

Rules required for 1 July 2014 commencement: consultation and implementation

Introduction

- 2.1 Chapter 2 will outline and examine the consultative process for the development of the *Public Governance Performance and Accountability Act 2013* (PGPA Act) rules required for 1 July 2014 commencement. It will also examine the proposed process of implementation of these rules and the support, in the form of guidance and training, that agencies have and will receive to help prepare them for the transition on 1 July 2014.
- 2.2 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 2014 as well as to effectively engage with the broader Public Management Reform Agenda (PMRA). The chapter concludes with the Joint Committee of Public Accounts and Audit's (JCPAA) comments and recommendations.

History of consultation

- 2.3 Extensive consultation has been a strong feature of the PMRA¹, since it was launched in December 2010. Throughout the PMRA, the Department of Finance (Finance) has engaged with stakeholders in a range of formats, including conducting 'town hall' type meetings, moderating a blog, and requesting written submissions.²

¹ At this time it was known as the Commonwealth Financial Accountability Review (CFAR).

² JCPAA, *Report 438: Public Governance, Performance and Accountability Bill 2013*, June 2013, p. 8.

- 2.4 Finance released the discussion paper, *Is Less More? Towards Better Commonwealth Performance*,³ in March 2012. This paper was generated to stimulate and encourage debate on the resource management framework and to help inform the development of options to be presented to the Government at a later stage. In November 2012, Finance released the position paper, *Sharpening the Focus*.⁴ This paper put forward options for a number of significant reforms to the Commonwealth resource management framework. A brief overview of the PMRA can be found in Chapter 1 of this report.
- 2.5 In February 2013, Finance began consultation on the Public Governance, Performance and Accountability Bill (PGPA Bill). The draft bill was released to a core working group, which included the Auditor-General, and, following several iterations, was released in April 2013. It was distributed to all entities that Finance had met with and to all portfolio departments and agencies with a request to further distribute to agencies within their portfolios. The draft bill was then developed and refined taking concerns raised by stakeholders into consideration. The PGPA Bill was introduced into the House of Representatives on 16 May 2013.⁵

Commitment to consult with stakeholders

- 2.6 The JCPAA conducted an inquiry into the Public Governance, Performance and Accountability Bill 2013.
- 2.7 Amongst other things, the Committee's report emphasised the necessity of comprehensive and extensive consultation to inform the development of the draft rules.
- 2.8 The former Minister for Finance and Deregulation gave the following assurances to the Committee regarding the intended consultative process for the development of the rules:
- That the Government will consult widely on the development of the rules. This would include extensive consultation within government, but also with other sectors and interested stakeholders (including the Not for Profit Sector, business and academia), including through working groups.
 - That once the rules are settled by government, they will be made publicly available for no less than 30 days for public comment and further consultation with government entities. The rules and explanatory memorandum will be made

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

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

5 JCPAA, *Report 438: Public Governance, Performance and Accountability Bill 2013*, June 2013, pp. 8-9.

available on the Department of Finance and Deregulation's ('the Department') website. Furthermore, the Department will hold several workshops with a broad cross section of agencies to ensure they are rigorously tested.

- Following the public consultation phase, the rules will be also be made available to the Committee for scrutiny. The government would await a report from the Committee prior to tabling in the Parliament. I would expect the Committee to have a strong and ongoing role in the formation of the rules, reflecting its position in the Parliament.
- The rules are disallowable instruments and so following their tabling in Parliament, there is further opportunity for scrutiny.⁶

2.9 The Dissenting Report from Coalition Members also highlighted the importance of a vigorous and extensive consultation process informing the development of the rules. To this end, the Dissenting Report recommended that:

During this period of further consultation, particular attention and focus should be given to:

- drafting and circulating as many of the Rules as is practically possible as a means of building confidence for the new approach across government; and
- securing the unqualified endorsement of the ANAO and the ASPC.⁷

2.10 In addition, the Dissenting Report recommended that the commitments made by the Minister for Finance and Deregulation be closely monitored.⁸

2.11 Finance has actively complied with the commitments made by the former Minister for Finance and Deregulation as well as fulfilling the recommendations related to consultation of JCPAA Report 438 and the Coalition Members' Dissenting report.

Consultative process for rules development

Development of proposed draft rules

2.12 The PGPA rules development process is overseen by a project board chaired by Dr Stein Helgeby, Deputy Secretary of Finance, and comprising 10 senior officials from the following Commonwealth bodies:

- Australian National Audit Office (ANAO)
- Department of Prime Minister and Cabinet

6 JCPAA, *Report 438: Public Governance, Performance and Accountability Bill 2013*, p. 26.

7 JCPAA, *Report 438: Public Governance, Performance and Accountability Bill 2013*, p. 63.

8 JCPAA, *Report 438: Public Governance, Performance and Accountability Bill 2013*, p. 63.

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- Commonwealth Scientific and Industrial Research Organisation (CSIRO)
 - Australian Public Service Commission (APSC)
 - Department of Social Services
 - Treasury
 - Australian Taxation Office
 - Indigenous Business Australia
 - National Gallery of Australia⁹
- 2.13 The first stage of the consultation process consisted of technical policy experts in Finance (and the Attorney-General's Department in relation to fraud) discussing and clarifying business requirements with steering committees focused by subject matter. The five steering committees are:
- Governance and Risk Management (membership of 21 entities)
 - Streamlining and Reducing Red Tape (membership of 17 entities)
 - Planning and Reporting (membership of 19 entities)
 - Appropriations and Resourcing (membership of 24 entities)
 - Legislation and Rules (membership of 21 entities)¹⁰
- 2.14 In addition to being on the project board, representatives from the ANAO are observers on each of the five steering committees.¹¹
- 2.15 During the period of July 2013-March 2014, the five steering committees met up to six times each, dependent on the number of rules relevant to each committee.
- 2.16 In addition to the subject matter steering committees, Finance also consulted with key stakeholders through interstate steering committees in Sydney (membership of 12 entities) and Melbourne (membership of 10 entities) on four occasions. Finance also held consultation meetings in Adelaide, Alice Springs and Darwin, meetings with statutory authorities and Indigenous Land Councils and discussions were also held with representatives from the not-for-profit sector.¹²
- 2.17 Draft proposed rules were then developed according to agreed design principles (as discussed in Chapter 3). Once the relevant subject matter steering committee and the Legislation and Rules Steering Committee were satisfied that a draft proposed rule 'reflected policy objectives,' the rule was released for public comment on Finance's PMRA website.¹³
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9 Department of Finance (Finance), *Submission 1*, p. 26.

10 Finance, *Submission 1*, p. 26.

11 Finance, *Submission 1*, p. 26.

12 Finance, *Submission 1*, p. 27.

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

Proposed rules released for public comment

- 2.18 During the period of 11 November 2013 to 22 February 2014, three tranches of proposed rules were released on Finance's PMRA website for comment. All of the proposed rules listed below were open for public comment for a minimum of 30 days.¹⁴
- 2.19 The first tranche of proposed rules were open for comment until 30 January 2014 and consisted of:
- Draft Rule Corporate Plan
 - Draft Rule Performance Statement
 - Draft Rule Insurance
 - Draft Rule Investment
 - Draft Rule Act of Grace
 - Draft Rule Advisory committees
 - Draft Rule Debt Recovery write off
 - Draft Rule Minister to inform Parliament
 - Draft Rule Payment pending probate
 - Draft Rule Duty to Disclose Interests
 - Draft Rule GBEs¹⁵
- 2.20 The second tranche of proposed rules were open for comment until 15 February 2014 and consisted of:
- Draft Rule Audit Committee
 - Draft Rule Fraud Control
 - Draft Rule Receipts¹⁶
- 2.21 The third tranche of proposed rules were open for comment until 22 February 2014 and consisted of:
- Draft Rule Banking of Relevant Money
 - Draft Rule Commitment and Expenditure of Relevant Money
 - Draft Rule Other CRF Money¹⁷
- 2.22 Finance received a total of 204 comments. The key themes that emerged from comments related to: audit committees (33 comments); corporate

14 Finance, <pmra.finance.gov.au/legislation-pgpa-act/pgpa-rules/pgpa-draft-rules>, accessed February 2014.

15 Finance, <pmra.finance.gov.au/legislation-pgpa-act/pgpa-rules/pgpa-draft-rules>, accessed February 2014.

16 Finance, <pmra.finance.gov.au/legislation-pgpa-act/pgpa-rules/pgpa-draft-rules>, accessed February 2014.

17 Finance, <pmra.finance.gov.au/legislation-pgpa-act/pgpa-rules/pgpa-draft-rules>, accessed February 2014.

plans (28 comments); fraud control (22 comments); and annual performance statements (21 comments).¹⁸

Rules required for 1 July 2014 but not released for public consultation

- 2.23 A small number of rules required for 1 July 2014 were not released for public consultation (see Table 2.1). Finance advised that these rules are 'listing rules' and therefore public consultation was not required. The purpose of these rules is to identify: listed entities; listed law enforcement agencies; which person or group of persons is the accountable authority of a listed entity; and which individuals are officials of a Commonwealth entity.¹⁹
- 2.24 These rules are reliant on the passing of the PGPA Consequential and Transitional Provisions Bill and the PGPA Act Amendment Bill. Following the tabling of these two bills, Finance will provide the Committee with the updated drafts of these rules.²⁰

Rules required post 1 July 2014

- 2.25 A number of rules have not yet been provided to the Committee, as Finance has deemed them not required for 1 July 2014 (see Table 2.2). Some of these rules have been assessed as not yet resolved and, as such, Finance has decided that more time is needed to review the drafts of these rules.²¹
- 2.26 Two of these rules, corporate plans and annual performance statements, were released for public consultation as part of the first tranche of draft rules, which were open for comment until 30 January 2014. Finance First Assistant Secretary of Governance and Management, Mr Lembit Suur, advised the Committee that these two rules will be further developed and brought to the Committee to review before the end of 2014.²²

The issue was that there was a feeling that advancing those two rules independently of considering issues that go to developing a performance monitoring, reporting and evaluation framework for the Commonwealth at a whole-of-scheme level was precipitate and that people preferred to see all of the linkages, all of the policies, how corporate planning would impact, for example, on the content of portfolio budget statements and how the annual performance statement that we intend to include in annual reports

18 Finance, *Submission 1*, p. 27.

19 Finance, *Submission 1.3*, Attachment B, p. 2.

20 Finance, *Submission 1.3*, Attachment B, p. 2.

21 See Table 2.1.

22 Mr Suur, Finance, *Committee Hansard*, Canberra, 27 March 2014, p. 3.

would relate to the rest of the annual report. So we have undertaken to develop that scheme, if you like, over the course of this year.²³

2.27 A series of other potential rules, where rules are allowed for in the PGPA Act, have been assessed by Finance as not required for 1 July 2014 or for later development at this time.²⁴

2.28 Finance Deputy Secretary, Dr Stein Helgeby, has advised the Committee that Finance will utilise the same consultation process for the development of future rules for the PGPA Act beyond those required for 1 July 2014:

The process we have run to date has been a process whereby we have made draft rules publicly available and they are open to anyone to comment on. We have been fortunate that a lot of people have chosen to comment on these things. We intend to run the same process into the future, which is to make things publicly available and to welcome comments and submissions from anyone who sees fit to do so. So, we do not envisage needing to create a separate process, because the process we already run is open to all to express a view on.²⁵

2.29 Some stakeholders, such as the Commonwealth Public Service Union (CPSU) and the Australian War Memorial, have already expressed an interest in continuing to participate in the consultation process for the development of future PGPA Act rules.²⁶ Others, such as the Auditor-General, have emphasised the significance of future rules, implying that ongoing high levels of consultation are needed. The development of future rules will be discussed in greater detail in Chapter 4 of this report.

23 Mr Suur, Finance, *Committee Hansard*, Canberra, 27 March 2014, p. 3.

24 See: Finance, *Submission 1*, pp. 23-25.

25 Dr Stein Helgeby, Deputy Secretary, Finance, *Committee Hansard*, Canberra, 27 March 2014, p. 5.

26 For example see: Australian War Memorial (AWM), *Submission 6*, p. 3; Commonwealth Public Service Union (CPSU), *Submission 10*, p. 2; and Indigenous Business Australia (IBA), *Submission 12*, p. 2-3.

Table 2.1 Rules required for 1 July 2014 but not released for public consultation

Provision in the PGPA Act		Provision in the Exposure Draft of Consolidated proposed rules		Purpose of Provision ²⁷
<i>Title</i>	<i>Section in the Act</i>	<i>Title</i>	<i>Section in the Rule</i>	
Listed Entities*	s8	Listed Entities	^6	To identify which bodies, persons, groups or organisations are listed entities.
Listed Law enforcement agency*	s8	Listed law enforcement agency	^7	To identify the law enforcement agencies what are listed law enforcement agencies for the purposes of the Act.
Accountable authorities – listed entities*	s12(2)	Accountable authorities – listed entities	^8	To identify which person or group of persons is the accountable authority of a listed entity.
Listing person as an official*	s13(3)(a)(iii)	Officials	^9	To identify which individuals are officials of a Commonwealth entity.

Source Finance, Submission 1, p. 20.

²⁷ All text regarding the purpose of the provision has been quoted directly from the relevant 'guide to this section' from the exposure draft of the consolidated proposed rules, Department of Finance, *Submission 1*, Attachment C.

Table 2.2 Rules assessed by Finance as required post 1 July 2014

Title of Rule provision	Section in Act	Reason not provided to Committee ²⁸	Submission 1.3
Corporate Plans	s35	No rule provided at this time. A draft rule has been released that includes details of corporate plan contents and arrangements for publication. The draft rule is subject to review and will be reissued for further comment.	Deferred introduction of these rules. As a transitional arrangement, the first corporate plan to be published by entities will be for the 2015-16 financial year commencing 1 July 2015. As annual performance statements report against the corporate plan, the first annual performance statement will be published in entity annual reports for the 2015-16 financial year. Annual reports for the 2013-14 financial year will apply the current requirements.
Annual performance statements	s39	No rule provided at this time. A draft rule has been released that includes details of corporate plan contents and arrangements for publication. The draft rule is subject to review and will be reissued for further comment.	Draft rules will be developed over the balance of 2014 in consultation with the JCPAA.
Financial Reporting Requirement (Annual Financial Statements)	s42	Currently, Finance Minister's Orders for Financial Reporting (FMOs) are revised each financial year to ensure the consistency of individual entity financial reports that flow into the Australian Government's Consolidated Financial Statements. As part of the transitional process supporting the commencement of the PGPA Act, arrangements will be put in place for Commonwealth entities to prepare their 2013-14 financial year reports against the current FMO. Under the PGPA Act, the matters addressed in FMOs will be contained in a separate PGPA Rule that will be developed for early release in early 2015 for the preparation of the 2014-15 financial year reports (which is consistent with the current timing relating to revising FMOs).	The financial reporting rules under section 42 of the PGPA Act are currently being developed. Draft rules will be made available for public consultation in September 2014 following consultation with PMRA steering committees. The rules are planned to be finalised in December 2014 and released in early 2015. Financial statements for 2013-14 financial year will apply the current requirements. It is not proposed to provide this rule to the JCPAA.
Arrangements for the establishment of entities with other jurisdictions	s102	Arrangements for the establishment of entities with other jurisdictions is part of the longer term work program continuing past 1 July 2014. A joint ventures and establishing entities subcommittee has been established under the Governance and Risk Management Steering	Arrangements for the establishment of entities with other jurisdictions is part of the longer term work program continuing past 1 July 2014. A joint ventures and establishing entities subcommittee has been established under the Governance and Risk

28 All text in the column 'reason not provided to the Committee' is directly quoted from Finance, *Submission 1*, pp. 19-22 and Finance, *Submission 1.3*, Attachment B, pp. 1-2.

	Committee to commence work in this area. Given the breadth of this mechanism, considerable consultation will be required to finalise a coherent model which meets the requirements of all stakeholders.	Management Steering Committee to commence work in this area. Given the breadth of this mechanism, considerable consultation will be required to finalise a coherent model which meets the requirements of all stakeholders.
Establishing new corporate Commonwealth entities	This rule is not necessary for 1 July 2014. Following consultation, further work is required to make the rule simpler and clearer in accordance with the PMRA rule design principles.	This rule is not required for 1 July 2014. Following consultation, further work will be undertaken to develop a streamlined and simple model for creating new corporate Commonwealth entities in accordance with the PMRA rule design principles.
Annual reports and reporting requirements	At this time a rule is not required to operationalise PGPA Act sections 46(3) and 97. The current annual report requirements approved by the Joint Committee of Public Accounts and Audit will be retained and updated to reflect the PGPA Act.	At this time a rule is not required to operationalise PGPA Act sections 46(3) and 97. The current annual report requirements approved by the Joint Committee of Public Accounts and Audit will be retained and updated to reflect the PGPA Act. Draft rules will be developed in consultation with the JCPAA over the balance of 2014 as part of the development of the performance framework.

Source Finance, Submission 1, pp. 19, 22; Department of Finance, Submission 1.3, Attachment B, pp. 1-2.

Finance's comment on consultation process

2.30 Mr Suur spoke to the Committee regarding Finance's experience of the consultation process, commenting on the lessons learned by Finance throughout the development of the draft rules:

The other lesson about the process is that, really, you cannot consult enough and you cannot talk enough about this stuff because it goes to the operations of every entity in the Commonwealth, of which there are over 190. They are so varied in their structures, in their powers and in their roles, and in where they do their business, how they do business, who they do business with and the way in which they are resourced, that it is a really vexed and complex project. I think in that context that time and the ability and capacity to talk and to respond to people's problems are essential to success.²⁹

2.31 The Secretary of Finance, Mr David Tune, similarly remarked that, despite the considerable efforts made by Finance to consult stakeholders, Finance may have underestimated the amount of consultation that was required:

... if anything, we probably underestimated the amount of consultation that was required. We were talking earlier about having to deal with a lot of agencies one-on-one about their independence. So rather than saying something that your independence is not threatened, we had to sit down with many of them and take them through and explain it to them, look at their special circumstances. That nitty-gritty work is something we probably underestimated a bit at the time.³⁰

2.32 Dr Helgeby, Deputy Secretary of Finance, expressed his confidence that, despite the possible underestimation of the level of detailed consultation and discussion with stakeholders that was required, the consultation and engagement undertaken has allowed Finance to develop 'a coherent and focussed set of rules.'³¹

2.33 Dr Helgeby pointed to the positive comments in submissions made by stakeholders as evidence of the success of the consultation process:

I note that submissions made to this committee were generally supportive of the proposed rules. Some made complimentary remarks about Finance's consultation process. An enormous amount of effort has gone into providing robust rules for the 1 July

29 Mr Suur, Finance, *Committee Hansard*, Canberra, 27 March 2014, p. 12.

30 Mr David Tune, Secretary, Department of Finance, *Committee Hansard*, Canberra, 27 March 2014, p. 13.

31 Dr Helgeby, Finance, *Committee Hansard*, Canberra, 27 March 2014, p. 2.

commencement of the PGPA Act. While we have not been able to accommodate all feedback or comments, we believe we have incorporated these, where possible, and presented a series of rules that are flexible to meet the needs of a broad range of corporate and non-corporate bodies. We will continue to engage and consult in developing the remainder of the rules.³²

- 2.34 Ancillary to the comments of stakeholders regarding the consultation process (discussed below), some entities, which raised concerns with the Committee regarding the development of the rules during its inquiry into the PGPA Bill, such as the Australian Broadcasting Corporation (ABC), declined the Committee's invitation to submit any concerns to this inquiry.

Evaluation of consultation process as reported by stakeholders

- 2.35 Stakeholders who have provided submissions to this inquiry have overwhelmingly expressed strong satisfaction with the consultation process conducted by Finance during the drafting of the proposed rules.³³
- 2.36 In its submission, the Reserve Bank of Australia 'acknowledg[ed] the breadth of the consultation process undertaken by members of the Department of Finance in development of the proposed rules.'³⁴
- 2.37 The Statutory Research and Development Corporations 'compliment[ed] the Department of Finance on its engagement in this important process and the quality of information it has provided.'³⁵
- 2.38 The Australian War Memorial recognised the care taken by Finance to provide 'adequate opportunities for agencies to contribute to the rules development prior to the issue of drafts' as well as the benefits of such consultation:

The purpose of each draft rule in relation to broader public management reforms was established in the consultation process, as was a comparison to existing legislative requirements to enable agencies to readily identify the potential impact of the proposed amendments.³⁶

32 Dr Helgeby, Finance, *Committee Hansard*, Canberra, 27 March 2014, p. 3.

33 For example see: Reserve Bank of Australia (RBA), *Submission 2*, p. 5; Statutory Research and Development Corporations (Statutory RDCs), *Submission 5*, p. 1; AWM, *Submission 6*, p. 2; Capital Training College, *Submission 8*, p. 2; Morison Consulting, *Submission 9*, p. 2; UnitingCare Australia, *Submission 11*, p. 1; IBA, *Submission 12*, p. 2; Commonwealth Scientific and Industrial Research Organisation (CSIRO), *Submission 13*, p. 2; and ScottCromwell, *Submission 14*, p. 7.

34 RBA, *Submission 2*, p. 5.

35 Statutory RDCs, *Submission 5*, p. 1.

36 AWM, *Submission 6*, p. 2.

2.39 Indigenous Business Australia (IBA) commended Finance on the manner in which it engaged with Commonwealth entities within the Indigenous affairs portfolio. IBA drew particular attention to Finance's efforts to work closely with Indigenous stakeholders and tailoring of draft proposed rules to complement local legislation:

Finance was active in engaging with the Northern and Central Land Councils to ensure that rules appropriate to their needs were provided to ensure that the PGPA Act did not operate in a manner inconsistent with the Aboriginal Land Rights (Northern Territory) Act 1976 (Land Rights Act). For example, the rules were adjusted (through inclusion of 12(2) of the proposed rules) so that officials employed in the Land Councils that are Aboriginal traditional land owners would not be required to endlessly disclose interests that may have been triggered due to the operation of the Land Rights Act in conjunction with the PGPA Act.³⁷

2.40 In addition to conducting extensive consultation regarding the development of the draft rules, Finance, together with the Office of Parliamentary Counsel (OPC), has been working with approximately 136 entities that have enabling legislation which will need to be amended for 1 July 2014.³⁸ The C&T Bill, to be presented to Parliament during the 2014 Winter sitting, is anticipated to make amendments to more than 250 pieces of legislation.³⁹

Follow-up with stakeholders following consultation

2.41 Despite the extensive consultation process regarding the development of the draft rules, some concerns were expressed regarding the short time frame for consultation. In addition, the importance of ensuring that all Commonwealth bodies understand and utilise the support that will be available to assist in the implementation on the rules required for 1 July 2014 was raised.

2.42 The Public Service Commissioner, Mr Stephen Sedgwick, also commented that he believed there was an unfortunate disconnect between the recent overhaul of the *Public Service Act 1999* (PS Act) and the development of the PGPA Act and its rules:

...we have done two landmark revisions of the frameworks within which significant parts of the public sector have operated in recent

37 IBA, *Submission 12*, p. 2.

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

39 Finance, *Submission 1.3*, p. 9.

times and at the end they appear to have been too disconnected, which is a big pity, I think.⁴⁰

2.43 The dual coverage of the PS Act and the PGPA Act is discussed in greater detail in Chapter 3 of this report.

2.44 When asked at the public hearing on 7 April 2014, stakeholders indicated that, beyond a rough estimate of what will be delivered over the next two to three years, they do not have a detailed knowledge of the consultation and implementation timeline for the next set of PGPA rules.⁴¹

2.45 The Risk Management Institute of Australia (RMIA) reported that, despite significant consultation undertaken by Finance, it has observed, through its member base, 'uncertainty, doubt and perhaps a modicum of scepticism within Commonwealth entities [regarding] the Reform'. The RMIA also advised that 'entities have a high level of uncertainty in regard to what, by when and what support capabilities will be available to assist in transition.'⁴²

2.46 Stakeholders expressed uncertainty regarding what changes had been made to draft rules throughout the consultation and drafting process. Mr Graeme Tolson, from the Cotton Statutory Research and Development Corporation, commented that changes made in early drafts in response to consultation were changed back in later drafts:

There was a matter we raised in relation to directors' interests... We did ask for that to be changed. It was changed in the early drafts but when it came out for further public consultation it was changed back to the original draft.⁴³

2.47 Morison Consulting also commented on this, stating that:

At a meeting of the Commonwealth Chairs of Audit Committees, co-chaired by the ANAO and the Department of Finance on 18 February 2104, the meeting heard that, based on a significant number of comments made during consultation, it was unlikely that the Audit Committee Rule would require a majority of 'independent' members. Yet the proposed Audit Committee Rule

40 Mr Stephen Sedgwick, Public Service Commissioner, Australian Public Service Commission (APSC), *Committee Hansard*, Canberra, 7 April 2014, p. 17.

41 Ms Leanne Patterson, Chief Finance Officer, AWM, *Committee Hansard*, Canberra, 7 April 2014, p. 24; Mr Michael Whelan, Deputy Chief Executive, Operations, CSIRO, *Committee Hansard*, Canberra, 7 April 2014, p. 24; Mr Joe Zabar, Director, Services Sustainability, UnitingCare Australia, *Committee Hansard*, Canberra, 7 April 2014, p. 29. See also the observation of the lack of responses, made by the Chair in *Committee Hansard*, Canberra, 7 April 2014, p. 25.

42 Risk Management Institute of Australia (RMIA), *Submission 15*, p. 2.

43 Mr Graeme Tolson, General Manager, Business and Finance, Cotton Research and Development Corporation, *Committee Hansard*, Canberra, 7 April 2014, p. 21.

now requires a majority of persons who are not officials of the entity (non-corporate entities) or employees (corporate entities).⁴⁴

- 2.48 This was also noted by the ANAO, regarding changes that were made to the rule on the commitment of relevant money:

The proposed rule is a significant departure from the draft rule that was issued by Finance for public consultation in late January 2014 and there has been very limited consultation on the rule now proposed.⁴⁵

- 2.49 It is important that follow-up is conducted with all stakeholders participating in the consultation process so that they can clearly see where changes have been made to drafts in response to their comments and suggestions. This will allow stakeholders to be better informed when implementing the rules and as they continue to provide feedback regarding draft rules and the implementation of the PGPA Act and broader PRMA reforms.

Implementation

- 2.50 This section firstly discusses what critical changes Commonwealth bodies might need to make to be compliant with the Act and rules as of 1 July 2014, and the short timeframe to prepare for such changes, before discussing the key guidance materials and training associated with these changes.

Changes required for 1 July 2014 implementation

- 2.51 Finance advised the Committee that Commonwealth bodies should not need to make significant changes to their internal systems in order to be compliant with the requirements of the PGPA Act and its rules on 1 July 2014. Mr Suur, First Assistant Secretary, Finance, stated that if Commonwealth bodies' internal systems are currently compliant with the *Financial Management and Accountability Act 1997* (FMA Act) and the *Commonwealth Companies Act 1997* (CAC Act) they 'will comply' under the PGPA Act on 1 July 2014:

All Commonwealth entities run internal systems that are compliant with the current requirements of the FMA Act and the CAC Act. Those systems are robust. They have internal audit committees overseeing them. The ANAO audits them on a regular basis. If people comply with the requirements of the FMA

44 Morison Consulting, *Submission 9*, p. 3.

45 ANAO, *Submission 3*, p. 8.

Act and the CAC Act then in relation to their internal systems they will comply with the requirements of this act. Some of the additional things that this act brings into play, like particular duties on accountable authorities and particular duties on officials are new. But in terms of internal systems that go to managing public resources, that go to managing relevant monies that are in the control of entities, that go to managing monies that are in the hands of outsiders, and so on, those provisions have been robust to date and they will continue to be robust for the purposes of this act.⁴⁶

2.52 Mr Suur also outlined the ways in which Finance is working with Commonwealth bodies to ensure that they are prepared for 1 July 2014:

In parallel with refining the rules and refining the guidance we have started rolling out information programs and training to agencies, which we can expand on. We have developed draft resource management instructions, which we have given to the committee, for non-corporate Commonwealth entities.⁴⁷

2.53 Mr Suur assured the Committee that Commonwealth bodies are 'very well prepared', stating that the consultation process has meant that representatives from Commonwealth bodies have been 'working on the rules and guidance for about eight months now.'⁴⁸

Short timeframe for 1 July 2014 implementation

2.54 The Auditor-General, Mr Ian McPhee, drew attention to the limited time between the finalisation of the PGPA rules required for 1 July 2014 and the implementation of the processes required by the Act and rules. The Auditor-General also acknowledged the tightening resource environment in which the transition is occurring:

The timeframe for finalising the full package of material and associated deliverables required to be in place prior to 1 July 2014 (this includes finalising supporting guidance material, the provision of appropriate training to entities and the updating of entity level systems, policies and procedures), will be very compressed, and is at a time when many entities are expected to deliver on other government priorities in a tightening resource environment.⁴⁹

46 Mr Suur, Finance, *Committee Hansard*, Canberra, 27 March 2014, p. 7.

47 Mr Suur, Finance, *Committee Hansard*, Canberra, 27 March 2014, p. 6.

48 Mr Suur, Finance, *Committee Hansard*, Canberra, 27 March 2014, p. 7.

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

- 2.55 Nonetheless, the Auditor-General, when asked by the Committee if there was any significant risks inherent to this short timeframe, answered that he foresaw little risk that agencies would be unable to comply with requirements before 1 July 2014:
- ...agencies by and large can follow many of the existing practices and still be in compliance with the new framework and the new rules.⁵⁰
- 2.56 Mr Sedgwick, the Public Service Commissioner, agreed with the Auditor-General, stating that, although it would be preferable for agencies to have more time to prepare, the public service will work hard to ensure compliance in all key areas by 1 July 2014:
- ...if we are not fully technically compliant, which might be an ask, that nonetheless there will be substantial compliance, to the extent that the rules are clear, that we are on a clear path to get compliance pretty quickly.⁵¹
- 2.57 When asked if their organisations were ready for the implementation of the PGPA rules on 1 July 2014, representatives of Commonwealth bodies expressed confidence that they will be suitably prepared for 1 July 2014.⁵²
- 2.58 Chief Financial Officer of the Australian War Memorial, Ms Leanne Patterson, assured the Committee that she did not foresee any risk regarding compliance, as it is expected that only minimal changes will need to be made to their current processes:
- A number of the rules that have been issued to date do not represent a major departure from current practice...there is not going to be much effort required to get us ready for 1 July.⁵³
- 2.59 Deputy Chief Executive of Operations, Mr Michael Whelan, advised the Committee that CSIRO is 'well prepared', stating that there would be only be significant risk if there were 'last-minute' changes to the rules.⁵⁴ Similar comments were made by IBA regarding the potential risk of last minute changes.⁵⁵
- 2.60 IBA's Chief Executive Officer, Mr Christopher Fry, expressed his confidence that IBA will be able to meet requirements for 1 July 2014,

50 Mr Ian McPhee, Auditor-General, Australian National Audit Office, *Committee Hansard*, Canberra, 7 April 2014, p. 15.

51 Mr Sedgwick, APSC, *Committee Hansard*, Canberra, 7 April 2014, p. 15.

52 Ms Patterson, AWM, *Committee Hansard*, Canberra, 7 April 2014, p. 20; Mr Whelan, CSIRO, *Committee Hansard*, Canberra, 7 April 2014, p. 20; Mr Christopher Fry, Chief Executive Officer, IBA, *Committee Hansard*, Canberra, 7 April 2014, p. 20; Mr Tolson, Cotton Research and Development Corporation, *Committee Hansard*, Canberra, 7 April 2014, p. 20.

53 Ms Patterson, AWM, *Committee Hansard*, Canberra, 7 April 2014, p. 20.

54 Mr Whelan, CSIRO, *Committee Hansard*, Canberra, 7 April 2014, p. 20.

55 Mr Fry, IBA, *Committee Hansard*, Canberra, 7 April 2014, p. 20.

pointing to the consultative process conducted by Finance as giving IBA comfort regarding the changes.⁵⁶

- 2.61 The Statutory Research and Development Corporations commented that their involvement in the consultation process contributed to their ability to be prepared for 1 July 2014:

...we have been heavily involved in the whole process from start to finish, which is good to see, and it has allowed us to build up a knowledge in advance, which I think makes it easier for us to be prepared for 1 July.⁵⁷

- 2.62 Finance Assistant Secretary, Mr Neil Robertson, assured the Committee that Finance is endeavouring to mitigate any risks associated with the short timeframe by focusing on raising awareness of the reforms within agencies and providing support during the transition.⁵⁸

Guidance and other materials

- 2.63 Finance has prepared a range of guidance materials to assist Commonwealth bodies as they prepare to implement the PGPA Act and its rules for 1 July 2014. At the time of writing, Finance has:

- drafted guidance
- produced model resource management instructions⁵⁹ (formerly Chief Executive Instructions for FMA agencies) and a draft Minister's delegation instrument
- posted (and will maintain) a list of frequently asked questions on the PMRA website⁶⁰

- 2.64 Finance has presented some draft guidance materials to the Committee. However, as they are working drafts, the Committee will not be commenting on the details of the draft materials, except in a set of specific instances in Chapter 3.

- 2.65 The following draft guidelines have been presented to the Committee:

- Duties of accountable authorities⁶¹
- Preventing, detecting and dealing with fraud⁶²

56 Mr Fry, IBA, *Committee Hansard*, Canberra, 7 April 2014, p. 20.

57 Mr Tolson, Cotton Research and Development Corporation, *Committee Hansard*, Canberra, 7 April 2014, p. 20.

58 Mr Neil Robertson, Assistant Secretary, Governance and Public Management Reform Taskforce, Department of Finance, *Committee Hansard*, Canberra, 27 March 2014, p. 6-7.

59 Finance, *Submission 1.1*, Attachment E.

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

61 Finance, *Submission 1*, Attachment J.

62 Finance, *Submission 1.1*, Attachment D1.

- Audit committees for Commonwealth entities and Commonwealth companies⁶³
- Banking of relevant money received by Ministers and officials⁶⁴
- Receipts collected by non-corporate entities⁶⁵
- Investment by Commonwealth entities⁶⁶
- Insurance⁶⁷
- Payment of an amount owed to a person at time of death⁶⁸
- Other CRF money⁶⁹
- Minister to inform Parliament of certain events⁷⁰
- Requests for discretionary financial assistance under PGPA Act 2013⁷¹
- Approval and commitment of relevant money⁷²
- Duties of officials⁷³
- Resource Management Instructions⁷⁴

2.66 The guidance regarding the new duties that will apply to all officials under sections 25 to 29 of the PGPA Act, 'Duties of officials,' is particularly important in ensuring that all officials will be prepared to comply with all requirements on 1 July 2014. Finance has assured the Committee that this guidance seeks 'to provide a uniform set of expectations and behaviours that covers all officials in meeting high standards of governance, performance and accountability.'⁷⁵

Clarity and consistency

2.67 The ANAO highlighted the importance of ensuring that all guidance materials are consistent and unambiguous, and that there is a clear distinction between mandatory requirements and guidance material:

The presentation of policy and guidance material needs to ensure the status of the material is clear and unambiguous. The

63 Finance, *Submission 1.1*, Attachment D2.

64 Finance, *Submission 1.1*, Attachment D3.

65 Finance, *Submission 1.1*, Attachment D4.

66 Finance, *Submission 1.1*, Attachment D5.

67 Finance, *Submission 1.1*, Attachment D6.

68 Finance, *Submission 1.1*, Attachment D7.

69 Finance, *Submission 1.1*, Attachment D8.

70 Finance, *Submission 1.1*, Attachment D9.

71 Finance, *Submission 1.1*, Attachment D10.

72 Finance, *Submission 1.1*, Attachment D11.

73 Finance, *Submission 1.1*, Attachment D12.

74 Finance, *Submission 1.1*, Attachment E1.

75 Finance, *Submission 1.1*, p. 4.

presentation of the accounting and auditing standards issued by the Australian Accounting Standards Board and the Australian Auditing Standards Board respectively are useful examples of where there is clear distinction between mandatory requirements and guidance material.⁷⁶

- 2.68 These views are shared by the RMIA, which expresses concerns that there are 'opt out opportunities present throughout the PGPA document set.' The RMIA points to examples of phrases which use the words 'should' or 'proportionate' as introducing risk to the achievement of the overarching outcomes of the PMRA. It recommends that this risk be mitigated by the use of absolute requirements:

We feel it would be more appropriate to specify absolute requirements and allow variability in the implementation of those requirements by entities, as befits their circumstance. In this way, there would be a baseline common to all entities, with variance in content and perhaps approach on an entity by entity basis. This would enable high returns on investment by guiding entities, such as Finance, lower overall cost of investment, and commonality on which reviews and audit could be executed, again at a lower cost, but higher returns. It would also enable transferability of thinking and experience from one entity to another, as is our understanding of one aspiration of the Reform Agenda.⁷⁷

- 2.69 Finance responded to the concerns raised by the ANAO and the RMIA by stating that the PGPA framework does make clear distinctions of mandatory requirements:

The PGPA framework makes a clear distinction between the mandatory requirements in the PGPA Act, rules, policy, and the guidance that will assist entities to meet their obligations.⁷⁸

- 2.70 Finance also responded to the RMIA's recommendations regarding the use of absolute requirements, asserting that the flexibility that RMIA has identified as 'opt out opportunities' is intentional and consistent with the drafting principles:

The Risk Management Policy has been drafted to be principles based and flexible. This flexibility was intentional to allow entities to tailor their existing risk practices and systems to the policy and to not unduly add any additional administrative burden on Commonwealth entities.⁷⁹

76 ANAO, *Submission 3*, p. 7.

77 RMIA, *Submission 15*, p. 4.

78 Finance, *Submission 1.3*, p. 3.

79 Finance, *Submission 1.3*, p. 18.

2.71 The importance of clarity of terminology was also raised by the APSC, which expressed concerns regarding the potential for confusion resulting from the dual coverage of the PGPA Act and the PS Act:

The Commission has been especially concerned that the legislation, taken together, should be clear, predictable and lack ambiguity for the employees who will be called on to implement it on a daily basis in the course of their duties.⁸⁰

2.72 The APSC stated that there has been ‘good progress in this respect, particularly in relation to guidance on the general duties of officials.’⁸¹ The Public Service Commissioner also praised Finance’s recent collaborative and consultative work with the APSC to ‘minimise the scope for confusion in language of the draft rule and guidance supporting the duties.’⁸²

2.73 The dual coverage of the PGPA Act and the PS Act is discussed in greater detail in Chapter 3 of this report.

Training

2.74 The ANAO stressed the importance of training for those individuals who will be ‘accountable authorities’ and ‘officials’ under the PGPA Act:

The training of officials is particularly important in view of the changes in both the content and structure of the legislation, including the inclusion of additional duties on accountable authorities and officials.⁸³

2.75 Finance assured the Committee that it has been conducting training in parallel with the development of the rules and guidance materials:

In parallel with refining the rules and refining the guidance we have started rolling out information programs and training to agencies...⁸⁴

2.76 Finance began conducting training and information sessions in February 2014, delivering sessions to entities in Canberra, Sydney and Melbourne. Further sessions are scheduled to be delivered through to July 2014 in Canberra, the Northern Territory, Queensland and South Australia.⁸⁵

2.77 Finance is also updating the Financial Management and Budget Training Program materials to comply with the PGPA Act and its rules. These materials will be available from April 2014 for entities to use for internal

80 APSC, *Submission 7*, p. 1.

81 APSC, *Submission 7*, p. 1.

82 Mr Stephen Sedgwick, APSC, *Committee Hansard*, Canberra, 7 April 2014, p. 15.

83 ANAO, *Submission 3*, p. [11].

84 Mr Suur, Finance, *Committee Hansard*, Canberra, 27 March 2014, p. 6.

85 Finance, *Submission 1.3*, p. 9.

training.⁸⁶ In addition, the draft guidance material currently available on the PMRA website is intended to support the training suite being delivered.⁸⁷

Committee comments and recommendations

Consultation

- 2.78 The Committee is pleased to note that the stakeholders who provided submissions to this inquiry overwhelmingly expressed strong satisfaction with the consultation process conducted by Finance during the drafting of the proposed rules.
- 2.79 It is clear that Finance have viewed thorough consultation on the reforms as a crucial element of success. This has included establishing a series of consultative committees and undertaking targeted consultation sessions with various stakeholder groups in various locations. The Committee commends Finance for this approach.
- 2.80 More specifically the Committee further commends Finance for its active engagement with the Committee from the early genesis of the reforms through to this inquiry. Engagement with the JCPAA and the broader Parliament are important steps in gaining lasting support for reforms of this nature to the financial framework.
- 2.81 The Committee expects that this robust consultation process, with all stakeholders including the Committee, will continue throughout the remainder of the development and implementation of the PGPA rules, and the greater PMRA. Continued consultation for future rules is discussed in greater detail in Chapter 4 of this report.
- 2.82 However, the Committee notes with concern the uncertainty expressed by some stakeholders regarding specific changes made to draft rules during the consultation and drafting process without feedback.
- 2.83 It is important that follow-up communication regarding amendments to rules is conducted with all stakeholders participating in the consultation process. This will allow stakeholders not only to see where their feedback has led to amendments but also, where possible, the rationale for changes or otherwise. It will also result in stakeholders being better informed as they continue to provide feedback regarding draft rules and the implementation of the PGPA Act and broader PRMA reforms.

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

87 Finance, *Submission 1.3*, p. 9.

Implementation

- 2.84 The Committee notes Finance's assurances that if Commonwealth bodies' internal systems are currently compliant with the FMA Act and the CAC Act they will be compliant under the PGPA Act on 1 July 2014.
- 2.85 The Committee notes that all of the Commonwealth bodies that the Committee spoke with were confident that they would be able to comply with the requirements on 1 July 2014. However, the Committee notes that it received submissions from only a small sample of Commonwealth bodies.
- 2.86 Nonetheless, the Committee is concerned regarding the RMIA's observations of uncertainty, doubt and scepticism within Commonwealth bodies regarding the reform.
- 2.87 The reforms to the finance law are significant, involving new legalisation combined with new rules, guidelines and government policy. This transition is occurring within a tightening resource environment closely following a change of government and associated machinery of government processes.
- 2.88 The Committee acknowledges that Finance has communicated that 'the primary task will be to review and update the sources of authorities for your internal controls and financial delegations' through their latest news releases.⁸⁸ Given these activities, combined with the evolving nature of the draft rules and guidance and the new duties on accountable authorities and individual officials, the Committee is conscious that Commonwealth bodies may hold some uncertainty about possible changes required to ensure both minimum compliance on 1 July 2014 and adoption of good practice shortly afterwards.
- 2.89 To minimise any uncertainty within Commonwealth bodies the Committee therefore suggests that Finance reconfirm and widely communicate the extent of actual system changes necessary by Commonwealth bodies for 1 July 2014, and where changes might be required that these be highlighted.

Guidance

- 2.90 As the guidance materials provided to the Committee are working drafts, the Committee will not comment on the detail of guidance materials, except in a limited set of specific issues discussed in Chapter 3. However, the Committee agrees with the ANAO that there should be a clear and

88 Finance, 'Public Management Reform Agenda: Readiness for implementation - 03', *PMRA Newsletter*, 14 March 2014, <cfar.govspace.gov.au/files/2014/03/PMRA-Newsletter-03-March-2014.pdf>, accessed 24 April 2104, p. 2.

simple distinction between what 'must' be done (requirements) and what 'should' be done (good practice).

- 2.91 The Committee is cognisant that the PGPA Act, rules, policy and guidance materials have been drafted to be principles-based and flexible. Therefore, it is important that guidance includes clear examples to assist Commonwealth bodies in determining which good practice options to apply to their situations. This will assist Commonwealth bodies to maximise benefits whilst minimising administrative burden.
- 2.92 The Committee also recognises the importance of ensuring the guidance materials provides a clear line of sight from the Act down to the detailed implementation elements; and also that different guidance documents are consistent in their structure and terminology. Both of these factors will assist officers to implement and more easily embrace the changes to the financial framework.

Recommendation 1

- 2.93 **The Committee recommends that the Department of Finance review all *Public Governance, Performance and Accountability Act 2013* guidance material to improve consistency in:**
- **the context provided**
 - **document structure**
 - **distinguishing between mandatory requirements and good practice terminology**

Training

- 2.94 The Committee agrees that training is crucial to successful reform and implementation of the finance law. Good quality training will assist relevant staff of Commonwealth bodies be prepared to meet the requirements of the PGPA Act and its rules, as they come into effect, and also to better engage with the intent of the broader PMRA reforms.
- 2.95 The Committee understands that additional training has been scheduled for May in preparation for 1 July 2014 implementation. The Committee suggests, if not already planned, that Finance schedule extended training over 2014-15 to assist entities move from minimum compliance to adoption of good practice, and to prepare them to implement likely changes from stage two of the PMRA.