Auditor-General for Australia

Australian National Audit Office

22 October 2018

Senator David Leyonhjelm
Chair
Red Tape Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Senator Leyonhjelm

Policy and process to limit and reduce red tape

The Australian National Audit Office (ANAO) published the following performance audit report that you may find relevant to the Red Tape Committee's Inquiry into the policy and process to limit and reduce red tape.

- Report No. 29 2015-2016 *Implementing the Deregulation Agenda: Cutting Red Tape*

The ANAO also considered the compliance reporting processes of selected entities in the following report.

- Report No.47 2017-2018 *Interim Report on Key Financial Controls of Major Entities*

Information about what the audits assessed, concluded and recommended is attached. The audit reports are available online at www.anao.gov.au.

Should the Committee require further information in relation to these matters, my office would be pleased to provide you with a briefing at a time convenient to you or appear as a witness at a hearing.

Yours sincerely

Grant Hehir

Report No. 29 2015-2016 ***Implementing the Deregulation Agenda: Cutting Red Tape***, assessed the effectiveness of selected departments' implementation of deregulation initiatives. To form a conclusion against the audit objective, the ANAO adopted the following high level audit criteria:

- effective whole-of-government oversight and guidance was available to support implementation of the Government's Deregulation Agenda;
- selected departments established sound governance, risk management and other arrangements to identify, assess and quantify potential deregulation measures; and
- effective processes were in place to monitor and report on achievements, including savings realised, from the Deregulation Agenda.

In addition to examining the role of PM&C as the central coordinating department for the Deregulation Agenda, the audit examined implementation of the Agenda by three selected portfolio departments—Communications and the Arts; Health; and Industry, Innovation and Science. The ANAO also reviewed the estimated savings or costs of a sample of 29 measures developed and implemented by these portfolios in 2014.

The audit concluded that:

- The incoming Government's Deregulation Agenda included an annual net reduction target of at least $1 billion in red tape, and on taking office in late 2013, internal portfolio-level reduction targets were set by Ministers, with a combined value of $2.65 billion for 2014 and 2015.[1] By the end of 2015, the Government had publicly announced measures to deliver estimated total net savings of $4.80 billion. Portfolio reporting to PM&C advised that some $3.97 billion in net savings had been implemented in 2014 and 2015—exceeding the internal target of $2.65 billion by $1.32 billion.
- PM&C moved quickly to put in place a governance framework to support implementation of the incoming Government's Deregulation Agenda. The selected departments established internal Deregulation Units with clearly articulated roles, responsibilities and consultative mechanisms, and involved senior APS leaders to provide impetus. The selected departments' approaches to calculating the savings (and in some cases the costs) of the 29 measures examined by the ANAO was consistent with whole-of-government guidance provided by PM&C and had regard to government expectations that departments adopt a risk-based and proportionate approach to assessing the benefits of removing or adjusting regulatory arrangements.
- Ministers agreed in December 2013 that significant regulatory changes—potentially including some red tape reduction measures—would be subject to a post-implementation review process within five years, and that the economic impacts of the overall Deregulation Agenda would be assessed by the Productivity Commission or another equivalent body within three years. As at the end of 2015, no whole-of-government post-implementation reviews or evaluations had been conducted, although some of the audited portfolios advised that they planned to undertake stakeholder surveys. Portfolio-level surveys are not a substitute for the structured third-party assessment of impact agreed by Ministers at the commencement of the program, and PM&C should take the necessary steps to implement the Australian Government's decision that the Deregulation Agenda's economic impacts be assessed within three years.

[1] Portfolio targets for 2014 were set in December 2013, with 2015 targets assigned in March 2015. The sum of individual portfolio targets was set at greater than $1 billion to minimise the risk of the target not being met as a result of delays in implementing deregulatory proposals. Individual portfolio targets were not published.

The ANAO recommended that:

The Department of the Prime Minister and Cabinet take the necessary steps to implement the Australian Government's decision of December 2013 that the economic impacts of the Deregulation Agenda be assessed within three years.

Report No. 47 2017-2018 ***Interim Report on Key Financial Controls of Major Entities*** focused on the results of the interim audits, including an assessment of entities' key internal controls, supporting the ANAO's 2017–18 financial statements audits. This report examined 26 entities, including all departments of state and a number of major Australian government entities. One matter considered in the report was the approach entities took to monitoring and reporting instances of non-compliance with finance law.

The ANAO observed that entities had processes in place for monitoring and reporting instances of non-compliance with finance law. Following changes to the mandatory external reporting of non-compliance in 2015–16, there is evidence that some entities are reducing the level of internal reporting of non-compliance captured and reported to audit committees and accountable authorities

Reporting relating to compliance with finance law

Entities are required to comply with the finance law[2] and this would lead to an expectation that entities are able to identify instances of non-compliance. Instances of non-compliance should be assessed to determine whether they indicate new or increased areas of risk for an entity. The *Public Governance, Performance and Accountability Act* 2013 (PGPA Act) sections 19 and 91 require accountable authorities of Commonwealth entities, to give the responsible Minister, reasonable notice, of any significant issue that may affect the entity. Prior to 2015–16, general government sector entities were required to submit an annual Certificate of Compliance to the Minister for Finance and the responsible Minister summarising all non-compliance with the PGPA Act Framework. From 2015–16, the Department of Finance changed the compliance reporting process to require entities to report only significant non-compliance with finance law to both the Minister for Finance and the responsible Minister.

To support the change in requirements, the Department of Finance issued guidance in relation to reporting of significant non-compliance through the Resource Management Guide 214 *Notification of significant non-compliance with finance law (PGPA Act, section 19)* (RMG 214). The guide outlines factors which may be considered when determining whether significant non-compliance occurred including:

- failure to comply with the duties of accountable authorities (sections 15 to 19 of the PGPA Act);
- serious breaches of the general duties of officials (sections 25 to 29 of the PGPA Act) including any fraudulent activity by officials;
- systemic issues reflecting internal control failings or high volume instances of non-compliance; and
- non-compliance issues that are likely to impact on the entity's financial sustainability.

[2] In accordance with section 8 of the PGPA Act finance law means the PGPA Act; or PGPA Rules; any instrument made under the PGPA Act; or Appropriation Acts.

RMG 214 notes that the accountable authority should consider their entity's environment when determining whether instances of non-compliance are significant. As part of the interim audits the ANAO considered entities' application of RMG 214.[3]

Entities advised that professional judgement is applied and consideration given, to the nature and volume of breaches when assessing significance.[4] The ANAO observed that three entities[5] included a specific financial impact threshold for which all non-compliance above the threshold would be considered significant within their formal definition of significant non-compliance.

As part of the Audit Committee's governance role the committee generally has oversight of the process for collating instances of non-compliance and the subsequent assessment regarding their significance. The Departments of: Foreign Affairs and Trade; and the Prime Minister and Cabinet provides only those breaches assessed as significant to their audit committees. The Department of Infrastructure, Regional Development and Cities did not provide a paper to the audit committee on its 2016–17 compliance with finance law. In addition the Department of Foreign Affairs and Trade's policy requires only significant non-compliance to be reported to the audit committee and the accountable authority, therefore a complete listing of non-compliance breaches was not compiled. As a result, DFAT has been excluded from the below analysis of non-compliance**.**

In addition to notifying the relevant Minister of any significant issues which occur, the entity must also report any significant non-compliance in its annual report in line with the PGPA Rule section 17AG. The Department of Defence was the only entity to report an instance of significant non-compliance with finance law in their 2016–17 annual report as outlined below.

> The Department of Defence reported 29 instances of significant noncompliance with the finance law, for circumstances proven as fraud committed by an official and addressed by Defence authorities through criminal, disciplinary or administrative action. Significant fraud cases are also reported separately to the Minister for Defence in accordance with reporting requirements set out in the Commonwealth Fraud Control Framework.[6]

Entities undertake a range of activities to identify instances of non-compliance and support their assessments of whether identified breaches meet the definition of significant breaches. These activities include self-reporting, internal assurance activities and questionnaires completed by officers holding delegations. Through these processes, in 2016–17 the entities included in this report[7] identified a total of 3,185 instances of non-compliance. Two entities reported no non-compliance[8], three entities reported 50 per cent of the non-compliance[9] and the remaining 19 entities each reported between one and nine per cent of the non-compliance.

Further details of the areas of non-compliance reported in 2016–17 are detailed below.

- Of the non-compliance with Commonwealth Procurement Rules, 95 per cent of the breaches related to rule 7.16 which requires entities to report contracts entered into or amended over

[3] RMG 214 does not apply to NBN Co Limited (NBN). NBN is required to report significant issues to the Minister in accordance with the PGPA Act and other matters as required under the *Corporations Act 2001*. In 2016–17, NBN identified no matters that required reporting.

[4] The ANAO did not undertake audit procedures to make an assessment of, or conclude on, judgements made by an accountable authority to determine whether non-compliance was significant.

[5] The Department of the Environment and Energy, the Future Fund Management Agency and the Board of Guardians and the National Disability Insurance Agency.

[6] Department of Defence 2016–17 Annual Report page 69.

[7] The analysis excludes the Department of Foreign Affairs and Trade and the NBN Co Limited.

[8] The Australian Postal Corporation and the Reserve Bank of Australia.

[9] The Departments of: Agriculture and Water Resources; Defence; and Home Affairs.

$10,000 on AusTender within 42 days. The following three entities identified the highest levels of non-compliance in this area: the Department of Home Affairs (540 instances); the Department of Finance (143 instances); and the Department of Agriculture and Water Resources (108 instances).

- Section 23 of the PGPA Act[10] provides the powers for accountable authorities of non-corporate entities to enter into or vary contracts, agreements or deeds of understanding relating to the affairs of the entity and approve commitment of funds. Of the instances of non-compliance in 2016–17: 392 were instances were identified by the Department of Defence; 194 instances by the Department of Human Services; and 132 instances by the Department of Agriculture and Water Resources.
- The instances of non-compliance of the PGPA Act excluding section 23 related to the misuse of corporate credit cards and the commitment of expenditure.
- The non-compliance with the PGPA rule relates to failure to document the approvals to enter into arrangements under section 23 of the PGPA Act and banking monies within 5 days from receipt.
- Non-compliance with the Commonwealth Grant Rules and Guidelines resulted from entities not meeting the requirement to publish grants on the website within 14 days.

The ANAO has noted that there are divergent practices in respect to determining the significance of identified non-compliance breaches. Following the changes to the mandatory external compliance reporting process in 2015–16, there is evidence that some entities are reducing the level of internal reporting of non-compliance captured and reported to audit committees and accountable authorities. The collation of this information, promotes greater transparency and enables the entity's management to assess risks and determine training requirements or changes to procedures required to address trends.

[10] Breaches of section 23 of the PGPA Act include: failure to obtain appropriate delegate approval prior to entering into contracts; and exceeding a delegate's approval.