



29 June, 2018

PGPA Act Review
Review Secretariat
Department of Finance
One Canberra Avenue
Forrest ACT 2603
sent via email: PGPAActreview@finance.gov.au

Dear Review Secretariat

PGPA ACT AND RULE INDEPENDENT REVIEW – DRAFT REPORT FOR CONSIDERATION

Thank you for your email dated 30 May 2018 seeking comments on the draft report to the independent review of the *Public Governance, Performance and Accountability (PGPA) Act 2013* and Rule.

The draft report contains 46 recommendations. Of these, Treasury:

- Supports 30
- Partially supports five
- Does not support six, and
- Notes five recommendations are not directly applicable.

Treasury's response to all relevant recommendations is set out in the attached document.

Where a recommendation is not supported or partially supported, in most cases this is due to the additional resource implications, or because it is inconsistent with the PGPA Act's current set of responsibilities for Accountable Authorities. There are several recommendations that Treasury supports, but notes will have a resource impact.

We note that several of the recommendations increase or make more explicit the requirements of the PGPA Act and Rule. This is not consistent with our preference for a principles-based approach to the performance aspects of the PGPA Act, or the original intent of the PGPA Act to take a principles-based approach to supporting better organisational performance. It is unclear that these additional compliance requirements support improved organisational performance, but they do add a regulatory burden to entities in preparing their corporate plans and annual performance statements.

I trust this information will be of assistance to the Review Secretariat.

Yours sincerely



Matt Flavel
Deputy Secretary
Corporate Services and Business Strategy Group

THEMES	RECOMMENDATION	RESPONSE FROM TREASURY
Driving change through leadership	<i>Strong operational management, ongoing review and leadership are required to maintain a dynamic and effective performance, governance and accountability framework.</i>	
	1 The Secretaries Board should periodically assess progress by Commonwealth entities in achieving the objectives of the PGPA Act, in particular meeting high standards of governance, performance and accountability and providing meaningful information to the Parliament and citizens. This work could be informed by portfolio secretaries monitoring progress achieved by entities within their portfolio.	Noted. This is a matter for Secretaries Board.
Performance framework	<i>The PGPA Act and Rule provide a sound framework for the measurement and reporting of the performance of entities across the Commonwealth, but the quality of performance reporting needs to improve.</i>	
	2 The PGPA Rule should be amended to raise the minimum standard for performance reporting by including a requirement that performance information must be relevant, reliable and complete. This will require entities to improve the quality of their performance measures.	Supported. Noting the challenges associated with identifying and collating evidence to support outcome-focused performance measures for policy can be more difficult to measure and report, especially where there is an annual reporting cycle and some measures are multi-year. As with most agencies, Treasury is working to clarify its performance measures consistent with PGPA Act requirements and the expectations in the performance reporting framework guidance (for example by ensuring all measures have robust and documented methodologies).
	3 The Secretaries Board should take initiatives to improve the quality of performance reporting, including through the greater use of evaluation, focussing on strategies to improve the way entities measure the impact of government programs.	Noted. This is a matter for Secretaries Board.
	4 Accountable authorities should ensure their audit committees have the skills, capability and resources to provide advice on the appropriateness of their performance reporting, in particular that audit committee members: (a) are clear on the level of advice on performance reporting sought by the accountability authority, which is at least that required by the PGPA Rule; and (b) have sufficient knowledge of the business of the entity and access to information and advice about the performance of the entity.	Supported. (a) The Treasury Audit Committee consists of members from a range of backgrounds, internal and external, to ensure they have the appropriate skills and experience relevant to the entity. Treasury notes that non-financial performance management is a discrete skill set from financial auditing, accordingly, we support building the capability of Audit Committees to undertake this work. (b) New members are provided with relevant information and briefings at the beginning of their term. Treasury regularly sends internal communications to members to keep them abreast of operational and performance matters. Meetings are held regularly and members are supported by regular updates from across the Treasury, including on organisational planning, reporting, risk management and fraud.
	5 Finance should use learning programs for audit committee chairs [see Recommendation 21] to share information about the performance reporting requirements of the PGPA Act and Rule and the role of audit committees to review the appropriateness of performance reporting. This will build their capability to review performance reporting.	Supported.
	6 Finance should continue to develop guidance on performance reporting to assist entities to meet the requirements of the PGPA Act and Rule and develop high-quality performance reports. This will also assist audit committees to review performance reporting.	Supported. Noting the need to ensure guidance is consistent with the Act and Rule, and consistently interpreted by both the Department of Finance and the Australian National Audit Office (ANAO).

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	7 The Finance Minister should request that the Auditor-General pilot assurance audits of annual performance statements to trial an appropriate methodology for these audits.	Not supported. Treasury does not support the idea of mandatory assurance audits on annual performance statements. We do not believe the value added will outweigh the significant additional resourcing impact (on entities and the ANAO).
	8 Finance should encourage the Australian Accounting Standards Board to develop a standard for performance reporting to assist entities and audit committees to develop and review performance reporting. We also support the Auditing and Assurance Standards Board further developing an auditing standard for performance reporting to assist auditors with auditing performance reporting.	Noted. This is a matter for the AASB.
	9 Finance should develop 'lessons learned' papers that cover complete performance cycles to identify good-practice examples of a clear read of performance information across portfolio budget statements, corporate plans and annual reports.	Supported. A lessons learned paper on the complete performance cycle would be useful and could replace the two separate lessons learned papers on the corporate plan and the annual performance statements. There is particular need for clarity around the Portfolio Budget Statements (PBS).
Managing and engaging with risk	<i>Risk management and engagement remains immature across Commonwealth entities, particularly non-corporate entities. To improve risk management and engagement practices, we recommend:</i>	
	10 Accountable authorities should identify ways to embed effective risk management and engagement into policy development and program management, and incentivise officials at all levels to manage and engage better with risk.	Supported. Treasury has done significant work over the last two years in implementing and embedding an improved risk framework, supporting tools and culture.
	11 Accountable authorities should engage with key stakeholders to identify their risk appetite and explain how risks will be identified, accepted and managed. In doing this, adequate attention should be given to upside, as well as downside, risk. The Parliament could also acknowledge the complex environment in which government operates.	Supported. Treasury routinely discusses risk appetite and management as a matter of course. It is for the Government to determine its response to the third sentence.
	12 Accountable authorities of large Commonwealth entities, or entities with complex risks, should consider appointing a Chief Risk Officer to support the accountable authority to implement a strong risk culture and behaviours across all levels of the organisation.	Supported, particularly that it is at the discretion of entities. Treasury currently has a Deputy Secretary as the Chief Risk Officer.
	13 Accountable authorities of large entities, or entities with complex risks, should consider establishing a separate risk committee, with an independent chair and membership linkage with the audit committee, to strengthen the governance of risk. Where an entity establishes a separate risk committee, the risk committee should be responsible for reviewing the appropriateness of the entity's system of risk oversight and management, with the audit committee's functions amended accordingly.	Support that it should be at the discretion of the Accountable Authority; do not support the blanket need for or make up of the committee. Treasury's Executive Committee is responsible for reviewing the appropriateness of Treasury's system of risk oversight and management. Treasury has reduced the number of internal committees to reduce red tape.
	14 For entities where a separate risk committee is not established, audit committees should be called 'audit and risk committees' to reinforce the important role of these committees in supporting accountable authorities to manage and engage with risk.	Not supported. The Charter gives effect to the role of the Audit Committee, not its title. The Accountable Authority has the discretion, cognisant of the PGPA Act and Rule, to determine the role and functions of the Audit Committee.

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Audit committees	<i>The effectiveness of audit committees is mixed, particularly in non-corporate Commonwealth entities. To improve their effectiveness, we recommend:</i>	
15	The independence of audit committees should be strengthened by requiring all audit committee members to be independent, with independence defined as not being an official or employee of a Commonwealth entity.	Not supported. The Treasury Audit Committee is made up of more external members than internal in line with current PGPA Act requirements. The Charter sets out that collectively the committee has the required skills. Treasury has found that the best outcomes result from members having a mix of public and private sector experience, supported by sufficient internal knowledge. The Secretary increased the number of internal members to two last year, after a discussion with the Chair, as internal members provided valuable insights into the work of the entity. An Audit Committee comprising independent members only would also increase the cost to entities, and make it more difficult for entities to source appropriate candidates.
16	The accountable authority and senior management of entities should be actively engaged with their audit committees, including attending meetings, to give their authority and imprimatur to audit committee activities in their entity. This will ensure that audit committees are briefed on the operations and performance of the entity and are able to question management on matters and information relevant to the role of the audit committee.	Supported. the Deputy Secretary of Corporate Services and Business Strategy Group, as the Secretary's representative, is a regular attendee at Audit Committee meetings to answer committee questions. Deputy Secretaries regularly present to the Audit Committee and the Secretary is de-briefed as appropriate. The Chair meets with the Secretary annually.
17	Accountable authorities should ensure: (a) their audit committee members, both individually and as a group, have the appropriate qualifications, knowledge, skills and experience to meet their responsibilities, as required in the PGPA Rule; (b) committee members are sourced broadly, with greater representation from other industries, sectors and locations; and (c) the remuneration of audit committee members is commensurate with the importance of their responsibilities and the commitment required.	Partially supported. The members of the Treasury Audit Committee, as a group, have the appropriate skills to meet their responsibilities. As mentioned above, this is provided by through a mix of public and private sector experience, and external and internal members. However, Treasury is concerned that this requirement, if implemented, will cause an additional resource burden on entities, particularly smaller and more specialised entities, as well as introducing greater financial and information security risks for agencies to manage.
18	Accountable authorities should establish an audit committee membership rotation policy, with maximum appointment terms, to ensure regular rotation of committee membership.	Supported, noting a blanket term would not be supported. Agencies should have discretion to determine a fit-for-purpose term. Too frequent rotation erodes knowledge accumulation and has additional resourcing pressures associated with recruitment activity.
19	Accountable authorities should ensure that independent members are inducted into the business of the entity and briefed on its operations and performance on an ongoing basis.	Supported. New members are provided with relevant information and briefings at the beginning of their term. Treasury regularly sends internal communications to members to keep them abreast of operational and performance matters. Meetings are held regularly and members are supported by regular updates from across the Treasury, including on organisational planning, reporting, risk management and fraud.
20	Smaller Commonwealth entities with limited resources and similar purposes should consider sharing an audit committee.	Not supported. Each entity should have an appropriately skilled Audit Committee that is appropriate to its functions and purpose. It would be difficult to ensure the committee gave each entity adequate support in managing its functions without significantly increasing the workload of members. Additionally, this would make member conflicts of interest more complex to manage.

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21	Finance should initiate a learning program similar to those offered by professional bodies such as the Chartered Accountants Australia and New Zealand, the Australian Institute of Company Directors and the Actuaries Institute, for audit committee chairs to facilitate sharing information about the performance of audit committee functions.	Partially Supported. The recommendation is unclear whether it is focused on learning or information sharing. Members are appointed as experts in their area of knowledge. Finance could facilitate a knowledge sharing forum for Audit Committee best practice, but should engage agency heads and Chairs to determine topics of greatest interest and benefit.
22	Audit committees should be subject to greater transparency by requiring disclosure in annual reports of their charter; membership; the qualifications, skills and experience of each committee member; details of each member's attendance at meetings; and the remuneration of each audit committee member, broadly consistent with the practice of Australian Securities Exchange (ASX) listed companies.	Supported, noting the additional resourcing required to meet these requirements, and that this confers an additional reporting burden on entities. An alternative could be for Finance to collect this additional information and publish it centrally via some mechanism.

Clarifying reporting requirements and reducing the reporting burden

Duplicative performance reporting requirements impose unnecessary reporting burden on entities. The linkages between the reporting requirements of portfolio budget statements, corporate plans and annual reports need to be clarified and requirements for corporate plans strengthened. To clarify reporting requirements and reduce the reporting burden, we recommend:

23	Finance should work with smaller entities to consider further options to address the reporting burden on smaller entities, taking into account arrangements in state and territory governments and international jurisdictions.	Supported. Treasury believes in a principles-based approach to the PGPA Act implementation, consistent with the aim of the Act to improve entity performance, rather than a compliance-focused approach.
24	The annual performance statement should be the primary vehicle for reporting the performance of Commonwealth entities. Duplicative performance reporting requirements – for example, those under the Regulator Performance Framework – should be reviewed and integrated to reduce the reporting burden and improve clarity.	Supported. Treasury supports reducing red tape through the streamlining of reporting requirements in this way.
25	Finance should simplify the reporting burden for smaller Commonwealth entities by developing standardised corporate plan and other templates to help reduce the amount of work required.	Partially supported. Treasury supports the development of templates for those who wish to use them, but not mandatory use.
26	Finance should amend the PGPA Rule on corporate plans to require the plans to outline how entities will achieve their purpose(s) over a four-year reporting horizon, how they cooperate and coordinate with others, and to identify key risks and how these will be managed.	Partially supported. There is some inconsistency and confusion as to the interpretation of this requirement that should be clarified in the Rule. The ANAO audit of corporate plans stated that the "four mandatory sections" of the corporate plan (environment, performance, capability and risk) should each explicitly address the four-year time horizon. This is not consistent with the Rule or Department of Finance guidance, which states that the <i>six</i> mandatory sections of the plan (introduction, purposes, environment, performance, capability and risk) are expected to cover the four-year period, with dates made explicit <i>where known</i> . Treasury supports a principles-based approach wherein the corporate plan is a strategic, forward-looking document that covers the forward estimates as far as possible, rather than a proscription that every section have mandatory headings across the four years. Treasury also supports not duplicating entity resourcing information across publications. As noted this information is already included in the PBS.
27	Finance should clarify and explain the integrated performance reporting requirements and linkages in portfolio budget statements, corporate plans and annual reports to achieve transparency to the Parliament, with reference to the views of the Joint Committee of Public Accounts and Audit and in consultation with the Australian National Audit Office.	Supported. The timing of the various publications and duplication of performance information can cause confusion. In addition there is now significant duplication across the PBS and corporate plan that should be streamlined.

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28	Finance should explore opportunities to better link performance and financial information presented in entities' corporate plans and annual reports.	Supported. There is now significant duplication across the PBS and corporate plan that should be streamlined and clarified.
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Annual report timing and Parliamentary scrutiny

Current arrangements for presenting annual reports to the Parliament do not ensure they receive adequate scrutiny by the Parliament. To improve the timeliness and scrutiny of annual reports, we recommend:

29	[Subject to implementation of Recommendation 30, below] Annual reports should be presented to the Parliament on or before 30 September. This would ensure the Parliament has annual reports available before the Senate Supplementary Budget Estimates hearings. Annual reports should be presented to the responsible minister no later than seven days before this date.	Supported.
30	The Parliament and Finance should continue to implement a fully digital reporting platform and reporting process for annual reports and other relevant reporting requirements, with a view to entities phasing out hard copy reporting by 2019–20. Sufficient resources and funding should be allocated to achieve this goal.	Supported.
31	The Senate should consider amending its Standing Orders to provide that entity annual reports, including annual performance statements, are referred to Senate standing committees for examination at Senate Supplementary Budget Estimates hearings. This would provide for greater scrutiny of annual reports at Senate Estimates hearings.	Supported.

Cross-government cooperation

The PGPA Act encourages cooperation by Commonwealth entities, but there is limited evidence that cooperation has been enhanced as a result of the Act. To improve cooperation by Commonwealth entities, we recommend:

32	The Government should consider using section 34 of the PGPA Act to set priorities and objectives in key areas of activity, which will facilitate trials of alternative planning, resourcing, governance and reporting arrangements for these priorities.	Noted. This is a decision for Government.
33	[Subject to the implementation of Recommendation 32, above] The Secretaries Board should leverage its leadership role by driving the implementation of priorities and objectives identified by the Government, including the development and reporting of whole-of-government performance information.	Supported. Treasury supports closer collaboration between entities to deliver outcomes, as far as practical within resource limits.

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Reporting of executive remuneration	<p><i>Current arrangements for reporting executive remuneration across Commonwealth entities and companies does not provide sufficient transparency and accountability for the use of public resources for this purpose. To improve transparency and accountability, we recommend:</i></p>	
34	<p>Accountable authorities should disclose executive remuneration in annual reports on the following basis, as shown in Appendix C to this report:</p> <p>(a) the individual remuneration, including allowances and bonuses, of the accountable authority and their key management personnel, in line with the disclosure of ASX listed companies; and</p> <p>(b) the number and average remuneration (including allowances and bonuses) of all other senior executives and highly paid staff, by band, consistent with the reporting arrangements in place up to 2013–14.</p>	<p>(a) Supported. In the interests of public sector transparency and accountability, Treasury supports the disclosure of individual remuneration (including allowances and bonuses) of the accountable authority and their key management personnel. The recommendation should make clear, however, whether such disclosure is mandated, or whether information will be disclosed on a consent basis, in line with privacy principles (and current aggregated executive remuneration reporting). We would recommend that the approach adopted be consistent with reporting by ASX listed companies.</p> <p>(b) Supported. Treasury already publishes the number and average remuneration (including allowances and bonuses) of senior executives and highly paid staff on our external website. Transitioning this reporting into the Annual Report does not represent additional work or resource requirements.</p>
35	<p>Accountable authorities should provide an explanation of their entity's remuneration policy and practice, consistent with the practice of ASX listed companies, similar to the remuneration report in a company's annual report.</p>	<p>Supported. In the interests of public sector transparency and accountability, Treasury supports providing additional information to further explain its remuneration policy and practice. It should be noted Treasury already publishes information in its Annual Report on considerations for remuneration setting of its Senior Executive Service staff.</p> <p>The recommendation should also make clear, and provide a specific example, of what should be included when providing an explanation of an entity's remuneration policy and practice.</p>
Reporting of contracts and consultancies	<p><i>Current arrangements for reporting spending on contracts and consultancies do not provide sufficient transparency to the Parliament and citizens. To clarify confusion on the reporting of consultancies and improve transparency on spending on contracts and consultancies, we recommend:</i></p>	
36	<p>The definition of 'consultancy' and the use of the 'consultancy flag' to identify consultancy contracts in AusTender should be clarified to ensure that spending on consultancies is reported consistently and accurately by non-corporate Commonwealth entities in their annual reports.</p>	<p>Supported.</p>

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37	<p>Non-corporate Commonwealth entities should provide the following information on expenditure on contracts and consultancies in their annual reports:</p> <p>(a) total aggregate expenditure on contracts and consultancies and the number of new and ongoing contracts in the reporting period (extending the current reporting requirements for consultancies to contracts in general); and</p> <p>(b) lists of all organisations and/or individuals that receive 5 per cent or more of the entity's total expenditure on contracts and consultancies, respectively (or, where this includes fewer than five organisations/individuals, the five organisations/individuals that receive the greatest level of expenditure).</p>	<p>Not supported. It is noted that 37b will be a subset of the data required to compile 37a. As per the Commonwealth Procurement Rules, non-Corporate Commonwealth entities are required to report details of all contracts, valued at \$10,000 (GST inclusive) and above, on AusTender within 42 days of the contract being entered into. As a result, data on these contracts is captured in Treasury's (and other entities) finance systems. Data on contracts valued below \$10,000 is not required to be reported on and is therefore not captured. This recommendation will add a significant amount of red tape, particularly to the larger procuring entities. It is recommended that if this change is accepted, the threshold for reporting contract and consultancy expenditure in the Annual Report be limited to only include those valued at or above \$10,000 (GST inclusive) – in line with the AusTender threshold. Additionally, the review findings were in context of the public discussion around the Commonwealth's spending on contracts and consultancies following the ANAO information report on procurement and contract reporting which defined 'contracts' basically as labour hire arrangements. Therefore a definition of 'contracts' will be required to be clear - does it mean everything other than consultancies or contracts for labour hire specifically?</p> <p>Additionally, thought should be given to the requirement to report on expenditure data more generally – details of the expected maximum contract value for arrangements at and above \$10,000 is already publicly available on AusTender. The maximum contract value being the maximum amount that will be spent against a particular arrangement. If the Annual Report requirements were amended to require information on the total expected contract value on contracts and consultancies and the number of new and ongoing contracts in the reporting period, like the Senate Order, a report could be built in AusTender to address this. Significantly reducing red tape without reducing transparency.</p>
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Finance support.	<p><i>Finance has provided strong support throughout the development and early implementation of the resource management framework, but there is a need to continue to provide support as entity practices mature. To support ongoing improvement of entity practices, we recommend:</i></p>	
38	<p>Finance should enhance its role in providing advice and support to Commonwealth entities and companies to reflect maturing practices by:</p> <p>(a) continuing communities of practice and one-on-one interactions with entities;</p> <p>(b) enhancing guidance material to be more pragmatic and practical in nature, with appropriate case studies, in consultation with entities and a cross-portfolio advisory committee;</p> <p>(c) periodically reviewing guidance material to ensure it remains appropriate; and</p> <p>(d) developing Finance's internet presence and its use of web-based materials.</p>	<p>Supported. Noting our preference for a principles-based approach. It may also create resource burden on entities having to read information where it is not targeted to the audience's needs. It must also be appreciated that constant change and revision to planning and performance requirements will create unnecessary burden on agencies and our preference would be for a package of changes periodically (circa 3 yearly), that have been well tested and piloted before release, with reasonable implementation timeframes.</p>

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Technical and other matters	<i>Matters received through submissions to streamline the application of the resource management framework, remove ambiguity, and strengthen coherence, clarity and consistency.</i>	
39	Finance should review and determine whether any aspect of the Commonwealth Risk Management Policy and the Comcover Benchmarking Survey Tool require changes to be made to improve coherence and operation, and consult with relevant stakeholders in making those changes.	Supported. The reporting framework for the survey is deficient. For example, the report concludes the bottom three rated risks are weaknesses / areas of underperformance, even where an entity has achieved its maturity target. The suggestions for improvement are a bucket list of items that the entity may already be doing - no effort is taken to target the report to the entity despite our resources applied to responding to the survey.
40	Finance and the Attorney-General's Department should explore how legal advice on the PGPA Act and Rule can be shared across Commonwealth entities.	Supported.
41	Finance should amend the PGPA Rule to ensure consistency with the construction of the provisions relating to the disclosure of material personal interests contained in the PGPA Act	Supported.
42	Finance should engage with relevant stakeholders to explain the reasons for the particular governance and accountability requirements applied to corporate Commonwealth entities and companies.	Supported.
43	Finance should evaluate the merits of making a rule under section 61 of the PGPA Act, relating to indemnities, guarantees or warranties by corporate Commonwealth entities, in consultation with relevant stakeholders and the Finance Minister.	Partially supported. Consistency across corporate Commonwealth and non corporate Commonwealth entities is welcomed where there is a genuine need for both entity types to be consistent and it does not add unnecessary red tape for either entity.
44	Finance should evaluate the merits of legislating a provision, equivalent to section 27L of the former <i>Commonwealth Authorities and Companies Act 1997</i> , to allow board members of corporate Commonwealth entities to inspect the books of the entity.	Noted.
45	Finance, in consultation with relevant stakeholders, should review the existing Finance Minister delegation under section 63 of the PGPA Act in relation to waiver of debts to reduce red tape.	Supported.
46	Finance, in consultation with relevant stakeholders, should examine introducing greater flexibility into the Finance Minister's delegation of section 53 of the PGPA Act in relation to banking by the Commonwealth.	Supported.