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Report 441

Inquiry into *Public Governance, Performance and Accountability Act 2013* Rules Development

Joint Committee of Public Accounts and Audit

May 2014
Canberra

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Foreword

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 (PMRA)’.

The JCPAA believes that stage one of the PMRA, comprising the PGPA Act and the implementation of the first set of PGPA rules, establishes a solid foundation for efficiencies and the framework for cultural change in Commonwealth resource management in future years. The PMRA, which comprises three broad stages, will require all Commonwealth entities to make the necessary cultural changes to maximise the value of these reforms, and leadership at the highest level and within central agencies will be crucial. If the benefits of this new framework are fully captured this would modernise public sector financial management, making Australia once again world leading in this area and positioning us well for the decades ahead.

As discussed in our report, the objectives of the PGPA Act and broader PMRA are extensive and include improved productivity and performance of the Commonwealth public sector, a more mature approach to risk across the Commonwealth, and improved quality of information to Parliament and the public. On this last point, the Committee has supported a proposal by the Australian National Audit Office that an additional guiding principle emphasising the Parliament’s role be applied in developing the remaining elements of the PMRA framework.

Some 19 PGPA rules were considered by the Committee as part of the inquiry, as set out in the Exposure Draft of the *Public Governance, Performance and Accountability Rule 2013* and two other instruments: the draft Commonwealth Procurement Rules and the draft Commonwealth Grants Rules and Guidelines.

The Committee noted general support from inquiry participants for the majority of draft rules required for 1 July 2014 commencement of the PGPA Act. However, we have made recommendations in response to specific issues raised by stakeholders concerning the draft PGPA rules on 'Approving commitments of relevant money' and 'Audit committees'. The Committee has also made recommendations relating to dual coverage of the PGPA Act and the *Public Service Act 1999*.

In terms of the development of future rules under the PGPA Act and other elements of the broader PMRA framework, the JCPAA intends to conduct inquiries into both stages two and three of the proposed reforms. These inquiries will continue the Committee's previous engagement with these critical reforms of the finance law that commenced with our earlier inquiry into the PGPA Bill 2013.

Key priority areas for stages two and three include a new risk framework and implementation of earned autonomy concepts; better facilitation of 'joined-up' government, and cooperation and partnership arrangements; and an improved performance framework, with draft PGPA rules for corporate plans, annual performance statements and annual reporting requirements. The PGPA rules relating to the performance framework are of particular interest to the JCPAA, given the many recommendations of past ANAO audits and Committee inquiries concerning performance reporting by Commonwealth agencies.

The Committee appreciated the issues raised by stakeholders during the inquiry regarding future PGPA rules and PMRA implementation, and the calls for early action in these areas. We commend the initial consultation process undertaken by the Department of Finance for the first set of proposed PGPA rules, and Finance's commitment to continue this process for the rules to be implemented post 1 July 2014. I also commend Finance for its leadership in driving this significant reform process.

Dr Andrew Southcott MP
Chair



Membership of the Committee

Chair Dr Andrew Southcott MP

Deputy Chair Mr Pat Conroy MP

Members	Ms Gai Brodtmann MP	Senator Cory Bernardi
	Mrs Jane Prentice MP (from 25/02/14)	Senator Alex Gallacher
	Mr Craig Laundry MP	Senator the Hon Kate Lundy
	Mr Andrew Giles MP (from 18/03/14)	Senator Anne Ruston
	Dr Peter Hendy MP (from 18/03/14)	Senator Dean Smith
	Mr Michael Sukkar MP	
	Mr Angus Taylor MP	
	Mr Tim Watts MP	
	Ms Lisa Chesters MP (until 18/03/14)	
	The Hon Tony Smith MP (until 18/03/14)	
	The Hon Dr Sharman Stone MP (until 25/02/14)	

Committee Secretariat

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Ms Antoinette Gardiner



Terms of reference

On 13 February 2014, the Joint Committee of Public Accounts and Audit resolved to inquire into and report on the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) rules development. The Committee will 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 Report Agenda.



List of abbreviations

ABC	Australian Broadcasting Corporation
ANAO	Australian National Audit Office
APS	Australian Public Service
APSC	Australian Public Service Commission
ARTC	Australian Rail Track Corporation Ltd
ASX	Australian Securities Exchange
AWM	Australian War Memorial
C&T Bill	Public Government, Performance and Accountability (Consequential and Transitional Provisions) Bill 2014
CAC Act	<i>Commonwealth Authorities and Companies Act 1997</i>
CFAR	Commonwealth Financial Accountability Review
CGCs	Commonwealth Grants Guidelines
CGRGs	Commonwealth Grants and Rules Guidelines
CPRs	Commonwealth Procurement Rules
CPSU	Commonwealth Public Service Union
CSIRO	Commonwealth Scientific and Industrial Research Organisation
Finance	Department of Finance

FMA Act	<i>Financial Management and Accountability Act 1997</i>
FMO	Finance Minister's Orders for Financial Reporting
GBEs	Government Business Enterprises
IBA	Indigenous Business Australia
JCPAA	Joint Committee of Public Accounts and Audit
KPI	Key Performance Indicator
MIC	Moorebank Intermodal Company Ltd
NFP	not-for-profit
OPC	Office of Parliamentary Counsel
PGPA Act	<i>Public Governance, Performance and Accountability Act 2013</i>
PGPA Bill	Public Government, Performance and Accountability Bill 2013
PGPA Rule	<i>Public Governance, Performance and Accountability Act 2013 Rule</i>
PMRA	Public Management Reform Agenda
PS Act	Public Service Act
RMIA	Risk Management Association of Australia
Statutory RDCs	Statutory Research and Development Corporations



List of recommendations

2 Rules required for 1 July 2014 commencement: consultation and implementation

Recommendation 1

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

3 Key issues: 1 July 2014 commencement

Recommendation 2

The Committee recommends that the following additional guiding principle be included as one of the guiding principles for the Public Management Reform Agenda:

- The financial framework, including the rules and supporting policy and guidance, should support the legitimate requirements of the Government and the Parliament in discharging their respective responsibilities.

Recommendation 3

The Committee recommends that the Department of Finance work to ensure that any necessary amendments are made to the *Auditor-General's Act 1997* such that the Australian National Audit Office has the power to audit the full planning, performance and accountability framework under the *Public Governance, Performance and Accountability Act 2013*.

Recommendation 4

The Committee does not recommend a change to the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) at this time, to address the potential confusion from dual coverage with the *Public Service Act 1999* (PS Act).

Instead, the Committee recommends that the Department of Finance and the Australian Public Service Commission work together to draft the necessary amendments to the PGPA Act and/or the PS Act to remove overlaps and reduce potential confusion from dual coverage, and that amendment proposals be put to the Parliament.

Recommendation 5

The Committee recommends that the Department of Finance (Finance) amend the draft guidance to s17 and s28 of the draft *Public Governance, Performance and Accountability Rule 2014* to emphasise that nothing in the draft rule precludes the chair, chief executive officer and chief financial officer of a Commonwealth body from attending audit committee meetings as an observer. Finance should also widely communicate this point.

Recommendation 6

The Committee recommends that draft rule s18 (Approving commitments of relevant money) of the *Public Governance, Performance and Accountability Rule 2014* be amended to explicitly place an obligation on all individual officials to consider proper use and management of public resources before approving commitments of relevant money.

Recommendation 7

The Committee recommends that the issue of commitments of relevant money, and the appropriateness of spending limits and associated documentation requirements set by accountable authorities, be included by the Department of Finance in the first independent review of the *Public Governance, Performance and Accountability Act 2013*.

Recommendation 8

The Committee recommends that the draft guidance material supporting s18 (Approving commitments of relevant money) of the *Public Governance, Performance and Accountability Rule 2014* be amended to include discussion of the reasonable use of, and the risks involved in, officials approving aggregate expenditure proposals.

4 Key issues: post 1 July 2014

Recommendation 9

The Committee recommends that the Department of Finance continue its consultation process with stakeholders on the *Public Governance, Performance and Accountability Act 2013* rules development for the post July 2014 rules and the broader Public Management Reform Agenda, based on the comprehensive consultation approach taken to date.

Recommendation 10

The Committee recommends that the Department of Finance prepare and communicate a plan clearly outlining the anticipated dates for development and consultation of all future rules and guidance materials under the *Public Governance, Performance and Accountability Act 2013*, and the broader Public Management Reform Agenda.

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
-

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

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.

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.

- 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

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	Reason not provided to Committee ²⁸		
	Section in Act	Submission 1	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. Draft rules will be developed over the balance of 2014 in consultation with the JCPAA.
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.	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.
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).	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	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 Management Steering

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.

Key issues: 1 July 2014 commencement

Introduction

- 3.1 Chapter 3 focuses on key issues concerning the rules development for 1 July 2014 commencement of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). It considers the draft *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule) and associated instruments.
- 3.2 Of interest, as set out in the Joint Committee of Public Accounts and Audit (JCPAA) inquiry terms of reference, is the impact of the draft rules and their purpose in the context of the broader Public Management Report Agenda (PMRA).
- 3.3 The chapter commences with a number of issues raised during the inquiry concerning the PGPA Act itself. It then discusses several specific issues regarding the draft rules. The chapter concludes with the Committee's comments and recommendations.

General issues concerning PGPA Act 2013

- 3.4 As discussed in Chapter 1, the purpose of the Committee's previous inquiry was to investigate the *Public Governance, Performance and Accountability Bill 2013* (PGPA Bill). The purpose of this current inquiry was not to revisit the PGPA Act but rather to focus on the PGPA rules development in the context of the broader PMRA.
- 3.5 However, the Committee notes six issues regarding the PGPA Act raised during the course of the inquiry that are relevant to the development of the PGPA rules, guidance and the broader PMRA reform process, as follows:
 - PGPA Act guiding principles

- Role and powers of the Australian National Audit Office (ANAO)
- Dual coverage PGPA Act and *Public Service Act 1999* (PS Act)
- s32B of the *Financial Management and Accountability Act 1997* (FMA Act) in the context of the PGPA Act
- s38 PGPA Act
- s59 PGPA Act

PGPA Act guiding principles

3.6 The PGPA Act and broader PMRA have been established on the basis of four guiding principles:

- government should operate as a coherent whole;
- 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.¹

3.7 The ANAO proposed the following additional guiding principle be applied in developing the remaining elements of the PMRA and PGPA framework:

The financial framework, including the rules and supporting policy and guidance, should support the legitimate requirements of the government and the parliament in discharging their respective responsibilities.²

3.8 The ANAO explained that its purpose in suggesting this additional guiding principle is to 'recognise that the executive government is accountable to the parliament for the use of public resources in a manner consistent with legislative requirements and conventions'.³ Further, the resource management framework has 'traditionally played a significant part in assisting government to manage its responsibilities in relation to public resources efficiently and effectively, and to respond to the legitimate information needs of the parliament'.⁴ While the PGPA Act and broader PMRA reflect a rigorous review of the existing resource management framework to eliminate constraints on the efficiency and effectiveness of public sector entities, 'it is also important as part of this

1 *Explanatory Memorandum, Public Governance, Performance and Accountability Bill 2013 (PGPA Bill)*, Parliament of the Commonwealth of Australia, p. 2. See also Department of Finance (Finance), *Submission 1*, p. 2.

2 Australian National Audit Office (ANAO), *Submission 3*, p. 4.

3 ANAO, *Submission 3*, p. 4.

4 ANAO, *Submission 3*, p. 4.

process that appropriate recognition is given to the responsibilities of the executive government, including in discharging its responsibilities to the parliament'.⁵

3.9 As the Auditor-General, Mr Ian McPhee, further commented:

... the ANAO have supported the benefits of conducting a review of the existing financial framework to eliminate constraints on the efficiency and effectiveness of public sector entities but have emphasised the importance of giving appropriate recognition to the responsibilities of an executive government in discharging its responsibilities to the parliament.⁶

3.10 The Department of Finance (Finance) responded to the ANAO's proposal by emphasising that the 'principle of supporting the parliament has been and is being implemented'.⁷ It was pointed out that 'in the act itself, as passed, one of the objects in section 5(c) is: "to require the Commonwealth and Commonwealth entities: (ii) to provide meaningful information to the Parliament and the public"'.⁸

3.11 Finance further explained that:

We have been animated in this process by a desire and a concern to enhance the relationship between the public sector and parliament and to enhance the role of parliament in a number of key ways. Three ways in which this in particular has happened in the PGPA process is the inclusion of an annual performance statement in annual reports, which will be tabled in parliament; parliamentary scrutiny of terminations of accountable authority appointments made under section 30; and also some roles in relation to the Auditor-General himself.

From our perspective, these changes are being done with a view to enhancing the ability of parliament to operate, to scrutinise the public sector and to hold the public sector to account. As we progress in this process we see subsequent stages of the reform program overall being about making more accessible, more relevant and more useful to parliament a lot of the documentation that parliament currently receives.⁹

3.12 In summary, Finance concluded:

5 ANAO, *Submission 3*, p. 6.

6 Mr Ian McPhee, Auditor-General, ANAO, *Committee Hansard*, Canberra, 7 April 2014, p. 8.

7 Dr Stein Helgeby, Deputy Secretary, Department of Finance (Finance), *Committee Hansard*, Canberra, 7 April 2014, p. 14.

8 Dr Helgeby, Finance, *Committee Hansard*, Canberra, 7 April 2014, p. 14.

9 Dr Helgeby, Finance, *Committee Hansard*, Canberra, 7 April 2014, p. 14.

The PGPA Act puts in place requirements for high standards of governance, performance and accountability and seeks to ensure that the Parliament is provided with meaningful information. The number of references to the Parliament has increased from 6 under the FMA and 4 under the CAC Acts to 14 under the PGPA Act.

At the highest level, the PGPA Act has done a number of things to enhance the role of the Parliament. For example, it requires:

- the inclusion of an annual performance statement in annual reports, that, of course, are tabled in Parliament;
- Parliamentary scrutiny of terminations of accountable authorities' appointments made under section 30; and
- expanded powers for the Auditor-General.

These provisions have been to ensure that important role of the Parliament is effectively supported by the supported by the PGPA Act.¹⁰

Role and powers of ANAO

3.13 The Committee sought to confirm that the new PGPA framework and rules would not impact on the role and powers of the ANAO. The Committee therefore asked the ANAO to confirm whether the consequential amendments to the *Auditor-General Act 1997*, being made through the PGPA (Consequential and Transitional Provisions) Bill 2014, would give the ANAO the full audit powers under the framework that Parliament would expect.

3.14 The ANAO confirmed that they were:

... very nearly there with the amendments to the Auditor-General Act. There are a lot of them. A lot of them are relatively minor. They are just replacement wordings. There is only one substantive amendment, which we still have not quite got there on yet. That is not because it is difficult or contentious. There is just a lot of work involved here. That involves an amendment that the Prime Minister has agreed on to introduce the concept of interim reports to the Auditor-General Act and to protect the confidentiality of those reports. That has been agreed to at a policy level by the Prime Minister. We are just working through the details of that amendment ... we are very close to getting agreement for the many amendments required to the act.¹¹

10 Finance, *Submission 1.3*, p. 12.

11 Mr Russell Coleman, Audit Principal, ANAO, *Committee Hansard*, Canberra, 7 April 2014, p. 15.

Dual coverage PGPA Act and PS Act

- 3.15 A significant issue arising during the Committee's inquiry was the dual coverage of the PGPA Act 2013 and the *Public Service Act 1999* (PS Act). This was highlighted by the Australian Public Service Commission (APSC), particularly with reference to s25-s29 concerning the 'General duties of officials'.
- 3.16 The APSC noted that:
- The Commission and the Department of Finance have examined carefully ways in which the PGPA Act works with ... the PS Act, which sets out the role and powers of agency heads and a clear statement of the conduct expected of public servants. 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. There has been good progress in this respect, particularly in relation to guidance on the general duties of officials.¹²
- 3.17 However, the APSC observed that the fact this guidance material had to be developed 'reinforces the view' that the 'dual coverage of the two Acts, with each of them setting out alternate statements seeking to regulate the behaviour and professional standards of public servants in the APS, adds complexity and the potential for confusion for APS employees'.¹³
- 3.18 The Australian Public Service Commissioner pointed to the difference in language between the two Acts as particularly contributing to this potential confusion – 'although they are expressed very similarly in respect of financial management, these statements use slightly different language, which carries the potential for unnecessary confusion, inefficiency and cost'.¹⁴ The Commissioner further explained the APSC had undertaken 'mapping of the obligations that were being imposed

12 Australian Public Service Commission (APSC), *Submission 7*, p. 4.

13 APSC, *Submission 7*, p. 4. The draft Resource Management Guide on the 'General duties of officials' sets out the 'Complementary duties between the PGPA Act and the PS Act'. The guide states that '[a] significant portion of officials have obligations under the PS Act. The PS Act has a broader scope when it comes to the duties, but the PGPA Act is more specified in law regarding standards of governance, performance and accountability across all Commonwealth entities ... For APS Employees, this guidance should be read in conjunction with the Australian Public Service Commissioner's guidance on the APS Code of Conduct', Finance, *Submission 1.2*, p. 16.

14 Mr Stephen Sedgwick, Australian Public Service Commissioner, APSC, *Committee Hansard*, Canberra, 7 April 2014, p. 9. For the purposes of this inquiry, the APSC also provided a reference table showing the differences in language between the two Acts, *Submission 7*, pp. 6-7.

under the two acts, and the point we are trying to make is that they are very, very similar. There is scope for confusion because they are so similar but they are in small respects different ... It is not necessarily the same language but it is certainly the same set of principles and the same intent'.¹⁵

- 3.19 Noting this potential for confusion, the APSC therefore proposed that the PGPA Act be amended to specify that the provisions of the Act relating to 'General duties of officials' do not apply to those employed under the PS Act:

The PGPA Act already contains provisions in relation to Commonwealth companies that recognises the Corporations Act as the primary regulatory framework that should apply. As a consequence, they are exempted from many of the provisions of the PGPA Act ... it would be sensible to amend the PGPA Act to take a similar approach in relation to the duties of officials set out in sections 25 to 29, specifying that those provisions do not apply to people employed under the PS Act.

- 3.20 Under this proposal, as the APSC explained, the PS Act and, in particular, the APS Code of Conduct, would instead provide the regulatory framework in this area: '[a]n amendment of this character would recognise that, under the APS Code of Conduct, those employees already have a comprehensive framework for the regulation of their behaviour that has been developed over years of practice and through consultation across the APS, and has been shown to work well over a substantial period of time'.¹⁶
- 3.21 On the issue of whether the APS Code of Conduct provided an effective replacement for s25-s29 of the PGPA Act in terms of its scope encompassing the resource management aspect of the PGPA Act in this area, the APSC emphasised the comprehensive nature of the PS Act framework. The Commissioner acknowledged that 'colleagues in Finance have particular concerns about whether the APS Code of Conduct, in a very small number of cases, provides the degree of specificity that they are seeking to be an effective replacement for these sections'.¹⁷ However, he noted that '[w]e are sympathetic to this concern and we are exploring with Finance the scope to amend the APS code so that it is more specific in the relevant areas'.¹⁸

15 Mr Sedgwick, APSC, *Committee Hansard*, Canberra, 7 April 2014, p.14.

16 APSC, *Submission 7*, p. 4.

17 Mr Sedgwick, APSC, *Committee Hansard*, Canberra, 7 April 2014, p. 9.

18 Mr Sedgwick, APSC, *Committee Hansard*, Canberra, 7 April 2014, p. 9.

- 3.22 The Commissioner therefore observed that the PS Act might also need to be amended to assist in addressing this issue:

As part of our attempt to resolve this issue, we have said: ‘Okay. Fine. If needs be, we could always recommend to the government that they consider some minor changes to the way that the code is expressed in order to be able to eliminate that scope for confusion between the two acts.’ We are working with Finance ... The sense that we are getting, as the process is not over, is that there probably are technical solutions that would have the effect of ensuring that the two sets of obligations are consistent, that the intent of the act is clearly covered, that the PGPA would exclude the duties and obligations in sections 25 to 29 from ... applying to APS employees but that the code of conduct has the same effect.¹⁹

- 3.23 The APSC concluded that its experience of the development of the PGPA rules and guidance ‘reinforces the view’ that it would be ‘preferable to amend the PGPA Act, recognising that the behaviour of APS employees, as the single largest common group of officials under the PGPA Act, should be regulated and enforced by existing, well-established and well-understood mechanisms established by the PS Act’.²⁰ As the Commissioner commented:

We have a once-in-a-decade opportunity to improve the quality of financial governance without imposing unnecessary costs and inefficiencies, a key to which is to ensure that the responsibilities under the total governance framework – which in this case is the PGPA Act and the Public Service Act – are clear, consistent, unambiguous and workable for everybody ...

If further discussions confirm it is workable, this approach would also be consistent with the government’s desire to reduce unnecessary regulation while retaining prudent financial management arrangements. It would minimise scope for confusion among staff and reduce the costs of ensuring compliance with what would otherwise be two very similar but slightly different regulatory regimes under two different acts. Let’s be clear: unnecessary cost can be reduced, if not avoided totally, by slightly amending the Public Service Act and the PGPA Act rather than continuing to separately apply duties and responsibilities of the PGPA Act to Public Service Act employees ... over the last couple of years we have overhauled both the

19 Mr Sedgwick, APSC, *Committee Hansard*, Canberra, 7 April 2014, p.14.

20 APSC, *Submission 7*, p. 5.

Public Service Act and the financial management framework within which the FMA and the CAC bodies operate ... we have done two landmark revisions of the frameworks within which significant parts of the public sector have operated in recent times and at the end they appear to have been too disconnected, which is a big pity, I think.²¹

- 3.24 In response, Finance made a number of comments about the two frameworks. In particular, it emphasised that the general duties of officials in s25 to s29 of the PGPA Act seek to apply a 'single set of standards that apply to all officials who use public resources', to promote a 'coherent system of governance' and give the Parliament 'confidence that public resources will be managed consistently and to a high standard'.²² This is based on the principle that 'public resources are public resources no matter in whose hand they are', and that there:

... ought to be common standards of accountability and responsibility in relation to the management of those public resources. Public resources in the Commonwealth are managed by upwards of 300,000 officials and about half of those fall under the Public Service Act. So to ensure that there are common standards across the whole of the Commonwealth in relation to the management of public resources, we need consistent duties ... this scheme will fall down if there are not common duties in relation to the management of public resources. If parliament cannot hold officials accountable on a consistent basis, then ministers cannot hold officials accountable on a consistent basis and the notion of the Commonwealth as a coherent whole falls down. So for us, it is a fundamental issue.²³

- 3.25 As Finance explained:

The PGPA Act creates a complete scheme around the management of public resources. The duties of officials complement the framework of controls and processes established by the accountable authority as required by sections 15 to 19 of the PGPA Act. The direct link between these controls and processes and the duties placed on all officials through sections 25 to 29 is designed to drive the cultural changes needed within entities to, amongst other things, promote effective risk management and performance

21 Mr Sedgwick, APSC, *Committee Hansard*, Canberra, 7 April 2014, pp. 9-10, p. 17.

22 Finance, *Submission 1.3*, p. 6.

23 Mr Lembit Suur, First Assistant Secretary, Governance and Public Management, Finance, *Committee Hansard*, Canberra, 27 March 2014, p. 14.

cultures. The need for precise and unambiguous standards would disrupt the scheme if APS employees were subject to a broader set of duties that are described differently ...

Decisions of the current and future governments to reshape government administration are best supported by a framework that applies the same set of duties and rules to all officials in their management of public resources. A single set of standards will allow the government to be more efficient and agile in times of administrative reorganisation and structural change. It will also give comfort to the Parliament that all officials, irrespective of whether an APS employee or a non-APS employee or of a corporate or non-corporate Commonwealth entity, will be subject to a complete scheme.²⁴

- 3.26 Finance further pointed to differences in scope between the two frameworks, emphasising that ‘in the PGPA Act there is a focus on precision and there is a focus on a couple of key concepts ... important in financial management and governance, which are not currently reflected in the Public Service Act’.²⁵ Finance added that:

The APS code of conduct, which is prescribed by section 13 of the Public Service Act 1999 (PS Act) and applies to around half of Commonwealth officials, has broader scope and relates to the employment of APS employees. The APS code of conduct is highly valued, and gives confidence about the high professional standards of an apolitical Australian Public Service, but the PGPA Act applies more precision when it comes to standards of governance, performance and accountability, particularly in relation to the management of resources. Good governance demands precise and unambiguous standards to promote effective management of public resources by officials.²⁶

- 3.27 In terms of potential confusion between the two frameworks, Finance emphasised that there are ‘sufficient similarities between the duties in the PGPA Act and the Public Service Code of Conduct to allow the two duties to work side by side’,²⁷ and that a number of agencies had successfully operated under multiple regulatory regimes – ‘entities and officials already operate under multiple regulatory regimes, including sets of duties, without difficulty’.²⁸ Further, concerning the CAC Act, Finance

24 Finance, *Submission 1.3*, pp. 6-7.

25 Dr Helgeby, Finance, *Committee Hansard*, Canberra, 7 April 2014, p. 15.

26 Finance, *Submission 1.3*, p. 6.

27 Dr Helgeby, Finance, *Committee Hansard*, Canberra, 7 April 2014, p. 2.

28 Finance, *Submission 1.3*, p. 7.

noted that there is 'no evidence' that the two sets of similar duties has 'created confusion over the past 14 years for the 17 CAC Act bodies that are also subject to the PS Act. In fact there is an argument that having consistent duties across multiple operating environments can help reinforce expectations on officials and help implement a consistent change in organisational culture'.²⁹

- 3.28 Finance confirmed that it had worked with the APSC on the draft guidance on the general duties of officials, to remove any potential confusion on this matter:

There are some differences between a particular duty under the PGPA Act and the corresponding duty under the Public Service Act. We believe that the management and use of public resources demands consistent and explicit standards applied unequivocally in legislation. To this end we acknowledge the work we have done and the assistance we have been provided by the Public Service Commission in helping to refine the draft guidelines on duties of officials where there has been a concern about potential confusion. We have worked to remove any confusion between the PGPA Act and the Public Service Act. In doing this we have sought to retain the precision of the PGPA Act ...

Our view is that areas for confusion have been addressed and removed. We have done that in consultation with the APSC throughout the process.³⁰

- 3.29 As a possible 'way forward', Finance concluded that it 'appreciates the assistance provided to date' by the APSC in developing guidance and 'will continue to work collaboratively with the APSC to ensure clarity around the way that the PGPA Act and PS Act interact. It will be important to monitor this issue both in the short term and as part of the independent review of the PGPA Act in three years' time'.³¹
- 3.30 In this context, Finance confirmed that, in the interim, it would 'continue to work collaboratively with the APSC on this issue to see whether or not solutions can be found in a much faster time frame than that'.³²

Section 32B FMA Act

- 3.31 Section 32B was included in the FMA Act to 'establish a supplementary power for the Commonwealth to make commitments to spend public
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29 Finance, *Submission 1.3*, p. 8.

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

31 Finance, *Submission 1.3*, p. 8.

32 Dr Helgeby, Finance, *Committee Hansard*, Canberra, 7 April 2014, p. 2.

money where there is not currently legislative authority'.³³ This was in response to the High Court's judgement of 20 June 2012 in *Williams v Commonwealth* (2012) 288 ALR 410 (Williams). The FMA regulations list arrangements, grants and programs to which s32B applies.

3.32 Finance noted that, to continue providing this legislative authority for the arrangements, grants and programs listed in the regulations, it is proposed to retain s32B of the FMA Act and the related regulations after 1 July 2014. The 'necessary amendments to allow these arrangements to continue to operate will be included in the PGPA (Consequential and Transitional Provisions) Bill 2014'.³⁴

3.33 The ANAO commented that it was 'unclear from the information provided to date, why appropriate provisions have not been included in the PGPA Act to provide this support'.³⁵

3.34 Finance explained that, as there is a second Williams case before the High Court, the preferred approach is to:

... respect the processes of the High Court and to leave the arrangement ... in response to the first Williams decision in place for the duration of the High Court's consideration of the Williams matter ... it would be inappropriate to take section 32B and to simply transfer that scheme into a new piece of legislation when the High Court is considering section 323B in the context of the second Williams case.³⁶

3.35 According to Finance the prudent course of action was therefore to 'leave the scheme where it is, to understand what the High Court believes about a scheme of that nature, and then to make judgements about what to do with that scheme'.³⁷

Section 38 PGPA Act

3.36 Section 38 of the PGPA Act concerns 'measuring and assessing performance'. Section 38(1) states that the accountable authority of a Commonwealth entity must 'measure and assess the performance of the entity in achieving its purposes'. The ANAO commented that this phrase could be 'interpreted narrowly', explaining that 'this is why Australian Accounting Standards separately require government agencies to account for income, expenses, assets and liabilities that they control, as well as

33 ANAO, *Submission 3*, pp. 5-6.

34 Finance, *Submission 1.3*, pp. 13-14.

35 ANAO, *Submission 3*, p. 5.

36 Mr Suur, Finance, *Committee Hansard*, Canberra, 7 April 2014, p. 5.

37 Mr Suur, Finance, *Committee Hansard*, Canberra, 7 April 2014, p. 6.

separately account for administered income, expenses, assets and liabilities'.³⁸

- 3.37 As the ANAO emphasised, it is 'obviously critically important that the performance of an agency not only encompass information on the delivery of programs but also information on the effectiveness of programs, even though policy responsibility rests with government'.³⁹
- 3.38 The ANAO therefore proposed an amendment to s38 of the PGPA Act to clarify this matter. However, it also noted that:

Clarification of this issue could be pursued in conjunction with the development of the revised performance framework to give greater confidence that assessment of performance relates to the impact or effectiveness of government programs or activities for which an entity carries administrative responsibility, including those that involve multiple entities and other jurisdictions.⁴⁰

Section 59 PGPA Act

- 3.39 Indigenous Business Australia (IBA) were concerned that s59(1) of the PGPA Act, 'Investment by corporate Commonwealth entities', might operate to 'restrict investment activity entirely except where the funds are surplus to requirement'.⁴¹ There was concern that IBA might be found 'in breach' of s59 by continuing to pursue investment activity with IBA's funds, even though IBA is expressly authorised by its act to invest money.⁴² IBA therefore proposed s59 be redrafted to clarify this issue.

- 3.40 IBA acknowledged, however, that:

The Department of Finance, in fairness, say that the amendments to the provision are the same in intent [as the CAC Act] and there is no material change and that, specifically around the argument that a specific power such as IBA has will override the general provision on the PGPA.⁴³

- 3.41 In response to these concerns, Finance clarified that:

The investment powers for corporate and non-corporate entities under the PGPA Act have not changed from those currently in place under the CAC Act ... Where corporate Commonwealth

38 ANAO, *Submission 3*, p. 5.

39 ANAO, *Submission 3*, p. 5.

40 ANAO, *Submission 3*, p. 5.

41 Indigenous Business Australia (IBA), *Submission 12*, p. 3.

42 IBA, *Submission 12*, p. 5.

43 Mr Chris Fry, Chief Executive Officer, IBA, *Committee Hansard*, Canberra, 7 April 2014, p. 20.

entities have specific investment powers in their enabling legislation (such as the IBA), these powers will not change.

Corporate entities will have no diminution of investment powers under the new framework.⁴⁴

Draft PGPA Rule 2014 and associated instruments

3.42 The Committee's focus in this inquiry is the draft rules required for 1 July 2014 commencement. The Committee's core reference documents were:

- *Exposure Draft of the PGPA Rule 2014*⁴⁵
- draft *Explanatory Statement* to the Exposure Draft of the PGPA Rule⁴⁶
- draft *Commonwealth Procurement Rules (CPRs)*⁴⁷
- draft *Commonwealth Grants Rules and Guidelines (CGRGs)*⁴⁸

3.43 As non-disallowable instruments, the Commonwealth Procurement Rules and Commonwealth Grants Rules and Guidelines are not consolidated in the PGPA Rule.

3.44 Finance provided the Committee with working drafts of a range of other instruments also planned to be in place for 1 July 2014 to support these draft rules:

- Guidance – supporting a number of the draft rules (working drafts with various dates)⁴⁹
- Model Resource Management Instructions (working draft dated 13 March 2014).⁵⁰

3.45 These documents have informed the Committee's deliberations. As the ANAO commented:

It is ... encouraging that Finance has now prepared draft guidance for each of the rules to be in place on 1 July 2014 and has also developed draft model Resource Management Instructions; this allows for a more informed assessment to be made about the

44 Finance, *Submission 1.3*, p. 28.

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

46 Finance, *Submission 1*, Attachment 4, pp. 1-26.

47 Finance, *Submission 1.1*, pp. 21-56.

48 Finance, *Submission 1.1*, pp. 57-93.

49 Finance, *Submission 1*, Attachment 10, pp. 1-19; Finance, *Submission 1.1*, pp. 94-206; and Finance, *Submission 1.2*, pp. 1-17.

50 Finance, *Submission 1.1*, pp. 207-337.

totality of the financial framework in relation to those matters on which rules have been prepared.⁵¹

- 3.46 However, it is noted that, at the time of the Committee reporting, the guidance and other materials reflected work in progress, not final drafts, and were still undergoing consultation.⁵² Where the Committee has made recommendations in this chapter concerning specific draft rules, it has also recommended the relevant draft guidance and other materials supporting that particular rule be reviewed and amended accordingly, in consultation with stakeholders.
- 3.47 Finance further provided the Committee with a draft Commonwealth Risk Management Policy.⁵³ This policy is discussed in Chapter 4 as it relates to broader issues related to the implementation of the PGPA Act and the broader Public Management Reform Agenda (PMRA), post 1 July 2014.

Design principles for draft rules

- 3.48 The draft PGPA rules have been developed according to six agreed design principles – see Table 3.1. These design principles have been of interest in considering the impact and purposes of the draft rules. As Finance noted, the design principles have been developed ‘to ensure a consistent consideration of issues in the development of the proposed rules and to ensure that where a rule was to be included, the requirements and intent of the rule was clear’.⁵⁴

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

52 As part of its submissions, Finance also provided the Committee with a working draft of a PGPA Act *Compendium*, describing the legislative and other arrangements supporting the introduction of the PGPA Act, Finance, *Submission 1*, Attachment 7, pp. 1-163. The draft *Compendium* provided useful background information for the Committee.

53 Finance, *Submission 1.1*, pp. 338-344.

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

Table 3.1 PGPA rule design principles

Design principle	Key aspects of principle
Threshold justification	<p>A rule is to be made only where the Act specifies the making of a rule, or where it is necessary or convenient for administrative reasons to have a rule.</p> <p>A rule should not be created if the provision(s) within the Act already provide sufficient direction.</p> <p>In all cases where a rule is not mandatory one should only be introduced where the subject matter cannot be dealt with (or is inappropriate to deal with) through guidance or better practice for legal, accountability, or policy reasons.</p> <p>Rules should set principles and, as a general proposition, should be outcome focussed and not prescribe detailed requirements that are better addressed by an entity's internal controls.</p> <p>Entities should have the flexibility to adopt appropriate systems and practices to achieve diverse policy and statutory objectives.</p>
Make clear the intent of a rule	<p>The purpose of a rule needs to be explained in non-technical language through a statement of objective in the explanatory statement and/or an introductory guide, as per the construct of the Act.</p>
Minimises regulation and red tape	<p>All rules should be drafted with the objective of keeping to a minimum the level of regulation and red tape, including through a regular review mechanism – the emphasis of the new system is on encouraging prudent behaviour through the duties of accountable authorities and officials, not on overly prescriptive regulatory and compliance requirements.</p> <p>Compliance for compliance's sake is to be avoided and should only be required where it is necessary to promote the objectives of the PGPA Act.</p> <p>Where prescriptive provisions are included, they should be clear, easy to understand and be able to be applied consistently.</p>
Recognises and manages risk	<p>The content of each rule will be dependent on the risk and consequences of non-compliance, and the nature and complexity of the subject matter.</p> <p>The rules will focus on ensuring an entity's response to any non-compliance is appropriate and balanced, taking into account all the circumstances, including associated risks.</p>
Avoids repetition and ambiguity	<p>A rule should avoid repeating features already included in the Act or best dealt with in entity-level policy and/or guidance/instructions.</p>
Supports the coherence of the Commonwealth framework	<p>Rules will have general application unless there is a clear case for them to apply to one group or type of entity ("Commonwealth as a whole").</p> <p>Some rules may need to be expressed in a form that meets particular legal requirements and circumstances that relate to particular entities.</p> <p>The approach reflected in one rule should not be in conflict with or overlap with another rule or the provisions of the Act</p>

Sources Submission 1, Department of Finance, p. 17.

Overview of draft rules

3.49 Some 19 PGPA rules, as set out in the draft PGPA Rule 2013, and CPRs and CGRGs, are required for 1 July 2014 commencement of the PGPA Act, as follows:

- 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
- other CRF money
- grants
- procurement⁵⁵

3.50 As was 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.

3.51 Issues were raised with the following four draft rules as part of the Committee's inquiry – see Table 3.2. These issues are discussed below.

55 Finance, Draft *Explanatory Statement* to the Exposure Draft of the PGPA Rule 2014, *Submission 1*, Attachment 4, p. 2; Finance, Draft *CPRs 2014*, *Submission 1.1*, pp. 21-57; and Finance, Draft *CGRGs 2014*, *Submission 1.1*, pp. 58-94.

Table 3.2 Draft rules where issues raised during inquiry

Title of rule provision	Draft section for rule provision in draft PGPA Rule 2014	Section in PGPA Act 2013
Officials' duty to disclose interests	12-16	29
Audit committees for Commonwealth entities and for wholly owned Commonwealth companies	17, 28	45, 92
Approving commitments of relevant money	18	52
Banking	19-21	55

3.52 There was support for the majority of draft rules required for 1 July 2014 commencement, with several inquiry participants remarking on their satisfaction with these rules.

3.53 The ANAO commented that, except for the rule on 'Approving commitments of relevant money the rules provided to the Committee will provide a reasonable basis for the substantive commencement of the Act on 1 July 2014, noting that rules on a number of key matters are still under development'.⁵⁶

3.54 Other participants confirmed that:

... the Memorial is satisfied that generally, the draft rules are principles based, and provide agencies with the flexibility to adopt the requirements of the Act, or in accordance with their accountable authority's written instructions or delegations.⁵⁷

CSIRO considers the Rules should serve to promote consistency and define minimum standards or requirements across the Commonwealth and, as proposed, be supported by guidance material and education and training programs. Draft Rules developed to date have for the most part met that objective ... The combination of the PGPA Act, Rules as legislative instruments, General Policy Orders, and Resource Management Guides will provide certainty for entities, whilst allowing the Government the necessary flexibility to modify the Financial Management and Accountability Framework in an efficient and timely manner.⁵⁸

3.55 On this point, Finance reflected that submissions were 'generally supportive of the proposed rules and complimentary of Finance's consultation process as providing genuine opportunity for organisations

56 ANAO, *Submission 3*, p. 7. See also ANAO, *Submission 3.1*, p. 1.

57 Australian War Memorial (AWM), *Submission 6*, p. 3.

58 Commonwealth Scientific and Industrial Research Organisation (CSIRO), *Submission 13*, p. 4.

to contribute to the development of the rules'.⁵⁹ Finance further confirmed that:

In terms of policy principle, there might be a difference of views about, let us say, the audit committee rule, to give an example, but that would be the only rule where there is a difference of view about policy. The other rules are all settled and they are settled with a high degree of satisfaction. So we have been getting email traffic and having conversations with people over the last couple of weeks about where we are up to, and across the full diversity of the Commonwealth, from corporate independent entities like the ABC down to departments of state and agencies in Canberra, people are happy with the rules and where they have taken the rules.⁶⁰

3.56 A number of inquiry participants also remarked that they regarded many of the rules required for 1 July 2014 commencement as non-contentious and representing relatively minor change:

... the majority of the rules developed to date are technical in nature and a number, in large part, reflect existing requirements that apply to Commonwealth agencies that are subject to the FMA Act.⁶¹

... the majority of the 17 draft Rules issued to date do not present significant departures from the current practice.⁶²

3.57 On the grants and procurement rules, Finance explained that:

There is no intention to make material changes to either grants or procurement requirements at this time, with the current Commonwealth Procurement Rules (CPRs) and Commonwealth Grants Guidelines (CGGs) being brought into the PGPA rule framework largely in their current form. This allows for a smooth transition to the new framework without disrupting the routine activities of Commonwealth entities ... While this approach is proposed for 1 July 2014, over time Finance will work to review and simplify the requirements of both the CGGs and the CPRs.⁶³

3.58 By way of explanation for this approach, Finance noted that

The content of the CPRs are strongly influenced by requirements established in free trade agreements entered into by Australia ...

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

60 Mr Suur, Finance, *Committee Hansard*, Canberra, 27 March 2014, p. 8.

61 ANAO, *Submission 3*, p. 6.

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

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

The Senate Finance and Public Administration Committee is currently conducting an inquiry into Commonwealth procurement procedures and there are a number of new free trade agreements being negotiated. Given the potential for these processes to impact on the current scope and content of the CPRs, Finance prefers to bring these together with any PGPA related changes into a single process at a later date ...

The current CGGs ... reflect the outcomes of a significant review, which sought to address issues raised by the not-for-profit (NFP) sector, recommendations of the Australian National Audit Office and the JCPAA itself.⁶⁴

- 3.59 Finance further commented that, as part of the update to the CPRs for PGPA Act compliance, it had 'taken the opportunity to reflect recent changes to the procurement framework', including decreasing the construction threshold and increasing the procurement reporting threshold.⁶⁵ It was also noted that there were a few other changes that Finance wanted to 'take an opportunity to make, in terms of the Commonwealth procurement rules, so as to pick up areas where ANAO advice has largely suggested to us that we need to do more to help agencies to help Commonwealth procurement officers'.⁶⁶ Similarly, the drafting of the updated CGRGs had sought to make the document clearer, 'with those elements that are mandatory clearly identified, while guidance is identified as non-mandatory better practice'.⁶⁷
- 3.60 As no significant concerns were raised about the other draft rules in the evidence provided to the Committee, these rules are not further discussed in this report.

Specific issues concerning draft rules

Draft rule on Officials' duty to disclose interests (s13, s14 and s16)

- 3.61 The APSC noted that it was exploring with Finance a 'minor revision' to the draft rule on 'Officials' duty to disclose interests':

... to ensure that it is clear in the rules that section 13(7) of the PS Act, which concerns disclosure of real or apparent conflicts of interest, applies to members of accountable authorities (section

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

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

66 Mr John Sheridan, Australian Government Chief Technology and Procurement Officer, Finance, *Committee Hansard*, Canberra, 27 March 2014, p. 9.

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

[13] of the draft Rule) where the member is also head of an APS agency.⁶⁸

3.62 During the inquiry, the Commissioner confirmed that, since the draft rule was submitted to the Committee, 'we have agreed a small amendment to section 13 to underscore that APS agency heads are bound by the code of conduct as well as this rule. I understand that the Department of Finance will include this amendment in the next iteration of the rule following the inquiry'.⁶⁹

3.63 Finance similarly observed that:

The guide to section 16 of the PGPA Rule (which applies to officials who are not an accountable authority or a member of an accountable authority) specifically references the duty in subsection 13(7) of the PS Act. Finance is amenable to including a similar reference in the guide to section 13 of the PGPA Rule (which applies to officials who are the accountable authority).⁷⁰

3.64 The Statutory Research and Development Corporations (RDCs) also raised concerns with the draft rule on 'Officials' duty to disclose interests' – in particular, ss14(4) of the draft Rule:

Exposure Draft Rule 14(4) states "The official must ensure that the disclosure is recorded in the minutes of the meeting". This differs from the previous draft of this rule, which stated "(5) The disclosure must be recorded in the minutes of the meeting". As no official other than the chair is in a position to record minutes, the Statutory RDCs submit that the wording of the previous draft should replace the wording of Exposure Draft Rule 14(4).⁷¹

3.65 Finance clarified that it had developed this subsection 'in consultation with the Office of Parliamentary Counsel who has advised that the obligation needs to be attributed to a particular person'.⁷²

3.66 The Statutory RDCs further raised concerns with s16 of the draft Rule:

Exposure Draft Rule 16 states that "An official of a Commonwealth entity ... must disclose that interest in accordance with any instructions given by the accountable authority of the

68 APSC, *Submission 7*, p. 5.

69 Mr Sedgwick, APSC, *Committee Hansard*, Canberra, 7 April 2014, p. 9.

70 Finance, *Submission 1.3*, p. 25.

71 Cotton Research and Development Corporation, Fisheries Research and Development Corporation, Grains Research and Development Corporation, Grape and Wine Research and Development Corporation, and Rural Industries Research and Development Corporation (the Statutory Research and Development Corporations [RDCs]), *Submission 5*, p. 2.

72 Finance, *Submission 1.3*, p. 20.

entity". This differs from the previous draft of this rule, which stated "The official must disclose the interest in writing consistent with requirements established by the accountable authority." The Statutory RDCs seek confirmation that an internal policy constitutes "instructions" within the meaning of Exposure Draft Rule 16, as the Statutory RDCs would generally record such requirements in internal policy documentation.⁷³

- 3.67 Finance clarified that the 'instructions given by an accountable authority will become internal policies of their Commonwealth entity and binding on the officials of that entity'.⁷⁴

Draft rule on Audit committees (s17 and s28)

- 3.68 A number of inquiry participants raised issues about the draft PGPA rule on 'Audit committee for Commonwealth entities' (s17) and 'Audit committee for wholly-owned Commonwealth companies' (s28) – in particular, paragraph 17(5)(a), concerning the exclusion of an organisation's Chair from being a member of its audit committee.

- 3.69 In terms of membership of the audit committee for Commonwealth entities, s17 states:

- (3) The audit committee must consist of at least 3 persons who have appropriate qualifications, knowledge, skills or experience to assist the committee to perform its functions.
- (4) On and after 1 July 2015, the majority of the members of the audit committee must:
 - (a) for a non-corporate Commonwealth entity – be persons who are not officials of the entity; or
 - (b) for a corporate Commonwealth entity – be persons who are not employees of the entity.
- (5) Despite subsections (3) and (4), the following persons must not be a member of the audit committee:
 - (a) the accountable authority or, if the accountable authority has more than one member, the head (however described) of the accountable authority;
 - (b) the Chief Financial Officer (however described) of the entity;
 - (c) the Chief Executive Officer (however described) of the entity.

73 Statutory RDCs, *Submission 5*, p. 2.

74 Finance, *Submission 1.3*, p. 20.

3.70 In terms of membership of the audit committee for wholly-owned Commonwealth companies, s28 states:

- (1) Section 17 of this rule (which is about audit committees for Commonwealth entities) applies to a wholly-owned Commonwealth company in the same way as it applies to a corporate Commonwealth entity.
- (2) For the purposes of subsection (1), a reference in section 17 to the accountable authority of the entity is taken to be a reference to the governing body of the company

3.71 Section 28 therefore specifies that the requirements in s17 also apply to wholly-owned Commonwealth companies.

Audit committee for wholly-owned Commonwealth companies (s28)

3.72 As Commonwealth companies, defined as government business enterprises (GBEs) under s5 of the draft PGPA Rule, Medibank Private Ltd, Australian Rail Track Corporation Ltd (ARTC), ASC Pty Ltd and Moorebank Intermodal Company Ltd (MIC) were concerned that s28 would prevent the Chair of a wholly-owned Commonwealth company from being a member of its audit committee. They raised a number of issues with this proposed rule, including that:

- it is inconsistent with widely adopted corporate governance standards for non-Commonwealth companies
 - The *Corporations Act 2001* (Cth) imposes no requirements in relation to the composition of audit committees ... The *Corporate Governance Principles and Recommendations with 2010 Amendments* (2nd edition) of the Australian Securities Exchange (ASX) Corporate Governance Council ... does not prohibit the Chair of the board of directors of the company from being a member of the company's audit committee ... We believe that ... the corporate governance standards applicable to the audit committee should generally be consistent with corresponding standards that apply to private enterprises conducting similar commercial activities.⁷⁵
- there is no justification for the higher standard
 - We have not been apprised of any justifications for imposing a higher standard on wholly-owned Commonwealth companies in respect of their audit committee composition ... The Draft Explanatory Statement to the Exposure Draft PGPA Rule 2014 included with the submission made to the Committee by the

75 Medibank Private Ltd, Australian Rail Track Corporation Ltd (ARTC) and ASC Pty Ltd, *Submission 4*, p. 2, p. 4. See also on Moorebank Intermodal Company Ltd (MIC) on this point, *Submission 16*, p. 1.

Department of Finance ... does not clearly explain why it is necessary ... In referencing and stating that it replaces regulation 6B Commonwealth Authorities and Companies Regulations 1997, the Draft Explanatory Statement overlooks the fact that there is no equivalent to proposed paragraph 17(5)(a) in regulation 6B ... there is no adequate case for Commonwealth companies to be subjected to this higher standard in terms of audit committee composition than comparable privately owned companies are.⁷⁶

- it is unnecessarily restrictive
 - It is our view that regulation should not exceed the minimum that is reasonably required in order to achieve the particular policy effect (or adequately to counter a demonstrated mischief) desired.⁷⁷
- it creates a competitive disadvantage
 - The prohibition on the Chair of the board sitting on the audit committee would place Medibank, ARTC and ASC company at a competitive disadvantage to their private sector counterparts and other similar commercial enterprises ... no Commonwealth company that is a GBE should be subject to the standard in proposed section 17(5)(a) of the PGPA Rule given that companies in the industries in which they compete as suppliers or purchasers are not subject to a similar prohibition.⁷⁸

3.73 Medibank Private, ARTC and ASC further pointed out that the regulatory context 'allows differentiation in the application of the rules that would permit s28 of the PGPA Rule to be modified':

The CAC Act recognises differences between Commonwealth authorities and Commonwealth companies. The PGPA Act does the same, recognising corporate and non-corporate Commonwealth entities as well as Commonwealth companies. The 'design principles' for the PGPA Rule contemplate the possibility of differentiated application of rules if there is a clear case for them to apply to one group or type of entity. Those same design principles state that such rules should be "necessary or convenient", minimise regulation and "red tape" and only apply where necessary to promote the objectives of the PGPA Act. Moreover, paragraph 101(2)(b) of the PGPA Act contemplates

76 Medibank Private, ARTC and ASC Pty Ltd, *Submission 4*, p. 3. See also MIC, *Submission 16*, p. 1, p. 4.

77 Medibank Private, ARTC and ASC Pty Ltd, *Submission 4*, p. 3.

78 Medibank Private, ARTC and ASC Pty Ltd, *Submission 4*, p. 3, p. 4.

different provisions under such rules for different Commonwealth entities or companies or classes thereof.⁷⁹

3.74 Accordingly, Medibank Private, ARTC, ASC and MIC proposed that there be a differentiated application of the PGPA rules to enable s28 to be amended so that paragraph 17(5)(a) does not apply to wholly-owned Commonwealth companies that are GBEs.⁸⁰

3.75 Finance responded to these concerns by highlighting that:

The distinguishing feature of an audit committee of an entity is its independence from the day-to-day operations and management of an entity. The ASX Principles make this point explicitly, noting that “the existence of an independent audit committee is recognised internationally as an important feature of good corporate governance” ... The ASX Principles also acknowledge this implicitly by requiring that chairs of boards should not be chairs of Audit Committees ...⁸¹

3.76 However, Finance acknowledged that the draft PGPA rules do ‘go a step further’ in excluding an organisation’s Chair as a member of its audit committee ‘for reasons that go to the scope or responsibility of an audit committee under the PGPA Act’.⁸² On this point, Finance explained that:

Under the ASX Principles, the responsibilities of an audit committee are to “review the integrity of the company’s financial reporting and oversee the independence of the external auditors” ... Under the section 17(2) of the draft PGPA Rule, the functions assigned of an audit committee are broader, and “must include reviewing the appropriateness of the accountable authority’s: (a) financial reporting; and (b) performance reporting; and (c) system of risk oversight and management; and (d) system of internal control; for the entity”.⁸³

3.77 Finance concluded that the ‘role of an audit committee under the PGPA Act is therefore wider than under the ASX Principles’:

The exclusion of the chairs of boards and councils from the audit committee reflects the fact that a chair, like a chief executive officer and chief financial officer of an entity, both of whom are also excluded from the membership of an entity’s audit committee, is responsible for leading the accountable authority in acting on and

79 Medibank Private, ARTC and ASC, *Submission 4*, p. 5.

80 Medibank Private, ARTC and ASC, *Submission 4*, p. 5; and MIC, *Submission 16*, p. 5.

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

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

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

giving effect to advice provided by the audit committee. In relation to these three positions a separation of roles is highly desirable.⁸⁴

3.78 As Finance further commented:

We acknowledge that this rule would create a high standard for Commonwealth entities and companies than for publicly listed companies. We believe this is appropriate. There is precedent for holding Commonwealth companies to a higher and different standard than their listed competitors. For example, in relation to audit committees for Commonwealth companies, the current Commonwealth authorities and companies regulations in the proposed rule provide that membership may include people who are not directors of the company to promote an independent perspective beyond the board.

The role of an audit committee in the Commonwealth is to provide independent advice and assurance to the entity's accountable authority. That includes reviewing the appropriateness of the accountable authority's performance reporting, risk oversight and systems of internal control. This goes beyond verifying and safeguarding the integrity of the financial reporting of an entity, which is a focus of ASX principles. For this reason we believe it is appropriate that senior leaders and managers responsible for day-to-day operations of an entity leave the giving of advice to others in this particular area.⁸⁵

Audit committee for Commonwealth entities (s17)

3.79 As a corporate Commonwealth entity, the Australian War Memorial (AWM) was also concerned about paragraph 17(5)(a) of the draft rule on audit committees preventing the Chair of its governing council from being a member of its audit committee:

... in the Memorial's view, retaining the option to allow the Chairman of Council to be a general member does not compromise the independence of the Audit Committee. It provides the opportunity for the Chairman of Council to tender well-informed strategic input, noting that this position is independently elected by Council members.⁸⁶

3.80 Finance's response to this matter was discussed above.

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

85 Dr Helgeby, Finance, *Committee Hansard*, Canberra, 7 April 2014, p. 1.

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

- 3.81 Morison Consulting raised concerns with this draft rule for both corporate and non-corporate Commonwealth entities, suggesting either removal of the rule altogether or, if not, modification of the rule:

I do not believe that Commonwealth audit committees require a specific PGPA Rule. A rule will only minimise flexibility which is not consistent with the broader Public Management Reform Agenda. The requirement to have an audit committee within the PGPA is sufficient ... Too much specificity in a rule reduces this flexibility and does not take account of the different size, complexity or maturity of organisations.⁸⁷

- 3.82 If an audit committee rule is to be implemented, Morison Consulting noted particular concern with ss7(4), which requires a majority of independent members – for a non-corporate Commonwealth entity, that a majority of the members of the audit committee entity be persons who are not employees of the entity and, for a corporate Commonwealth entity, that a majority of the committee members be persons who are not officials of the entity. In terms of the requirement applying to non-corporate Commonwealth entities, Morison Consulting commented that:

... this is too prescriptive and not in the spirit of the PGPA. I am not sure what problem we are trying to resolve with this approach, except to cause more expense to government agencies. Comment has been made that the extra members could be sourced from other government agencies on a 'free basis'. I do not believe that open and frank discussion may necessarily take place at an audit committee under such a scenario. There is also a cost at the whole of government level in the use of these resources ... There is an incorrect assumption that by having a majority of members as independent, the audit committee will necessarily provide independent assurance.⁸⁸

- 3.83 In terms of the requirement applying to corporate Commonwealth entities, Morison Consulting commented that:

This part of the Audit Committee rule is not well constructed. Section 17(4) allows in effect, for the audit committee of corporate Commonwealth entities to be comprised entirely of board members. This ignores the inherent conflict that boards are the ultimate decision makers and have overall responsibility for performance of the organisation. To address this conflict audit committees of corporate Commonwealth entities should also have

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

88 Morison Consulting, *Submission 9*, p. 4

a member/(s) who are truly separate from the board and management ... section 17(4)(b) should read:

The majority of the members of the audit committee must for a corporate Commonwealth entity be persons who are not employees of the entity and include at least one member who is external of the corporate accountable authority.⁸⁹

3.84 Finance responded by noting that:

... the distinguishing feature of an audit committee of an entity is its independence from the day-to-day operations and management of an entity. The ASX principles make this point explicitly, noting that “the existence of an independent audit committee is recognised internationally as an important feature of good corporate governance” ... The draft PGPA Act audit committee rules mandate majority independent membership for the same reason.⁹⁰

3.85 Related to this concern, the Statutory RDCs, as corporate Commonwealth entities, requested further clarification of the definition of ‘employees’ in paragraph 17(4):

Exposure Draft Rule 17(4) states “On or after 1 July 2015, the majority of the members of the audit committee must ... (b) for a corporate Commonwealth entity – be persons who are not employees of the entity.” The Statutory RDCs request express clarification in the rule that members of an accountable authority of a corporate Commonwealth entity are not “employees” within the meaning of this rule (and therefore do count towards the relevant majority).⁹¹

3.86 Finance clarified that employees ‘can include members of the accountable authority where they are executives of the entity’ – however, ‘non-executive members of the accountable authority are not employees for the purpose of the rule, that is, they meet the independence test (excluding the head of the accountable authority under subsection 17(5) of the PGPA Rule)’.⁹²

Observer status option

3.87 At the 7 April 2014 public hearing for the Committee’s inquiry, an alternative way of approaching the PGPA audit committee rule – the

89 Morison Consulting, *Submission 9*, p. 5.

90 Finance, *Submission 1.3*, p. 19.

91 Statutory RDCs, *Submission 5*, p. 3.

92 Finance, *Submission 1.3*, p. 20.

observer status option— was discussed as a possible means of addressing the concerns set out above.

3.88 As the Auditor-General highlighted, ‘there is no prohibition on them [chairs] attending as observers if they wish’:

... we quickly did a bit of intelligence gathering within the office late last week about what happens with the CAC bodies, and certainly there are circumstances where the chairs of CAC bodies do attend audit committee meetings as members. There are equally a significant number of chairs who attend the audit committee meetings as observers— which is quite interesting. That is, they are not formal members of the committee but they attend anyway— and, under the Finance approach, arguably could still attend as observers.⁹³

3.89 Finance confirmed that nothing in the draft rule precluded persons in the three positions— chair, chief executive officer and chief financial officer of an entity (all of whom are excluded from the membership of an entity’s audit committee)— from attending any meeting of an entity’s audit committee as an observer.⁹⁴ Importantly, as Finance further noted:

... in discussions that we had with some Commonwealth corporations in Adelaide last week we confirmed that there was nothing to preclude. Two of the entities we spoke to are two of the entities that signed one of the submissions to this committee— the Australian Submarine Corporation and the Australian Rail Track Corporation. We indicated to them that there was no reason why a chair of a board could not attend an audit committee meeting. In fact, it is common practice ... not only in corporate Commonwealth entities but also non-corporate Commonwealth entities for people like chief operating officers or chief financial officers to sit in on audit committee meetings as observers to answer questions that might arise from the audit committee as those questions arise.⁹⁵

3.90 In terms of this option, a number of corporate Commonwealth entities present at the April 2014 public hearing were asked if they thought having a chair with observer status at an audit committee was sufficient.

3.91 The AWM confirmed a remaining ‘very strong preference that we retain the option to invite the chair of our council to be a member of the audit committee’, but conceded that ‘appearing as an observer would be better

93 Mr McPhee, ANAO, *Committee Hansard*, Canberra, 7 April 2014, p. 12.

94 Finance, *Submission 1.3*, p. 10.

95 Mr Suur, Finance, *Committee Hansard*, Canberra, 7 April 2014, p. 12.

than not being able to appear at all'.⁹⁶ The RDCs reaffirmed that 'there should be the option for the board to choose its committee members', but conceded that having observer status for the chair 'should allow' for important matters for RDCs such as 'transfer of corporate memory'.⁹⁷

3.92 CSIRO commented that it was 'comfortable with the rules written':

Our convention is that the chair is not a member. He is invited to attend by the chair of the audit committee as is the chief executive and other officials, and we are comfortable with that observer or participation status, which is effective for our operations.⁹⁸

3.93 Similarly, IBA noted that it also had 'an independent audit and chair. Chair of the audit and risk is independent, and that is something we believe in quite strongly'.⁹⁹

Draft rule on Approving commitments of relevant money (s18)

3.94 The draft PGPA rule on 'Approving commitments of relevant money' (s18) is intended to replace a number of existing FMA regulations governing the approval and commitment of public money. Section 18 states that:

- (1) If an official of a Commonwealth entity is approving the commitment of relevant money for which the accountable authority of a Commonwealth entity is responsible, the official must record the approval in writing as soon as practicable after giving it.
- (2) To avoid doubt, the official must also approve the commitment consistently with any written requirements, including spending limits, specified by the accountable authority in:
 - (a) instructions given by the accountable authority; or
 - (b) the instrument that delegates to the official, or otherwise authorises the official to exercise, the accountable authority's power to approve the commitment of relevant money; or
 - (c) a direction to the official in relation to the exercise of that power.

3.95 The explanatory guide to s18 in the draft PGPA Rule 2014 states that:

The accountable authority responsible for relevant money has a duty to promote the proper use of the money (see section 15 of the

96 Ms Leanne Patterson, Chief Finance Officer, AWM, *Committee Hansard*, Canberra, 7 April 2014, p. 19.

97 Mr Tolson, Cotton RDC, *Committee Hansard*, Canberra, 7 April 2014, p. 19.

98 Mr Michael Whelan, Deputy Chief Executive, Operations, CSIRO, *Committee Hansard*, Canberra, 7 April 2014, p. 19.

99 Mr Fry, IBA, *Committee Hansard*, Canberra, 7 April 2014, p. 19.

Act). This duty applies when approving commitments of the money. If the accountable authority delegates its power to approve commitments of the money to an official, or otherwise authorises an official to exercise that power, the accountable authority will be able to ensure the proper use of the money through the delegation or authorisation. It can also ensure that through its instructions.

3.96 Section 15 of the PGPA Act states that:

- (1) The accountable authority of a Commonwealth entity must govern the entity in a way that:
 - (a) promotes the proper use and management of public resources for which the authority is responsible; and
 - (b) promotes the achievement of the purposes of the entity; and
 - (c) promotes the financial sustainability of the entity.
- (2) In making decisions for the purposes of subsection (1), the accountable authority must take into account the effect of those decisions on public resources generally.

3.97 While noting that the FMA regulations were 'quite prescriptive' and acknowledging 'benefits in streamlining existing requirements',¹⁰⁰ the ANAO raised a number of concerns with the draft rule, including:

- 'Proper use' and recording the basis for expenditure decisions
- Commitment of expenditure in future years
- Approval of expenditure in aggregate

'Proper use' and recording basis for expenditure decisions

3.98 The ANAO commented that the draft rule regarding 'Approving commitments of relevant money' was a 'substantive departure from existing obligations that explicitly require an approver to be satisfied, after making reasonable inquiries, that giving effect to the spending proposal would be a proper use of Commonwealth resources'.¹⁰¹ This was a requirement under Regulation 9 of the FMA Act. As the ANAO explained:

The proposed rule imposes no direct obligation on an official to be satisfied that the proposed commitment of relevant money represents the 'proper use' of the money and relies instead on: the general duty of the accountable authority to promote the proper use of relevant money (the duty is included in section 15 of the PGPA Act); and on the accountable authority issuing instructions,

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

101 ANAO, *Submission 3*, p. 7. Capital Training Pty Ltd also raised concern about this rule, *Submission 8*, p. 5.

delegations or directions to officials that must be complied with in approving the commitment.¹⁰²

3.99 As the ANAO further noted, while it may be 'expected that an accountable authority would take the necessary steps to require an official to be satisfied that the proposed commitment of relevant money would represent the "proper use" of such money', there is 'no obligation on the accountable authority to do so'.¹⁰³

3.100 It was acknowledged that there is high level alignment between the FMA Act and PGPA Act in promoting proper use, but the key point being made here is that, while it is expected under the PGPA Act and relevant rule that an accountable authority will establish internal systems to promote proper use, there is no obligation on them to do so:

... promotion does not mean application and that is the fundamental issue here ... What we observe in the current proposal is that there is no similar mechanism to operationalise, to go from promotion to application ... What we observe in the rule is very simply that the obligation is that you must comply, if you are an approver, with 'any written requirement that may exist'. The issue is and the question is: will the requirement exist? The current schema relies in essence on the accountable authority to bring home the bacon by producing an internal rule set which requires its people to observe the proper use test. It may do so ... it would be an imprudent chief executive or board that would not do so. However, the option remains. It could be introduced in whole or in part or not at all.¹⁰⁴

3.101 As the Auditor-General commented on this point:

Nothing focuses the mind more than a direct and personal obligation applied by the financial framework when you sign off and approve expenditure of public monies to be satisfied it is the proper use of public monies. It has been with us for a long time. It is not an onerous requirement but it is a requirement that has protected the interests of government and the parliament for a long period of time. We are suggesting it needs close consideration before it is removed.¹⁰⁵

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

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

104 Dr Tom Ioannou, Group Executive Director, Performance Audit Services Group, ANAO, *Committee Hansard*, Canberra, 7 April 2014, p. 11.

105 Mr McPhee, ANAO, *Committee Hansard*, Canberra, 7 April 2014, p. 11.

3.102 The Auditor-General further emphasised the importance of this issue from the perspective of executive government and the Parliament:

It has always been my understanding that the financial framework should look after the interests of the government and also the parliament. That is driving our views around the views about officials being required to say that the proposed commitment of relevant moneys represents the proper use, because we believe – and I believe – that that is important from the government’s point of view and from the parliament’s point of view.¹⁰⁶

3.103 Accordingly, the ANAO concluded that:

... [it] does not consider that the proposed rule will provide the government and parliament with sufficient confidence that officials, in approving the commitment of relevant money, will be required in all cases to form a judgment that it represents the proper use of such money. Because the need to explicitly consider ‘proper use’ has historically been a fundamental principle of public administration when committing public funds, and has served a beneficial purpose without being a compliance burden, we do not see a valid basis to vary this in the context of the implementation of the PGPA Act.¹⁰⁷

3.104 In response, Finance made a number of comments. It highlighted that, ‘[f]undamentally the PGPA reforms take a more holistic approach to the prudent control over public resources’:

In creating a single framework for all Commonwealth entities, the PGPA Act and Rules move away from the transactional, process and legislative prescription currently contained in the FMA Act; for example, which deal with ‘persons entering arrangements’ and ‘approvers recording the terms of approvals’ ...

The PGPA Act seeks to establish a coherent system of governance and accountability across all Commonwealth entities. A prudent control system is not solely about the final consideration or approval steps in a process – it is holistic, starting with the level of control exercised by an accountable authority, and the structures, checks and balances that the accountable authority deploys to provide confidence to Ministers, the auditor and the Parliament that it is meeting its obligations in relation to the proper use of public resources. It is about how those controls are supported by

106 Mr McPhee, ANAO, *Committee Hansard*, Canberra, 7 April 2014, p. 13.

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

legislative controls on officials to exercise care and diligence, good faith and for proper purpose.¹⁰⁸

3.105 As Finance explained:

Proper use under the PGPA Act is a matter that is dealt with again through accountable authorities [under s15 of the Act], so we have elevated a responsibility to accountable authorities to ensure proper use and to put in place internal systems of control that ensure proper use. Under our scheme, it is [up to] a fully accountable authority to ensure that it has an appropriate system in place across the whole of the entity to ensure proper use. Individuals work within that scheme, within that system. It is not necessary in our view for individuals then to make decisions in isolation about whether or not a particular transaction constitutes a proper use.¹⁰⁹

3.106 Accountability in this area is 'further reinforced' by the requirement in s16 of the PGPA Act that the accountable authority 'must also establish an appropriate system of internal control which includes requirements on officials approving commitments'.¹¹⁰ Accordingly:

An official who is approving a proposed commitment of relevant money would be doing so in accordance with directions from his or her accountable authority who is required to promote the proper use and management of public resources for which the authority is responsible (section 15 of the PGPA Act).

It is for the accountable authority to ensure internal controls of the entity support the proper use and management of public resources.

Officials must also comply with the general duties of officials to act in good faith and for a proper purpose (section 26 of the PGPA Act).¹¹¹

3.107 As Finance noted, in the proposed system of controls, obligations and duties under the PGPA Act, there is 'flexibility for accountable authorities to apply processes for committing relevant money that are appropriate to their entities and the environments that they operate in':

The proposed framework introduces a system of control at the whole-of-government level which gives the Executive and the Parliament confidence that the commitment of relevant money

108 Finance, *Submission 1.3*, p. 5.

109 Mr Suur, Finance, *Committee Hansard*, Canberra, 7 April 2014, p. 10.

110 Finance, *Submission 1.3*, p. 6.

111 Finance, *Submission 1.3*, p. 27.

across the whole Commonwealth system and by each Commonwealth entity is:

- undertaken according to consistent principles,
- subject to processes and controls that are proportionate to the risks involved, and
- being recorded in a way that is auditable.¹¹²

- 3.108 In terms of controls being proportionate to the risks involved, Finance noted that ‘the PGPA rules move away from the level of process prescription currently embodied in the FMA Act’ and instead provide ‘core governance principles for all accountable authorities and then gives them the flexibility to design processes for the management of their entity to meet those standards – taking into account the nature of the entity, its operations and, significantly, the risks the entity faces and engages with in its operations’.¹¹³
- 3.109 In terms of an audit trail, Finance commented that one thing that is ‘mandatory’ is the ‘requirement for an approval to be recorded in writing as soon as practicable after it is given’, ensuring there is an ‘auditable record of an official’s approval, in writing, that will form a part of the evidentiary trail against which the official can be held to account for their proper use of relevant money’.¹¹⁴
- 3.110 Finance further observed that, while the FMA Regulation 9 approach provided ‘a degree of assurance about process-compliance, these processes are prone to over-prescription, inefficiency and red-tape when broadly applied to all instances’.¹¹⁵
- 3.111 Finance also pointed out that there was no requirement under the CAC Act to explicitly require an approver to be satisfied, after making reasonable inquiries, that giving effect to the spending proposal would be a proper use of Commonwealth resources – ‘[n]o such process, for example, is prescribed in the CAC Act, and there is no evidence that CAC Act entities are poorer in their handling of public moneys’.¹¹⁶
- 3.112 Finally, Finance observed that, for the first time, the new PGPA framework now extended the FMA Act concept of ‘proper use’ to the previous CAC Act bodies (now called corporate Commonwealth entities) – the obligation for proper use is being applied to entities to which it did not previously apply. A central part of the new PGPA

112 Finance, *Submission 1.3*, pp. 5-6.

113 Dr Helgeby, Finance, *Committee Hansard*, Canberra, 7 April 2014, p. 2.

114 Finance, *Submission 1.3*, p. 6.

115 Finance, *Submission 1.3*, p. 5.

116 Finance, *Submission 1.3*, p. 5.

framework, building on the current FMA Act requirement, is that all accountable authorities are now responsible, under s15 of the PGPA Act, for promoting the proper use and management of public resources for which they are responsible. The new framework therefore extends the current FMA Act concept to 'all Commonwealth entities, corporate and non-corporate alike'.¹¹⁷

3.113 In conclusion, Finance noted that the approach to this area in the PGPA Act:

... encourages accountable authorities and officials to engage effectively with risk and implement controls around spending that are efficient and proportionate to the risks involved, but always within the context of the discretion and powers provided to them by the Parliament.

In moving away from the rigid prescription currently applied to FMA Act agencies, the new framework gives accountable authorities the responsibility to develop controls that are appropriate to their entities, rather than a 'one size fits all' approach.¹¹⁸

3.114 Finance further stated that:

The current arrangements [under the FMA Act] require people to act in certain ways ... The [PGPA] framework ... is one that relies upon internal processes and mechanisms and relies upon the requirements and the obligations that are set out in the act itself to drive the right level of disclosure, the right level of process and the right level of accountability inside particular organisations, recognising that not only are there different types of transactions that people conduct but organisations have different levels of risk attached to them ... We have put before you a set of proposals that rely on a sequence of or series of internal controls starting with the act itself working through the rules and then going down to obligations for accountable authorities to put certain processes in place. That is the approach we have taken compared to the current arrangement, which is to require, which does not differentiate at those levels ...

we would expect that, as a matter of good practice, people would be undertaking proper activities here. To the extent that they do not, to the extent that their processes are inadequate, they are exposed to audit processes, they are exposed to committee

117 Finance, *Submission 1.3*, p. 6.

118 Finance, *Submission 1.3*, p. 5.

processes of parliament and they are exposed for the lack of robustness in their processes. But in essence what we are saying is: 'We expect you to obey and follow the requirements your accountable authority has set for you.' The difference is that we are saying that those processes will need to be put in place in an appropriate manner, and the ANAO is saying: 'We would like to see that requirement specifically written in at this level rather than at the level of the individual entity'.¹¹⁹

3.115 Of significance here is ensuring that the linkages are made clear between:

- s15 and s16 of the PGPA Act
- s25-s29 (Duties of officials) of the PGPA Act
- s18 of the draft PGPA Rule on 'Approving commitments of relevant money' (s18), and
- ensuring that the following supporting material also makes these linkages clear:
 - ⇒ the section guides in the draft PGPA Rule
 - ⇒ the draft Explanatory Statement to the draft PGPA Rule
 - ⇒ the guidance material supporting these matters

3.116 As Finance commented:

The link to officials goes to duties in section 25 to 29, so officials work within the framework of controls established by the accountable authority. The rule requires them to observe the requirements of that framework but, if you like, the other compulsion on them to do so properly is the duties in the PGPA Act under section 25 which is to show care and diligence and the duty in section 26 to act in good faith and for a proper purpose. So, if you like, the scheme comes together not only through the common duty that all accountable authorities have, corporate and non-corporate, for ensuring proper use and ensuring the proper processes are in place in their entity for proper use but the duties that all officials have across corporate and non-corporate entities to behave in a way that shows care and diligence and demonstrates that they are acting in good faith for a proper purpose. So that is where the scheme connects.¹²⁰

3.117 There would need to be consultation if this draft PGPA rule were proposed to be amended to incorporate the previous requirement in Regulation 9 of the FMA Act. In this context, there was interest in whether

119 Dr Helgeby, Finance, *Committee Hansard*, Canberra, 7 April 2014, p. 10, p. 13.

120 Mr Suur, Finance, *Committee Hansard*, Canberra, 7 April 2014, p. 10.

this approach would in fact be onerous for the previous CAC Act bodies (the new corporate Commonwealth entities under the PGPA Act). Finance commented:

There is nothing in the CAC act at the moment that talks about proper use ... If we were to take the route that the ANAO is suggesting, it would visit a new compliance burden on all corporate Commonwealth entities. We have got them over the line on the proper use concept and we have got them over the line in recording when a commitment is being spent. But what is being suggested by the ANAO here is: (1) something that has not been tested with corporate Commonwealth entities; (2) some corporate Commonwealth entities in their submissions to this committee have already made some comment on, indicating that they would not support movement down this track; and (3) would represent the imposition of red tape and new regulation on corporate Commonwealth entities' operations.¹²¹

- 3.118 However, as the IBA commented, perhaps the issue here is not so much proposing such a change as ensuring there is consultation and stakeholders have sufficient time to understand what is being proposed:

My concerns with [the proposal made by] the Auditor-General may not be in the actual detail that he proposes but are rather that we have not had time to fully understand the impact on day-to-day management, and that aspect may lead to some unintended consequences that take away flexibility in the commercial space without mitigating any additional risk that might be perceived ... I think where I am coming from is that we may not have any concerns with what the Auditor-General has in mind but we have not had time to understand the detail.¹²²

- 3.119 On a separate but related matter, the ANAO raised whether, 'as a matter of principle, the basis for decisions (that is the substantive reasons) to enter into commitments that may result in the expenditure of public moneys above a certain threshold (as determined by entities) should be recorded'.¹²³ As the ANAO explained:

This is currently a requirement in relation to the proposed expenditure of grants and is generally accepted practice, at least for higher value expenditure. Given the special responsibilities that attach to the use of relevant moneys (essentially public

121 Mr Suur, Finance, *Committee Hansard*, Canberra, 7 April 2014, p. 3.

122 Mr Fry, IBA, *Committee Hansard*, Canberra, 7 April 2014, p. 24.

123 ANAO, *Submission 3*, pp. 8-9.

moneys), it would not be unreasonable to require approvers to record the basis of their decisions for expenditure above an agreed threshold which may be determined by entities.¹²⁴

3.120 In response, Finance commented that the PGPA Act:

... provides core governance principles for accountable authorities and gives them the flexibility to design their processes for the management of their entity, according to the nature of the entity, its operations and, significantly, the risks that the entity faces and engages within its operations.

The accountable authority responsible for relevant money has a duty to promote the proper use of the money (section 15 of the Act). The accountable authority is able to promote the proper use of the money through its delegations or instructions to officials, which may contain requirements around the recording of decisions based on the factors such as the nature and size of the commitment, and the risk profile of the entity.

Finance guidance material will support accountable authorities in determining where this might be appropriate.¹²⁵

Commitment of expenditure in future years

3.121 The ANAO noted that the draft rule on approving commitments of relevant money 'does not incorporate any specific requirements in relation to the commitment of expenditure beyond available appropriations, currently governed by FMA Regulation 10'.¹²⁶

3.122 By way of background, an important control in a public resource management framework concerns the commitment of future moneys that have yet to be appropriated by the Parliament:

While appropriations are frequently on an annual basis, entities' operations, their interactions and transactions with the public and with business do not lapse annually, but are ongoing. Contractual arrangements, partnerships and accommodation leases span many years, potentially twenty-five years or longer. Services are provided for which there may be a public or professional liability that runs on for many years.

In delegating power over future spending to accountable authorities, an appropriate balance needs to be struck that allows the accountable authority to operate in an efficient and financially

124 ANAO, *Submission 3*, pp. 8-9.

125 Finance, *Submission 1.3*, pp. 16-17.

126 ANAO, *Submission 3*, p. 9.

sustainable manner with suitable controls over Budget 'lock-in' and oversight by the Executive and Parliament.¹²⁷

- 3.123 While acknowledging that the PGPA Act included requirements 'designed to control these commitments' that would 'go some way towards a system that provides some control over commitments that rely on future appropriations', the ANAO observed that they are 'less than the requirements traditionally relied on by Finance Ministers in this area'.¹²⁸
- 3.124 Instead, the ANAO proposed that '[a]ny control would be most effective as part of the resource management framework, rather than as a budgetary control because it is transactions entered into by entities that commit expenditure over the forward estimates that are the focus of current arrangements'.¹²⁹
- 3.125 However, the Auditor-General acknowledged that '[w]e accept it is ultimately a matter for those in government responsible for budget preparation to determine the extent to which explicit requirements need to be in place to control these commitments, as the issues go to the extent of lock-in of future budgets' – however, '[h]istorically, this is an area where explicit controls have existed and have been valued by finance ministers'.¹³⁰
- 3.126 As the Auditor-General added:
- ... it is a matter for the finance minister as to how much control he would like in the regime. But my experience says that historically finance ministers have actually enjoyed and appreciated the ability to keep the lid on the level of forward commitments ... I am just saying that a little bit of strength in the hand of the finance minister should keep a lid on this. And by 'keeping a lid on it' I mean agencies or entities entering into transactions that can obligate the government in future years. In my view that is desirable.¹³¹
- 3.127 In response, Finance commented that, through FMA Regulation 10, 'the current framework takes a purely prescriptive path to control the commitment of future spending', with Regulation 10 having a 'limited impact' because it applies to a small proportion of total government

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

128 ANAO, *Submission 3*, p. 9.

129 ANAO, *Submission 3*, p. 9.

130 Mr McPhee, ANAO, *Committee Hansard*, Canberra, 7 April 2014, p. 8.

131 Mr McPhee, ANAO, *Committee Hansard*, Canberra, 7 April 2014, p. 16.

spending – ‘in practical terms, less than 8 per cent of total government expenditure is subject to FMA Regulation 10’.¹³²

3.128 Finance further noted that the ‘effectiveness of FMA Regulation 10 has diminished over time as better controls have been introduced’, with two-thirds of Regulation 10 requests to the Finance Minister now relating to indemnities (these will now be subject to the Finance Minister’s approval under a requirement in the PGPA Act).¹³³

3.129 As Finance also emphasised:

... the PGPA Act places principles-based requirements for financial management on all accountable authorities. This includes the duty to govern the entity (PGPA Act section 15), which includes promoting the financial sustainability of the entity and considering the effect of decisions on public resources generally. The draft guidance material issued by Finance for section 15 points out that in meeting these obligations, an accountable authority should consider whether proposed commitments can be met from known appropriations, and whether, by entering into long-term commitments, they are locking away future flexibility to accommodate new policy and program priorities.¹³⁴

3.130 Finance concluded that, taken together, ‘the systems of controls, obligations and duties under the PGPA framework, and controls contained in other frameworks provide a rigorous control over future Budget lock-in and protect the ability of Government to respond to emerging priorities’.¹³⁵

Approval of expenditure in aggregate

3.131 The ANAO noted that the draft rule on approving commitments of relevant money ‘allows for the approval of the commitment of expenditure in aggregate’. While recognising the ‘benefits of allowing the approval of aggregate expenditure in some circumstances’, the ANAO commented that the ‘supporting guidance should discuss the reasonable use of, and the risks involved in, officials approving aggregate expenditure proposals’.¹³⁶

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

133 Finance, *Submission 1.3*, p. 4.

134 Finance, *Submission 1.3*, p. 4.

135 Finance, *Submission 1.3*, p. 4.

136 ANAO, *Submission 3*, p. 9.

Other issues

- 3.132 The Statutory RDCs raised a different issue about the draft rule on ‘Approving commitments of relevant money’, concerning the wording of s18(1), which states:
- If an official of a Commonwealth entity is approving the commitment of relevant money for which the accountable authority of a Commonwealth entity is responsible, the official must record the approval in writing as soon as practicable after giving it.
- 3.133 The Statutory RDCs pointed to ‘various circumstances’ where they ‘may not grant approval prior to making a commitment for a specific item or for a specific amount in writing’ – for example, the engagement of a supplier ‘may be approved in writing but the specific amount is not necessarily approved, except by payment of the invoice’.¹³⁷ They concluded that the rule therefore ‘lacks clarity on the level at which the approval must occur’.¹³⁸ In particular, the Statutory RDCs were concerned that the draft rule might ‘force the introduction of formal purchase order systems, which is likely to involve significant implementation and administration cost and a reduction in flexibility of operation’.¹³⁹
- 3.134 Accordingly, the Statutory RDCs proposed the draft rule be amended by inserting a new sub-rule – that ‘Rule 18(1) does not apply to corporate Commonwealth entities’.¹⁴⁰ Alternatively, they sought further clarification about the wording of the rule itself – that ‘general approvals of commitments made in accordance with any written requirements specified by the accountable authority will constitute compliance with the rule’.¹⁴¹
- 3.135 In response, Finance observed that officials currently approving commitments of relevant money must have obtained the authority to approve the proposed commitment through a delegation or authorisation from their accountable authority, and that a ‘proposal for the commitment of relevant money can be general in nature (such as, a proposal relating to a group or class of proposed arrangements)’.¹⁴² Finance confirmed that it

137 Statutory RDCs, *Submission 5*, p. 3.

138 Statutory RDCs, *Submission 5*, p. 3.

139 Statutory RDCs, *Submission 5*, p. 3.

140 Statutory RDCs, *Submission 5*, p. 4.

141 Statutory RDCs, *Submission 5*, p. 3.

142 Finance, *Submission 1.3*, pp. 20-21.

would 'continue to consult with stakeholders on the guidance offered to ensure that entities understand how to apply the Rule'.¹⁴³

Draft rule on Banking (s19-s21)

3.136 The Statutory RDCs raised concerns with the draft rule on 'Banking' (s19-s21):

The previous draft of these rules stated that "A Minister or an official of a Commonwealth entity who receives relevant money is not required to bank the money, when: ... (b) the banking of the money, in the opinion of the relevant accountable authority, is uneconomical". This exception to the general requirement to bank relevant money does not appear in the Exposure Draft Rule and the Statutory RDCs submit that it should be reinserted to provide flexibility in appropriate circumstances.¹⁴⁴

3.137 Finance clarified that, under paragraph 19(1)(b) of the draft PGPA Rule, an accountable authority may 'prescribe a period by which bankable money received by an official must be deposited', and that '[t]his discretion may be exercised by an accountable authority for a broad range of reasons, including the situation where individual amounts collected over a certain period is likely to be uneconomical to bank'.¹⁴⁵

Committee comments and recommendations

3.138 The Committee concludes that stage one of the PMRA, comprising the PGPA Act and the implementation of the first set of rules, establishes a solid foundation for efficiencies and the framework for cultural change in Commonwealth resource management over future years.

3.139 The willingness to encourage entities and officials to appropriately engage with risk is a welcome and necessary maturation of public sector management. More specifically, allowing accountable authorities increased autonomy to determine fit-for-purpose internal controls, within a clearly defined and principles based framework, is commendable.

3.140 The Committee's specific comments and recommendations on the matters outlined in this chapter are set out below.

143 Finance, *Submission 1.3*, p. 21.

144 Statutory RDCs, *Submission 5*, p. 4.

145 Finance, *Submission 1.3*, p. 21.

General issues concerning PGPA Act 2013

PGPA Act guiding principles

- 3.141 The Committee notes the ANAO's proposal that the following additional guiding principle be applied in developing the remaining elements of the PMRA and PGPA framework:
- The financial framework, including the rules and supporting policy and guidance, should support the legitimate requirements of the government and the parliament in discharging their respective responsibilities.¹⁴⁶
- 3.142 The Committee also notes Finance's position that the PMRA and PGPA framework are effectively supporting this principle, despite it not being explicitly stated.
- 3.143 The Committee acknowledges and commends efforts to increase the prominence of the Parliament in the finance law and increase the quality of information provided to the Parliament and the public.
- 3.144 However, the Committee concludes on balance that there would be benefit in explicitly stating the prominence of the Parliament through adopting an additional guiding principle along the lines of that proposed by the Auditor-General.
- 3.145 In coming to this conclusion, the Committee points to the significance of the four existing guiding principles – they are critical to understanding the PGPA Act and rules, and broader PMRA. As Finance confirmed, '[t]he rules ... have been drafted to reinforce the importance of these principles'.¹⁴⁷ These guiding principles are also frequently referred to in key material supporting the draft rules, the PGPA framework and PMRA.¹⁴⁸
- 3.146 Adoption of this additional principle would therefore help focus and support the development of the remaining stages of the PMRA framework.

146 ANAO, *Submission 3*, p. 4.

147 Dr Helgeby, Finance, *Committee Hansard*, Canberra, 27 March 2014, p. 1.

148 The guiding principles were referred to in the *Explanatory Memorandum* for the PGPA Bill 2013 (Parliament of the Commonwealth of Australia, p. 2) and are referred to in guidance produced to support some of the draft rules – see, for example, Resource Management Guide on 'General duties of accountable authorities' (Working draft), Finance, *Submission 1.2*, p. 5.

Recommendation 2

- 3.147 **The Committee recommends that the following additional guiding principle be included as one of the guiding principles for the Public Management Reform Agenda:**
- **The financial framework, including the rules and supporting policy and guidance, should support the legitimate requirements of the Government and the Parliament in discharging their respective responsibilities.**

Role and powers of ANAO

- 3.148 The Committee notes that the new PGPA Act and rules are not intended to impact on the role and powers of the ANAO. However, the Committee suggests that further consequential amendments to the Auditor-General's Act may be required to ensure the ANAO retains the full audit powers under the new framework that Parliament would expect. For example, it will be necessary to ensure that the ANAO can audit the full scope of the planning, performance and accountability framework under the PGPA Act, not just 'performance indicators'.

Recommendation 3

- 3.149 **The Committee recommends that the Department of Finance work to ensure that any necessary amendments are made to the *Auditor-General's Act 1997* such that the Australian National Audit Office has the power to audit the full planning, performance and accountability framework under the *Public Governance, Performance and Accountability Act 2013*.**

Dual coverage PGPA Act and PS Act

- 3.150 The Committee acknowledges the range of concerns raised by the APSC about dual coverage of the PGPA Act and the PS Act and Code of Conduct. The Committee also notes the points raised by Finance in response.
- 3.151 The Committee was deeply disappointed to hear that the two largest public sector legislative reforms that have occurred in recent years have not been developed in tandem, and that the result may lead to confusion for officials trying to work under both pieces of legislation.

- 3.152 The two Acts should have been developed to be consistent and complementary – taking the opportunity to simplify, rather than complicate, the operating environment for officials at the day-to-day level.
- 3.153 However, given that this did not occur, the Committee supports the principle of consistency in coverage of the PGPA Act, rather than allowing differential application for different entity types (acknowledging the necessary distinction made for Commonwealth companies operating under the *Corporations Act 2001*).
- 3.154 The Committee is also confident that the professionalism of public sector officials will enable them to operate effectively under the two Acts and fulfil their associated duties.
- 3.155 The Committee does not therefore recommend amendment to the PGPA Act at this time to exclude officials employed under the PS Act from the general duties of officials' within s25 to s29 of the PGPA Act.
- 3.156 The Committee does however strongly recommend continued work on the supporting guidance for both the PGPA Act and PS Act – with the aim of minimising potential confusion for officials. This work is crucial and should be prioritised. Of course, once finalised this explanatory material should be widely communicated.
- 3.157 Furthermore, the Committee encourages Finance and the APSC to be mindful that the issue of dual legislative coverage may impact the development of future rules; and that they should work together pre-emptively as necessary to minimise such instances.
- 3.158 Despite the guidance attempting to minimise confusion, the situation of dual coverage is far from ideal. The Committee proposes that Finance and the APSC work together to draft the necessary amendments to the PGPA Act and/or the PS Act to remove any overlap. This may result in amending the terminology within the two Acts to ensure consistency, or may result in one Act referring to the other on certain matters.
- 3.159 The situation of dual legislative coverage should be rectified as soon as practicable. The Committee is conscious that the PS Act and Code of Conduct have just undergone major revisions, with associated communication and education initiatives to make relevant officials aware of the updates. It may therefore take some time to make amendments. However, it is not acceptable to the Committee that this issue only be revisited in the independent review of the PGPA Act in three years' time. Work should be done and proposals put to the Parliament in the interim if at all possible.

Recommendation 4

3.160 **The Committee does not recommend a change to the *Public Governance, Performance and Accountability Act 2013 (PGPA Act)* at this time, to address the potential confusion from dual coverage with the *Public Service Act 1999 (PS Act)*.**

Instead, the Committee recommends that the Department of Finance and the Australian Public Service Commission work together to draft the necessary amendments to the PGPA Act and/or the PS Act to remove overlaps and reduce potential confusion from dual coverage, and that amendment proposals be put to the Parliament.

Section 32B FMA Act

3.161 The Committee acknowledges the ANAO's comments concerning provisions reflecting s32B of the FMA Act not having been included in the PGPA Act. However, the Committee notes Finance's explanation concerning the current High Court action relating to this matter. The Committee therefore agrees that, although the present arrangement may not be ideal, it is a practical and prudent approach to a matter currently before the courts.

Section 38 PGPA Act

3.162 The Committee notes the ANAO's acknowledgment that, rather than amending s38 of the PGPA Act to clarify matters relating to the measurement and assessment of entity performance, this might instead be addressed in the future development of the revised performance framework. The Committee therefore encourages Finance and the ANAO to work together to clarify this issue as part of the future consultation process on a revised performance framework. On this point, the Committee notes Finance's commitment that it will:

... consult extensively both within and outside of the Commonwealth on the development of the new performance framework to ensure it is coherent, flexible and sufficiently detailed to enable an improved system of performance management and governance, and it provides meaningful information to Parliament.¹⁴⁹

¹⁴⁹ Finance, *Submission 1.3*, p. 13.

Section 59 PGPA Act

- 3.163 The Committee appreciates the concerns raised by IBA about possible restrictions on its investment activity under s59 of the PGPA Act. However, the Committee notes Finance's clarification of s59 seeking to address IBA's concerns about this matter. In particular, the Committee notes Finance's clear direction that, '[w]here corporate Commonwealth entities have specific investment powers in their enabling legislation (such as the IBA), these powers will not change. Corporate entities will have no diminution of investment powers under the new framework'.¹⁵⁰

Specific issues concerning draft rules

- 3.164 The Committee notes that there was support for the majority of draft PGPA rules required for 1 July 2014 commencement, with several inquiry participants remarking that the rules will largely provide an adequate basis for commencement on 1 July. The Committee also notes that this level of support reflects the extensive consultation process conducted by Finance on the initial set of proposed rules, as discussed in Chapter 2.
- 3.165 Specific issues raised with four draft rules are discussed below.

Draft rule on Officials' duty to disclose interests (s13, 14 and s16)

- 3.166 The Committee notes the APSC's concerns with s13 of the draft PGPA Rule relating to 'Officials' duty to disclose interests' and the agreement reached between the APSC and Finance, over the course of the inquiry, to amend the guide to s13 of the draft Rule to specifically reference the duty set out in subsection 13(7) of the PS Act.
- 3.167 The Committee also notes the concerns raised by the RDCs regarding s14 and s16 of the draft rule on 'Officials' duty to disclose interests'. The Committee is satisfied with the clarifications provided by Finance on these matters. To further address the RDCs' concerns, the Committee encourages Finance to work with the RDCs to ensure that the relevant draft guidance and other materials supporting this draft rule are revised to better clarify these issues.

Draft rule on Audit committees

- 3.168 The Committee notes the concerns raised by a number of inquiry participants about the draft PGPA rule on 'Audit committee for Commonwealth entities' (s17) and 'Audit committee for wholly-owned Commonwealth companies' (s28) – in particular, paragraph 17(5)(a),

¹⁵⁰ Finance, *Submission 1.3*, p. 28.

concerning the exclusion of an organisation's Chair from being a member of its audit committee.

- 3.169 The Committee agrees with the principle that a distinguishing feature of an audit committee of an entity should be its independence from the day-to-day operations and management of an entity. The Committee also appreciates Finance's point that the draft PGPA rules 'go a step further' in excluding an organisation's Chair as a member of its audit committee 'for reasons that go to the scope or responsibility of an audit committee under the PGPA Act', with the functions of an audit committee under the Act being 'broader'.¹⁵¹
- 3.170 The Committee considers that an increased emphasis on the observer status option in the guidance and other materials supporting the draft rule may address some of the concerns raised about this matter. Finance has confirmed that nothing in the draft rule precludes the chair, chief executive officer and chief financial officer of a Commonwealth body (all of whom are currently excluded from the membership of an audit committee under s17 and s28 of the draft rule) from attending audit committee meetings as an observer.¹⁵² On balance, the Committee does not therefore support a change to the draft rule at this time.

Recommendation 5

- 3.171 **The Committee recommends that the Department of Finance (Finance) amend the draft guidance to s17 and s28 of the draft *Public Governance, Performance and Accountability Rule 2014* to emphasise that nothing in the draft rule precludes the chair, chief executive officer and chief financial officer of a Commonwealth body from attending audit committee meetings as an observer. Finance should also widely communicate this point.**

Draft rule on Approving commitments of relevant money (s18)

- 3.172 The Committee notes the evidence and strongly held views expressed during the inquiry on the wording of the draft rule on 'Approving commitments of relevant money'.
- 3.173 The Committee recognises the importance of extending the concept of 'proper use' to accountable authorities of Commonwealth corporate entities for the first time. This is a commendable advancement in accountability.

¹⁵¹ Finance, *Submission 1.3*, p. 9.

¹⁵² Finance, *Submission 1.3*, p. 10.

- 3.174 However, the issues raised by the Auditor-General regarding the controls around commitments of relevant money are concerning.
- 3.175 The Auditor-General commented that the proposed approach is a 'substantive departure from existing obligations' for non-corporate Commonwealth entities. He continued that the requirement to explicitly consider proper use is 'not an onerous requirement but it is a requirement that has protected the interests of government and the parliament for a long period of time'.¹⁵³ The ANAO's submission further notes that the rule before the Committee has substantially changed from that consulted upon previously, and cites s71 of the PGPA Act placing obligations on Ministers that aligns with the previous 'Regulation 9' provisions.
- 3.176 On balance and due to the significance of this issue, the Committee is therefore of the opinion that the draft rule should be amended to explicitly place an obligation on all individual officials to consider 'proper use' before approving a commitment of relevant money, while allowing an accountable authority the freedom to establish internal controls appropriate to its operating environment – such as spending limits and associated documentation requirements. In connection with amending the draft rule, the associated guidance materials should also be amended. The Committee is aware that this amendment will apply obligations to officials of both Commonwealth corporate and non-corporate entities. At a minimum, the draft rule, rather than the 'guide to this section' of the rule, should be amended to state that an official must also comply with his or her duties under s25 to s29 of the PGPA Act.
- 3.177 In coming to this conclusion, the Committee notes Finance's evidence and the draft guidance that draws the connection between s25 and s26 of the PGPA Act and the rule in question.
- 3.178 Section 8 of the PGPA Act explicitly defines 'proper' as 'when used in relation to the use or management of public resources, [to] mean efficient, effective, economical and ethical'. Section 26 of the Act states that 'an official of a Commonwealth entity must exercise his or her powers, perform his or her functions and discharge his or her duties in good faith and for a proper purpose'.
- 3.179 The Committee is of the opinion that the general duties of officials also relate to the use or management of public resources. In other words, the broader duties of officials also apply to the specific duties of officials when approving commitments of relevant money. Section 26 should therefore be read as placing an explicit and direct obligation on all officials to form a

153 Mr McPhee, ANAO, *Committee Hansard*, Canberra, 7 April 2014, p. 11.

judgement about whether a commitment of relevant money is efficient, effective, economical and ethical in all instances.

- 3.180 As, in the Committee's opinion, this obligation is already enshrined in the PGPA Act – and its promotion is also expected by accountable authorities – making this obligation explicit at the level of the rule should be at little cost. Rather, it should serve to clarify and re-enforce the obligations in the Act and a key principle around the use of public sector resources.
- 3.181 Furthermore, it is a reasonable expectation that all officials should already be considering proper use concepts every time they commit taxpayer dollars – whether they are within Commonwealth corporate or non-corporate entities and whether or not this a current legislative obligation. The Committee is therefore not convinced by arguments that an explicit statement to this effect in the rule would unreasonably reduce an entity's autonomy or impose an unreasonable burden. This point is reinforced by the statement that 'public resources are public resources', implying that the rules around the use of public resources should be equal, no matter the entity type.
- 3.182 Within this context, the Committee is supportive of allowing an accountable authority the freedom to establish internal controls appropriate to its operating environment – such as spending limits and associated documentation requirements. This will allow the entity to appropriately engage with risk and balance the issues of efficiency and accountability. The Committee notes that this approach is supported by the Auditor-General.
- 3.183 The Committee acknowledges that this change may take time to implement, including undertaking necessary consultations, as this is technically a new obligation for Commonwealth corporate entities. It therefore may not be prudent to implement this change for Commonwealth corporate entities for 1 July 2014. However, retaining this obligation for non-corporate Commonwealth entities should be straightforward as it will be a continuation of current practice.
- 3.184 Finally, the Committee believes these issues should be included as key elements in first independent review of the PGPA Act.

Recommendation 6

- 3.185 **The Committee recommends that draft rule s18 (Approving commitments of relevant money) of the *Public Governance, Performance and Accountability Rule 2014* be amended to explicitly place an obligation on all individual officials to consider proper use and management of public resources before approving commitments of relevant money.**

Recommendation 7

- 3.186 **The Committee recommends that the issue of commitments of relevant money, and the appropriateness of spending limits and associated documentation requirements set by accountable authorities, be included by the Department of Finance in the first independent review of the *Public Governance, Performance and Accountability Act 2013*.**
- 3.187 Regarding the commitment of future money, the Committee appreciates the ANAO's concern that the draft rule does not incorporate specific requirements in relation to the commitment of expenditure beyond available appropriations, currently governed by FMA Regulation 10. However, the Committee notes the Auditor-General's acknowledgment that this may primarily be a matter for executive government.
- 3.188 The Committee requests that the Department of Finance advise the Committee of the thresholds set for expenditure beyond available appropriations as soon as these are established.
- 3.189 The Committee further notes the ANAO's comments concerning the draft rule allowing for the approval of the commitment of expenditure in aggregate. It supports the ANAO's suggestions that the supporting guidance on this rule should discuss the reasonable use of, and the risks involved in, officials approving aggregate expenditure proposals.

Recommendation 8

- 3.190 **The Committee recommends that the draft guidance material supporting s18 (Approving commitments of relevant money) of the *Public Governance, Performance and Accountability Rule 2014* be amended to include discussion of the reasonable use of, and the risks involved in, officials approving aggregate expenditure proposals.**

Draft rule on Banking (s19-s21)

- 3.191 The Committee notes the concern raised by the RDCs regarding s19-s21 of the draft PGPA rule on 'Banking'. The Committee considers that the clarifications provided by Finance on this matter should be sufficient. To further address the RDCs' concern, the Committee encourages Finance to work with the RDCs to ensure that the relevant draft guidance and other materials supporting this draft rule are revised to better clarify this issue.

Key issues: post 1 July 2014

Introduction

- 4.1 Chapter 4 focuses on post 1 July 2014 issues concerning the rules development for the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). The chapter discusses the staged implementation process for the PGPA rules in the context of the broader Public Management Reform Agenda (PMRA). It then briefly considers a range of issues concerning further development of the PMRA and PGPA framework post 1 July 2014 raised in evidence to the Joint Committee of Public Accounts and Audit (JCPAA), including the need for continuing consultation regarding future draft rules. The chapter concludes with the Committee's comments and recommendations.

Staged implementation process

- 4.2 As discussed in Chapter 1, the PMRA, with the PGPA Act as its cornerstone, is a broad integrated package of reforms to the Commonwealth's resource management framework.
- 4.3 The Department of Finance (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.

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.¹

- 4.4 Consistent with the staged implementation of the PMRA reforms, there is a staged implementation process for the PGPA rules, with the first set of PGPA rules to be implemented by 1 July 2014.
- 4.5 A second set of PGPA rules will be implemented in stage two of this process. As Finance confirmed, '[s]ome rules are not required for 1 July 2014 and will be introduced during the course of 2014-15'.²
- 4.6 The draft PGPA rules for post 1 July 2014 implementation that will be prepared in consultation with stakeholders and the JCPAA are set out in Table 4.1.³

1 Department of Finance (Finance), *Submission 1*, p. 12.

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

3 In terms of the *Public Governance, Performance and Accountability* (PGPA) rule on Financial reporting (Annual financial statements) (s42), Finance confirmed that it is 'not proposed to provide this rule to the JCPAA', *Submission 1.3*, p. 36.

Table 4.1 Draft PGPA rules for post 1 July 2014 implementation being prepared in consultation with stakeholders and JCPAA

Title of PGPA rule	Section PGPA Act	Finance description of current status of draft rule
Corporate plans	s35	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. Draft rules will be developed over the balance of 2014 in consultation with the JCPAA.
Annual performance statements for Commonwealth entities	s39	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. Draft rules will be developed over the balance of 2014 in consultation with the JCPAA.
Annual reports and reporting requirements	s46(3) & s97	Annual reports for the 2013-14 financial year will apply the current requirements. The current annual report requirements approved by the JCPAA 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.
Risk	s102	A rule will not be made at this time—consideration will be given to the need for a rule once a whole of government risk management policy is in place.
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 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	s87	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.

Source *Finance, Submission 1, p. 25; and Finance, Submission 1.3, pp. 35-36*

Consultation and timing for post 1 July 2014 elements

- 4.7 The Committee has an interest in the post 1 July 2014 development of the PMRA framework and PGPA rules for a number of reasons.
- 4.8 First, given the staged implementation of the rules, a number of inquiry participants emphasised the need for continuing consultation on the future draft rules to be implemented post 1 July 2014:

... changes to the governance and accountability framework for the Commonwealth and its agencies will occur in stages under the proposed reforms, which will take a number of years to implement. The challenge for Finance will be to ensure that there is consistent and sustained engagement with stakeholders over a

relatively long period so that it continues to ensure that the rules developed under the PGPA Act do not adversely affect the operation of Commonwealth entities in an unintended manner.⁴

The reforms are based on the duty of the Accountable Authority to govern the entity. It will therefore be important that the development of the Rules and related material continues to be consultative. The risk of imposing Rules without consultation, or introducing inappropriate central oversight, is that it might inadvertently disempower the Accountable Authority and reduce desired accountability.⁵

The Department of Finance has indicated in its submissions to this inquiry that these rules [corporate plans and annual performance statements] will be introduced during the course of 2014-15, rather than on 1 July 2014, and will be prepared in consultation with stakeholders. The CPSU would welcome the opportunity to participate in this process to help ensure that employees are involved in discussions about the setting of performance measures and that the focus on performance is at the organisational level.⁶

4.9 Second, some inquiry participants emphasised the significance of the post 1 July set of PGPA rules in implementing critical aspects of the PGPA framework. As the Australian National Audit Office (ANAO) commented:

While recognising that the broad ranging reform agenda will take some years to implement fully, the ANAO notes that by focussing on a limited number of rules that will take effect from 1 July 2014, a number of key issues have been deferred until after 1 July 2014. This will necessarily mean that a number of the stated benefits of the reforms will not be realised for some time, assuming the effectiveness of the rules and any associated policy and guidance in achieving those benefits.

The ANAO recognises that it is relatively early days in terms of the development and implementation of the new framework and major components are still to be developed.⁷

4.10 The ANAO further observed that, on the basis of its work, 'key priority areas' include:

- an enhanced performance measurement and reporting regime;

4 Indigenous Business Australia (IBA), *Submission 12*, pp. 2-3.

5 Commonwealth Scientific and Industrial Research Organisation (CSIRO), *Submission 13*, p. 4.

6 Community and Public Sector Union (CPSU), *Submission 10*, p. 2.

7 Australian National Audit Office (ANAO), *Submission 3*, p. 11.

- arrangements that better facilitate joined-up government and accommodate the concepts of collective responsibility and multiple accountabilities; and
- a differential financial reporting regime to streamline the financial reporting requirements for Commonwealth entities, which is compliant with the Australian Accounting Standards while still meeting the needs of the government and parliament.

These matters are not being addressed in the first tranche of Rules developed by the Department of Finance (Finance) but are scheduled for consideration in the development of the suite of Rules required after 1 July 2014.⁸

- 4.11 Finance acknowledged that the scope of implementation for 1 July 2014 had been somewhat reduced: '[t]hose things we were talking about ... around performance information evaluation and so forth we are putting off for another year'.⁹
- 4.12 Third, PGPA rule development relating to the performance framework is of particular interest to the JCPAA, given the long history of the poor findings of past ANAO audits and Committee inquiries on performance reporting by Commonwealth agencies. Of significance here also is the Committee's role in approving the Annual Report Guidelines for Commonwealth agencies.
- 4.13 Fourth, some inquiry participants emphasised the need to understand the complete set of PGPA rules, and for a considered approach to implementation. In particular, the ANAO noted that there were a 'range of consequences from adopting the staged approach to implementation which will need to be managed by both Finance and other public sector entities' – including:
- various elements of the reforms are being considered without the benefits of a full understanding of the composition of the revised financial framework;
 - priority areas for attention, particularly performance measurement and reporting, are not being considered in Stage 1;
 - there is uncertainty whether subsequent amendments will be required to current proposals in framing future elements of the framework; and
 - a long term investment in project and change management in progressively implementing the reforms, and undertaking

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

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

training of staff by all public sector entities, is required if the stated benefits are to be realised.¹⁰

- 4.14 Fifth, the Committee received evidence over the course of the inquiry on PGPA rules required for 1 July 2014 commencement, as well as those required for post 1 July. It also received evidence on stages two and three of the PMRA reforms. This was in part due to some draft rules being released for public consultation for 1 July commencement and then being deferred to post 1 July, and also due to stakeholders' views about the significance of the post 1 July set of rules and later stage PMRA reforms.
- 4.15 On this point, there was some confusion evident over the course of the inquiry about the timing of the various sets of draft PGPA rules. The JCPAA and some stakeholders lacked clarity about the precise timing of what would be dealt with when.
- 4.16 As became clear during the inquiry, initial plans for the implementation dates for some of the draft rules have changed over time. For example, a number of draft rules were included in Finance's public consultation process over December 2013-February 2014 as they were originally planned for 1 July 2014 commencement. However, these draft rules were later deferred to post 1 July implementation and subsequently not included in the draft PGPA Rule 2014 provided to the Committee. As Finance confirmed:
- In relation to the rules for corporate planning and annual performance statements, we released two draft rules through steering committees and then through the public consultation process. Those rules received a lot of comments. It is fair to say that most of the comments were focused on those two rules combined. As a result, we have decided that we will take a longer time to establish a broader framework for the performance framework for the Commonwealth, including keeping those draft rules as drafts and reviewing those throughout the balance of 2014.¹¹
- 4.17 As the specific implementation dates for the set of draft rules required post 1 July 2014 lacked some clarity, the Committee sought further information on the timing, to ensure there would be sufficient time for public consultation and a Committee inquiry before implementation.¹²
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10 ANAO, *Submission 3*, pp. 4-5.

11 Ms Thea Daniel, Assistant Secretary, Governance and Public Management Reform Taskforce, Finance, *Committee Hansard*, Canberra, 27 March 2014, p. 3.

12 Finance, *Submission 1.3*, p. 36.

4.18 In terms of future consultation on the draft PGPA rules for post 1 July 2014, Finance has confirmed that it will run a similar process to that conducted previously:

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.¹³

Key issues

4.19 The Committee was interested in three major themes concerning the PGPA Act rules development and broader PMRA framework raised in evidence to the inquiry:

- Performance framework – largely stage 2
- Risk framework and earned autonomy – stages 2 and 3
- Cooperation objective, including ‘joined-up’ government and external partnering – largely stage 3

4.20 These issues are briefly discussed below.

Performance framework

4.21 An enhanced performance measurement and reporting regime is a significant part of stage two of the PGPA framework and broader PMRA, post 1 July 2014. As Finance noted:

A key element of the second stage, immediately following the introduction of the PGPA Act from 1 July 2014, will focus on improving the quality of planning, performance information and evaluation within government to improve accountability to Ministers, the Parliament and the public through the development of a performance framework. The performance framework would be in place for early 2015 ... the proposed framework includes rules to be made under the PGPA Act, and affects key documents like Portfolio Budget Statements and Annual Reports.¹⁴

13 Dr Stein Helgeby, Deputy Secretary, Finance, *Committee Hansard*, Canberra, 7 April 2014, p. 5.

14 Finance, *Submission 1.1*, pp. 5-6.

- 4.22 A number of inquiry participants commented on the significance of the performance framework reform under the new PGPA Act and rules:

The Rule on corporate planning and performance measurement and reporting will be important to improving the quality and transparency of decision making at a whole of Government and entity level and should provide increased confidence to the Parliament on the proper use of public resources.¹⁵

The CPSU's main concerns about the draft rules for the PGPA Act relate to corporate plans and annual performance statements.¹⁶

- 4.23 Regarding the timeframes proposed for the introduction of the new performance reporting framework – with corporate plans to commence from 2015-16 and performance statements to be required after 1 July 2016 – the ANAO noted that it would 'most likely be a number of years before there is a demonstrable improvement in the Commonwealth's performance framework as a result of the introduction of the PGPA Act'.¹⁷ The ANAO therefore emphasised that:

While no structural changes to the existing performance regime can be anticipated given the timeframes involved in developing and implementing a revised framework, we consider it is important that Finance and agencies are responsive to improving the measurement and reporting on program performance, including addressing relevant recommendations made by the JCPAA and the ANAO. This could include, for example, emphasising the factors that are important to enhanced measurement and reporting including: leadership by senior management; the use of proxy measures to assess the impact of progress where direct measures are not readily available; the importance of reliable data capture methods and systems; and giving higher priority to improving performance indicators, particularly indicators that are designed to measure the impact or effectiveness of programs.¹⁸

- 4.24 As the Auditor-General further commented:

It has clearly been a priority that we have been encouraging a focus on: performance measurement and performance reporting ... I think we are all agreed that it is a priority and it is just a

15 CSIRO, *Submission 13*, p. 3.

16 CPSU, *Submission 10*, p. 1.

17 ANAO, *Submission 3*, pp. 9-10.

18 ANAO, *Submission 3*, p. 10. See also Capital Training Pty Ltd on this point – *Submission 8*, pp. 3-4.

consequence of the phased implementation of a program that is taking so long. We have been talking for some years now about the importance of getting this better measurement around the effectiveness of government programs. It is up to Finance to organise its own priorities, but you can understand that we see this as probably No. 1, and your point is that it is being delayed some years before we see the results of that. At one level I understand that; at another level it was unfortunate that the priorities could not have been shifted to give a stronger focus on performance measurement in the public sector than we are seeing today.¹⁹

4.25 The ANAO observed that, as set out in ANAO Report No. 21, *2013-14 Pilot Project to Audit Key Performance Indicators*, while the importance of key performance indicators (KPIs) in informing the assessment of program performance is recognised, 'making a difference requires leadership, effective governance, and a desire to understand the impact of government programs and how even better outcomes may be achieved'.²⁰

4.26 Accordingly, the ANAO noted that, to improve the standard of performance measurement and reporting in the short term, 'there is considerable scope for Finance to enhance the level of communication with entities on performance measurement as part of its strategy to implement a revised performance regime'.²¹

4.27 The Committee Chair also commented on the poor quality of KPIs:
You have mentioned the portfolio budget statements, and I am very familiar with them. The quality of the KPIs is very poor. They are KPIs that are very easy to meet. Most of them are not even useful KPIs. They are really not adequate at all.²²

4.28 The Secretary of Finance, Mr Tune, responded:

I agree with you, yes.²³

4.29 Finance further acknowledged that:

... information about the non-financial performance of Commonwealth entities has been of a variable quality for an extended period. The JCPAA and the Australian National Audit Office ... have identified shortcomings of elements of the existing performance reporting framework such as the operation of the

19 Mr Ian McPhee, Auditor-General, ANAO, *Committee Hansard*, Canberra, 7 April 2014, p. 13.

20 ANAO, *Submission 3*, p. 10.

21 ANAO, *Submission 3*, p. 10.

22 Dr Andrew Southcott MP, Chair, JCPAA, *Committee Hansard*, Canberra, 27 March 2014, p. 5.

23 Mr Tune, Finance, *Committee Hansard*, Canberra, 27 March 2014, p. 5.

Commonwealth's Outcomes and Programmes Framework and the development and use of programme-level Key Performance Indicators (KPIs). Current performance management arrangements are ad-hoc and fragmented in nature and lack coherence at a whole-of-system level ...

One additional challenge is to make sure that the Performance Framework contemplates, and can accommodate, cross jurisdictional activities. The PGPA Act provides for, and indeed encourages, co-operation across jurisdictions. We need to make sure that the Performance Framework is sensitive to the fact that government works in this way and should provide good quality data to support this activity.²⁴

- 4.30 In terms of conducting further work on this area in the interim, Finance observed that:

The very fact that the act places positive obligations on the public sector to focus on performance is itself providing a stimulus to people to act in this area. We are very well aware that there are entities or organisations out there who are going to use the time between now and 2015 not simply to comment on the guidance and on the rules but to try and lift their internal processes in order to be ready to satisfy and meet the obligations when they come into effect. So support and some additional focus in a couple of key areas is what we are doing in the interim.²⁵

- 4.31 Finance also highlighted that, while the performance framework reforms are being implemented as part of the next set of PGPA rules:

In the meantime, Finance will continue to work with agencies on all issues relating to the implementation of the current Outcomes and Programmes framework including the development of programme level KPIs. To complement the wider work that is occurring, a focus for the next few months is on (a) developing an Australian Government internet library of all finished M&E-relevant [monitoring and evaluation] products, and (b) establishing a core set of KPIs for the Commonwealth's top-20 spending programmes.²⁶

24 Finance, 'Brief for JCPAA on a proposed approach to the performance framework under the PGPA Act 2013', *Submission 1.1*, p. 338.

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

26 Finance, 'Brief for JCPAA on a proposed approach to the performance framework under the PGPA Act 2013', *Submission 1.1*, p. 341.

- 4.32 In terms of the online performance library, Finance explained that it will be the 'central repository of all information about the performance of Commonwealth entities and programs'.²⁷ On the KPIs for the top-20 spending programs, Finance observed that:
- We are focusing in particular on the top two-thirds of government spending, which is effectively captured in 20 programs, and looking at how those programs assess performance and report performance. We think by putting the emphasis in those areas, with practical steps and with support provided by the department, that will reinforce what we are trying to do in the changes to the framework.²⁸
- 4.33 As the Secretary of Finance, Mr Tune, noted, focusing on the top-20 programs will cover 'about 67 per cent of spending across the Commonwealth', including the age pension, the disability support pension, unemployment benefit.²⁹ Finance stated that there were 'concrete timetables' for these initiatives, with the online library to be 'up and running by August this year' and the performance data for the top-20 programs to have been 'worked through systematically for inclusion in the first sets of corporate plans that are done for the 2015-16 year and will be released in June 2015'.³⁰
- 4.34 Finance further emphasised:
- ... we are working and working in a very practical way with agencies to improve in this area. We expect that the very existence of the act and the very prospect that new rules will come into play, even if they do not formally have an impact until a later point, will provide a significant spur to activity in this area. For example, in our own agency the prospect of this spur, in a way, means that we will undertake work to be well positioned for the implementation rather than wait for the implementation before we set about our business.³¹
- 4.35 Against this background, it is noted that Finance provided the Committee with a 'Proposed approach to the performance framework under the

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

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

29 Mr Tune, Finance, *Committee Hansard*, Canberra, 27 March 2014, p. 6. See also Finance, *Submission 1.3*, p. 34.

30 Mr Lembit Suur, First Assistant Secretary, Governance and Public Management, Finance, *Committee Hansard*, Canberra, 27 March 2014, p. 4.

31 Dr Helgeby, Finance, *Committee Hansard*, Canberra, 7 April 2014, p. 13.

PGPA Act 2013'.³² As part of introducing and supporting this framework, Finance proposes to:

- Provide well constructed guidance and training on:
 - ⇒ key tools and approaches for collecting non-financial performance information, including on the design of key performance indicators and the use of evaluations at different parts of a programme's cycle;
 - ⇒ better practice for non-financial performance information and the assessment of Commonwealth programmes;
 - ⇒ ensuring alignment between the various sources of non-financial performance information and the input (means), process (use), output (performance) or outcome (effects) it is describing; and
 - ⇒ the options for incorporating the learning from various sources of non-financial information into decisions at various levels within an entity.
- Increase interactions with entities to support them developing useful and applicable performance measures and metrics. This extends upon Finance's engagement to date with agencies that has focused on improving their KPIs.³³

4.36 Finance confirmed that, 'later this year', it will 'provide the JCPAA with a final and consolidated submission on the proposed framework':

This submission will include draft rules on corporate planning, annual performance statements and annual reports; guidance materials; and as relevant, templates to enable the implementation of each of the above new elements, including explanations about their practical operation in relation to existing financial framework tools and principles. This submission will also include the outcomes of the consultation that will be undertaken with the Australian Government and with Commonwealth entities, including PM&C and the ANAO, about the new arrangements.³⁴

Risk framework and earned autonomy

4.37 Implementation of the risk framework is a significant part of the PGPA Act and broader PMRA, post 1 July 2014. As Finance emphasised:

32 Finance, *Submission 1.1*, pp. 338-344.

33 Finance, 'Brief for JCPAA on a proposed approach to the performance framework under the PGPA Act 2013', *Submission 1.1*, p. 340.

34 Finance, 'Brief for JCPAA on a proposed approach to the performance framework under the PGPA Act 2013', *Submission 1.1*, p. 341.

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.³⁵

- 4.38 The significance of the risk framework established by the new PGPA Act was commented on by a number of inquiry participants:

While Commonwealth entities have previously applied better practice guidance on risk management, this new legislative requirement will act to ensure a more comprehensive and whole-of-entity (or enterprise) approach to addressing risk oversight and management.³⁶

- 4.39 Also of interest, in the later stage implementation of the PMRA and PGPA framework, was the concept of earned autonomy:

For CSIRO, the implementation of the PGPA Act and Rules provides an opportunity ... in due course to demonstrate organisational compliance as a basis for future earned autonomy.³⁷

- 4.40 Some inquiry participants encouraged Finance to accelerate progress on the risk framework:

... we note that no "risk rules" will be developed until "a whole of government risk management policy is in place" ... While we appreciate the need to stage the introduction of the PGPA rules ... we believe that there is an urgency for Commonwealth agencies to better manage risk in their collaboration and engagement with non-Commonwealth entities ... However, without the development of risk rules within the PGPA process there remains

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

36 Capital Training Pty Ltd, *Submission 8*, p. 2.

37 CSIRO, *Submission 13*, p. 2.

little guidance or direction as to how Commonwealth entities and/or officials will act on their duties.³⁸

4.41 UnitingCare Australia requested that risk rules be ‘prioritised’ within the PGPA process.

4.42 Other inquiry participants encouraged Finance to accelerate progress on broader aspects of the risk framework in PMRA, such as earned autonomy:

In keeping with the general principles of the Public Management Reform Agenda, the Statutory RDCs understood that serious consideration would be given to a more nuanced approach to risk management and, in particular, the implementation of a system of earned autonomy, the aim of which would be to improve performance through rewarding high standards of compliance. The Statutory RDCs are keen for this concept to be integrated into the new regime as soon as possible.³⁹

4.43 Finance provided the Committee with a draft Commonwealth Risk Management Policy.⁴⁰ At the time this was provided to the Committee, the document was a working draft, still undergoing consultation.

4.44 A number of inquiry participants commented positively on the draft policy:

The draft Commonwealth Risk Management Policy provides valuable guidance to Commonwealth entities working to achieve the requirements of Section 16 of the PGPA Act.⁴¹

4.45 However, the need for further work on the risk framework was also noted:

... [the Policy] makes no reference to any ministerial or parliamentary oversight of an entity’s risk management policy ... We recommend strengthening this requirements, making Ministerial approval of an entity’s risk management policy a requirement of the Commonwealth Risk Management Policy. We believe an entity’s risk management policy should be subject to parliamentary review.⁴²

38 UnitingCare Australia, *Submission 11*, p. 2.

39 Cotton Research and Development Corporation, Fisheries Research and Development Corporation, Grains Research and Development Corporation, Grape and Wine Research and Development Corporation, and Rural Industries Research and Development Corporation (Statutory RDCs), *Submission 5*, p. 4.

40 Finance, *Submission 1.1*, pp. 338-344.

41 Capital Training Pty Ltd, *Submission 8*, p. 2.

42 Capital Training Pty Ltd, *Submission 8*, p. 2.

... a strategic vulnerability exists for the PGPA Reforms associated with the Draft Risk Management Policy Guidelines provided by the Department of Finance.⁴³

- 4.46 The risk management policy will be in place on 1 July 2014. Finance explained its approach in implementing this policy and considering whether a PGPA rule on risk might be implemented at a later date:

Our approach, and it is an approach that we have taken in consultation with all entities, is to take a small step in the right direction first off, by putting in place a whole-of-Commonwealth policy; then seeing how that policy is implemented, what sorts of issues it throws up, what sorts of improvements need to be made; and, over time, when we get to a place where there is cohesive practice across all elements of risk engagement and management in the Commonwealth, then thinking about what a rule might look like, what elements of risk management need to be prescribed in the law and what needs to be done in guidance. In other words, we are not coming into an area where there is a lack of cohesion at the moment and immediately imposing law; we are trying to come in at a lower level and bring cohesion before we prescribe things in law.⁴⁴

Cooperation arrangements

- 4.47 Cooperation arrangements that better facilitate joined-up government and external partnering, and accommodate the concepts of collective responsibility and multiple accountabilities, are a significant part of the PGPA Act and broader PMRA framework, post 1 July 2014.

- 4.48 The significance of this reform was commented on by a number of inquiry participants:

The Rules as part of the broader Reform Agenda have potential to foster collaboration whilst reducing unnecessary red-tape and bureaucracy. Collaboration including cross-jurisdiction collaboration is essential to addressing national challenges and delivering innovative programs.⁴⁵

UnitingCare Australia has taken a close interest in the development of the PGPA Act, and the preceding Commonwealth Financial Accountability Review, because we believe it is a critical piece of legislative architecture that rightly recognises the

43 ScottCromwell, *Submission 8*, p. 8.

44 Mr Suur, Finance, *Committee Hansard*, Canberra, 27 March 2014, pp. 10-11.

45 CSIRO, *Submission 13*, pp.2-3.

importance of collaboration and partnership between Commonwealth and non-Commonwealth entities.⁴⁶

- 4.49 Some inquiry participants made suggestions for how this mechanism might be implemented:

For CSIRO the benefits of scientific research come generally from the interaction of two or more 'connected' players. Connections facilitate access to knowledge, know-how, infrastructure, funding, resources and clients. However, the opportunity cost of 'connecting' is often substantial so the new Commonwealth Financial Framework and associated Rules need flexibility to support collaboration. The Framework in itself is not a barrier but CSIRO would encourage efforts within the broader reform program to explore mechanisms that enable government priorities to be funded and governed on a program or outcome basis, rather than necessarily on an entity by entity basis alone ... The possible financial management risks associated with that approach would be balanced by the opportunity to implement more integrated whole of government solutions.⁴⁷

- 4.50 In terms of the focus on improved cooperation arrangements as part of the PGPA framework and PMRA, Finance commented that it had established a foundation for this work with stage one of PMRA:

We have in this part of the process already got some hooks for further reform ... We have requirements around the burdens that a Commonwealth entity imposes upon others whether they are Commonwealth or private sector or whatever. We also have the hooks in here to build a concept of joint arrangements or joint-venture type concepts between the Commonwealth level of government and other levels of government. So we have not been able, in this piece of legislation, to push that to its ultimate conclusions but it is very clearly a part of our agenda ... We have the hooks and it is clearly part of the program to work on those hooks into the future.⁴⁸

Not-for-profit sector

- 4.51 UnitingCare Australia pointed to the important role that the not-for-profit sector can play in the development of a risk framework and collaborative

46 UnitingCare Australia, *Submission 11*, pp. 1.

47 CSIRO, *Submission 13*, pp. 2-3.

48 Dr Helgeby, Finance, Committee Hansard, Canberra, 7 April 2014, p. 24.

arrangements as part of the PGPA framework and PMRA, and encouraged Finance to accelerate progress in these areas:

... we believe that there is an urgency for Commonwealth agencies to better manage risk in their collaboration and engagement with non-Commonwealth entities ... We would therefore encourage the Department of Finance to move quickly in the development of the risk rules within the PGPA process and in doing so work with non-government partners, especially the Not-for-profit (NFP) sector ...

Effective collaboration between the government and the NFP sector is critical in meeting some of the long-term social challenges facing our nation.⁴⁹

- 4.52 UnitingCare Australia proposed that Finance give priority to engaging with the NFP sector to develop a risk framework and collaborative arrangements under the PGPA framework and PMRA. As Mr Joe Zabar, Director of Services Sustainability for UnitingCare Australia, explained:

We supported the [PGPA] bill because it reflected a more contemporary view of public administration, recognising the importance of collaboration and partnership between Commonwealth and non-Commonwealth entities. Effective cooperation and collaboration between the Commonwealth and the not-for-profit sector is critical to addressing some of the most complex and entrenched social challenges facing our nation ...

We believe that the government will need to work differently with the NFP sector ... While the traditional procurement contract relationship between our sectors will continue, we believe that there will be increasing need to move toward a new relational, or partnership, contract model of engagement between our sectors ... It is important that the PGPA Act and the associated rules accommodate this change. The use of the partnership model will require a more sophisticated approach to the management of risk and the associated terms and conditions attached to the NFP funding agreement. We note that the Department of Finance has now developed a draft Commonwealth risk management policy. We would encourage them to consult further with the sector about it, especially in relation to its application to community service delivery through partnership model.⁵⁰

49 UnitingCare Australia, *Submission 11*, p. 2.

50 Mr Joe Zabar, Director of Services Sustainability, UnitingCare Australia, *Committee Hansard*, Canberra, 7 April 2014, p. 27.

- 4.53 Concerning the risk framework, UnitingCare Australia further emphasised that:

Under the current arrangements, the monopsony, we have very little room to negotiate around terms and conditions. So, in essence, much of the risk that the Commonwealth agency wishes to negotiate in terms of its own arrangements can be shifted onto us, and there is not a lot we can do about it. For example, the fact that they can request people be removed creates a risk for us. The fact that supplementary conditions can be added through the process adds a risk to us.⁵¹

Committee comments and recommendations

- 4.54 The Committee commends the consultation process undertaken by Finance for the first set of draft rules, and Finance's commitment to continue this process for the future draft rules.
- 4.55 The Committee notes that, given the staged implementation of the PGPA rules, there is a need for continuing consultation on the draft rules to be implemented post 1 July 2014.
- 4.56 As the precise timing for the various sets of draft PGPA rules and PMRA initiatives lacked clarity at times the Committee is seeking further information in this regard. This is to ensure there is sufficient time for public consultation and a Committee inquiry before tabling in Parliament and implementation. The Committee also maintains that more needs to be done to clearly communicate the content and timing of the future stages to all stakeholders.

Recommendation 9

- 4.57 **The Committee recommends that the Department of Finance continue its consultation process with stakeholders on the *Public Governance, Performance and Accountability Act 2013* rules development for the post July 2014 rules and the broader Public Management Reform Agenda, based on the comprehensive consultation approach taken to date.**

51 Mr Zabar, UnitingCare Australia, *Committee Hansard*, Canberra, 7 April 2014, pp. 26-27.

Recommendation 10

- 4.58 **The Committee recommends that the Department of Finance prepare and communicate a plan clearly outlining the anticipated dates for development and consultation of all future rules and guidance materials under the *Public Governance, Performance and Accountability Act 2013*, and the broader Public Management Reform Agenda.**
- 4.59 The Committee appreciates the issues raised by inquiry participants relating to key areas of the PGPA Act and PMRA implementation, and the calls for early action in these areas.
- 4.60 The PMRA is a major rethink about how the Commonwealth goes about its business. The PGPA Act is a crucial first step on this journey – laying the foundations for efficiencies and the framework for cultural change in Commonwealth resource management over future years. However, arguably the more significant opportunities remain to be captured as part of the next two stages of PMRA reforms.
- 4.61 Importantly, this process will involve all entities actually making the cultural changes required to maximise the value of the reforms. Indeed, this may be the most challenging but largest determinant of success. It will take time and diligence. Leadership will be crucial, showing that the reforms have been embraced at the highest level and within central agencies. This will involve Finance, executive government and the Parliament also having a more mature approach to risk, while holding entities to account for expected increases in levels of cooperation and far better performance management and reporting.

The performance framework

- 4.62 Regarding the performance framework, the new emphasis on performance management and reporting in the finance law is indeed a welcome enhancement – and Finance should be commended for cementing its prominence at the legislative level. Once executed, this framework should facilitate better planning, implementation and assessments by entities as well as providing a clear line of sight across these elements for external stakeholders.
- 4.63 The Committee notes the ‘Proposed approach to the performance framework under the PGPA Act 2013’, document provided by Finance. However, the Committee agrees with the ANAO that more could have been done ahead of the full reforms in this area to drive improvements – as this is a longstanding issue that has been highlighted by ANAO and JCPAA reports over several years.

- 4.64 Poor performance indicators and related management practices were highlighted in 2006-07 in the ANAO's report on the *Application of the Outcomes and Outputs Framework*. The JCPAA thought this issue significant enough to recommend changes to the *Auditor-General Act 1997* in late 2010, allowing the ANAO to directly audit key performance indicators. Since then the Committee and the ANAO have continued their focus on performance indicators, and have continued to find poor results. The Committee's most recent report on the subject – Report 439 – recommended that Finance 'prioritise the review and update of the performance measurement and reporting framework ... for the 2014-15 financial year ... irrespective of the passage of the [PGPA Act]'.⁵²
- 4.65 The Committee was therefore disappointed to see little advancement in this area under the current framework while designs of the larger reforms were being prepared. Finance could have taken the opportunity during the intervening years to emphasise more strongly to entities the importance of improving their performance management and reporting approaches in preparation for the PMRA changes. This, as the ANAO suggests, could have included communications on the importance of a performance management culture and strong leadership by senior management; the use of proxy indicators; the importance of reliable data capture methods and systems; and giving higher priority to assessing the impacts or effectiveness of programs.
- 4.66 However, the Committee was pleased to see some work commencing to develop an Australian Government online performance library and establishing a core set of KPIs for the Commonwealth's top-20 spending programs. This is a welcome initiative and, if done well, should provide useful information to the public and a comprehensive knowledge base from which to roll out improved performance initiatives to all entities and programs.

The risk framework

- 4.67 The Committee notes the high level of stakeholder interest in the development of the risk framework under the PGPA Act and PMRA, and Finance's work on a draft Commonwealth Risk Management Policy. As it will be important to get the balance right in moving to a more mature approach to risk engagement, the Committee encourages Finance to work with all interested stakeholders to monitor the application and effectiveness of the Commonwealth Risk Management Policy over the coming years. This will help inform whether a risk rule should be
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52 JCPAA, *Report 439: Review of Auditor-General's Reports Nos 11 to 31 (2012-13)*, 27 June 2013, p. 11.

developed and also facilitate assessment of this issue as part of the independent review of the PGPA Act.

Cooperation arrangements

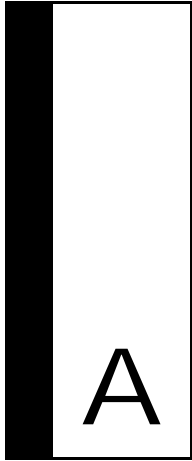
- 4.68 The Committee also notes the high level of stakeholder interest in cooperation arrangements under the PMRA reforms. Spanning from facilitating joined-up government through to partnering with other jurisdictions and external parties, the ability to better incorporate the concepts of collective responsibility and multiple accountabilities will be a significant evolution in public sector reform.
- 4.69 The Committee emphasises that focus should be retained on improving joined-up approaches between Commonwealth entities, including appropriation, leadership and accountability arrangements. These issues have been identified through multiple ANAO and JCPAA inquiries to be a hindrance to effective whole-of-government program implementation. With the increased need for several entities to work together to deliver complex Commonwealth programs further drive is required in this area.
- 4.70 Concepts of collective responsibility and sharing of risk will also need to be applied to external partnering approaches – in particular, with the NFP sector. The Committee is sympathetic to concerns that, despite central rhetoric advocating partnership and risk sharing, specific entity level arrangements and contract clauses seem at a disjunct with these principles at times. The Committee encourages Finance to work actively with all stakeholders, including the NFP sector, in further developing the risk framework and collaborative arrangements under the PGPA Act and broader PMRA framework. This may extend to Finance, the government and the Parliament working to change cultures within Commonwealth entities to better embrace the new reforms.

Next steps

- 4.71 Regarding the development of future rules under the PGPA Act and other elements under the broader PMRA framework, the Committee intends to conduct inquiries into both stages two and three of the proposed reforms. To remove doubt, the Committee is interested in all elements of the reform agenda, not just the PGPA rules development.
- 4.72 These inquiries will continue the Committee's previous engagement on these critical reforms of the finance law, commencing with the earlier inquiry into the PGPA Bill.
- 4.73 The Committee's next inquiry in this area is likely to include, but may not be limited to, investigation of:

- the effectiveness and comprehensiveness of Finance's ongoing consultation
- the performance framework, including draft rules for corporate plans, annual performance statements and annual reporting requirements
- the risk framework, including implementation of the Commonwealth Risk Management Policy
- progress towards implementing other reforms and initiatives, such as:
 - ⇒ priorities and objective setting by the government
 - ⇒ budget reforms to improve clear line of sight
 - ⇒ better facilitation of 'joined-up' government, including appropriation aspects
 - ⇒ cooperation and partnership with other jurisdictions and external parties
 - ⇒ implementation of earned autonomy concepts

Dr Andrew Southcott MP
Chair
May 2014



Appendix A - Submissions

- 1 Department of Finance
- 1.1 Department of Finance
- 1.2 Department of Finance
- 1.3 Department of Finance
- 2 Reserve Bank of Australia
- 3 Australian National Audit Office
- 3.1 Australian National Audit Office
- 4 Medibank Private Ltd, Australian Rail Track Corporation Ltd and ASC Pty Ltd
- 5 Statutory Research and Development Corporations
- 6 Australian War Memorial
- 7 Australian Public Service Commission
- 7.1 Australian Public Service Commission
- 8 Australian Capital Training College
- 9 Morison Consulting
- 10 Community and Public Sector Union
- 11 UnitingCare Australia
- 12 Indigenous Business Australia
- 13 CSIRO
- 14 ScottCromwell Pty Ltd

- 15 Risk Management Institution of Australia
- 16 Moorebank Intermodal Company
- 17 Confidential



Appendix B – Public Hearings

Thursday, 27 March 2014

Department of Finance

Mr David Tune, Secretary

Dr Stein Helgeby, Deputy Secretary

Mr Lembit Suur, First Assistant Secretary, Governance and Public Management

Mr Robert Antich, Assistant Secretary, Risk, Insurance and Special Claims Branch

Ms Thea Daniel, Assistant Secretary, Governance and Public Management Reform Taskforce

Ms Kerry Markoulli, Assistant Secretary, Resource Management

Mr Neil Robertson, Assistant Secretary, Governance and Public Management Reform Taskforce

Monday 7 April 2014

Department of Finance

Dr Stein Helgeby, Deputy Secretary

Mr Lembit Suur, First Assistant Secretary, Governance and Public Management

Mr Robert Antich, Assistant Secretary, Risk, Insurance and Special Claims Branch

Ms Thea Daniel, Assistant Secretary, Governance and Public Management Reform Taskforce

Mr Neil Robertson, Assistant Secretary, Governance and Public Management Reform Taskforce

Mr John Sheridan, Chief Technology and Procurement Officer

Ms Radmilla Ristic, Director

Australian National Audit Office

Mr Ian McPhee, Auditor-General

Dr Anastasios (Tom) Ioannou, Group Executive Director, Performance Audit Services Group

Mr Russell Coleman, Audit Principal

Australian Public Service Commission

Mr Stephen Sedgwick, Public Service Commissioner

Ms Stephanie Foster, Deputy Public Service Commissioner

Ms Karin Fisher, Group Manager Ethics

Australian War Memorial

Ms Leanne Patterson, Chief Finance Officer

Statutory Research and Development Corporations

Mr Graeme Tolson, General Manager Business and Finance, Cotton Research and Development Corporation

Mr Jeffrey Derix, General Counsel and Corporate Secretary, Grains Research and Development Corporation

CSIRO

Mr Michael (Mike) Whelan, Deputy Chief Executive, Operations

Indigenous Business Australia

Mr Christopher Fry, Chief Executive Officer

Ms Kirsty Gowans, General Counsel

UnitingCare Australia

Dr Ian Holland, Director, Services Development

Mr Joe Zabar, Director, Services Sustainability