

Introduction

Background

- 1.1 On 13 February 2014, the Joint Committee of Public Accounts and Audit (JCPAA) resolved to inquire into the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) rules development. The terms of reference for the inquiry were to ‘consider the process for the development of the rules, the impact of the rules, and the purpose of the rules in the context of the broader Public Management Reform Agenda’.
- 1.2 The JCPAA’s inquiry into the draft rules builds on its earlier inquiry into the Public Governance, Performance and Accountability Bill 2013 (PGPA Bill). The PGPA Bill was introduced into the House of Representatives in May 2013 and referred to the Committee for inquiry. The Committee tabled its report, *Report 438: Advisory Report on the Public Governance, Performance and Accountability Bill 2013*, on 4 June 2013. The PGPA Act received Royal Assent on 29 June 2013.
- 1.3 The Explanatory Memorandum to the PGPA Bill stated that:

The rules, which will be disallowable instruments, will be developed in consultation with Commonwealth entities. A number of entities have indicated an interest in participating in working groups to develop the rules. The JCPAA will also play an important role in the development and approval of the rules.¹
- 1.4 As noted in its Government Response to the Committee’s report on the PGPA Bill, the Department of Finance (Finance) undertook to consult with the Committee on the draft rules for the PGPA Act:

¹ *Explanatory Memorandum, Public Governance, Performance and Accountability Bill 2013* (PGPA Bill), Parliament of the Commonwealth of Australia, p. 10.

My department appeared before the JCPAA and undertakings were made to consult with the JCPAA during the implementation of the PGPA Act, most notably in relation to the rules ... that will underpin the operation of the Act and need to be in place for 1 July 2014, the date when the substantive provisions of the Act come into effect.²

1.5 Finance further commented that:

The need for rigorous consultation was also emphasised in the dissenting report from Coalition members, which recommended that '... if Parliament passes the Bill before 30 June, Coalition members require ...

- (b) a progress report on the development and drafting of the Rules be made available to the JCPAA by both Finance and the ANAO by 30 November...'³

1.6 As is discussed in Chapter 2, the draft PGPA rules provided to the Committee by Finance were developed following an extensive consultation process on an initial set of proposed rules. As Finance noted:

Consistent with undertakings to the previous Parliament during the passage of the PGPA Act in May and June 2013, the supporting rules have been subject to public consultation and [have been] presented to the JCPAA to review before they are formally presented to Parliament.⁴

Public Management Reform Agenda

1.7 The Public Management Reform Agenda (PMRA), with the PGPA Act as its cornerstone, is a broad integrated package of reforms to the Commonwealth's resource management framework.

1.8 The PMRA commenced in December 2010⁵ and involved extensive consultation across government and other sectors. In March 2012, Finance released the discussion paper, *Is Less More? Towards Better Commonwealth*

2 Government Response to Joint Committee of Public Accounts and Audit (JCPAA) *Report 438, Advisory Report on the PGPA Bill 2013*, 2 December 2013, p. 1.

3 Government Response to JCPAA *Report 438, Advisory Report on the PGPA Bill 2013*, 2 December 2013, p. 1.

4 Department of Finance (Finance), *Public Governance, Performance and Accountability Act 2013 (PGPA Act) Compendium (Working Draft 1.0)*, Appendix 7, *Submission 1*, p. 17.

5 It was at that time known as the Commonwealth Financial Accountability Review (CFAR).

Performance.⁶ This paper was generated to encourage debate on the resource management framework and help inform the development of options to be presented to the Government at a later stage.

- 1.9 In November 2012, Finance released the position paper, *Sharpening the Focus*.⁷ This paper put forward options for a number of significant reforms to the Commonwealth resource management framework.
- 1.10 The PMRA is a significant initiative, aimed at encouraging fundamental cultural change in the way government does business. The PMRA and PGPA Act have been established on the basis of four guiding principles:
- government should operate as a coherent whole;
 - a uniform set of duties should apply to all resources handled by Commonwealth entities;
 - performance of the public sector is more than financial; and
 - engaging with risk is a necessary step in improving performance.⁸
- 1.11 Finance noted that the overall direction of the reforms ‘has won wide support from both within and outside government, including professional bodies and groups’, and that ‘measures required to promote and implement these principles through the PGPA Act are well underway and have developed momentum’.⁹
- 1.12 The Australian National Audit Office (ANAO) commented that the ‘stated objectives of the reform of the financial framework are extensive’ and include:
- improved quality of information to Parliament to support its constitutional role in relation to Commonwealth expenditure;
 - a more mature approach to risk across the Commonwealth;
 - improved productivity and performance of the Commonwealth public sector with concomitant benefits for a broad range of stakeholders; and
 - reduced red tape within the Commonwealth and for partners who contribute to the delivery of Australian Government programs and services, including grant recipients.¹⁰
- 1.13 Table 1.1 sets out the key themes of the PGPA Act and broader PMRA.

6 Department of Finance and Deregulation, *Is Less More? Towards Better Commonwealth Performance*, Discussion Paper, Commonwealth Financial Accountability Review, March 2012.

7 Department of Finance and Deregulation, *Sharpening the Focus: A Framework for Improving Commonwealth Performance*, November 2012.

8 *Explanatory Memorandum*, PGPA Bill 2013, Parliament of the Commonwealth of Australia, p. 2. See also Finance, *Submission 1*, p. 3.

9 Finance, *Submission 1*, p. 3.

10 Australian National Audit Office (ANAO), *Submission 3*, p. 3.

Table 1.1 Key themes: PMRA and PGPA Act

Key theme
Coherent system of governance (Government operates as a coherent whole)
Independence of entities (maintains operational independence of entities in enabling legislation)
Uniform set of duties (public resources are public resources)
Performance framework (public sector performance more than financial)
Engaging with risk to improve performance
Earned autonomy (more mature approach to risk)
Cooperation to achieve common objectives
Accountability (resource management framework)
Meaningful information to Parliament and public (improved quality of information)
Simplification (reducing red tape, impact on non-government sector)
Improved productivity and efficiency

Sources PGPA Act 2013; EM to PGPA Bill 2013; Department of Finance, Submission 1

PGPA Act 2013

1.14 The *Public Governance, Performance and Accountability Act 2013* (PGPA Act) consolidates into a single piece of legislation the governance, performance and accountability requirements of the Commonwealth, setting out a framework for regulating resource management by the Commonwealth and relevant entities. The PGPA Act will replace the *Financial Management and Accountability Act 1997* (FMA Act) and the *Commonwealth Authorities and Companies Act 1997* (CAC Act). The substantive provisions of the PGPA Act come into effect on 1 July 2014.

1.15 The objects of the PGPA Act, as set out in the legislation, are:

- (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; and
 - (ii) to provide meaningful information to the Parliament and the public; and
 - (iii) to use and manage public resources properly; and
 - (iv) to work cooperatively with others to achieve common objectives, where practicable; and

(d) to require Commonwealth companies to meet high standards of governance, performance and accountability.

1.16 The PGPA Act represents a cultural change in Commonwealth resource management, shifting from a prescriptive compliance-based approach to a broad principles-based approach. It seeks to:

... improve high level accountability through uniform duties and better reporting, while reducing overall red tape on entities. An underlying theme is to establish coherence to the whole of the Commonwealth's operations, while allowing individual entities to have an appropriate level of operational independence within the control framework.¹¹

1.17 Both Finance and the ANAO acknowledged the importance of the new framework striking a balance, in terms of reducing the level of prescription:

... the philosophy underlying the whole of the program that we have been trying to develop over the last three years [is] about control versus managing risk. What we are trying to do is get a better balance between the two. The view we have taken ... is that we have a system that is too rules bound and what that does is stifle innovation, new ways of thinking about doing things, and it leads to people being risk adverse in the way they go about their jobs. So we are saying you need some controls ... but we need to also get rid of some of the rules and give people some flexibility and enable them to take some risks. Part and parcel of the regime is you develop a risk management plan, think about how you manage your risks and think about how you can be innovative in your corporate planning processes as well. So it is that balance. We are trying to shift it a bit without losing the essential controls that you have to have about how public money is spent.¹²

... the ANAO considers it is important that a balance is struck between reducing the level of prescription and ensuring that key requirements are retained in the revised framework to protect the interests of the government and the parliament.¹³

1.18 Finance provided a useful summary of the key aspects of the new PGPA Act – see Figure 1.1.

11 Finance, *Submission 1*, p. 11.

12 Mr David Tune, Secretary, Finance, *Committee Hansard*, Canberra, 27 March 2014, p. 10.

13 ANAO, *Submission 3*, p. 11.

Figure 1.1 Key aspects new PGPA Act

The Public Governance, Performance and Accountability Act 2013 (PGPA Act) will apply to the 194 bodies currently subject to the *Financial Management and Accountability Act 1997* (FMA Act) and *Commonwealth Authorities and Companies Act 1997* (CAC Act) from 1 July 2014 ...

The Act will replace the current two Act financial framework (FMA Act and CAC Act) which is premised primarily on the legal character of two categories of body and their 'ownership' of funds. This split categorisation confuses the reality that both types of body hold money and property that are ultimately public resources, and the legal character of the bodies should not be the determining factor on how these bodies are treated for the purposes of accountability, reporting and control of public resources.

The Act creates two categories of 'Commonwealth entity' – corporate and non-corporate Commonwealth entities (section 11 of the Act). The general approach in the Act is to apply the same principles, legal requirements and obligations on both types of entity and their staffs to ensure consistency of management, reporting and accountability.

The Act introduces the term 'accountable authority' (section 12 of the Act). This term is applicable to the person or persons who have the control and responsibility for the management of an entity. An accountable authority may be a single person or a group of persons.

The Act also introduces a uniform set of duties applied to accountable authorities (sections 15-19 of the Act) and all 'officials' (sections 25-29 of the Act) (who include accountable authorities) of Commonwealth entities. These duties are principles based. The rationale for placing duties on all officials is that it clarifies the standards of behaviour that are expected of individuals across the Commonwealth using public resources. Further, to promote mobility across sectors the duties have been based on the fiduciary duties in the Corporations Act. Aligning duties in this way provides consistency across the private, public and not-for-profit sectors. This is designed to help government to join up with other sectors and will help with recruiting experienced directors for government boards.

The Act introduces the new concept of 'public resources' (section 8 of the Act). This new concept provides a single definition that applies broadly to all money and all property held by Commonwealth entities. This stands in distinction to the FMA and CAC Act approach which treated money and property, and accountability for it, in entirely separate ways. The Act's approach eliminates the inconsistencies of the current legislative framework and any perceived advantage or disadvantage in terms of public accountability arising from the inconsistency.

One of the key differences in the Act compared to the FMA and CAC Acts is that the Act brings together into a single piece of legislation all the elements of the resource management cycle (the cycle of planning, budgeting, implementing, evaluating and being held accountable) (Parts 2-3 and 2-4 of the Act), applied across all Commonwealth entities, in order to ensure clarity and consistency around accountability and transparency in the management of public resources.

A key element of this, and new to the legislative framework, relates to the introduction of the requirement for the accountable authority to record and report on the entity's performance (Part 2-3 of the Act). This seeks to parallel performance reporting with financial reporting by recognising the inherent value of quality performance reporting to government and stakeholders.

The Act is part of an integrated package of reforms, it is the first step in encouraging cultural change in the way government does business. This is especially evident in relation to risk. Unlike the current framework, the Act places an explicit duty in respect of risk upon accountable authorities (section 16 of the Act) to recognise that a prudent appetite for risk is crucial for innovation and improved productivity and efficiency. Moreover, appropriate risk-taking and innovation are consistent with careful and proper control of public resources. Furthermore the Act, through the rules (section 101), allows the Finance Minister a power to prescribe matters, or make different provisions in relation to particular Commonwealth entities or classes of entities. This flexible model allows a targeted and risk based approach to be taken to regulation where required.

Source *Finance, Submission 1, pp. 15-16*

Hierarchy of instruments and arrangements

- 1.19 The PGPA Act represents the primary legislation of the Commonwealth resource management framework and is supported by a range of subsidiary legislation, instruments and related arrangements that together explain the requirements of the legislation and how best to meet its obligations. These elements consist of:
- the PGPA Act
 - the PGPA Rules
 - other legislative instruments
 - other binding requirements (that are not legislative instruments)
 - guidance and advice.¹⁴
- 1.20 Finance highlighted that it had 'sought to develop a financial and performance framework which has an effective hierarchy of requirements, without duplication across control mechanisms and with clarity as to the status of the control'.¹⁵ Further, 'many of the issues that could be dealt with under a rule are equally effectively dealt with through alternative control mechanisms such as delegations and policy, or through guidance' – for example:
- delegation: gifts of relevant property;
 - policy: risk; user charging; and acquisition, use, management and disposal of property; and
 - guidance: accountable authorities and officials duties; performance records; access to records, measuring, assessing and reporting on performance; accounts and records; monthly financial reporting.¹⁶
- 1.21 In terms of Government policy and government policy orders, Finance explained that the 'accountable authority of a non-corporate Commonwealth entity must govern the entity in a manner not inconsistent with the policies of the Commonwealth' but, in recognition of their separate legal status, 'accountable authorities of corporate Commonwealth entities are not required to do so unless a legislative instrument in the form of a government policy order has been issued by the Finance Minister'.¹⁷

Significance of PGPA Act

- 1.22 Finance highlighted that the PGPA Act represents an 'evolution in public governance, performance and accountability arrangements for the
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¹⁴ Finance, *PGPA Act 2013 Compendium* (Working Draft 1.0), Appendix 7, *Submission 1*, p. 5.

¹⁵ Finance, *Submission 1*, p. 10.

¹⁶ Finance, *Submission 1*, p. 10.

¹⁷ Finance, *PGPA Act 2013 Compendium* (Working Draft 1.0), Appendix 7, *Submission 1*, p. 10.

Commonwealth'.¹⁸ It is a significant reform, establishing for the first time a single framework for resource management across Commonwealth bodies and providing a single high standard applying to all officials in the use of public resources. As Finance commented:

If you look at the number of provisions in the previous legislation that we no longer have to deal with, the number of requirements we no longer need, and if you look at the profusion of material that has existed and still exists to help people navigate their way through the system and then look at the act as it stands – which you can read from cover to cover and get a sense of what is important and what you have to do, the rules that pick out the things that are really important and the guidance that builds on that a bit further and then other things that it will make available as tools – then the relative simplicity of what is here now compared with what was there before is ... a significant indicator ... that we will achieve, as people implement this, efficiency, streamlining and, more importantly, an emphasis on what really counts in government, which is not simply that you comply with processes but that you do things to achieve things and achieve things that are consistent with what government and parliament wishes you to do.¹⁹

1.23 A number of inquiry participants commented on the significance of the new PGPA Act and noted their support for the reforms in the broad. As the ANAO observed, the 'Commonwealth's financial framework is central to an efficient, effective and accountable public sector and the ANAO supports efforts to streamline key elements of the framework'.²⁰ As the Auditor-General, Mr Ian McPhee, further commented:

... it is timely to review the old regime and reassess what is actually required. It is a good thing that Finance has done it. The thing that I accept also, though, is the new model ... we have got a government policy position to take the global view and have a phased implementation approach, and that is quite respectable. If we truly believe public resources are public resources ... then I think we have to come at the decisions around the use of public resources from a principles basis as we are being told, not from the point of view of what a CAC body might have done in the past

18 Finance, *Submission 1*, p. 13.

19 Dr Stein Helgeby, Deputy Secretary, Finance, *Committee Hansard*, Canberra, 7 April 2014, p. 17.

20 ANAO, *Submission 3*, p. 11.

and not seeking to impose additional requirements on CAC bodies.²¹

- 1.24 However, the ANAO also noted that the 'current framework remains fundamentally sound'.²²

PGPA Act providing a platform for change

- 1.25 Finance explained that it will take 'several years to implement the PMRA reforms and integrate them fully into the practices and processes of Commonwealth entities and companies'.²³ The PMRA will have three stages, with the PGPA Act, in stage one, setting the foundation for the implementation of the broad range of reforms coming out of the PMRA – '[t]he Act is part of an integrated package of reforms, it is the first step in encouraging cultural change in the way government does business'.²⁴
- 1.26 Stage one of the PMRA, comprising the PGPA Act and initial set of rules, therefore establishes a foundation for efficiencies and cultural change over future years, premised on a willingness to engage with risk. As Dr Stein Helgeby, Deputy Secretary of Finance, observed:

... this is not just to change a piece of paper but to change behaviour ... Along the way I think the kinds of change in terms of behaviour that we are looking for are that we can see people assessing risks and integrating risks better into their planning, planning better, reporting better and linking performance better ... I would like to see the risk management culture and the performance culture in the public sector to be in a materially better place in three years time than they are at the moment ... but ... ultimately it is not those things that are going to have the biggest impact, it is going to be the example set by organisational leaders, by boards, by CEOs, by ministers, by committees such as this one that will have the biggest impact. All we are really doing is providing the platform, but we think it is good platform, on top of which those changes can occur.²⁵

- 1.27 Finance further highlighted that the PGPA reforms had encouraged a useful and ongoing dialogue between various bodies and across different sectors about Commonwealth resource management:

21 Mr Ian McPhee, Auditor-General, ANAO, *Committee Hansard*, Canberra, 7 April 2014, p. 17.

22 ANAO, *Submission 3*, p. 3.

23 Finance, *Submission 1*, p. 12.

24 Finance, *Submission 1*, p. 16.

25 Dr Helgeby, Finance, *Committee Hansard*, Canberra, 27 March 2014, p. 8.

... there is a dialogue across the whole of the Commonwealth and all Commonwealth entities in all of their diversity about matters of governance and how the Commonwealth goes about doing its business and what it is that unites the Commonwealth rather than what it is that makes bits of the Commonwealth different. That has been a strength of this project. It has actually generated a discussion that has now run for three years about what it is that we can do collectively as public officials in how we manage Commonwealth resources and how we are held to account for the use of our resources to ministers, the parliament and the public ... that in itself indicates that there is cultural change. We have noncorporate entities interested in how corporate entities go about doing their business. We have regulatory entities interested in how service delivery entities struggle with particular issues, and vice versa. So there are conversations starting across boundaries that used to prevent communication, and that is a really good indicator that we are on the right track.²⁶

1.28 The staged implementation of the PMRA is further discussed below.

Independent review after three years

1.29 Sections 111 and 112 of the PGPA Act require the Finance Minister, in consultation with the JCPAA, to conduct an independent review of the operation of the Act and the rules after three years, from 1 July 2014:

- (1) The Finance Minister must, in consultation with the Joint Committee of Public Accounts and Audit, cause an independent review to be conducted of the operation of this Act and the rules.
- (2) The review must be conducted as soon as practicable after the end of 3 years after this section commences.
- (3) The persons who conduct the review must give the Finance Minister a written report of the review.
- (4) The Finance Minister must cause copies of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Finance Minister.

26 Mr Lembit Suur, First Assistant Secretary, Governance and Public Management, Finance, *Committee Hansard*, Canberra, 27 March 2014, pp. 8-9.

Draft PGPA (Consequential and Transitional Provisions) Bill 2014

- 1.30 The operative provisions of the PGPA Act come into effect from 1 July 2014, replacing the FMA Act and the CAC Act. Given the wide-ranging scope of the FMA Act and the CAC Act, there are many references to these Acts throughout various other Commonwealth laws. Finance, in collaboration with other entities, is developing the PGPA (Consequential and Transitional Provisions) Bill 2014 (C&T Bill), which will seek to amend more than 260 laws to align the statute book with the revised financial framework.²⁷
- 1.31 In addition to updating references to the new financial framework, the proposed Bill will 'simplify enabling legislation in cases where provisions of the PGPA Act cover an issue that is also dealt with in enabling legislation, and include provisions to ensure that an agreed policy position is properly reflected in the interaction of the PGPA Act and the enabling legislation'.²⁸ Finance further proposes to 'insert amendments into bodies' enabling legislation specifying whether the body is a "Commonwealth entity" for the purposes of the PGPA Act. The amendments would also identify who is the accountable authority for the entity'.²⁹
- 1.32 Finance noted that, in the process of consulting and developing the draft rules required for 1 July 2014, various amendments to the PGPA Act had also been identified to support the draft rules. Rules that rely on amendments to the PGPA Act relate to:
- receipts;
 - commitment of relevant money;
 - disclosure of interest;
 - banking; and
 - setting off amounts owed to and by the Commonwealth.³⁰
- 1.33 The proposed amendments seek to:
- provide for the treatment of entity GST receipts and payments on the face of the Act rather than through a rule (receipts);
 - permit sub-delegation of powers by the Finance Minister to the accountable authority (commitment of relevant money, banking and disclosure of interest); and
 - provide a rule making power (set-off).³¹

27 Finance, *PGPA Act 2013 Compendium* (Working Draft 1.0), Appendix 7, *Submission 1*, p. 13.

28 Finance, *PGPA Act 2013 Compendium* (Working Draft 1.0), Appendix 7, *Submission 1*, p. 13.

29 Finance, *PGPA Act 2013 Compendium* (Working Draft 1.0), Appendix 7, *Submission 1*, p. 14.

30 Finance, *Submission 1*, p. 9.

31 Finance, *Submission 1*, p. 9.

- 1.34 Finance highlighted that the C&T Bill 'had been the subject of extensive consultation with Commonwealth entities'.³² It noted the importance of consulting with the 136 Commonwealth entities with enabling legislation requiring consequential amendment as a result of the PGPA Act, to ensure these entities are 'comfortable that their statutory independence is not being compromised'.³³ On this point, Ms Thea Daniel, Assistant Secretary of Finance, confirmed: 'I think that all of the entities for whom operational independence is a concern are now satisfied that the legislation will not impact on that operational independence'.³⁴
- 1.35 Finance explained that the C&T Bill would be introduced into Parliament in the June 2014 sittings, consistent with 1 July 2014 commencement of the PGPA Act and rules. This would also allow consideration to be given to the 'JCPAA report on the rules to assess whether any consequential amendments are required'.³⁵

Draft PGPA Rule 2014 and associated instruments

- 1.36 Section 101 of the PGPA Act provides that the Minister for Finance may make rules (similar in form to regulations) by legislative instrument to prescribe matters giving effect to the Act.
- 1.37 The PGPA Act provides broad rule-making powers for the Finance Minister to support the proper management by the Commonwealth of public resources. In determining the suite of rules required, Finance reviewed the existing legislative requirements established under regulations made for the FMA and CAC Acts.³⁶
- 1.38 As Finance explained, most rules 'do not impose detailed requirements but provide the key principles against which accountable authorities are to design their processes for the management of the entity, according to the nature of the entity, its operations and the risks that it faces, and within the control limits of the legislation and rules'.³⁷
- 1.39 Consistent with the staged implementation of the PMRA, there is a staged implementation process for PGPA rules – only some of the rules are

32 Finance, *PGPA Act 2013 Compendium* (Working Draft 1.0), Appendix 7, *Submission 1*, p. 18.

33 Finance, *Submission 1*, p. 4.

34 Ms Thea Daniel, Assistant Secretary, Governance and Public Management Reform Taskforce, Finance, *Committee Hansard*, Canberra, 27 March 2014, p. 12.

35 Finance, *PGPA Act 2013 Compendium* (Working Draft 1.0), Appendix 7, *Submission 1*, p. 18.

36 Finance, *Submission 1*, p. 5.

37 Finance, *Submission 1*, p. 11.

required for 1 July 2014 commencement of the PGPA Act, not the full set of rules.

- 1.40 The first set of PGPA rules is set out in the Exposure Draft of the *Public Governance, Performance and Accountability Rule 2013* (PGPA Rule)³⁸ and two other instruments: the draft Commonwealth Procurement Rules³⁹ and the draft Commonwealth Grants Rules and Guidelines.⁴⁰
- 1.41 The PGPA Rule is being made to support the implementation of the PGPA Act. The rules, as disallowable instruments, therefore need to be developed and tabled in Parliament before the substantive provisions of the PGPA Act come into effect on 1 July 2014.
- 1.42 As non-disallowable instruments, the Commonwealth Procurement Rules and Commonwealth Grants Rules and Guidelines are not consolidated in the PGPA Rule but set out in separate instruments.⁴¹
- 1.43 The first set of rules contained in the PGPA Rule relate to:
- defining government business enterprises;
 - listed entities;
 - listed law enforcement agencies;
 - accountable authorities;
 - preventing, detecting and dealing with fraud;
 - recovery of debts;
 - officials' duty to disclose interests;
 - audit committees for Commonwealth entities and for wholly owned Commonwealth companies;
 - approving commitments of relevant money;
 - banking;
 - investment by the Commonwealth;
 - insurance obtained by corporate Commonwealth entities;
 - authorisations of amounts by the Finance Minister;
 - payment of amount owed to person at time of death;
 - minister to inform Parliament of certain events;
 - receipts of amounts by non-corporate Commonwealth entities;
 - and
 - other CRF money.⁴²
- 1.44 Finance noted that the draft rules 'retain a number of important existing framework controls and in some instances strengthen them', with other

38 Finance, *Submission 1*, Attachment 3, pp. 1-31.

39 Finance, *Draft Commonwealth Procurement Rules 2014, Submission 1.1*, pp. 21-57.

40 Finance, *Draft Commonwealth Grants Rules and Guidelines 2014, Submission 1.1*, pp. 58-94.

41 Finance, *Submission 1*, p. 7.

42 Finance, *Draft Explanatory Statement to the Exposure Draft of the PGPA Rule 2014, Submission 1*, Attachment 4, p. 2.

existing requirements having been streamlined 'so that accountable authorities can prudently but efficiently manage the public resources under their control within the context of their financial management responsibilities'.⁴³

1.45 The draft rules will support the role of the Finance Minister, responsible Ministers and accountable authorities in the following areas:

- entity governance issues (e.g. disclosure of interest, fraud control and audit committees);
- transaction support (e.g. investment, insurance, advisory committees, debt recovery, payments pending probate, receipts, banking, expenditure, other CRF money, procurement and grants); and
- accountability (e.g. Minister to inform Parliament and financial reporting).⁴⁴

1.46 As is further discussed in Chapter 2, the draft PGPA rules provided to the Committee by Finance were developed following an extensive consultation process on an initial set of proposed rules.

Scope of inquiry

1.47 It is important to clarify the scope of the Committee's inquiry into the PGPA Act rule development in the context of the broader PMRA. In doing so, it is useful to understand more about the staged implementation process for the PGPA Act and broader PMRA.

Staged implementation process

1.48 Finance noted that it will take 'several years to implement the PMRA reforms and integrate them fully into the practices and processes of Commonwealth entities and companies', and explained that the reform process will have three broad stages:

Stage one (current) is about establishing the base from which other reforms can be advanced. It concentrates on the Commonwealth's business process and systems and how they can be streamlined and better focused. It builds on many of the strengths of the current financial framework, but strips away some process and red tape requirements.

43 Finance, *Submission 1*, p. 13.

44 Finance, *Submission 1*, p. 5. There are also a number of rules of a technical nature that go to the scope of the PGPA Act (e.g. listing accountable authority of an entity to provide certainty in relation to coverage of the PGPA Act).

Stage two (through to 1 July 2015) is also about internal process but is more outward looking. It will focus on improving the quality of planning, performance information and evaluation within government to improve accountability to Ministers, the Parliament and the public.

Stage three (thereafter) is outward looking. It will focus on improving how the Commonwealth joins up with external parties from all sectors of the economy to deliver its public policy outcomes – through commercial partnerships, grants, joint projects. To fully embed improvements in this area, it is necessary to have in place operating practices which support government working as a whole with better transparency and accountability, and a risk based approach to governance, incorporating earned autonomy concepts.⁴⁵

- 1.49 Consistent with the staged implementation of the PMRA, there is a staged implementation process for PGPA rules, with the first set of PGPA rules being considered in stage one of the reform process:

Following passage of the Act, Finance has focussed on Stage one and in particular:

- the development of supporting rules that are necessary for 1 July 2014;
- the introduction to the Parliament and passage of the C&T Bill in the Winter Sittings; and
- the release of guidance and training to support Commonwealth entities in implementing the Act within their organisations.⁴⁶

- 1.50 The second set of PGPA rules will form part of stage two of the reform process. As Finance confirmed:

Some rules are not required for 1 July 2014 and will be introduced during the course of 2014-15. They will be prepared in consultation with stakeholders and the JCPAA. These include proposed rules for: corporate plans, annual performance statements and annual reports; financial reporting; and a number of rules relating to machinery of government issues.⁴⁷

Current and future Committee inquiries

- 1.51 In considering the development of the PGPA rules, two categories of draft rules were of interest:

45 Finance, *Submission 1*, p. 12.

46 Finance, *Submission 1*, p. 12.

47 Finance, *Submission 1*, pp. 7-8.

- those required for 1 July 2014 commencement – included in stage one of PMRA
 - those required for post 1 July 2014 – included in stages two and three of PMRA
- 1.52 As discussed earlier, the ‘key goal of stage one is to establish the base from which objectives of the PGPA Act can be advanced. This includes establishing a unified framework within which Commonwealth entities will have the flexibility to adopt appropriate systems and processes’.⁴⁸
- 1.53 Due to the commencement of the PGPA Act on 1 July 2014, the Committee’s report has necessarily focused on the set of rules required for 1 July commencement and stage one of the PMRA reform process. However, the Committee also has an interest in the post 1 July set of rules, arising from its overall intent to inquire into the full set of PGPA rules and PMRA more broadly.
- 1.54 It is further noted that, given the significance of the post 1 July 2014 set of rules – many of these rules will assist in implementing critical aspects of the PGPA Act in the context of the broader PMRA – the Committee received evidence, as part of this inquiry process, on both the draft rules required for 1 July commencement and those required post 1 July. The Committee also received evidence relating to stages two and three of the PMRA reforms, with a number of inquiry participants emphasising the need to understand the full package of PGPA rules in the context of the broader PMRA, and the need for continuing consultation regarding the future draft rules.
- 1.55 The JCPAA’s interest in the PGPA rules development in the context of the broader PMRA means that the Committee is interested in the various stages of the reform agenda, as well as the rules.
- 1.56 Accordingly, in briefly discussing the rules required post 1 July 2014 in Chapter 4 of the report, the Committee also indicates its interest in the second and third stages of the PMRA reforms that accompany implementation of these rules.
- 1.57 In terms of the timing for the current inquiry, the Committee’s report has been tabled in May 2014 to allow for consideration of the report’s findings and recommendations before the first set of draft rules – as set out in the draft PGPA Rule 2013 and associated instruments – is finalised and presented in Parliament. As Finance noted:

Consistent with undertakings to the previous Parliament during the passage of the PGPA Act in May and June 2013, the supporting

48 Finance, *Submission 1*, p. 12.

rules have been subject to public consultation and [have been] presented to the JCPAA to review before they are formally presented to Parliament.

... The recommendations of the committee will be considered by the government before the final form of the rules is determined. The rules will then presented for the 15-day disallowance period in both Houses of Parliament.

Subject to the timing of the release of the JCPAA report, and Government consideration of the recommendations in the report, it is expected that the rules will be presented to Parliament during the Winter Sittings.⁴⁹

Conduct of inquiry

- 1.58 A media release issued on 6 March 2014 announced the inquiry and called for submissions to be received by 24 March 2014. Details of the inquiry, including terms of reference, were then placed on the Committee's website.
- 1.59 The majority of the draft rules considered by the Committee were the outcome of a prior public consultation process on earlier drafts of the proposed rules conducted by Finance. Finance consolidated the feedback from this consultation process and provided the draft rules to the JCPAA, in the form of an Exposure Draft of the PGPA Rule 2014, and draft Commonwealth Procurement Rules and draft Commonwealth Grants Rules and Guidelines, on 5 March and 18 March 2014 respectively. The Committee's webpage emphasised that its inquiry was a separate process from the initial consultation process undertaken by Finance.
- 1.60 The Committee invited submissions from a range of corporate and non-corporate Commonwealth entities, as well as Commonwealth companies, to ensure it received a range of views from all the different bodies under the PGPA Act. The Committee also invited submissions from other interested stakeholders, including the not-for-profit sector.
- 1.61 Further media releases were distributed on 26 March 2014 and 4 April 2014, providing details of public hearings for the inquiry. Finance also posted copies of the Committee's media releases on its PMRA website and distributed them via email to its key PGPA contacts lists. Social media was further used to publicise the inquiry, including a request for submissions and notification of the hearings.

49 Finance, *PGPA Act 2013 Compendium* (Working Draft 1.0), Appendix 7, *Submission 1*, p. 17.

- 1.62 A total of 16 submissions and five supplementary submissions were received as part of the inquiry – these are listed at Appendix A.
- 1.63 The Committee held two public hearings in Canberra on 27 March 2014 and 7 April 2014. Witnesses who gave evidence at these public hearings are listed at Appendix B.
- 1.64 Copies of all relevant documents, including submissions and a copy of the transcripts of the public hearings, are available on the Committee’s website at www.aph.gov.au/jcpaa

Report outline

- 1.65 Chapter 2 focuses on the consultative process for the development of the PGPA rules required for 1 July 2014 commencement. It also examines the proposed process of implementation of these rules and the support, in the form of guidance and training, that agencies will receive to prepare them for the transition on 1 July. The chapter briefly comments on the importance of clarity and clear direction to ensure that Commonwealth bodies are able to effectively meet the requirements of the PGPA Act and its rules on 1 July as well as to effectively engage with the broader PMRA. The chapter concludes with the Committee’s comments and recommendations.
- 1.66 Chapter 3 focuses on key issues concerning the rules development for 1 July 2014 commencement of the PGPA Act. It considers the draft PGPA Rule and associated instruments. Of interest, as set out in the inquiry terms of reference, is the impact of the draft rules and their purpose in the context of the broader PMRA. The chapter briefly comments on a number of issues raised with the Committee concerning the PGPA Act, with relevance to the development of the rules. It then discusses the design principles for the draft rules, and considers several specific issues regarding the draft rules, raised in evidence to the Committee. The chapter concludes with the Committee’s comments and recommendations.
- 1.67 Chapter 4 focuses on post 1 July 2014 issues concerning the rules development for the PGPA Act. The chapter discusses the staged implementation process for the PGPA rules in the context of the broader PMRA. It then briefly considers a range of issues concerning further development of the PMRA and PGPA framework post 1 July raised in evidence to the Committee, including the need for continuing consultation regarding the future draft rules. The chapter concludes with the Committee’s comments and recommendations.

Note on references

- 1.68 References to the Committee *Hansard* are to the proof *Hansard*. Page numbers may vary between the proof and the official *Hansard* transcript.

