does not have scope to significantly alter (e.g., a multilateral international agreement), or
    – the RIS relates to an NPP that is but one option from a package (i.e., the other options will be addressed by other NPPs that will be put to the decision-maker).

- OBPR may exempt certain classes of decisions made by an agency (but not by a Minister or Cabinet) from the requirement to prepare a RIS, provided the agency has demonstrated (to OBPR's satisfaction) robust, internal RIS-like processes for making those decisions. The resulting decision documents will continue to be published to maintain transparency and accountability.
  - For example, OBPR may choose to approve the process by which the Australian Taxation Office reaches its positions on public rulings as sufficiently robust and RIS-like, thereby obviating the need to examine the process of developing each ruling individually. Public rulings will be published (as happens currently).

- For critical decision points where an appropriately detailed regulatory impact analysis has already been developed (e.g. in a Cabinet Submission) or summarised in another way (e.g. with NPPs), a short (one page) standardised *Regulation Impact Summary* highlighting the regulatory costs and implications of a proposal should replace a comprehensive RIS.
  - Since the RIA process simply reflects the steps that good policy advice should take, it follows that the elements of a RIS should already be present in the Cabinet Submission (or other policy decision document), although not necessarily in an immediately accessible form. Thus, a separate RIS document is duplicative, giving rise to the sense that the RIS is 'just a compliance exercise'. Eliminating the duplication but keeping a short summary document will make decision documents shorter and more accessible for decision-makers.
  - OBPR will work with Cabinet Secretariat to develop a suitable template for the Summary.

Recommendation 5: Recognising that the additional flexibility provided by the changes to the RIA above may increase the risk of an important regulatory decision being made without best practice regulatory impact analysis having been followed, the trigger for a Post-Implementation Review (PIR) should be modified. If OBPR considers that the regulatory analysis presented to policy makers at the final decision point on a policy with major economic impacts is sufficiently divergent from best practice, OBPR may recommend to the Parliamentary Secretary that the PIR should be brought forward by three years (i.e. from five years to two).
- Currently, PIRs are required after two years in circumstances of non-compliance with the RIS rules and after five years for regulatory changes that have major impacts on the economy. Where a change will have a major impact, a RIS that diverges sufficiently from best practice at the final decision point should also trigger an earlier evaluation. (COAG RISes are only rated as either compliant or non-compliant and are not subject to PIR requirements).
  - OBPR advises that the early evaluation would not be triggered lightly, or for technical failures to meet best practice guidelines.
  - In practice OBPR will also take into account that some measures may not benefit from an early PIR.

Key issue 3: Measuring regulatory burden

Recommendation 6: Several portfolios support the inclusion of regulatory charges in future regulatory burden targets and calculations, while noting that the inclusion could make it more difficult for Government to increase such charges. If agreed, only policy changes to introduce new or modify existing regulatory charges should be considered i.e. the ongoing indexation of fees to maintain their real value should be excluded and natural population increases would not be counted. Noting that some portfolios may be more greatly affected than others, investigation into regulatory charges within portfolios should be undertaken to determine the feasibility of incorporating them into the RBM.

- Including regulatory charges would provide a more consistent and accurate measure of regulatory burden, reduce any incentive to favour government charges over market instruments, and better reflect the burden felt by regulated populations (who often rate government charges as much a part of regulatory burden as compliance costs).

– However, including regulatory charges may make progress towards the red tape reduction target more difficult and could create problems for smaller portfolios that have a limited stock of regulation to draw upon to find additional savings.
    ▪ Earlier recommendations to adjust the incentives of targets would alleviate this pressure to some degree.
- The Department of Finance notes that the deterrent effect of including regulatory charges in the RBM could potentially create some tension with the *Australian Government Charging Framework* which is designed to promote appropriate user charging.

Recommendation 7: Clarify that the current 'mutual obligation' exemption in the RBM guidelines covers certain costs that might otherwise be regarded as part of the regulatory burden where the portfolio can satisfy OBPR that the requirements generating the costs are integral to the behavioural change required by the policy. In practice, however, the 'default' position will be to count these costs in the RBM calculation.
- There is an argument that the current mutual obligation exemption is inconsistent with the RBM principles as it excludes costs that are typically counted as regulatory burden in non-welfare portfolios. However, the counter argument justifying the exemption is that the obligations are intrinsic to the policy objective rather than being merely the cost of complying with or administering it. Revoking the exemption could greatly affect the current measure of regulatory burden for welfare programs.
    – Given Ministers are inclined to treat the cost of demonstration of compliance with job seeking requirements as intrinsic to the mutual obligation policy, the interpretation of mutual obligation in the *Guide to Social Security Law* should be applied.
        ▪ The approach of invoking the exemption only where portfolios claim it and satisfy OBPR that the reporting requirements are integral to the policy would tend to limit the use of the exemption.

Recommendation 8: Introduce a materiality threshold on costing requirements with the following elements:
1. Where a proposal is identified by a portfolio and agreed by OBPR as likely to result in a cost below $100,000, a costing under the RBM will not be required. Proposals agreed to be below the threshold may be costed, or not, at the portfolio's option.

2. Where a proposal is identified by a portfolio and agreed by OBPR as likely to result in a cost above $100,000, but below $1,000,000, a costing is required but does not need formal assessment by OBPR.

3. OBPR will continue to review costs below those thresholds in the usual way if requested to do so by the relevant portfolio.
- Where no costing is undertaken on a measure that OBPR agrees is likely to cost below $100,000, provided portfolios treat regulatory increases and decreases similarly, they may choose to:
    – cost all measures (regulatory and deregulatory) at $50,000, or
    – round measures expected to be below $50,000 to zero and those above to $100,000.
        ▪ As the 'no costing required' threshold will be applicable to both regulatory costs and savings, the accounting choice will have no noticeable impact on cumulative net red tape reduction.
- These thresholds have been selected based on an analysis of costing data which shows that costings below $100,000 represent less than 1 per cent of the absolute value of regulatory impact across all portfolios. Costings below $1,000,000 represent less than 5 per cent of total value with the exception of a few portfolios.
    – Based on this data, the recommendation will reduce internal red tape while having no material effect on the progress of red tape reduction.
- The expertise now established in portfolio Deregulation Units will be able to provide sound guidance on immaterial costings that do not require formal scrutiny from OBPR.

Key issue 4: Reducing the reporting load

Recommendation 9: From the beginning of the next Parliament, replace the two annual Repeal Days with an annual 'deregulation day' (or two) in the Spring sitting.
- A 'deregulation day' would be used to pass deregulatory legislation that would otherwise not be of legislative priority, and to announce deregulatory measures that are important to Ministers.

  – This change would recognise that there is a rapidly diminishing stock of legislative achievements to be made through the current Repeal Day process of repealing inoperative legislation. A number of portfolios report that profile of the Autumn day will drop more rapidly than the Spring day, due to drafting timetables and the difficulty of consulting over the end of year holiday period.

  – As the bulk of the cost reduction occurs through administrative changes or alteration to substantive legislation (which is often timed more urgently in a sitting than the Repeal Day schedule allows), the deregulation day would not necessarily be used as a general update of red tape reduction progress.
    : Public reporting of progress could continue to be made regularly where appropriate to satisfy the Government's objectives (i.e. following a mid-year report).

Recommendation 10: Ease requirements on annual portfolio deregulation reports.
- Annual deregulation reports should focus on whole-of-government achievements, with portfolios afforded flexibility to report further deregulation achievements in a manner that suits their circumstances and objectives.
  – The minimum reporting requirement for portfolios would be summary data on regulatory impacts and a list of measures.

Recommendation 11: Report progress less frequently from the next term of Parliament (bi-annually, subject to progress).
- Current internal quarterly reporting requirements are burdensome for some portfolios. Public reporting can create confusion and risk reporting errors where there is overlap with annual reports and other processes.
- Rationalisation of reports would provide clearer points for the public to track progress. A pattern of maintaining two or three main progress points per year will address the overlap between annual reports and Autumn Repeal Day progress updates. However, this needs to be approached in stages. The suggestion is that, from 2017, under calendar year reporting:

  – The requirement for a March quarter report should be dropped.
    ▪ This would allow space for the reporting of the previous calendar year's achievement via annual reports in March, without confusing the public by proximate publication of the March quarter's report (and a Repeal Day update).
  – The report for the third quarter could also be dropped, subject to progress against the overall target. If mid-year progress is well ahead of the pro rata delivery target it may not be required. However, the third quarter report may be required if mid-year progress is behind or tracking close to the pro rata delivery target.
    ▪ Specific details of reporting requirements would need to be determined taking into account the effects of the adoption of the other recommendations and with a view to avoiding the Government being surprised by under achievement.
  – Forward Work Programmes or interim progress reports may be necessary to provide assurances to the Government that the whole-of-government three year target will be achieved.

- The changes in Recommendation 11 are based on calendar year arrangements. These will be affected by a decision to align reporting to a financial year basis.

Recommendation 12: Shift annual reporting to a financial year basis from the next term of Parliament.

- Reporting on a financial year basis will better align deregulation achievements with Departments' existing annual reports and reporting requirements.
    – Under this change, the election period in 2016-17 would act as a transition time for fiscal year reporting to commence.

Recommendation 13: Allow portfolios to opt for sign-off on internal progress reporting by the SES head of the portfolio's Deregulation Unit rather than a portfolio Deputy-Secretary.
- As the deregulation agenda matures and Deregulation Units become increasingly accountable for progress within their portfolio, it follows that they can assume responsibility for much of the internal reporting, should the portfolio wish to operate in that way.
- Examples of internal reporting where the sign-off level could be delegated include:
    – quarterly and mid-year reports on achievement against targets
    – measure descriptions for annual reports
    – agreements to share or apportion regulatory burden adjustments between portfolios.
- RIS sign-off will remain at the Deputy Secretary level along with the offset guarantee proposed in Recommendation 3.

Key issue 5: Improving stakeholder engagement

Recommendation 14: Adjust stakeholder engagement in the ways identified below to enable more effective consultation.
- Where agencies are able to do so, they should continue to leverage stakeholder engagement off existing processes and/or partner with others for consultation purposes. The trend of allowing flexibility in the pursuit of more effective stakeholder engagement should continue.
    – Agencies acknowledge that MACs have not always proven to be the main or best mechanism for engaging stakeholders. Most agencies have developed other stakeholder engagement strategies and processes.

- Other possible consultative mechanisms include red tape open days (which could be led by the PSPM and relevant Ministers) on selected themes or other methods for direct interaction. In general, more effective use of existing and alternative processes will help to minimise consultation fatigue, particularly in large portfolios and sectors where certain stakeholders are likely to engage on multiple policy issues.
    – Agencies should continue to make better use of social media and more direct engagement with those affected by red tape e.g., small business (as well as usual stakeholders such as business associations). The general trend towards online engagement/consultation should be encouraged.

17.   Freedom of information (FOI)

Description

The *Freedom of Information Act 1982* (FOI Act) provides a legally enforceable right for individuals to obtain documents held by most Australian Government agencies and official documents of a minister, subject to some exceptions and exemptions, whether it is their own personal information or information about government policy or operational matters. An applicant does not need to provide any reasons for seeking access to such information.

Once a FOI request is made, the entity must follow the formal processes under the FOI Act to make its decision. A document that is requested must be disclosed unless exempt under the FOI Act or withdrawn. The entity or minister must take all reasonable steps to notify the applicant of their decision within 30 days of receiving the request. If an applicant disagrees with the entity's decision, they may seek internal review, external review by the Information Commissioner, with further review available in the Administrative Appeals Tribunal, or judicial review of the decision.

The Office of the Australian Information Commissioner (OAIC) has issued guidelines about the operation of the FOI Act which entities are required to have regard to under section 93A of the FOI Act when performing a function or exercising a power under the Act. The OAIC has also developed the *Guide to the FOI Act* which explains the FOI Act's main provisions and underlying principles and a range of other resources and fact sheets about the FOI Act.

Routine administrative access is available in some cases as an alternative to FOI requests. Administrative access means release of government information, in response to a specific request, outside the formal process set out in the FOI Act. The *Privacy Act 1988* (Privacy Act) also enables release of personal information outside of the FOI Act (Australian Privacy Principles 12 and 13).

Section 8 of the FOI Act requires entities to publish an information publication plan on their website showing how they propose to meet the requirements of the IPS. The IPS involves nine specific categories of information that must be published and facilitates entities publishing other information they hold:

1. details of the entity's structure (for example, in the form of an organisation chart);
2. details of the entity's functions, including its decision making powers and other powers affecting members of the public;
3. details of statutory appointments of the entity;
4. the entity's annual reports;
5. details of consultation arrangements for members of the public to comment on specific policy proposals;
6. information in documents to which the entity routinely gives access in response to requests under the FOI Act (disclosure logs);
7. information that the entity routinely provides to Parliament;
8. details of an officer (or officers) who can be contacted about access to the entity's information or documents under the FOI Act; and
9. the entity's operational information (relevant to exercising functions, powers, making decisions or recommendations affecting the public, e.g. rules, guidelines, practices and precedents relating to those decisions or recommendations).

Section 93 of the FOI Act requires entities to provide information for inclusion in the annual report produced by the OAIC. Entities subject to the FOI Act must provide quarterly and annual statistical reports to the Information Commissioner, about freedom of information matters within statutory timeframes. In summary, the quarterly report requires information about entity FOI request numbers, decision outcomes, exemptions claimed, response times, charges, disclosure log, internal reviews, and amendment of personal record requests. The annual return requires information about staff resources involved in FOI or IPS work, staff-hours spent on FOI or IPS work, and non-staff costs attributable to FOI or IPS. Separate returns need to be completed for each minister, parliamentary secretary, department and entity. If no FOI requests have been received during the period, a nil return must be submitted. The Information Commissioner uses this information as part of preparing the OAIC annual report, which includes a specific chapter on entity FOI statistics. The full dataset is published at data.gov.au and is accessible from a link on the OAIC's website. The dataset is extracted from the website used by agencies to input quarterly and annual statistical returns.[40]

There is a growing backlog of FOI requests. There were 2,649 outstanding requests at the beginning of 2013-14, 28,463 new requests received and 3,872 outstanding requests at the end of 2013-14. The OAIC estimated that the cost of activities across the Commonwealth attributed to the operation of the FOI Act was $41.8 million in 2013-14.

The FOI Act has recently been subject to review and proposed legislative reform. The *Freedom of Information Amendment (New Arrangements) Bill 2014* seeks to implement new arrangements to increase the efficiency of FOI and privacy regulation, reduce confusion and minimise the cost burden for applicants and entities. This includes reducing the size of government by abolishing the OAIC and transferring some functions to other entities. The Bill was introduced in the Parliament on 2 October 2014.

The FOI Act was reviewed by Dr Allan Hawke in 2013. Dr Hawke made 40 recommendations to streamline FOI procedures, reduce complexity and increase the effectiveness and efficiency of managing the FOI workload. The Government has not formally responded to the report.

Summary of feedback on costs and benefits of the policy

The review heard that entities had to devote considerable resources to managing FOI processes within a complex legislative and policy framework. The review observed that FOI requests are particularly resource intensive for small entities with limited corporate capacity. One entity advised that at times up to 50 per cent of its in-house legal capacity was devoted to managing the FOI processes. Some other entities reported requiring assistance to manage some matters.

Entities advised the review that quarterly reporting seemed unnecessary and could be replaced by annual reporting. Similarly, the review heard the system for gathering FOI statistics is burdensome and should be streamlined or simplified. There were concerns about the administrative burden of FOI for sensitive matters. One entity indicated there was a high volume of complex requests for matters that were publicly visible and where requests were generally fully or partially refused, but still had to be processed anyway.

A theme arising from these comments was that FOI was a burden that entities needed to manage rather than being an appropriate accountability mechanism. A number of comments suggested

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[40] See https://data.gov.au/dataset/freedom-of-information-statistics, accessed 18 August 2015.

FOI was used by the media to find documents that are embarrassing to government or by people seeking access to their own information.

Others indicated that requests for public information were unnecessarily tedious given there are other channels open to them to obtain information. Some FOI areas suggested that effective consultation and, where appropriate, negotiation with the requestor can ensure that requests are handled appropriately.

The review observed there are differing views about the effectiveness of disclosure logs. One view is that disclosure logs serve an important transparency purpose and, once documents are released, the log ensures that future requests, particularly from the media, will not be made for similar documents. Some entities put on their website in the disclosure log the decision, the documents released and the schedule of documents. Other entities indicate that documents relating to a decision on a particular FOI matter are available on request. The review heard these entities consider disclosure logs administratively burdensome to keep updated, are unwilling to not comply with web accessibility requirements, and query whether the disclosure log reduces the number of FOI requests.

The review also received representations about application fees and charges imposed as part of the FOI. The review considers this issue has been the subject of recommendations from recent reviews which are yet to be implemented and involve significant public policy considerations that extend beyond the terms of reference for this review.

Assessment against Principles for Internal Regulation

The FOI Act is the legislative underpinning of open government in Australia. The review considers that FOI is necessary to provide the public with a legally enforceable right of access to government documents. However, the FOI Act imposes a significant administrative burden across entities, which in some areas is not proportional to the risks being managed.

Improved stage of existing access mechanisms and processes

The review considers that proactive and consistent use of mechanisms under the FOI Act relating to administrative access, disclosure logs, and the unreasonable diversion of resources ground of refusal would assist entities to better manage resourcing challenges arising from FOI.

The review heard barriers to using administrative access include the culture within an entity, a lack of negotiation with the requestor, and the guidance on websites about the way in which requests for information should be made from government.

Administrative access to information and access to personal information under the Privacy Act are less resource-intensive mechanisms available than those under FOI. Individuals should be guided to use these mechanisms on entity websites and in negotiating a request with a requestor. For instance, where a document is available publicly, the document could be provided to the person administratively and the client asked to withdraw their request, to reduce processing costs of a decision under the FOI Act.

The review notes the Hawke report recommended developing guidance and assistance to encourage entities to develop administrative access schemes (Hawke recommendation 21(a)). The OAIC has implemented the recommendation by producing a fact sheet, *FOI agency resource 14: Administrative access.* The fact sheet explains administrative access, why it may be beneficial to release information outside the formal FOI process and how entities can set up an administrative access arrangement.

Similarly, the IPS requires entities to proactively publish general information about an entity and its operations and other information rather than in response to FOI requests. Entities should make greater use of this scheme to make information available publicly where appropriate. The OAIC has published materials to assist entities to meet their IPS obligations.

The review considers that disclosure logs provide an important transparency mechanism which assist in transparent and accountable government. The administrative burden of scanning and making such documents available online is low, with potential savings in having to individually provide such material to an applicant. Enhancing the use of disclosure logs is important for transparency and accountability of government, and to move towards a pro-disclosure culture across government.

More broadly, the review notes Dr Hawke released the FOI *Better Practice Guide* in June 2013 in conjunction with his report to assist entities to better manage FOI requests. This supplements the FOI guidelines, issued by the OAIC, which also include material on FOI processing.

While the review supports the concept of the IPS, it is important that it does not result in duplication of requirements for publishing relevant information publicly. While the FOI guidelines enable entities to cross-reference information published elsewhere for the purposes of the IPS, mandating particular publishing requirements which are already otherwise required reduce the benefits of the scheme. For example, requiring entities to publish information on statutory appointments appears to result in duplication as such information has been required on the AusGovBoards website since 2013.

While the Hawke review made an observation about considering whether the IPS requirements could be extended to other areas, such as research papers, expert/consultant reports, grants, loans and guarantees, there is a risk that further extending the scheme's requirements could duplicate other initiatives across government. Accordingly, the review suggests considering whether the IPS could be consolidated with other government transparency initiatives, such as the digital transformation agenda, to enhance public access to government information and data.

Reporting

The review heard mixed views about the value of FOI reporting. Entities reported that reporting quarterly is onerous and unnecessary. In response to those concerns, the review heard that reporting on a quarterly basis assists entities to have in place proper processes for collecting data, to maintain accuracy, and to reconcile figures annually. In addition, the review heard annual reporting could create extra work at the end of the financial year to reconcile statistics, when entities are occupied with other responsibilities.

The review considers that while the information published on the statistical dataset is drawn from quarterly datasets it could just as easily be developed from an annual data set. The review queries why reporting for the annual report on FOI needs to be done at the end of the financial year when other responsibilities may distract from this work, and suggests considering whether it could be done at a different time of the year.

The review suggests the quarterly process of statistical reporting is disproportionate from the risks to be managed, and more administratively burdensome than necessary. The FOI Act should be amended to no longer require entities to report quarterly and annually, and instead only provide relevant information annually to a single point in government.

While a concern was raised about the system for collecting statistics, the review notes administration arrangements have recently shifted, and that moving to providing annual statistics

could involve an opportunity to reduce the administrative burden associated with using the system.

Legislative reform

Legislative reform is necessary to reduce the administrative burden of requirements in the FOI Act regime across government. Implementation of a number of Hawke Report reforms would address concerns raised with this review about the regulatory burden imposed by the FOI Act.

If the Hawke Report recommendations cannot be implemented as a whole at this stage, the review suggests focussing on bringing forward specific measures to ease the administrative burden across government from FOI and improve the operation of the Act. Provisions relating to timeframes were raised with the review as an area that would greatly assist entities to better meet statutory requirements under the FOI Act. In particular, the review suggests it would be worth considering:

- simplifying and streamlining procedures requiring entities to seek the OAIC's agreement to extend timeframes, such as by:
    o only providing the OAIC with a role where the applicant has brought a matter under the OAIC's supervision; or
    o implementing the Hawke recommendation to remove the requirement on entities to notify the OAIC of extensions of time by agreement, and restrict the OAIC's role in approving extensions of time (Hawke recommendation 7);
- extending by another 30 days the restriction on entities or ministers agreeing with an applicant to extend the timeframe for processing a FOI request (see Hawke rec 8);
- enabling an extension of time for consultation on Cabinet-related material by up to 30 additional days (Hawke recommendation 9); and
- amending statutory timeframes in the FOI Act from 'calendar days' to 'working days' and excluding any period in which an entity is closed, for example during the 'shutdown' period over Christmas (Hawke recommendation 31).

Scope of access and exemptions from the FOI Act

The review noted a number of issues which affected the coherent operation of the FOI Act and whether certain matters should be available under the Act.

One example of an issue associated with the scope of access involved seeking access under the FOI Act to a public document. Some entities reported that they would make a decision to grant access under the FOI Act. While it may be possible to avoid making an administrative decision about such a request by providing administrative access, it requires the applicant to agree to withdraw the FOI request.

The review notes the Hawke report identified requests for public information as something that could be examined as part of a comprehensive review of the FOI Act.

Another example raised with the review was whether it is appropriate for a litigant to use FOI while investigations are in process or during legal proceedings. The Hawke report recommended that FOI processing should be suspended where an applicant has commenced litigation or there is a specific ongoing law enforcement investigation in process (Hawkerecommendation 39).

The review suggests considering whether the scope of access under the FOI Act be considered as a possible option to address these issues. Section 12 of the FOI Act limits the FOI Act for certain documents, for instance a document that is open to public access under another

enactment, but where a fee or charge applies. While there may be other possible options for addressing this issue, the review suggests considering whether the scope of access should be adjusted to cover circumstances where a document can be accessed on a website or through another legal mechanism.

The review also heard about requests from particular entities for exemptions from the FOI Act.

A key issue involved the FOI Act exemption for documents with a commercial value being too narrow for some entities to use. Section 47 of the FOI Act provides that a document is an exempt document if disclosure would result in information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed. The review heard one entity is unable to use this exemption for certain types of commercially sensitive information. The Hawke report recommends section 47 of the FOI Act be amended to make clear that it applies to documents that contain information about the competitive or commercial activities of agencies (Hawkerecommendation 19(a)). The review suggests considering implementation of this recommendation, or an alternative approach with a similar objective, to address concerns raised with this review about this matter.

The review also suggests considering whether exemptions for specific entities would be appropriate to address their concerns. The review notes that the Hawke report recommends that entities exempted under Part II of Schedule 2 of the FOI Act in respect of specific documents should justify their exemption to the satisfaction of the Attorney-General (Hawke recommendation 19(b)). In addition the Hawke report recommended the Attorney-General consider whether there is a need to include any other agencies in Part II of Schedule 2 (Hawke recommendation 19(c)). Accordingly, the review suggests entities which raised exemptions with this review provide them to AGD for further consideration given the Hawke report has not been implemented.

Recommendations:

17.1 Entities:

- **examine their FOI practices to ensure they impose the least burdensome mechanisms for responding to FOI requests; and**

- **consider more active publication of information to decrease FOI requests.**

17.2 AGD in consultation with relevant entities consider whether the Information Publication Scheme could be consolidated with other government initiatives for enhancing public accessibility of government information, such as the digital transformation agenda.

17.3 To reduce the administrative burden on entities arising from managing FOI requests, AGD should:

- **reduce the frequency of reporting imposed on entities for FOI matters from quarterly to annually;**

- **recognising challenges with the current legislative environment, seek the Government's agreement to prioritise implementing recommendations of the Review of Freedom of Information laws (the Hawke report) that would reduce the**

regulatory burden on entities and improve the operation of the *Freedom of Information Act 1982* (FOI Act); and

o **consider issues raised about exemptions and the scope of access to information under the FOI Act to enhance the operation of the Act.**

18.   Records and information management

Records Management and archives

Description

The *Archives Act 1983* (Archives Act) empowers the National Archives of Australia (Archives) to promote the creation, keeping and management of information in Commonwealth records in an efficient and economical manner, as well as provide access to the archival resources of the nation. Records and information management ensures that records are:

- systematically and efficiently created, captured and described;
- secured, stored and preserved for as long as they are needed; and
- destroyed or transferred to the Archives once they no longer have any residual business value.

Under the Archives Act, it is an offence to destroy Commonwealth records without permission from the Archives unless destruction is specified in another piece of legislation or allowed under a normal administrative practice. The Administrative Functions Disposal Authority (AFDA) issued by the Director-General of the Archives sets out requirements for keeping or destroying specific records of administrative business performed by most entities. This includes functions such as finance, human resources and procurement.

The Archives' *Digital Transition Policy* of 2011 requires entities to move to digital information and records management and away from paper-based records management. Digital transition includes replacing paper-based processes with digital processes and limiting the creation of new paper records to reduce the costs of storing increasing quantities of paper records.   While Archives assists entities to observe elements of the policy, it has sought to limit the creation of paper records by not accepting paper based records that are created digitally after 1 January 2016.

As part of the digital transition, the Archives administers 'Check-up Digital', an annual survey to help entities gauge their digital information management maturity and set clear direction for improved digital practices. It includes 18 capabilities and is delivered in the form of an online survey. The Archives asks all entities to complete the survey and received a 95 per cent response rate across entities in 2014. The survey is used to develop an annual report to the minister responsible for the Archives. Better practice is highlighted through the Archives' Awards for Digital Excellence, which recognises and promotes excellence and innovation in the management, use and reuse of digital information by entities.

In May 2014, the Archives announced the development of the Digital Continuity 2020 Policy to build on the digital transition policy. The Archives has developed a Digital Continuity Plan, which provides practical advice to entities on managing digital information to ensure that it remains accessible and usable for as long as it is needed. The Archives has set non-binding digital continuity targets for 2020, which involve:

- all new business and ICT systems and tools will comply with the International standard (ISO 16175), Principles and Functional Requirements for Records in Electronic Office Environments;
- entities will make and record business decisions digitally, using digital authorisations and workflows;

- information will be interoperable across the Commonwealth so it can be shared within and between entities;
- entities will meet minimum metadata standards set by the Archives so digital content is described, sharable and re-usable;
- entities will meet standard professional information and records management specialist qualifications, skills and capabilities set by the Archives; and
- entities will report annually on their progress in digital information management, and the Archives will report annually to government.

The Archives is consulting with entities to expand on those targets and continue policy development, with a focus on the pathways needed to achieve the targets.

The Archives Act establishes a right of public access to non-exempt Commonwealth records in the 'open access period' (transitioning from 30 years to 20 years over the period 2011 to 2021). The Archives must consult with relevant entities about a request to access information that may be exempt. The Archives Act requires the Archives to make a decision and notify an applicant within 90 days of receipt of an access request, after which the decision is deemed to be a refusal. The applicant may seek internal reconsideration or review of the decision in the Administrative Appeals Tribunal.

Summary of feedback on costs and benefits of the policy

Feedback about records management and the Archives involved:

- concern about the Archives not accepting paper created records after 2015;
- there are large number of records disposal authorities, which in some cases are difficult to amend after machinery of government changes;
- concern that policies required to implement electronic file management systems across government reflect a paper-based approach to records management;
- Archives' digital transition and digital continuity policies support the changing nature of records from physical to digital, and supports implementing innovative ideas on better ways of working. The policy provides enough requirements and implementation support without being unnecessarily prescriptive;
- the Archives needs to be linked with the digital transformation agenda to ensure information management requirements are incorporated into whole-of-government systems and data is appropriately managed to ensure continuity, 'findability' and accountability, and to improve productivity;
- the legislative framework needs to be modernised, and the 90 day timeframe for processing an access request is too short; and
- the Archives is not consistently engaged on information management policy development and decision-making across government.

Assessment against Principles for Internal Regulation

The review considers that the Archives plays an increasingly important role in ensuring that information generated is appropriately stored as a Commonwealth asset to support accountability, efficiency and effectiveness of government business and for information to be useable into the future.

The Archives administers the requirement for disposing and keeping records under the Archives Act through the AFDA, which contains 1068 records classes. To assist entities to find the relevant authority, the Archives has developed streamlined disposal authorities through the

AFDA Express, which contains 88 common classes of records. The Archives advised the review that it works closely with entities to ensure the AFDAs are accurate, and if they are not, the onus is on an entity to advise the Archives. The Archives also advised that compliance with the Archives Act simply involves not destroying records earlier than permitted. The review considers these requirements to be proportional to the objective of ensuring sound records management practices in entities.

The review understands that the purpose of the requirement for digital records from 2016 generated electronically to be provided to the Archives in an electronic form is to reduce the storage costs to the Archives and entities of duplicate paper based records. This requirement of the Archives was announced in 2012 and the Archives has worked closely with entities to assist them to meet the target. Records created in a paper-based format would still continue to be accepted from 2016. The review considers this requirement to be proportional to the risks to be managed.

The review noted that some entities applied Archives requirements in a manner that emulated paper-based records. The review understands decisions about the way internal record-keeping systems are established are a matter for entities to determine rather than the Archives. In this context, the review observes that entities may be missing opportunities to gain efficiencies or other benefits of operating digitally, which may make it more difficult to adapt to changes to government business under the digital transformation agenda.

The review heard positive feedback about the support the Archives gives entities in applying its policies of digital transition and digital continuity. The review supports Archives' approach to implementing these policies through better practice guidance and support to entities where possible. To ensure that entities see value in providing reporting the Archives requests, the review suggests the Archives publish its report to government as part of the digital continuity policy.

Recommendation:

18.1 The review recommends that the National Archives of Australia (Archives) publish its annual reports to government as part of the digital continuity policy.

The review heard that the Archives was engaged in whole-of-government initiatives on information management, such as digital transformation, on an ad hoc basis. This involved working level engagement about proposals being developed for consideration by the government, as well as senior level decision-making about such matters. To avoid imposing an administrative burden, records and information management requirements need to be built into the design of information management and business systems. This is particularly important to enable data to have value in the future, for example by enabling it to be found, be interoperable with other information management systems, and archived appropriately so it can be used into the future.

The review suggests the Archives should be more closely involved in the work of entities and decision-making processes on government information management matters, including the digital transformation agenda. Opportunities for the Archives may arise by considering this as part of the Digital Services Standard, refreshing Enterprise Resource Management systems, the shared and common services service catalogues, or the ICT2PR.

Recommendation:

18.2 The review recommends the Archives work with entities to be more closely involved in policy development processes and decision-making forums on government information management, including digital transformation-related matters, to:

o **reduce the administrative burden arising from meeting their responsibilities under the *Archives Act 1983*; and**

o **ensure government information and data is usable for the future.**

Statutory period for responding to access requests

The review heard that the requirement for the Archives to process a request to access a Commonwealth record in the open access period in 90 days imposes a significant administrative burden on the Archives and the policy owners of the relevant information.

The review understands the impact of this requirement varies depending on the volume and complexity of the records concerned. Ninety-five per cent of access applications received by the Archives are finalised within 90 days. However, for a majority of records that contain sensitive material the Archives is currently unable to meet the statutory timeframe. These records require referral to one or more entities for advice on whether the material remains sensitive before the decision on access can be finalised.

The review understands that some of the difficultly of meeting the timeframe is attributed to a small number of researchers placing considerable demands on the resources of the Archives. For example, three applicants account for more than 10,000 access applications, representing more than half of the Archives' outstanding backlog of applications.

The review notes that the Hawke Report recommended that time periods in the *Freedom of Information Act 1982* be changed from calendar days to working days (Hawke recommendation 31). The review also recommended enabling there to be an agreement to extend time with the agreement of an applicant (Hawke recommendation 8) and for consultation on Cabinet-related material (Hawke recommendation 9).

The review supports these recommendations from the Hawke report applying in principle to access requests under the Archives Act to reduce the administrative burden.

Recommendation:

18.3 The review recommends that AGD work with the Archives to develop a proposal to amend the 90 day requirement for processing requests for access to information under the *Archives Act 1983* to reduce the administrative burden by:

o **changing the calendar day requirement to a business day requirement; and**

o **provide greater flexibility for the Archives to consult relevant entities on information requested under the Act.**

Beginning work on the future of accessing government information

There is duplication, inconsistency and a lack of coherence in the operation between information access schemes under the FOI Act, the Privacy Act and the Archives Act. For example, amendments establishing conditional exemptions in the FOI Act in 2010 mean it is more difficult for the Archives to release records over 20 years old than it is for entities to release documents

under the FOI Act, despite more recently generated documents potentially containing greater sensitivities. Similarly, the review observed documents about peoples' personal information are available under both the FOI Act and the Privacy Act, leading to confusion about which access scheme should apply.

The Hawke report recommended a comprehensive review of the FOI Act which should consider the interaction with the Archives Act and the Privacy Act (Hawke recommendation 1).

When operating in an environment where records are born digital, there is scope to streamline government processes relating to accessing government information. Processes for accessing government information under the archives, FOI and privacy legislative frameworks will benefit through automated mechanisms to retrieve government information, while also becoming increasingly responsive.

Legislative reform will be necessary to take full advantage of these opportunities. The way in which information is processed in response to a request for information under the FOI, privacy and archives access schemes will also change. For example, the Archives advised the review that it manually examines records subject to an access request to determine whether an exemption under the Archives Act applies and consults with entities about its approach in each case. This process is considered necessary for effective and consistent decisions and to ensure sensitive material is not inadvertently released. However, this manual process imposes a significant administrative burden with a high resourcing cost to entities, while being prone to human error despite robust procedures.

Complete digital transition of Commonwealth records will lead to substantial improvements in efficiency and effectiveness, including an ability to provide access to government records in multiple formats and platforms, significant improvements in the access examination process , and a reduced administrative and financial burden on entities in meeting their obligations under the Archives Act.

The review suggests an integrated legislative framework covering the life-cycle of government information, from creation and storage to retrieval and sentencing, could improve efficiency and effectiveness by establishing a simpler and more coherent framework for accessing and managing government information in a digital environment.

It is appropriate to commence with legislation regulating archival responsibilities of the Commonwealth as it covers the creation, management and sentencing of information contained in Commonwealth records, as well as access to such records during the open access period.

Recommendation:

18.4 The review recommends that AGD begin work with relevant entities to scope and develop a simpler and more coherent legislative framework for managing and accessing government information during its life-cycle in a digital environment through staged reforms, commencing with legislation regulating archives.

19.　　Commonwealth Fraud Control Framework

Description

The Commonwealth Fraud Control Framework exists to assist entities to manage risks that may lead to fraud against the Commonwealth, and to manage prevention, detection and investigations of fraudulent activities. The framework comprises three tiered documents:

- **Fraud rule** (section 10 of the PGPA Rule) – a legislative instrument binding all Commonwealth entities which sets out the minimum principles-based requirements of fraud control. It requires the accountable authority of a Commonwealth entity to take all reasonable measures to prevent, detect and deal with fraud relating to the entity, including by:
  - conducting fraud risk assessments regularly;
  - developing and implementing a fraud control plan that deals with identified risks following a risk assessment; and
  - having appropriate mechanisms for preventing, detecting, investigating, and recording and reporting fraud incidents.

- **Commonwealth Fraud Control Policy** – supports accountable authorities to discharge their responsibilities under the fraud rule by setting out key principles of fraud control which must be applied, but allows entities some flexibility to develop measures adapted to their own risks.
  The fraud control policy is binding on NCEs and is intended to be better practice for corporate entities to meet the requirements of the fraud rule. Mandatory requirements include:
  - *Prevention and training* – documenting procedures, meeting relevant fraud investigation competencies and qualifications;
  - *Investigations* – applying requirements of the Australian Government Investigations Standards, such as documenting procedures and decisions, circumstances for referral of potential serious or complex fraud to the Australian Federal Police, and recovering financial losses; and
  - *Reporting requirements* – entities providing information for the Australian Institute of Criminology (AIC) to report on fraud instances and control arrangements; AGD reporting annually to the Minister for Justice on whole-of-government compliance with the fraud rule and policy based on the AIC's information; and entities reporting to their minister annually on fraud initiatives, as well as significant fraud risks and incidents for the entity.

- **Resource Management Guide No. 201 - Preventing, detecting and dealing with fraud** – sets out better practice for fraud control for all Commonwealth entities.

The ANAO published a Better Practice Guide, *Fraud Control in Australian Government Entities*, in 2011. It is based on the previous fraud control guidelines implemented under the FMA Act and is now out of date.

The Commonwealth Fraud Control Framework was reviewed in 2014 to enable it to be implemented under the PGPA Act.

Summary of feedback on costs and benefits of the policy

The review heard there was a perception that the Commonwealth Fraud Control Framework had become more cumbersome under the PGPA Act as it comprises three documents in place of five lines of FMA Regulations together with guidelines issued as a legislative instrument.

The review observed there was some confusion about which elements are mandatory, about the extent to which small entities are able to comply with mandatory requirements, and about application of the Commonwealth Fraud Control Framework to low level, or trivial fraud. The review also heard that more than two thirds of CCEs comply with the framework despite it not being mandatory. Concern was expressed that fraud was considered the responsibility of specific fraud control managers or officers, rather a responsibility for line areas and line managers.

Feedback from entities indicated the training requirement is an administrative and costly burden, is mandatory but not relevant to smaller entities, and is difficult to comply with in material entities due to staff moving between positions. However, entities reported favourably about AGD's online whole-of-government fraud awareness training package to facilitate mandatory fraud and corruption awareness education for all staff.

While the review was advised the Australian Government Investigations Standards form a mandatory part of the fraud policy, it was reported that there should be more flexibility given to line areas of entities to initiate a fraud investigation. The review heard that the Certificate IV in Government (Fraud Control) is very basic and not effective as a requirement.

The review was advised that reporting requirements were too onerous and that ministerial reporting requirements were not clear. Some entities advised that they had no fraud incidents but were asked to complete the entire AIC survey and report to their minister annually. The review also heard the AIC survey is not sufficiently clear to promote consistency.

The review also heard that:

- guidance the ANAO offers in its better practice guide needs to be updated to reflect the PGPA Act framework;
- the Commonwealth Fraud Control Framework overlaps with the *Public Interest Disclosure Act 2013* (PID Act) and the APS Code of Conduct, resulting in a lack of clarity about how to report and investigate incidents of alleged fraud; and
- there were issues with entities having authority to seek disclosure of personal information for the purposes of investigating alleged fraud matters.

Assessment against Principles for Internal Regulation

Implementation of the framework

The review considers it important that principles underpinning fraud control be maintained to address the risk of fraud within the Commonwealth. The Commonwealth Fraud Control Framework now forms part of the duties of accountable authorities under the PGPA Act. To be effective, it needs to be embedded as part of the ordinary duties of officials across Commonwealth entities. While the review supports this objective of the framework, it considers that prescriptive and compliance focussed measures might hinder this objective.

The Commonwealth Fraud Control Framework seeks to allow entities to manage risks in a way which best suits their circumstances. The review understands that while the content of the requirements for fraud did not substantively change, the approach to fraud control significantly changed with the adoption of the PGPA Act framework. The review understands that most of the content of the previously binding guidelines was moved to the non-binding guidance to enable entities to adopt a risk-based approach. This was achieved by developing a principles-based fraud rule under the PGPA Act. The rule is supported by more detailed requirements in the fraud policy, which is binding on NCEs as government policy. The fraud policy expressly declares that it is best practice for CCEs, despite using mandatory language.

The review heard mixed views about whether the mandatory elements in the fraud policy are necessary. Officers responsible for fraud control prefer the framework to be mandatory to enable them to implement measures necessary to identify and address fraud. However, other feedback suggested there should be more flexibility for entities to adopt a risk-based approach when dealing with alleged incidents of fraud, particularly low level or trivial matters.

The overly regulatory focussed approach in the policy is at odds with the Principles for Internal Regulation identified in this review. Some mandatory elements of the fraud policy are overly prescriptive and expensive to comply with, particularly for small entities. For example, one small entity explained that due to the time and expenses involved, it has adopted a position of non-compliance with the Commonwealth Fraud Control Framework as it has a low risk of fraud. The review suggests some prescriptive elements should be consolidated with the resource management guide as better practice to enable them to make risk-based decisions about fraud control compliance, rather than be non-compliant with the framework.

The framework should better support risk-based decisions and accountability for taking risks to better facilitate embedding fraud management as a responsibility of everyone, rather than leaving fraud for the fraud control 'experts'. Below are areas of prescriptive regulation in the fraud policy the review suggests become better practice to support, rather than duplicate, existing obligations under the PGPA Act framework and enhance risk-based decision-making.

Fraud prevention - procedures

The fraud policy requires entities to document instructions and supporting procedures for officials to use as part of their normal responsibilities.

The review suggests the fraud policy is too prescriptive and requires entities to document instructions and supporting procedures relevant to fraud control imposed under the duties of the PGPA Act and the fraud rule. Under section 16 of the PGPA Act, accountable authorities have a duty to establish and maintain systems relating to risk and control. This involves establishing and maintaining a system of risk oversight and management for the entity, and an appropriate system for internal control, which staff of the entity are required to comply with. The fraud rule requires entities to take all reasonable measures to prevent, detect and deal with fraud relating to the entity, including by having in place appropriate mechanisms for preventing fraud. The review considers that the resource management guide sets out better practice which supports entities to meet these obligations and, as a result, the requirement in the fraud policy is unnecessary and inconsistent with the principles-based approach of the PGPA Act.

Fraud prevention - training

Entities are required to ensure that officials primarily engaged in investigating fraud meet minimum required fraud control competency requirements within 12 months of engagement.

Minimum requirements involve a Certificate IV in Government (Fraud Control) or equivalent for officials primarily engaged in fraud risk assessment, and a Diploma of Government (Fraud Control) or equivalent for officials primarily engaged in the coordination and management of fraud control activities.

The review heard views which queried the effectiveness of mandatory training requirements relating to fraud. The review suggests the training requirement for NCEs should enable entities to make a risk-based decision about their in-house fraud capability and applicable training, supported by better practice.

<u>Ministerial reporting</u>

The fraud policy requires 'significant fraud' matters to be reported to ministers. The review heard this requirement serves an important transparency purpose to ensure ministers are informed about significant incidences of fraud that occur within their portfolio.

The review considers there to be scope for the reporting under the fraud policy to be better integrated within the PGPA Act. Under section 19 of the PGPA Act, an accountable authority has a duty to keep their minister informed about the activities of the entity. The review considers that informing ministers about 'significant fraud' should already be an obligation on accountable authorities. Instead of an annual reporting requirement to ministers, the review suggests that entities make a risk-based decision about when and what to report to ministers about fraud, taking into account applicable guidance material. This report should be provided as soon as practicable after a significant incident occurs.

Recommendation:

19.1 AGD to consider removing certain mandatory elements of the Commonwealth Fraud Control Policy to enable entities to adopt a risk-based approach, in particular in the areas of fraud prevention, training and reporting.

Guidance on fraud control

The review observed some discrepancies between comments it received from entities about their understanding of the fraud control requirements and applicable guidance.

<u>Clarity of guidance material on investigations</u>

The review heard mixed views on the requirement for a qualified fraud officer to carry out fraud investigations. The review understands there is discretion involved in line areas being able to determine whether allegations require an investigation without referring the matter to the relevant fraud manager, or even that trivial fraud be investigated. However, there is a perception in some entities that this is not the case. Examples were raised with the review of allegations about incorrect entry of information into a timesheet, or the theft of stapler, both being required to be referred to a qualified investigator to determine whether an investigation should occur.

The resource management guide states that 'some matters of fraud may be so trivial as to not warrant investigation' and that 'entities should have graduated and proportionate responses to non-compliance and trivial fraud'. However, it also states that 'investigations should be carried out by appropriately qualified and experienced personnel'. The review observes this issue may be due to the way in which entities implement their internal fraud control procedures without

applying an appropriate risk-based approach, informed by guidance material suggesting investigations be carried out by qualified investigators.

The review suggests considering whether this issue could be addressed through express guidance in the framework that there is flexibility for line areas to investigate alleged fraud matters in appropriate circumstances, and about risk-based decision-making when applying fraud control procedures in entities.

Consolidation of guidance

The review also heard that the ANAO better practice guide on fraud control contains some useful material but is now outdated. The review understands the ANAO has commenced work to update this material for current Commonwealth Fraud Control Framework under the PGPA Act. While AGD's guidance material is focussed on entities meeting requirements of the Commonwealth Fraud Control Framework, the ANAO's better practice guide is intended to be a tool for senior management and officials with direct responsibilities for fraud, as well as useful to a wider audience, including employees, contractors and service providers. Nonetheless, there appears to be:

- some duplication and variation about what constitutes better practice (e.g. what to include in fraud control plans and suggestions about when to update them); and
- a greater administrative burden on entities than appears to be necessary (e.g. 21 pages from AGD plus 101 pages from the ANAO).

The review has made a central recommendation about the ANAO taking the opportunity to review the continuing need for it to maintain better practice guidance where policy owners or regulators have developed their own policy guidance material. For this reason, the review considers there is an opportunity now to consolidate guidance material.

Recommendation:

19.2 The review recommends that AGD, in consultation with the ANAO, review existing guidance relevant to fraud control with a view to ensuring it is streamlined and consolidated into the framework.

Whole-of-government reporting on fraud

Both the AIC and AGD prepare whole-of-government annual reports on fraud. The AIC's report covers fraud instances and control (last report covered financial years 2010-11 to 2012-2013), and AGD's report to the Minister for Justice covers compliance. The review heard that the whole-of-government report on fraud should be enhanced to help entities to improve business processes in detecting fraud across the Commonwealth by utilising captured information more effectively. The review suggests this might assist to enhance training, prevention and detection of fraud.

For there to continue to be value in the AIC's annual survey of entities, the review considers the information gathered and presented in both reports should be made as useful as possible and be publicly visible. The review suggests AGD and AIC work together to prepare a single consolidated whole-of-government report on fraud control that is published on annual basis. The report should enhance accountability and transparency of matters identified in the fraud survey. This would also enable reporting requirements in the fraud policy to be streamlined.

Recommendation:

19.3 The review recommends that AGD cease its annual report on fraud compliance to the Minister for Justice, and instead work with the Australian Institute of Criminology (AIC) to develop and publish a single whole-of-government annual report on fraud control.

While the review heard entities find collecting the data for the AIC's survey to be burdensome, it is the only way to get a snapshot across entities to identify compliance with the framework. However, the review considers this survey also serves important transparency and accountability purposes.

The review heard concerns that the survey needs to be improved. It was suggested clearer guidance be provided to ensure more consistent reporting of fraud related matters across entities, as some entities may be under or over-reporting fraud at present. Similarly, the review heard that questions in the survey are ambiguous and explanatory notes are required to be submitted in addition to survey responses. There is no feedback on how the data is interpreted or used. It is also unclear to entities about how to report on fraud investigations that cross multiple financial years.

The review suggests revising the AIC's survey to make it less burdensome for entities, such as enabling entities with no instances of fraud to report a nil response, and providing clearer guidance to ensure more consistent reporting across entities about fraud matters.

Recommendation:

19.4 The review recommends that AGD work with the AIC to revise its annual survey on fraud to make it less burdensome and provide clearer guidance for more consistent reporting across entities.

Overlap with the PID Act and APS Code of Conduct

The PID Act establishes a scheme to facilitate reporting of wrongdoing in the Commonwealth public sector, including matters such as contravening a law, abusing public trust, and maladministration.

An assertion that a person has stolen public property or committed a fraud against the Commonwealth may overlap with the PID Act and APS Code of Conduct, leading to some confusion about how to handle the matter. Subsection 47(3) the PID Act provides that an investigation may include consideration of whether a different investigation or reinvestigation should be conducted by the entity or another body under another law of the Commonwealth. However, the review heard that restrictions on disclosure under the PID Act create impediments to effective management as, for example, only officers directly involved in an investigation are able to see the relevant information.

The review observes that the Commonwealth Fraud Control Framework, the PID Act and the APS Code of Conduct require reporting of matters that would cover fraud and provide separate processes for investigating such matters. It is not clear what protection would be afforded to officials who report alleged fraud incidents if not using the PID Act framework. The potential overlap between these three schemes should be addressed, potentially through guidance to entities on how to deal with such situations.

The review suggests further consideration to the overlap between the Commonwealth Fraud Control Framework, PID and the APS Code of Conduct regimes be considered. This could include referring the issue to the statutory review of the PID Act that will commence in January 2016, in accordance with section 82A of the PID Act.

19.5 The review recommends that AGD, APSC and PM&C work together to better manage the apparent overlap between the Fraud Control Framework, the *Public Interest Disclosure Act 2013* and the APS Code of Conduct.

The review understands that entities have different positions or are unsure how they may use and disclose personal information to investigate fraud and meet certain compliance functions and legal obligations under the Commonwealth Fraud Control Framework. The review was advised this impediment creates duplication of effort by entities and law enforcement agencies.

The review understands the OAIC has advised AGD that a privacy impact assessment should be undertaken as a next step. The purpose of an assessment is to identify the impact that a project might have on the privacy on individuals, together making recommendations for managing, minimising or eliminating such impacts. The assessment would consider the extent to which sharing information in response to a fraud investigation is already permitted by the Australian Privacy Principles under the Privacy Act. Where that information sharing is not permitted, the assessment should consider:

- whether the sharing of that personal information is reasonable, proportional and necessary to achieve the policy objective of investigating and dealing with fraud; and
- if so, options for permitting that information sharing under the Australian Privacy Principles.

The OAIC suggested one option could involve amending section 10 of the PGPA Rule to include a specific provision authorising the sharing of personal information between entities when investigating or otherwise dealing with fraud incidents.

While privacy legislation extends beyond the terms of reference for this review as it applies both internally and externally to government, the review suggests that to reduce the administrative burden, work be done to ensure there is express authority for entities to conduct fraud investigations. The review suggests that the barriers to sharing information are similar between frameworks for personnel security and fraud, and that work could be done jointly to identify and address these issues.

Recommendation

19.6 The review recommends that AGD coordinate work with relevant stakeholders to identify and address issues associated with entities' authority to seek and disclose personal information relevant to a fraud investigation.

20. Legal Services Directions

Description

The LSDs are a set of binding rules issued by the Attorney-General about the efficient and effective delivery of Commonwealth legal services. The LSDs set out requirements for sound practice in the provision of legal services to the Australian Government. The LSDs and guidance material provide tools to manage legal, financial and reputational risks to the Australian Government's interests.

The LSDs are binding on NCEs. They have extended application to a body or person that handles claims or conducts litigation for or on behalf of the Commonwealth. The Attorney-General may decide that a particular body or person is to comply or should be exempt from the LSDs. The Office of Legal Services Coordination (OLSC) in AGD administers the LSDs and may make some delegated decisions.

Legal Services Multi-Use List

Since 1 June 2012 applicable entities have been required to use the Legal Services Multi-Use List (LSMUL) to access approved legal services providers to conduct Commonwealth legal work. The LSMUL is a form of prequalified tender which allows entities to prequalify suppliers for subsequent procurement opportunities. The objectives of the LSMUL are to reduce barriers to entry into the market for Commonwealth legal work, gather and disseminate information on the performance of legal service providers, and support entities to be informed purchasers of legal services.

Under the LSDs, entities are required to comply with the following requirements relating to the LSMUL:
- entities are required to procure legal services from firms on the LSMUL, unless the Attorney-General grants an exemption;
- entities must consider the amount of pro bono legal work a firm does in deciding who to award work to and return a compulsory evaluation of that firm to AGD;
- entities are required to evaluate LSMUL panellists based on recent performance (see compliance and reporting below);
- entities are also required to lodge an annual compliance certificate with AGD.

AGD's Legal Services Multi-Use List Guidance Material states that the LSMUL needs to be read in conjunction with Commonwealth procurement policies, including the CPRs. Entities which are exempt from the requirement to use the LSMUL may elect to use the LSMUL by seeking approval in writing from AGD. While the LSMUL does not apply to engaging legal counsel, the LSDs apply differing daily fee thresholds with specific approval requirements.

Compliance and reporting

The LSDs provide for the Attorney-General to apply sanctions to entities and legal service providers for non-compliance. AGD has issued a guidance note covering compliance to assist entities to meet LSD compliance requirements. AGD monitors compliance to address emerging, systemic or significant issues across the Commonwealth through mandatory reporting requirements, entity compliance notifications and annual compliance certificates.

Entities are required to complete a number of mandatory reporting requirements unrelated to compliance, which are referred to in different ways under the LSDs. These include:

- significant issues reporting (paragraph 3) – entities must report to AGD or the Attorney-General on significant issues that arise in the provision of legal services, especially in handling claims and conducting litigation.
- annual legal services expenditure reporting (paragraph 11) – entities must report their legal services expenditure to AGD within 60 days of the end of the financial year, in a format approved by OLSC. Entities must also ensure that expenditure figures are published annually. There is no required form – entities use their annual report or a website.
- settlement approval arrangements (paragraph 3.2 and Appendix C) – entities involved in significant issues matters, or which seek to depart from the normal mechanism for settling a claim, need to refer the matter to AGD to seek the Attorney-General's agreement for a matter to be settled.
- post-work evaluation of LSMUL providers (item 6 of Appendix F) – entities using external legal services providers on the LSMUL must provide AGD with an electronic report about the service received in an approved form and specified time period.

AGD publishes an annual report of Commonwealth legal services expenditure on its website broadly covering information entities provide to AGD, an overall picture of the state of Commonwealth legal services market, and a report on pro bono activity by LSMUL providers.

Reviews of legal services arrangements

The AGD Secretary has commenced a review of Commonwealth legal services to identify, among other things, efficiencies that can be gained in government legal costs. The review is expected to be completed and a report provided to government by no later than 30 June 2016. The last significant review of Commonwealth legal services was conducted in 2009 by Tony Blunn AO and Sibylle Krieger. The recommendations emphasised the need for a more coordinated and strategic approach to the provision of legal services to the Commonwealth.

Summary of feedback on costs and benefits of the policy

The LSDs received a significant amount of feedback during the review relating to compliance, reporting, the operation of the LSMUL, and other specific issues.

Compliance and reporting

Entities reported the LSDs impose an unnecessarily high level of compliance on entities. The review heard it is not clear how requirements imposed on entities to monitor and record breaches of the LSDs was used by AGD when it is reported, and there was no visibility of sanctions being imposed for non-compliance. Concern was also expressed that breaches of the LSDs were required to be reported to the Attorney-General regardless of the significance of the breach.

The review heard that compliance reporting involves duplication. There was concern that when an entity is non-compliant with the LSDs, it is required to report it to AGD immediately and duplicate that information in an annual report, which also requires accountable authority approval.

Significant issues reporting

Entities reported significant issues reporting requirements should be streamlined.

Annual legal services expenditure reporting

The review heard that annual reporting on legal services expenditure was a significant issue for entities. Entities advised the review that:
- legal expenditure reports are a large impost which requires extensive work. One entity advised the review that it needs to create two reports – one for internal use and another for external use;
- this type of reporting is of little value as AGD does not provide information about what the data is used for or give any feedback;
- entities found reporting down to the exact cent unnecessarily burdensome; and
- AGD should implement a reporting threshold for entity's annual spend on legal services for the purposes of the LSDs.

Post-work evaluation of LSMUL providers

The review received feedback that the requirement to submit an evaluation on every instance of legal services covered by the LSMUL was meaningless (as services were provided by individual lawyers in a firm), onerous (particularly for entities receiving legal advice for large numbers of matters due to the consultation steps in the process of rating them), and rarely considered by entities. The review consistently heard entities express concern that failure to submit evaluations on the provision of legal services was regarded as a breach of the LSDs.

The review also heard that the reporting model associated with the LSMUL assumes a poor understanding of legal services procurement across government, which is not the case in all entities.

LSMUL

The review heard a significant amount of feedback about the effectiveness of the LSMUL. A summary of this feedback is set out below:
- the LSMUL does not provide an efficient or effective framework for obtaining legal services
- the LSMUL is too inflexible as a result of mandatory contract clauses – for example the mandatory indemnity clause is appropriate for standard legal advice procurements, but not where the contract is for the engagement of a secondee from one of the panel providers;
- the LSMUL is not fit-for-purpose – it is premised on some entities not having the skills to manage the ordering process and avoid cost overruns, which is not the case for all entities;
- inclusion in the LSMUL does not include a value-for-money assessment for the Commonwealth;
- inconsistency between the LSDs and Commonwealth tender requirements - for example, it is not always possible to meet tender requirements for advice on highly sensitive matters due to timing/sensitivity issues, resulting in a breach of the LSDs being declared;
- having to seek a quote for legal services of low value legal services was a waste of time and was likely to cost the Commonwealth more than it saved;
- entities have adopted a wide range of different approaches in engaging providers under the LSMUL, varying from direct procurement under the LSMUL without complex

arrangements, to very significant administrative overlays (e.g. agreeing to the terms of a 50 page order form for every supply of a legal service); and

- entities have set up parcelling arrangements that resemble legal panels (i.e. through a procurement process which may require providers to repeat information already available on the LSMUL; and also their own deed arrangements departing from 'standard' arrangements under the LSMUL).

Specific issues raised with the review

More broadly, the review heard that:

- the LSDs could be modified to increase the threshold for major claims - the existing threshold has been in place for over 15 years and has never been indexed; and
- the requirement for AGD or the Attorney-General to approve counsel rates above those set in the LSDs imposes an administrative process with little associated value.

Assessment against Principles for Internal Regulation

AGD's review of legal services

The review considers there are significant issues with the effectiveness in the operation of the LSDs and the LSMUL at present. While work has commenced toward AGD review, the review understands that its terms of reference have not yet been settled. Based on feedback, in particular about compliance based elements of the framework, the review suggests AGD's review ensure the requirements under the LSDs and the LSMUL are proportional to the risks to be managed, and consider whether risk-based approach could be adopted where possible.

Recommendation:

20.1 The review recommends that AGD's review of legal services should apply the Principles for Internal Regulation in considering the future arrangements for the Legal Services Directions, in particular the principle that regulation should be proportional to the risks to be managed and support a risk-based approach where possible.

Post-work evaluation of LSMUL providers

The review is concerned about the requirement for entities to submit to AGD evaluations of Commonwealth legal work undertaken by external legal services providers under the LSMUL being too prescriptive. The evaluation process rates LSMUL panellists based on recent performance. However, the review heard that the ratings are rarely considered by entities as they are subjective, based on upon the staff allocated to the activity.

The review understands this requirement was put in place following multiple report recommendations about gaining efficiencies from becoming a more informed purchaser of legal services. The review considers that the requirement for entities to evaluate Commonwealth legal work by an external legal services provider is onerous and that, in its current form, such a report is of little value to entities.

The review considers that this evaluation should not be a mandatory requirement and is being disproportionate with the objective of the LSMUL for entities to be informed purchasers of legal services. The review suggests the requirement be repealed as soon as possible.

Recommendation:

20.2 The review recommends that AGD seek the Attorney-General's agreement to repeal the mandatory requirement under the Legal Services Directions to submit evaluations of Commonwealth legal work undertaken by external legal services providers as it imposes a disproportionate regulatory burden on entities.

Other issues for consideration in AGD's review of legal services

The review received a significant number of concerns about the way in which annual legal services expenditure reporting operates under the LSDs. The review understands AGD considers it important to complete its annual legal services expenditure report, which it publishes. The report provides an overview of legal services expenditure each financial year and, where possible, identify and report on trends, patterns and changes in entity legal services spend compared with previous years.

The review suggests AGD consider the feedback received by the review with a view to reducing the regulatory burden on entities, in particular enhancing the level of consistency with whole-of-government requirements for procurement. The review suggests that AGD consider whether the least administrative burdensome mechanism is in place for entities to complete this reporting requirement. For entities to see value in completing such reporting, the reporting requirement should be able to be used for both internal and external purposes.

The review notes feedback from entities querying the effectiveness of the LSMUL and other specific issues. The review suggests AGD consider these issues in its review.

Recommendation

20.3 The review recommends that AGD consider and respond to other issues raised with this review as part of its review of legal services.

21. Protective Security Policy Framework (PSPF)

PSPF Governance Assessment

Description

The PSPF provides appropriate controls for the Australian Government to protect its people, information and assets, at home and overseas. Governance arrangements and core policy documents in the PSPF describe the higher level mandatory requirements applicable to entities. Detailed protocol documents and guidelines support the personnel security, information security and physical security core policies. The protocol documents set out minimum procedural requirements. Some entities have specific security risks that will require them to apply more than the minimum requirements.

The PSPF applies to NCEs. The principles of the PSPF are being extended to apply to CCEs and wholly-owned Commonwealth companies that have received a government policy order (GPO) under the PGPA Act.

There are 13 governance requirements in the PSPF (abbreviated to GOV-1 to GOV-13). Key governance requirements of the PSPF involve entities:

- applying risk-based principles and policies to:
  - manage the functions of an entity and the security threats its faces; and
  - develop, implement and maintain protective security measures;
- preparing, monitoring and reviewing security plans to ensure they address risks in the operating environment;
- reporting annually to their portfolio minister on the level of entity compliance with the PSPF;
- developing a culture of security through strong programmes of security awareness and education to ensure employees fully understand their security responsibilities; and
- investigating security incidents promptly and with sensitivity.

Summary of feedback on costs and benefits of the policy

The review received feedback about the requirements of the PSPF. Entities indicated that PSPF requirements have increased over recent years and the framework has been amended several times since it was implemented. Some entities reported those changes were not well communicated.

Entities reported generally that the PSPF framework imposes significant work on entities through mandatory compliance and reporting requirements.

The PSPF also poses challenges for entities with lower risk profiles of having to increase security controls to share information with a higher classification.

Assessment against Principles for Internal Regulation

The PSPF is critical to maintaining the security necessary for effective government operations and outcomes, and must reflect the security risks faced by Australia. While a heightened security environment increases the risks to the Commonwealth, the review considers it is important not to impose an administrative burden unnecessarily or disproportionately.

The review notes that the framework seeks to make clear to users which elements are mandatory and which are guidance, as well as seeking to identify the source of the requirements. The

documents within the framework are mapped in tiers, are publicly accessible and provide a balance of requirements and guidance for users across government.

While the framework is underpinned by risk management principles, it applies a compliance approach which may not assist entities to effectively engage with risk. The review suggests it would be more coherent for the framework to be premised on establishing the minimum requirements of a security governance framework and establish assurance and reporting requirements proportional to risk. The framework would also benefit from adopting a principles-based approach, where possible, to be more consistent with the PGPA Act framework.

The draft GPO for CCEs and wholly-owned Commonwealth companies provides a minimum set of governance and other protective security principles to enable entities to apply protective security that is more proportional to the risks being managed than in the PSPF. Accordingly, the review considers that the PSPF governance requirements appear to be overly prescriptive and would benefit from being reviewed. Examples of possible changes could include:

- requirements relating to the roles of entity security adviser, information technology security adviser, and the SES officer responsible for protective security could be consolidated (GOV-2 and GOV-3);
- requirements to develop a security plan as well as separate security policies could be consolidated and streamlined (GOV-4 and 5). Entities would be better placed applying PSPF guidance material where appropriate within their entities rather than developing their own policies. In addition, they should not duplicate section 16 of the PGPA Act, which imposes a duty on accountable authorities to establish and maintain systems relating to risk and control;
- there is scope to streamline annual internal audit and reporting requirements to minimise duplication with PGPA Act duties and reduce the administrative burden on entities where possible. For example the draft GPO requires entities or companies to report 'security violations' (as defined in the GPO), rather than entities reporting all instances of non-compliance to the PSPF (GOV-7);
- for entities to give guidance to staff on how legislation relating to managing government information relates to their role appears to be unnecessary, and could instead be made general guidance under the PSPF, as GOV-1 requires (GOV-9);
- the requirement for entities to adhere to requirements relating to security in international agreements to which Australia is a party is:
  - unclear as there is no guidance on which agreements are applicable; and
  - unnecessary as decision-makers are already required under ordinary administrative law principles to take them into account (GOV-10); and
- entities are already required to comply with PGPA rules, and NCEs comply with the Commonwealth Fraud Control Policy. These requirements do not need to be repeated in the PSPF (GOV-13).

The review suggests that these issues should be reviewed against the whole of the PSPF with a view to streamlining the framework, removing duplication with other requirements, and imposing the minimum necessary administrative burden on entities.

Support to entities on the PSPF

AGD provides support to entities to assist with their implementation of the PSPF. Entities reported that communication about changes to the PSPF had in some cases not been effective, resulting in entities not being aware of the relevant changes. While some entities reported that PSPF outreach initiatives had been effective, for example in the context of discussing how implementation could be done, the review suggests more can be done. In particular, the review considers more could be done to assist entities to engage with risk under the framework. The review understands that current resourcing constraints in AGD mean that a limited focus is able to be given to its outreach activities with entities. The review suggests AGD better resource its outreach activities to improve communication and support for implementation of the PSPF to assist entities to adopt a sound risk-based approach.

Coverage of fraud and anti-corruption matters

While the review suggests removing the requirement of the PSPF to comply with the Commonwealth Fraud Control Framework, an alternative would be for the Commonwealth Fraud Control Framework to be integrated into the PSPF. This could involve consolidating components of the Commonwealth Fraud Control Framework and PSPF and identifying whether they could be better aligned to achieve more effective outcomes through risk-based decision-making.

Similarly, the review considers that the PSPF should be considered as an option for implementation of other anti-corruption measures as well.

The review suggests combining the fraud, anti-corruption and protective security frameworks in the future could potentially:

- enhance the coherence of the PSPF, as they address similar matters relating to vulnerabilities in Commonwealth operations; and
- reduce the administrative burden as similar requirements could be streamlined and consolidated.

Recommendations:

21.1 AGD review the governance component of the PSPF in accordance with the Principles for Internal Regulation, in particular to streamline requirements and remove duplication with other requirements imposed on entities.

21.2 AGD improve communication and support to entities to implement the PSPF, in particular to assist entities adopt a sound risk-based approach.

21.3 AGD consider whether fraud control and anti-corruption measures could be integrated into the PSPF to streamline and enhance the effectiveness of these frameworks.

PSPF Information Security

Description

The PSPF provides appropriate controls for the Australian Government to protect its people, information and assets, at home and overseas.

Information security policy requirements under the PSPF involve entities ensuring:

- they appropriately safeguard all official information to ensure its confidentiality, integrity and availability by applying safeguards so that
    - only authorised people access information through approved processes;
    - information is only used for its official purpose, retains its content integrity, and is available to satisfy operational requirements; and
    - information is classified and labelled as required; and
- information created, stored, processed, or transmitted in or over government ICT systems is properly managed and protected, including complying with the Information Security Manual (ISM).

The information security policy is supported by documents under the second and third tiers of the PSPF. The Australian Government information security management core policy sits under the second tier of the PSPF and contains seven mandatory elements which impose obligations on accountable authorities.

The third tier of the PSPF is the Australian Government information security management protocol. The protocol specifies information security controls to be used to satisfy the information security mandatory requirements and covers information assets owned or entrusted to the Australian Government. The protocol needs to be applied in conjunction with an entity's other governance activities, strategies and business plans. The protocol, the ISM, standards and guidelines inform entity-specific information security policy and procedures.

The ISM is the responsibility of ASD within Defence. It is the standard which governs the security of government ICT systems. The ISM was redeveloped in 2012 to comprise three separate parts: the Executive Summary, a Principles document and the Controls Manual. The Executive Summary and Principles documents are high-level and intended for the accountable authority of an entity, senior executives and business areas. The ISM Controls document is written in a mandatory form for ICT practitioners, but in accordance with risk management principles under the PSPF. The ISM is reviewed and updated annually to take into account new information security practices, changing technologies and changes to the threat landscape and malicious activity.

The PSPF mandatory requirement INFOSEC 4 requires entities to implement ASD's Top 35 Strategies to Mitigate Targeted Cyber Intrusions as outlined in the ISM. To satisfy INFOSEC 4, entities are required to implement the Top 4 priority strategies. While ASD also strongly recommends that entities implement the remaining strategies, entities can prioritise these depending on business requirements and the risk profile of each system. ASD requests entities to complete an annual survey to measure how entities are performing against the top four strategies and the other strategies to mitigate targeted cyber intrusions.

Compliance reporting against PSPF mandatory requirements must be provided to relevant ministers annually in accordance with PSPF requirements.

Summary of feedback on costs and benefits of the policy

The review observed differing views on the costs and benefits of the policy. Information security experts appreciate the specificity and certainty that the ISM provides. It enables ICT areas to have leverage to enable the right hardware and software to be in place in entities to manage whole-of-government information security risks. However, business areas and users who interact with the ISM (for example as business system owners requiring ICT solutions) find the ISM prescriptive, onerous and a barrier to innovation.

The review observed during consultations that it is unclear how a risk-based approach was to be adopted in the context of ISM being a mandatory document. The review understands business users are unable to effectively engage with the framework and require ICT areas to evaluate business proposals and respond to risks.

Similarly, it appears that business owners may not fully appreciate the risks of implementation without appropriate testing and management. The review understands there is also limited acceptance of the potentially catastrophic risks amongst senior management and business areas. Practice appears to differ between departments, depending on the extent to which ICT managers are willing to weigh up proposals in terms of risks and benefits, and put them to senior management for consideration.

Assessment against Principles for Internal Regulation

The review considers that information security is a necessary part of the PSPF. As government processes and programmes increasingly utilise ICT systems, there are increased risks of external actors maliciously gaining an advantage by exploiting technologies to access information of national importance.

Better integrating the ISM into the PSPF

While the ISM forms a component of the PSPF, the PSPF does not incorporate the ISM in a coherent way. While the ISM is given effect to under the requirements of the PSPF, it does not fit under any of the tiers of the framework. This may be because the ISM is a component that is the responsibility of Defence rather than AGD. Given the whole-of-government application of the PSPF, the review suggests the ISM be integrated into the second or third tier of the PSPF.

Compliance with the ISM and business users in entities

The review identified a lack of clarity amongst users on the extent to which compliance is required for controls in the ISM. The ISM encourages entities to make 'informed, risk-based decisions specific to their unique environments, circumstances and risk appetite', consistent with risk management principles under the PSPF. Requirements for controls in the ISM refer to 'must' and 'should' based on ASD's experience, but recognises that entities have different risk appetites and security environments, and that there may be circumstances where the risks or business impact of implementing the 'top four' outweigh the benefit. However, the mandatory language of the controls means risk-based decisions to not adopt particular controls must be justified and recorded. While the review understands that the PSPF does not require entities to report decisions about managing risk in a different way as non-compliance, there may be confusion in entities about whether such decisions need to be reported. The ISM also makes clear that all controls may be audited for compliance by the ANAO, which suggests they are all mandatory in practice.

The key issue for the review is the lack of clarity of how the risk-based framework should operate in practice for business areas in entities, rather than ICT areas which administer the policy. Unless proactive steps are taken, business areas may not appreciate how to engage with

risk, which may frustrate their ability to leverage opportunities presented by innovative technology.

The review suggests clearer guidance would assist business areas to engage with ICT areas in entities that administer and apply the ISM. For instance, if controls in the ISM were referenced against specific risks identified in the 'top four' or 'top 35', business areas may be better placed to engage with risk in justifying not complying with a particular control. Similarly, entities should be able to set their controls in line with their risk tolerance and operating requirements with confidence that such decisions are consistent with the ISM and the PSPF.

More broadly, the review suggests considering amending the ISM to clearly distinguish between controls which are mandatory and which are better practice. If better practice is not implemented as part of a risk-based decision, it should not be required to be recorded as non-compliance or reported. While it is appropriate for entities to be accountable for risk-based decisions to not adopt elements of the ISM, there should be greater flexibility to engage with risk in balancing business and security objectives.

The review also suggests that guidance be developed about the extent to which security and risk assessments done by major Australian companies of technology, software or platforms could be recognised by government as part of its consideration of risks of adopting the relevant technology, software or platforms.

Recommendation:

21.4 To enhance the coherence of the PSPF, AGD and Defence:

- o **better incorporate the Information Security Manual within the framework; and**

- o **consider how the Information Security Manual could be improved to assist business users of entities to make informed, risk-based decisions, for instance by providing clearer guidance on how particular controls apply to specific risks.**

PSPF and Security Vetting

Description

Personnel security vetting procedures under the PSPF were among the most consistently identified as a significant administrative burden for individuals and entities.

Centralised security vetting processes were reported to adversely and unnecessarily impact on recruitment of employees that require access to classified information and resources. The review also heard that, despite an electronic system for centralised vetting, staff continue to be required to enter their data on multiple occasions. The review also identified significant duplication between employment checks for recruitment purposes (employment screening) in some entities and the Baseline security clearance.

The review proposes a number of recommendations that would both enhance security outcomes while reducing the administrative burden and improving efficiency. Key recommendations include:

- AGD developing options to reform personnel security policy for:
  - o entities to conduct basic employment screening checks to a consistent standard to remove the requirement for Baseline clearances;

- electronic sourcing of information from government and private sources rather than asking staff to provide all relevant information; and

- continuous evaluation and assessment for security clearance holders which, when implemented, would reduce the administrative burden in staff having to provide information to revalidate their clearances;

- AGD and the APSC coordinating work to identify and address potential privacy impediments in security vetting; and
- Defence providing entities with greater visibility about security risks identified as part of centralised security vetting to enable them to more proactively manage staff.

Personnel security is a key component of the PSPF. The PSPF requires entities to ensure the people they employ meet high standards of trustworthiness, maturity, integrity, honesty and loyalty at and throughout their employment. Under the PSPF entities are required to apply a risk-based approach.

Security and employee engagement

Each entity head is responsible for ensuring appropriate levels of security and character clearance of individuals they engage. Section 22 of the PS Act allows an entity head to impose conditions of engagement on a prospective employee, such as security and character clearances.

There is currently no minimum standard for employment screening, which is separate from the process of security vetting. Guidance on personnel security requirements and better practice is set out in AGD's *Australian Government personnel security protocol*. The protocol recommends *Australian Standard AS4811:2006 Employment Screening* for employment screening. This includes identity proofing, eligibility, qualification checks, previous employment checks, and a criminal records check.

Security clearances and vetting

The PSPF requires individuals to hold a security clearance where they require access to classified resources. Security vetting involves assessing an individual's suitability to hold a particular level of security clearance. AGD issued the *Australian Government personnel security guidelines—vetting practices* to assist entities to meet PSPF controls. In particular, a Baseline clearance assists entities to mitigate the risk of business impacts (i.e. loss, damage or compromise of Australian Government resources) by identifying personnel who:

- are not who they say they are (identity theft);
- do not have the right to work in Australia;
- do not have the appropriate qualifications;
- have questionable behavioural standards;
- are vulnerable to coercion; or
- have a criminal record.

In 2009, the Government decided that security vetting would be centralised for most government entities through the Australian Government Security Vetting Agency (AGSVA), established within Defence. Centralised security vetting has been in place since 2010. AGSVA requires a clearance subject to complete an online 'ePack', with relevant documents. Clearances above Baseline also require a security assessment, conducted by Australian Security Intelligence Organisation (ASIO) under the *Australian Security Intelligence Organisation Act 1979*. All security clearances require a police records check. Revalidation requirements are set out in the protocol.

AGSVA manages 349,000 active Australian Government security clearances. In 2013-14 it issued over 33,000 clearances. In March 2015 there were over 13,000 security clearances overdue for revalidation. Baseline clearances comprise over 40 per cent of active clearances. A table below sets out AGSVA's clearance benchmark time periods and current average timeframes for processing security clearances:

Clearance level	Benchmark processing time	Average timeframe for clearance completion for 2014-15
Baseline	1 month	0.8 months
Negative vetting 1	4 months	4.6 months
Negative vetting 2	6 months	5.4 months
Positive vetting	6 months	11.9 months

Security assessments are a component of the security vetting process for clearances above a Baseline level. ASIO conducts security assessments for about 35,000 security clearances per year. ASIO advised the review that it has a backlog of 3,720 security assessments, with an average waiting period of 202 days (though some date back to 2012).

Over the financial years 2011-12 to 2013-14, 109,736 security clearances were granted and 45 refused. The clearance denial rate over this period was 0.04 per cent. Four Baseline clearance applicants were denied a clearance. If clearance subjects are not found suitable as part of an organisational suitability assessment or employment screening check, the matter may not progress to security vetting. Defence has estimated the costs of centralised security vetting to be $50 million per annum.

Exceptions to personnel security requirements

A security clearance can generally only be sought for a person who meets eligibility requirements (Australian citizenship and a 'checkable background', meaning there is not more than a cumulative period of 12 months in which a person is unable to verify their background). Entities can approve a waiver of these eligibility requirements to enable a request for a security clearance to be processed.

A person may also be given temporary access to classified information and resources for either short term access (up to three months) or provisional access ahead of a request for a clearance being assessed (until a clearance is granted or denied). The protocol states that 'agencies are not to use temporary access provisions for routine business needs or as a substitute for sound personnel management.'

Review and policy changes for personnel security and security vetting

In implementing the PSPF, AGD adjusted the personnel security policy to clarify the responsibilities of entities, direct resources to the areas of greatest risk and strengthen the assessment of a person's ongoing suitability to hold a security clearance. Further changes were made when implementing the protocol in September 2014. Practices in AGSVA and ASIO have also recently changed to streamline security vetting and assessment processes.

The Auditor-General reviewed AGSVA in 2014 and published ANAO Report No 45, *Central Administration of Security Vetting* in June 2015. The ANAO report identified that AGSVA has not met its 95 per cent target for processing security clearances and recommended Defence develop a pathway to achieve agreed timeframes for processing and revalidating security clearances.

The review understands AGD is leading work to develop and cost options for further reforms to personnel security arrangements.

Summary of feedback on costs and benefits of the policy

The review received considerable feedback on personnel security, most of which focussed on centralised security vetting.

Entities reported that centralisation of security vetting at AGSVA had resulted in a backlog of security clearances which had led to very large delays in engagement of staff across entities. The review heard about temporary access being used routinely to engage and retain staff.

Concern was expressed that Baseline security clearance arrangements impose an unnecessary administrative burden due to delays in recruitment, offer limited assurance against security risks, and duplicate employment screening in some entities.

The review also heard that:

- information provided for a security clearance at AGSVA was required on multiple occasions, even after entry on the electronic system; and
- AGSVA does not provide entities with transparency on the risks identified where they are considered to be mitigated for staff during the security clearance process.

Assessment against Principles for Internal Regulation

The review considers it important that the personnel security component of the PSPF be maintained to address security risks. While the return on the investment to identify and mitigate security risks appears to be small, the heightened risks in the security environment and need for international partnerships means that security vetting continues to be essential. However, it is clear there are systemic issues with the personnel security framework and current arrangements for security vetting impose significant costs on the Commonwealth, potential security risks and substantial administrative burden.

The long delays reported by entities for clearance applicants and the impact on engaging and retaining staff are a major concern for the review due to the administrative burden that results. While steps have been taken to improve the processes for clearance applicants, there is a significant legacy caseload that affects the effective processing of security clearances. AGSVA advised the review that the backlog has been exacerbated in the past 18 months as a result of an increased security threat level.

Where delays are avoided by granting temporary access, it might be at the cost of exposing the Commonwealth to security risks. The current framework needs to ensure not only that the requirements are proportionate to the risks, but also unnecessary burdens of process and risk do not continue to be imposed on entities and individual clearance subjects.

Current work on reforms on personnel security policy

The review notes that AGD has commenced work to develop and cost options to reform Commonwealth personnel security arrangements. Given the level of prescription about processes in the area of personnel security, the review considers that administrative burden could be significantly reduced while also enhancing security outcomes for the Commonwealth. To this end, the review suggests AGD apply the Principles for Internal Regulation identified in this review.

Employment screening and baseline security clearances

The review understands that a Baseline security clearance does not provide a greater assurance that a person is not a risk to security than the steps some entities already take as part of their employment screening requirements. The review considers that a Baseline security clearance would be unnecessary if employment screening was conducted to an appropriate minimum standard across entities.

The review was advised that under the PS Act framework prior to 1999, APS employees were required to undergo standardised employment screening checks, such as a criminal history check. Following reforms to modernise the APS framework and reduce central prescription, the review understands this requirement was removed and discretion was given to entities to determine an appropriate level of employment screening. The review observes that employment screening now appears to be fragmented across entities.

A consistent standard of basic employment screening would reduce the administrative burden across Commonwealth entities if it could be conducted to a Baseline clearance standard. It would enable new employees to be brought on more quickly, remove existing duplication in some entities, and reduce the backlog at AGSVA. Entities may be able to realise a number of benefits, including:

- greater ownership, control and speed in recruiting staff requiring access to lower level classified resources;
- greater mobility of staff between roles within organisations and across entities;
- vetting resources to be focussed on higher level clearances;
- a higher level responsibility for managing identified security risks relating to an employee within the entity; and
- a reduction in costs where recommended employment screening is already being conducted.

Costs of a basic employment screening standard include:

- added costs for entities not currently meeting a basic employment screening standard, such as criminal history checks;
- entities may need to change their recruitment practices; and
- possibly complex transitional arrangements.

To minimise the regulatory burden on entities, the review suggests applying a basic employment screening standard for newly engaged staff to provide an equivalent level of assurance as a Baseline security clearance. Each entity should have scope to determine whether basic employment screening should apply to existing staff and the point at which that would be done. For example, staff with existing security clearances would not need to be screened to the consistent standard as they already meet or exceed screening requirements.

Some entities may decide or need to use another provider for elements of basic employment screening.[41] However, the review considers it important that the employing entity make a decision on engagement which weighs vulnerabilities, risks and suitability arising from employment screening checks.

AGSVA currently holds a central register of security clearances it has granted. To reduce the administrative burden for staff and enhance mobility across entities, the review considers this list should be expanded to cover staff who have been appropriately employment screened.

The review acknowledges other options may be available, but does not consider them to be effective at reducing the administrative burden on entities. Other options could include:

- enabling entity specific vetting of Baseline clearances – this would reduce the backlog at AGSVA, but may affect mobility of staff arising from recognition of clearances and could unwind efficiencies of centralised vetting; or
- AGSVA could recognise entity specific checks in lieu of Baseline clearances - this may lead to greater variability (possibly introducing risks and affecting mobility of staff), add complexity to Baseline clearances, and may not reduce the backlog at AGSVA.

Revalidation of security clearances and potential continual evaluation and assessment

The review considers that the existing process of revalidating security clearances imposes an unnecessary administrative burden on security clearance applicants. Clearance subjects need to resubmit a large amount of information required to enable them to hold their initial clearance. They also substantially contribute to the backlog at AGSVA.

The review suggests the following options could be explored to reduce administrative burden for staff, reduce the backlog at AGSVA, and provide greater security:

- *Improved data collection* – electronically sourcing information from government and private sector sources;

- *Continuous evaluation and assessment* – would involve raising the level of assurance by evaluating information relevant to security risks about employees regularly after a security clearance has been granted. Electronic data collection could be used to minimise staff being required to provide information for the purposes of evaluation and assessment other than where material changes of circumstances occur (which is already a requirement). The review understands that one entity has implemented a continuous evaluation and assessment process, and that other entities are considering it for employees more generally.

- *Removing the administrative burden from the revalidation process* – once implemented, continuous evaluation and assessment could remove the need for staff to provide information to revalidate their security clearances. Revalidation could be a 'behind the scenes' process and information requested from an employee only if a risk was identified and clarification needed, rather than routinely.

The review understands there would be significant challenges developing options that would implement the elements set out above. Such options would involve significant design challenges, upfront costs, and might require changes to administrative and legislative

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[41] For example, the National Police Checking Service lists a number of 'broker' organisations to obtain relevant police history information with the consent of an applicant. . See: http://www.crimtrac.gov.au/documents/NationalPoliceCheckingServiceNPCSListofAccreditedOrganisations.pdf , accessed 26 July 2015.

frameworks, including privacy (see below). However, there would be considerable benefits for reduced regulatory burden on clearance subjects, enabling entities to identify and quickly mitigate security risks, vastly more efficient clearance processing, and potential cost savings in the medium to long term.

Recommendation:

21.5 **The review recommends that to reduce the regulatory burden on staff and improve security outcomes, AGD work with Defence and other relevant entities to develop and cost options for reform to personnel security policy which would:**
apply the Principles for Internal Regulation identified in this review, in particular the principle that regulation should be proportional to the risks to be managed;

- o **replace Baseline security clearances for ongoing staff with a consistent level of basic employment screening for the Australian Government;**

- o **reduce the amount of information staff are required to produce for security clearances by electronically seeking information from relevant government and private sources; and**

- o **develop a continuous evaluation and assessment model for security clearances which, once implemented, would reduce requirements imposed on staff for revalidation of security clearances.**

Privacy issues

The review heard reports of a number of issues about consent to disclose personal information in accordance with the Australian Privacy Principles under the Privacy Act.

As part of the security clearance process, staff currently provide their consent to a vetting agency seeking relevant personal information to verify claims they made during the security clearance process. However, the review heard that the privacy framework imposes an administrative burden as clearance subjects may be asked to sign additional consent forms for specific information, or to collect, use and disclose their personal information on behalf of the vetting agency.

While the privacy framework extends beyond the terms of reference for this review, as it applies both internally and externally to government, the review suggests that work be done with relevant entities to better understand issues associated with entities' authority to seek and disclose personal information relating to security vetting.

The review suggests it would be worth discussing with relevant entities the full scope of the issues and making a coordinated approach to the OAIC to settle on what the potential impediments are and what a possible resolution might be. In this context, it may be open to agencies to rely more heavily on the flexibility available under regulation 9.2 of the *Public Service Regulations 1999* at insofar as it relates to the use and disclosure of information.

The review considers that any changes to enable greater disclosure and use of personal information by agencies should minimise the burden on staff, but also ensure they are fully informed about the scope of the consent and the way information disclosed would be used.

The review notes that similar issues appear to have arisen concerning seeking and disclosing information to conduct fraud investigations under the Commonwealth Fraud Control Framework.

Accordingly, it may be worth considering whether work on privacy related issues for both frameworks could be developed jointly.

Recommendation:

21.6 The review recommends that AGD work with the APSC to coordinate work across entities to identify and resolve potential privacy impediments arising from consent requirements for employment screening or security vetting processes.

Entities having greater visibility of security related information about staff

The PSPF requires entities and AGSVA to share information that may impact on an individual's ongoing suitability to hold an Australian Government security clearance. This includes changes of personal circumstances and other events or incidents that may impact on the clearance holder's suitability to continue to hold a clearance.

The move from entity based vetting to centralised vetting may have resulted in a cultural issue that has delinked employment related risks and security risks. The review observed that entities' changes of circumstances processes appeared to be considered a matter for AGSVA rather than the entity's responsibility. For instance, there appeared to be a focus on entering data for revalidation purposes rather than an entity considering any employment risks. AGSVA asks employees on its website to send changes of circumstances forms to both the entity's security team and AGSVA. However, the review observed in one entity that newly engaged staff were advised not to contact the entity security adviser about issues relevant to their security obligations, but to fill out a change of circumstances form and send it to AGSVA directly.

The review heard concerns that with current delays at AGSVA, such information may not be provided to the entity to manage such matters in a timely manner or at all. AGSVA advised the review that:

- change of circumstances forms are processed within 72 hours;
- where concerns are identified they are prioritised and work commences within a week; and
- AGSVA informs an entity sponsoring the clearance subject or other relevant entities of concerns where appropriate.

The review is not sure about the extent to which these procedures occur in practice.

While AGSVA has in place a risk advisory process where it can provide information to an entity if there are security concerns, the review heard that where an employee receives (or is refused) a security clearance from AGSVA, no qualification or relevant information is provided to the entity about the person regarding risk factors informing that decision. However, AGSVA advised the review that:

- if a security clearance is denied and there are security concerns relevant to the entity these will be advised to the entity; and
- if a clearance is granted and there are residual risks that require limitations, these will be advised to the entity.

The PSPF requires entities to resolve any doubts about a clearance holder in favour of sharing information within the Commonwealth. The review understands that AGSVA does not provide sensitive personal information to an entity unless it relates to a security risk. AGSVA advised

that much of the information collects to assess suitability is sensitive personal information which does not relate to a security risk.

The review understands in Canada, agencies decide security clearances on recommendation from a centralised security vetting provider.[42] Information about the relevant risks is provided to the entity to make decisions about clearances for its staff.

The review is unclear about the extent to which information is shared as part of centralised vetting with entities about their clearance subjects. Given representations casting doubt on the extent of information being shared with entities, the review suggests Defence provide entities with greater visibility about information relevant to security risks as part of the security vetting process or arising from changes of circumstances. Greater visibility would enable those risks to be actively managed in the human resources framework as such matters may also impact on the welfare, reliability or effectiveness of an employee.

Recommendation

21.7   The review recommends that Defence provide entities with greater visibility of information about security clearance holders identified through centralised security vetting processes to enable those risks to be proactively managed in entities.

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[42] See the Canadian Policy on Government Security, available at: http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?section=text&id=16578, accessed 26 July 2015.

22.   Employment arrangements

General matters – employment arrangements

Description

General themes emerged across employee arrangements throughout the consultation process, including: recruitment, remuneration, performance management, workforce management reporting, and work health and safety (separate assessments are being prepared for each of these areas).

The themes focus on the level of regulation imposed internally by Commonwealth entities, the quality of APSC guidance, and the role of the APSC in assisting relevant entities with workforce management. This assessment considers those themes.

Summary of Feedback

Entities argued for streamlining workforce management reporting and approval requirements that are imposed both by the APSC and within entities. They suggested that, when new reporting requirements are introduced in response to new government policies, existing reporting requirements be reviewed by the APSC to determine if all are still necessary.

Entities also noted that their own internal processes were overly burdensome, with layers of process added to manage the perceived level of risk, and high levels of approval delegations that go beyond minimum requirements. In some instances, entities believed certain requirements existed when they did not – and never had.

Small entities in particular commented that APSC guidance is currently designed for larger, complex entities, and expressed a wish for the APSC to actively support entities to implement fit-for-purpose HR policies, and remove unnecessary layers from current processes.

The usefulness of guidance material was raised by entities across a number of policy areas, including employee arrangements. There was concern that guidance did not clearly indicate the minimum requirements of policies, and that the use of language tended not to differentiate adequately between what is mandatory and what is suggested as better practice. Multiple entities referred to APSC guidance as dense, and felt they would derive more use from the material if it was more streamlined, using simple language.

Assessment against Principles for Internal Regulation

Commonwealth entities, in many instances, do not apply a risk-based approach to their workforce management processes which leads to their becoming overly prescriptive. That appears to be a common feature across NCEs and entities that employ staff under the PS Act, however, the CCEs' streamlined management structures, however, afforded them the flexibility to adopt more streamlined approach to workforce management processes.

The APSC has recognised the need for it to actively support entities to diagnose the entity's issues, and work towards implementing fit-for-purpose solutions.

Recommendations:

22.1 The APSC develop and communicate streamlined models of core Human Resources (HR) policies and processes that Commonwealth entities may apply or adapt to their own circumstances and risk profiles.

22.2 The APSC assume an active role in supporting Commonwealth entities in their implementation of fit for purpose HR policies and practices, including:

o **developing a suite of policy and practice options for small and medium size entities that are appropriate and proportional to the scale of the entities and their operations.**

22.3 The APSC produce guidance for entities on the minimum requirements for core HR policies and practices, including performance management, managing underperformance and recruitment.

22.4 The APSC conduct regular and ongoing evaluations of the impact on entities of its policies and guidance in order to ensure implementation by entities is proportional and fit for purpose.

Performance management

Description

NCEs and entities that engage their staff under the PS Act are required to comply with the minimum requirements for performance management set out in the PS Act and the *Australian Public Service Commissioner's Amendment (Performance Management) Direction 2014* (the Commissioner's Amendment Direction).

The primary objective of the Commissioner's Amendment Direction was to strengthen the requirement for accountable authorities, supervisors and employees to uphold the effective performance Employment Principle. From a regulatory perspective, requirements include:

- managing and assessing the performance of employees;
- providing appropriate and timely performance feedback;
- ensuring each employee has a documented performance agreement;
- ensuring supervisors are effective in the conduct of performance management;
- conducting underperformance management in a timely and constructive manner; and
- conducting a periodic review of their entity's policy, processes and practices against APS best practice.

While there is a requirement to assess employees and provide them with timely feedback, the directions do not mandate an assessment mechanism for entities to use, nor how frequently it needs to occur. It is noted, however, that some entities will have additional requirements based on clauses within their current Enterprise Agreements.

Summary of feedback

Feedback from staff in entities was that the performance management framework was too complex and time consuming. Internal performance management processes were similarly described, and considered to provide limited utility to employees or employers. To what degree views on the framework were shaped by views of internal processes was uncertain. Some entities observed that finalising the assessment rating process, with its multiple ranking options, took more time to resolve than performance discussions which should be the actual focus of the exercise. The extensive guidance within entities and from the APSC did not appear to help this situation, with frequent comment being made on having trouble understanding what was actually required.

Entities also spoke of the reluctance of supervisors to undertake management of underperformance. Reasons identified were the resource intensive nature of the process and the risk that managing underperformance would lead to bullying and harassment or unfair dismissal claims. Concerns were raised that in avoiding early management of poor performance, issues that could initially be addressed through informal channels were left until they needed to be resolved through formal/legal channels.

Some entities asserted that the review of actions provisions (section 33 of the PS Act) should be reconsidered, as community standards (e.g. Fair Work Commission and Australian Human Rights Commission) should be sufficient for the public sector. Those entities thought providing an employee with three avenues to have a decision formally reviewed disempowered managers, and increased the administrative burden on entities.

Assessment against the Principles for Internal Regulation

The current legislative requirements for performance management are not numerous, and do not mandate an overcomplicated process. Multiple NCEs have received low rankings in their capability reviews for performance management, and APS census results consistently challenge the efficacy and current use of the existing feedback model. That raises doubts about whether the current model for performance management and assessment is effective in achieving its objectives.

An alternative approach, increasingly adopted in the private sector, is to move away from formal performance assessment arrangements towards a simplified assessment model that reduces the risk of subjectivity, and consequently time spent by senior leadership moderating the ratings. The formal annual performance discussion is removed, and replaced by regular conversations between supervisors and their employees ensure timely, relevant feedback.

As noted in the summary of feedback, the current approach to managing underperformance tends to bypass informal process, and instead becomes formal, thereby imposing significant resource burdens on entities and is, arguably, a less effective approach to managing underperformance. Informal options should be the preferred approach by entities, and internal processes should underpin that objective.

Recommendations:

22.5 Entities review their performance management systems and evaluate whether they add real value to improving performance for both the entity and the employee. In the interest of removing the compliance burden that many performance systems impose on managers and employees, entities consider alternatives, such as adopting a simpler

satisfactory/unsatisfactory categorisation, supplemented by an emphasis on the importance of regular performance feedback.

22.6 The APSC ensure managers have access to practical support and guidance to improve their capacity to improve the performance of their staff and address underperformance.

22.7 Entities examine their dispute resolution processes to ensure they promote informal consultation processes as a first resort.

Recruitment

Description

When recruiting, entities that engage their staff under the PS Act are required to comply with the PS Act, the *Australian Public Service Commissioner's Directions 2013* (Commissioner's Directions), the *Public Service Regulations 1999*, and the *Public Service Classification Rules 2000*. These provide relevant entities with the minimum requirements for conducting selection processes.

The minimum requirements for conducting a non-SES selection process[43] for example, include determining the purpose of the selection process upfront; and determining whether an open, competitive process is needed (e.g. seeking to engage or promote a candidate). If it is required, an entity must:

- advertise the vacancy on the APSjobs website;
- design and run an open, competitive selection process based on merit; and
- register the outcome on the APS gazette.

Although the above elements are mandatory, entities have the flexibility to design selection processes that are fit-for-purpose, and suit their business needs.

On 31 October 2013, the Australian Government, through the APSC, implemented interim recruitment arrangements to manage the size of the public sector. This has involved the requirements for entities to:

- seek APS Commissioner approval to advertise within the APS;
- seek APS Commissioner approval to advertise to the wider community;
- seek APS Commissioner approval on the number of recruits an entity can engage through entry-level recruitment programmes;
- conduct a thorough check of the APS Redeployment Register prior to advertising within the APS, including providing an assessment on every potential candidate; and
- gain accountable authority approval on the APSC Internal Recruitment Record form.

On 1 July 2015, the interim recruitment arrangements were rescinded, and new arrangements were introduced for entities to report on, and monitor, the ASL reported in the Budget process.

Summary of feedback

General comments

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[43] http://www.apsc.gov.au/publications-and-media/current-publications/streamlining-recruitment

- Greater trust should be placed on accountable authorities to manage their resources with the overall policies of government.
- The default approach to recruiting staff on an ongoing basis (rather than non-ongoing or casual) and the process barriers to adopting another default position internally limits the APS' ability to be a modern, flexible workforce.
- An increase in specified-term projects has created staffing issues. Entities aren't releasing staff for temporary movements, or extending previous arrangements when project timeframes are extended. Barriers to employing non-ongoing staff impact on such projects.
- APSC should host an e-recruitment system for all entities which would reduce duplication and inefficiency.
- The complex recruitment environment creates substantial pressure on smaller entities as they generally have less flexibility (for example to fill gaps by moving staff around or having the capacity to absorb staff losses).
- The following opportunities to streamline internal recruitment processes were identified:
  o move away from lengthy written applications that are burdensome for applicants, and assessors, instead using short expressions of interest and resumes;
  o stop using the Integrated Leadership System (ILS) as selection criteria;
  o enable entities to access other entities' orders of merit; and
  o review the process for APS1-6 promotion reviews.

Recruitment frameworks

- Recruitment frameworks across the public sector are complex and time consuming for all entities.
  o There is an extensive approval process required (both internal and external) to advertise a vacant role within (and outside of) the Australian Public Service.
  o *The lifting of the interim recruitment arrangements is not expected to alleviate the overregulation implemented within entities*, particularly when entities are facing new reporting requirements for workforce management (e.g. ASL and span of control reporting). This has resulted in entities experiencing significant delays and difficulties when completing selection processes.

Impact of internal controls

- When whole-of-government requirements are imposed, entities implement internal processes to comply with the new requirements. However, when the whole-of-government requirements are rescinded, internal processes tend to remain in place. Two examples highlighted during consultations involved:
  o One entity's process under the interim arrangements involved the business area needing to fill out extensive paperwork (both internal and APSC documents), which then needed to be supported by the relevant SES Band 3, reviewed by the recruitment team, endorsed by the SES Band 1 of the HR area, discussed by the senior Executive Team and approved by the accountable authority. Relevant paperwork would then be submitted to the APSC for approval, after which the business area could start the selection process. *Once the interim arrangements were lifted, the entity reduced the amount of paperwork, but made no other changes to its processes.*

Assessment against the Principles for Internal Regulation

Current legislative requirements for recruitment processes are not numerous and entities have the flexibility to design approval and selection processes to suit their individual circumstances.

However, entities have commonly adopted an approach to recruitment that exceeds minimum requirements. The interim recruitment arrangements and ASL reporting requirements appear to have also influenced the risk appetite of entities against devolving delegations and streamlining processes.

Entities currently face a recruiting environment where both public and private sector entities are competing to attract and retain the best talent. Entities that are risk averse and adopt overly regulated internal recruitment processes and approval requirements limit their ability to engage staff quickly and competitively. This, coupled with the delays experienced in processing security clearances (addressed separately in the PSPF assessment), has significantly extended the time it takes many entities to identify and successfully recruit preferred candidates.

The review contends that in many instances current practices exceed the minimum regulation necessary to achieve their aims, and are disproportionate to the level of risk faced - in both determining a legitimate vacancy, and selecting a preferred candidate.

The impact of recent changes in legislative and reporting requirements and the (available) labour market have created a recruiting environment where entities tend to engage staff through a particular employment category that may not align with business needs. For example:

- the increased regulation during the interim recruitment arrangements significantly extended the time taken to fill vacancies, creating a culture where entities were reticent to release staff for either non-ongoing engagements or to fill urgent short term vacancies.
    - o This has led entities to default to ongoing engagement, creating the financial risk of relying on turnover to keep the entity within its Budget allocations
- contractors hired individually, or through firms, are excluded from ASL and headcount reporting. While a valid engagement option, it may present longer term issues regarding organisational capacity and knowledge management, and may be a more expensive option in the longer run.

Entities should be able to undertake a mature workforce management approach, where recruitment decisions are based on functional requirements and not on the relative difficulties of one engagement process over another.

One particular area of inflexibility that limits the use of non-ongoing engagements is where a non-ongoing employee cannot be extended for a defined period beyond 12 months without advertising the role. An example of such an arrangement would be the extension of a taskforce, where the life of the activity is finite. A non-ongoing employee, who possesses requisite skills and knowledge built up during the course of the activity, could not be easily replaced and the cost and effort of conducting a new recruitment process (as opposed to extending the engagement) to cover the remaining duration of the taskforce would be difficult to justify.

Recommendations:

22.8 **The APSC develop and communicate streamlined recruitment models and practices that Commonwealth entities may apply or adapt to their own circumstances and risk profiles, giving consideration to ways to:**

- o **in consultation with the Merit Protection Commissioner, streamline, and shorten the APS promotion review process while still protecting the right of an individual to ensure the application of merit;**

- o **enable agencies to piggy-back on other agencies' orders of merit; and**

- o **discourage lengthy written applications and the Integrated Leadership System as selection criteria.**

22.9 **Entities, informed by the APSC (in line with the above recommendation), should review their recruitment processes to ensure they do not unnecessarily go beyond minimum mandatory requirements and do not waste time and resources.**

22.10 **The APSC assess whether current legislative and policy requirements result in a choice of engagement type inconsistent with the business requirements of an entity, with any such requirements being reviewed and amended accordingly.**

22.11 **The APSC review the relevant provisions of the *Australian Public Service Commissioner's Directions 2013* to provide greater flexibility for an entity to extend non-ongoing engagements beyond a 12 month period without advertising, where such an extension is:**

- o **for a defined period;**

- o **for an incumbent who has been assessed as satisfactory; and**

- o **assessed as representing a more efficient use of public resources than undertaking a recruitment process for the additional defined period.**

Workforce management reporting

Description

Accountable authorities are responsible (under section 15 of the *PGPA Act)* for appropriately managing entity resources, and ensuring that operations are fiscally sustainable. In addition, requirements have been imposed to monitor the Australian Government workforce, including the SES cap, ASL, annual reports, the State of the Service Report, unscheduled absence rates, and APSEDii data collections.

The APSC advised entities that, from 1 July 2015, there was a requirement for entities to report and monitor headcount and ASL estimates reported through the budget process. Accordingly, accountable authorities are now also responsible for ensuring that staffing is within budget ASL estimates, except when subject to further Government decision. The new compliance measure involves:

- the increased reporting of ASL data to the Finance through each estimates update (including the Budget, MYEFO and Pre-Election Economic Fiscal Outlook (PEFO) updates);
- continuing to report headcount data (via the monthly submission of movement files) to the APSC in the APS Employment Database (APSED); and
- where agencies forecast significant variation between headcount and ASL estimates, reporting to the APSC the indicative size of, and reason for, the expected variance.

In addition, where previously entities were required to report on their unscheduled absence rates yearly via the State of the Service Report, for the 2015-16 financial year entities are now required to report on a monthly basis. This data will be used to provide entities with individual summary reports comparing their performance against the APS average, and a whole-of-government report to the Minister Assisting the Prime Minister for the Public Service.

The APSC recently released the *APS framework for optimal management structures*, which looks to reduce the number of organisational layers within entities, and its span of control. It is understood that future reporting and compliance requirements (if any) will be determined by the Secretaries Board after this review's finalisation.

Summary of feedback

The following comments are a reflection of feedback received through the consultation process:

- There are excessive compliance and reporting requirements imposed on entities in the workforce management space. Greater trust should be placed on accountable authorities to manage their resources within the overall policies of government.
- 'Reporting may have had a purpose when it started, but does that purpose still exist? Reporting obligations need to be reviewed and tested for relevancy, or if they can be done in a simpler, less burdensome way'.
- Efficiency will only come if there is genuine autonomy - removing the interim recruitment arrangements, but continuing to have caps, offsets, and external monitoring will mean that entities will remain constrained because the culture they are operating in (if not the rules) is constraining.
- An external focus on reducing unscheduled absence rates has led to increased internal reporting on trends, absence rates, and branch 'hot spots'. This proves to be particularly onerous as the rate is not a direct indication of absenteeism as it includes warranted personal leave (genuine but unexpected illness), planned personal leave (such as scheduled medical procedures), and compassionate/bereavement leave. For small entities, where a limited number of genuine instances can impact rates significantly, the requirement is particularly burdensome because it has the potential to mislead and serves no good purpose.
- The processes regulators apply to achieve different government initiatives can create conflicting outcomes. For example, reducing management structures and span of control is constrained when entities are required to operate against an ASL cap.

Assessment against the Principles for Internal Regulation

Workforce management reporting is a useful tool for entities that supports strategic planning and decision making processes. However, when used as a mechanism to enforce compliance it has been shown to reinforce a culture of risk aversion across the Commonwealth, and reduce the ability of an accountable authority to manage its resources in a flexible, independent and innovative manner. This in turn, as reported through consultations, has lead to an environment of overregulation within entities, focussing resources on meeting specific obligations, rather than managing a sustainable, well-structured workforce. While government can and does set limits on the resources available to entities, the design of how these decisions are implemented and reported on has a bearing on both the related administrative burden and manner in which entities manage their resources.

The review notes an increased trend of imposing reporting requirements on entities upon the introduction of new policy to monitor progress and as a means of promoting compliance. There is also a time lag associated with removing older, potentially duplicative existing requirements. The volume of compliance requirements focussed on managing the size and shape of the public sector imposes a significant burden on entities. Various reports, based on measures that capture data from slightly different perspectives (e.g. headcount and ASL, SES numbers, and (potentially) management structures) are duplicative but do not always support internal management decision-making. It would appear that the compliance burden associated with controls and reporting impedes the achievement of the public sector the government wants – one that is flexible, agile and working within optimum management and staffing structures.

In recognition of this issue, the APSC recently streamlined the State of the Service report (from 400 in 2014 to 80 pages in 2015), including reducing the volume of data requested from Commonwealth entities (from 156 to 52 questions). To supplement the reduced content within the report, data and supporting evidence will be made available to entities from a central repository on the APSC's website.

Recommendation:

22.12 The APSC, consulting as necessary with Finance, review their data collection processes and practices against the Principles for Internal Regulation with a view to streamlining and minimising the impact of reporting and compliance requirements imposed on entities.

Remuneration (enterprise bargaining)

Description

As part of negotiating the current round of Enterprise Agreements, the Australian Government decided that all entities that employ staff under the PS Act, and other NCEs (including staff employed under the *Members of Parliament (Staff) Act 1984*) would need to adhere to the *Australian Government Public Sector Workplace Bargaining Policy*.

During the enterprise bargaining process, entities cannot reach agreement, including 'in-principle agreement', with bargaining representatives on matters inconsistent with Government policy unless the entity Minister and Public Service Minister have granted an exemption in relation to that matter. In addition to exemptions, an entity's proposed remuneration arrangements are subject to endorsement from the APSC and sometimes Finance, and its proposed enterprise agreement must be approved by the APS Commissioner, the entity Minister, and the Minister

Assisting the Prime Minister for the Public Service before the proposal can be submitted to entity employees for a vote.

Summary of feedback on costs and benefits of the policy

Entities commented that the current workforce bargaining policy is restrictive and does not lend itself to an agile, streamlined process. It was noted that the associated approval process significantly lengthened the time required to finalise the process. Some entities, particularly Government Business Enterprises or entities that employed technical specialists, found that the policy restricted their ability to be competitive in the labour market.

Entities suggested that for the next round of bargaining, the current model should be examined as future efficiency offsets may impact on the sustainability of entities.

The review also identified through its consultation that there was a lack of awareness of the supporting tools and documentation provided by the APSC on the bargaining process, and in some cases, that the guidance was not effectively addressing the issues faced by entities.

Assessment against the Principles for Internal Regulation

The *Australian Government Public Sector Workplace Bargaining Policy* provides a framework for relevant entities to conduct enterprise bargaining and ensures a consistent approach across the public sector. Feedback indicates, however, that the current policy has created an overly complex and time consuming process for entities. In order to help entities address these difficulties, and better facilitate the bargaining process, it is recommended that the APSC undertake work on a streamlined process for entities to apply, and that fit-for-purpose guidance be developed and communicated across the public sector.

Recommendations:

22.13 The APSC continue to examine ways in which the current enterprise bargaining process can be streamlined within the government's policy parameters, tailored to the range of employment environments, diversity of roles and the size of entities within the public sector.

22.14 The APSC review guidance and communication strategies in relation to remuneration and enterprise bargaining arrangements to assist entities develop a more comprehensive understanding of arrangements and processes.

Code of Conduct and Public Interest Disclosure

Description

Section 13 of the PS Act sets out 13 requirements of the APS Code of Conduct. Employees can report suspected misconduct by raising concerns with their manager or with an investigative unit in their entity, through entity helplines, or by making a whistleblower report to an authorised person under the Act.

The PID Act establishes a scheme for public interest reporting of wrongdoing in the Commonwealth. This includes conduct a person reasonably believes: contravenes a law; is corrupt; perverts the course of justice; wastes public funds or property; is an abuse of public trust; unreasonably endangers health and safety or endangers the environment; or is

maladministration. The PID Act applies to entities and complements Commonwealth notification, investigation and complaint handling schemes.

Summary of feedback on costs and benefits of the policy

The review heard about confusion in some entities about how to deal with matters where an employee makes a disclosure about conduct relevant to both the APS Code of Conduct and the PID Act. The review heard practice differs across entities, with some adopting a pragmatic approach of a preliminary negotiation with the employee about the appropriate course, and others following the specific legislative requirements of the PID Act to the exclusion of other mechanisms. The review also heard the PID Act did not give much flexibility for appropriate internal discussion about resolving matters that arise.

Assessment against Principles for Internal Regulation

There is a substantial overlap in the matters covered by the APS Code of Conduct and the PID Act. Investigations under the PID Act are very tightly regulated. Adopting a full compliance approach appears to constrain entities from resolving matters that could be otherwise dealt with more flexibly under the APS Code of Conduct.

The review suggests consideration be given to the overlap between PID and the APS Code of Conduct regimes. While the review recommends considering the overlap of these schemes with fraud control (see Recommendation 19.5), the broader overlap should also be addressed, for instance through clearer guidance or legislative authority. This consideration could form part of the statutory review of the PID Act that will commence in January 2016, in accordance with section 82A of that Act.

Recommendation:

22.15 The APSC and PM&C work together to better manage the apparent overlap between the APS Code of Conduct and the *Public Interest Disclosure Act 2013*.

Rehabilitation and work, health and safety

Description

Work, health, and safety compliance and reporting requirements are largely determined by the *Work, Health and Safety Act 2011* (WHS Act) and the Safety, *Rehabilitation and Compensation Act 1988* (SRC Act). Given the broad scope of the subject matter, the review has focussed its assessment on areas identified through the consultation process.

Rehabilitation Management System (RMS) Audits

Under section 41 of the SRC Act, Comcare issued the *Guidelines for Rehabilitation Authorities 2012* (the Guidelines), which includes a requirement for Commonwealth entities to develop and maintain a system for managing rehabilitation and, upon its implementation, outlines their assessment and reporting requirements. As such, entities are required to:

- engage competent personnel to undertake audits of its RMS;
- promote a continuous improvement strategy providing for appropriate remedial action identified by those audits;
- report rehabilitation performance to meetings of the employer's board or executive;
- complete certification of compliance with the Guidelines; and

- upon request, provide Comcare with a copy of that certification and any other relevant documentation.

Comcare supplements the Guidelines with advice which provides clarification on the definition of competent personnel and the frequency of audits:

- Competent personnel must have knowledge of the SRC Act, and audit training and experience. The majority of entities need to procure external auditors to satisfy this requirement; and
- Entities are recommended to conduct an annual audit of their RMS. However where an entity has conducted an assessment and its senior executive endorses the entity as low risk, it can reduce the frequency of its formal audits. In such cases, Comcare recommends that formal audits be conducted at least every three years, and that over the interim years, entities conduct an internal review using the RMS audit workbook.

Summary of feedback

Through its consultations the review has identified a widespread lack of understanding between Comcare and other Commonwealth entities regarding the mandatory compliance requirements for RMS audits. Comcare guidance suggests that an annual formal audit is not always required; however, practices across Commonwealth entities are currently underpinned by an assumption that it is mandatory, increasing pressure on under-resourced corporate areas. Small entities have found the process burdensome and expensive, particularly the need to procure an external consultant to undertake an audit of their small caseload.

In relation to workers' compensation, entities stated that clearer definitions within the SRC Act would reduce red tape. For example, greater clarity regarding 'reasonable administrative action' would reduce the level of risk aversion within entities to manage employees (particularly on performance). It is understood that legislation is currently before Parliament that, if passed, would assist in providing that clarification.

Entities also suggested that WHS Act and workers' compensation reporting could be reviewed with a view to reducing administrative burden on entities. For example, the threshold for reporting incidents to Comcare by entities is set at a low level, creating a significant reporting burden which, in some circumstances, discourages compliance. However, the WHS Act (and Comcare as the regulator) requires entities to report only notifiable incidents (those that are critical/serious and dangerous in nature). The internal reporting of minor incidents and near misses (and their definitions) is determined by individual entities. Comcare might be able to prevent unnecessary reporting activity by providing guidance to entities on the minimum reporting requirements.

Entities reflected that Comcare collects a wide range of valuable data (e.g. rehabilitation provider performance information, notifiable incident reports, etc), but does not share that information with entities. It was suggested that timely access to this information would aid entities in conducting their business, particularly satisfying their work, health, safety, and rehabilitation legislative requirements.

Assessment against the Principles for Internal Regulation

The current legislative requirement for Commonwealth entities to implement and audit their RMS is a useful way to measure their system's efficacy, and identify areas for improvement. However, based on entity feedback, Comcare's current approach for the implementation of these

requirements could be further streamlined, and applied through a risk-based, differential approach.

Currently, Comcare recommends that entities conduct an annual audit of their RMS. Comcare has the authority to require Commonwealth entities to annually conduct an RMS audit through the reporting of compliance certification and exercised this authority on 43 entities during the 2014-15 financial year. However, where entities have self-assessed as being low risk they may simply provide Comcare with advice of this self-assessment and details of its most recent compliance certification. As evidenced through consultations, these requirements are not clearly understood by entities. Comcare should review its guidance and communications with entities to clarify what requirements are mandatory, and which matters are being suggested as better practice, with particular focus on removing ambiguity and improving consistency of terminology.

Comcare recently investigated the impact of legislative requirements on small entities to have an RMS. Their proposed approach, that recognises the disproportionate burden of compliance on small entities, and the importance of differentiating compliance requirements based on risk levels is commendable, and the review sees benefit in adapting that approach across all their regulatory functions.

In implementing a risk-based approach to the requirement for RMS audits, Comcare should also assess whether the current approach of using a restricted set of personnel as the only group capable of conducting an audit meets minimum standards, or whether broadening the requirements to reduce the cost imposition on entities would be appropriate.

Recommendations:

22.16 **Comcare, as part of its efforts towards a more coherent approach to regulation that is fit for purpose for entities, apply lessons learnt from its review of RMS in small entities to other areas of its administration and to its dealings with the broader public sector.**

22.17 **Comcare, as part of applying a risk-based, differential approach to the obligations on entities in relation to RMS audits:**

  o **explain the extent to which entities are required to conduct a formal audit annually; and**

  o **review the current restrictions on who can conduct an audit and whether there are opportunities to widen the pool of assessors and constrain costs for entities.**

22.18 **Comcare review its current guidance and advice in order to clarify what requirements are based in legislation or government policy and are therefore mandatory, and which matters are being suggested as better practice.**

22.19 **Comcare implement a data collection and sharing approach that:**

  o **consults with Commonwealth entities (and its private sector licensees where appropriate) on proposed data collection exercises to determine the workload involved, and the most effective means of collection;**

- communicates why the data is required, the relevance of its collection, and how it will be used;

- makes use of risk-based, differential approaches to the collection of data and imposition of reporting obligations on entities; and

- shares resulting information with contributors in a timely fashion.