



Australian Government
Department of Employment

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

Department of Employment

Introduction

The Department of Employment is pleased to make a submission to the Independent Review of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and the *Public Governance, Accountability and Performance Rule 2014* (PGPA Rule). This submission includes perspectives provided from portfolio agencies, as well as individuals, such as Chief Financial Officers, who regularly engage with the PGPA Act.

Background

The Employment portfolio provides advice, support, programs and services to the Australian Government and wider community. The portfolio works with other Australian Government agencies, state and territory governments and a range of service providers to connect people with jobs, support workplace safety and build business productivity.

The agencies of the portfolio are structured in a variety of ways, with some having their own establishing legislation. These structures influence how the agencies manage the efficient, effective and proper use of public resources, as well as how they interact with the PGPA Act and PGPA Rule.

The **Department of Employment** is responsible for national policies and programs that help Australians find and keep employment and work in safe, fair and productive workplaces.

The **Asbestos Safety and Eradication Agency** is dedicated to working with jurisdictions and affected parties to facilitate a national approach to the eradication, handling and awareness of asbestos.

The **Australian Building and Construction Commission** is responsible for ensuring compliance with workplace laws in building and construction workplaces and delivering impartial advice to the building and construction industry.

Comcare, the Safety, Rehabilitation and Compensation Commission, and the Seafarers Safety, Rehabilitation and Compensation Authority contribute to a safer, fairer and more productive Australia. Comcare partners with workers, their employers and unions to keep workers healthy and safe, and reduce the incidence and cost of workplace injury and disease.

The **Fair Work Commission** is Australia's national workplace relations tribunal. It is responsible for administering provisions of the *Fair Work Act 2009* as well as a range of other functions.

The **Fair Work Ombudsman** promotes harmonious, productive and cooperative workplace relations and ensures compliance with Commonwealth workplace laws. The **Registered Organisations Commission** promotes the efficient management and accountability of registered organisations.

Safe Work Australia is leading the development of policy to improve work health and safety and workers' compensation arrangements across Australia.

The **Workplace Gender Equality Agency** is responsible for promoting and improving gender equality in Australian workplaces and administering the *Workplace Gender Equality Act 2012*.

Overarching statement

Overall, the legislation and associated public management reform agenda (PMRA) have the potential to be a positive influence in the Department's management arrangements, and to date have provided a reasonable balance between guidance and flexibility.

The intended benefits of the PGPA Act are to improve the quality of information to Parliament, introduce a more mature approach to risk across the Commonwealth, improve the productivity and performance of the Commonwealth public sector, and reduce red tape. These benefits were considered in developing this response.

Impact of the new legislative framework on small entities

We welcome the review considering the impact of the PGPA Act on small entities, and note that the Employment portfolio contains agencies of a mix of sizes, ranging from fewer than twenty staff to more than two thousand.

The 'one size fits all' approach for Commonwealth entities has caused an inadvertent impact for smaller agencies, primarily in relation to resourcing in order to effectively and efficiently meet the requirements of the PGPA Act. All of our portfolio's agencies must meet the requirements to establish and maintain governance, frameworks, delegations and authorisations regardless of size.

It is our view that there could be benefit in increased model frameworks, instruments and arrangements, as well as guidance material being made available to make it easier to comply and to support consistency in the application of the PGPA Act. This would be particularly beneficial for smaller agencies, where budget constraints prohibit the recruitment of specialist expertise in these areas, with workloads being absorbed into existing operational roles and functions. When measured at the whole-of-Government level, the Department of Finance creating more best practice templates and guidance e.g. 'shell' delegations and rules, would lead to significant resource savings.

An example where clearer guidance would be of benefit is procurement. One of our portfolio agencies recently contacted the Department of Finance for assistance on how to interpret that Department's advice in a Resource Management Guide, which mandates the use of the Commonwealth Contracting Suite. The agency had difficulty in getting appropriate specificity of advice for their circumstances.

Generally we find the Resource Management Guides to be excellent reference documents. They are easy to find and are written in very clear terms. However, there is scope for the Department of Finance to take a more active role in interpreting guidance and modelling supporting materials. This would address the issue of Commonwealth entities misinterpreting the intent of the PGPA Act or its supporting guidance. This was raised in an audit of corporate planning conducted by the Australian National Audit Office (ANAO) involving one of our portfolio agencies, which noted that the *'content, interpretation and application of one mandatory process requirement... remains an issue for entities, notwithstanding the release of revised guidance from Finance in July 2016. The clarity of current*

requirements should be considered as part of the review of the operations of the PGPA Act and PGPA Rule to be conducted after 1 July 2017¹.

For broader consideration by the review, we would suggest that a differential approach could be applied for the requirements of the PGPA Act, dependent on the size of the agency, similar to that given to the tiered approach for financial reporting i.e. Tier 1 – larger, or higher risk agencies would require more comprehensive disclosure, and Tier 2 - limited or reduced disclosure. This would potentially reduce the impact on resourcing and budget constraints for smaller agencies.

This concept, originally called ‘earned autonomy’ and more recently known as ‘differential regulation’ was communicated by the Department of Finance as being central to the reforms being proposed as part of the PMRA. Rather than applying a one-size-fits-all approach to regulation within government, ‘differential regulation’ would mean the nature and extent of regulatory intervention would be dependent on an entity’s risk profile and performance.

Interaction of the PGPA and other legislation

The timing of reporting under the PGPA Act is currently inconsistent with reporting required for agencies with Regulatory Performance Framework (RPF) obligations. RPF reporting is due in December, and the main reporting mechanism of the PGPA Act, the annual report, is required to be tabled in Parliament by the end of October. This misalignment impacts agencies which include RPF indicators in their Corporate Plans, and could otherwise align their internal performance cycles.

Risk and performance

Within the Department, it is widely recognised that risk management is a cornerstone of good corporate governance and organisational success. Managing risk well enables us to achieve our outcomes and promotes the efficient, effective and ethical use of resources. A recent ANAO audit concluded the Department has a mature and integrated approach to the identification and management of risk and has implemented a range of measures to build its risk capability. The Department has consciously invested in its risk management framework and we were pleased the ANAO has identified the positive returns from this investment.

¹ ANAO Report No.54 2016–17 Corporate Planning in the Australian Public Sector 2016–17, Page 9, Paragraph 18.

The Commonwealth Risk Management Policy has been well received by our portfolio. An area which would improve the implementation of the PGPA Act and its benefits realisation would be a closer relationship between the Commonwealth Risk Management Policy, and the annual mandatory Comcover Risk Benchmarking Survey. The Comcover survey assesses risk *maturity*, and could be potentially enhanced by also measuring *compliance* with the Commonwealth Risk Management Policy. The Department notes the Comcover survey significantly pre-dates the release of the Commonwealth Risk Management Policy.

An area we would welcome the review exploring further is optimising the relationship between the corporate plan and portfolio budget statements (PBS), particularly in relation to sequencing and performance measurement. At present, there is a high degree of duplication between these two documents, which introduces overlap and inefficiency, and adds complexity to maintaining the line of sight between that which entities intend to achieve and what was delivered. The corporate plan was a new requirement under the PGPA Act, and largely duplicates the content of the other key planning document, the PBS. The intention at the time of the implementation of the PGPA framework was that the PBS would be pared back to essential financial information, with the discussion of strategic priorities and performance targets to reside only in the new corporate plans. However, all of this information remains as required context for the PBS, which has the effect of two statements of strategic and performance information in two separate planning documents.

Currently, Commonwealth entities are required to prepare corporate plans by 31 August each financial year (or by the end of February for entities that operate on a calendar year basis). The PBS is typically published in May, which means in practice the majority of our organisational planning has occurred significantly prior to the release of the Corporate Plan.

Similarly, a Finance Secretary Direction on *'Requirements for Performance Information in Portfolio Budget Statements'* requires, amongst other things, that entities include performance criteria, and indicative current year results, in their PBS. As a result, entities now have to report on performance criteria in their corporate plans, PBS and in annual performance statements at the end of each financial year or reporting period.

We note that at a recent Public Management Reform Agenda forum, the idea of multi-year appropriations was raised. While this concept needs to be investigated for viability, our initial view is that it is worth further exploration. This approach would leverage the existing PBS (single year focus) and corporate plan (multi-year focus) relationship.

Conclusion

Broadly, the implementation of the PGPA Act and PGPA Rule have supported the operations of the Department and portfolio agencies. As identified above, at times, the mix of prescriptive and principles-based elements of the PGPA Act and wider legislative framework has proved challenging. The Department considers that as the public sector management reforms contained in the PGPA Act were expected to take several years to implement, mature and become fully embedded into the practices and processes of Commonwealth entities, this is likely indicative that change is underway.

The Department would also like to acknowledge the work of the Department of Finance in supporting the introduction of the PGPA Act. In particular, we have found the Department of Finance to have been very collaborative in consulting on the Accountable Authority Instructions, and to have taken on board feedback about improving the format and consistent presentation of Resource Management Guides.