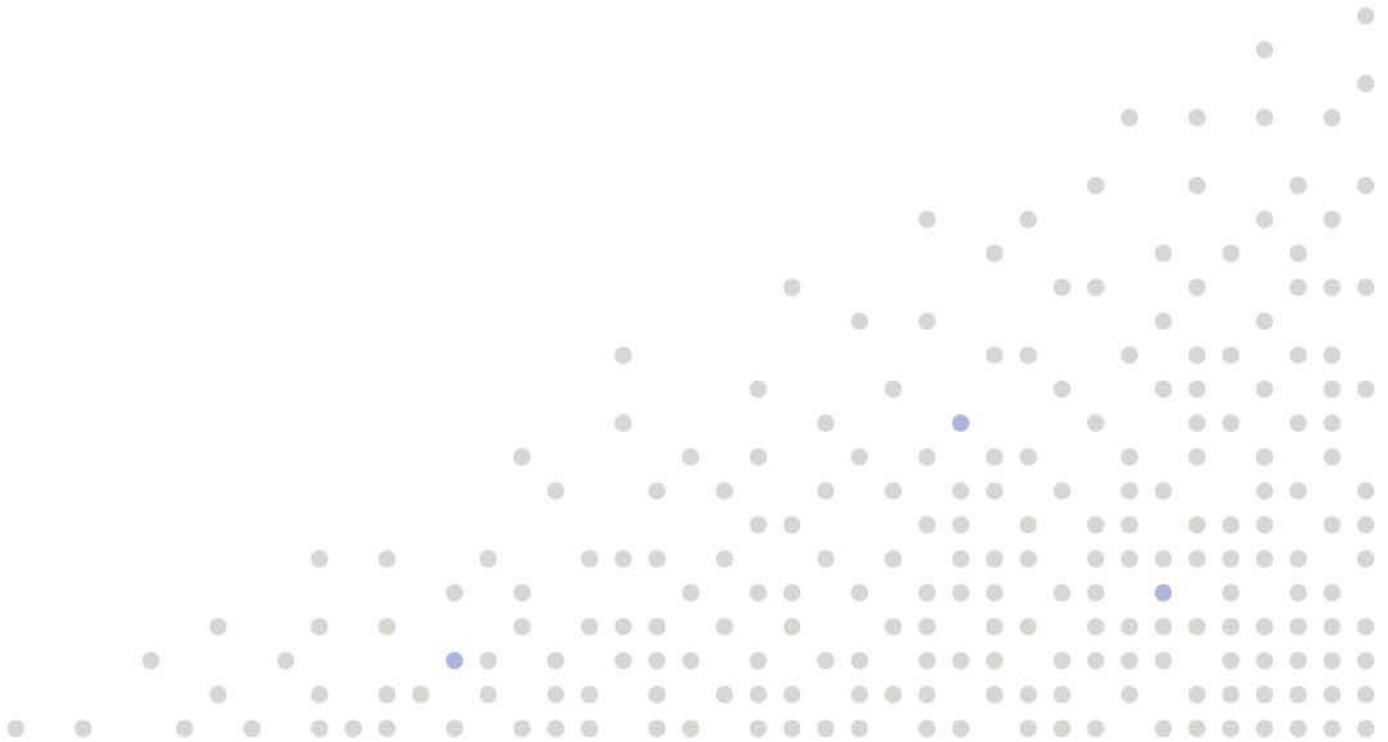




Australian Government
Department of Finance



Department of Finance

Submission to the
Joint Committee of Public Accounts and Audit
Inquiry into probity and ethics in the Australian Public Sector

August 2023

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Introduction

1. The Department of Finance (Finance) welcomes the opportunity to provide a submission to the Joint Committee of Public Accounts and Audit's Inquiry into probity and ethics in the Australian Public Sector.
2. This submission provides a summary of:
 - a) the finance law and the Resource Management Framework including duties of accountable authorities and officials;
 - b) annual reporting requirements;
 - c) the requirements of the Commonwealth Grants, Rules and Guidelines;
 - d) the requirements of the Commonwealth Procurement Framework; and
 - e) information on Finance's stewardship of these frameworks, including support to accountable authorities and officials of Commonwealth entities and communication fora.

Finance Law

3. Commonwealth finance law is comprised of:
 - a) the *Public Governance, Performance and Accountability Act 2013* (PGPA Act);
 - b) Rules made under the PGPA Act, the Public Governance, Performance and Accountability Rule 2014 (PGPA Rule) and the Public Governance, Performance and Accountability (Financial Reporting) Rule 2015;
 - c) any instrument made under the PGPA Act including the Commonwealth Procurement Rules, the Commonwealth Grants Rules and Guidelines and Accountable Authority Instructions; and
 - d) Appropriation Acts.

Resource Management Framework

4. The Commonwealth resource management framework governs how officials, including accountable authorities, in the Commonwealth public sector use and manage public resources. The cornerstone of the framework is the PGPA Act.
5. An accountable authority is the relevant secretary, chief executive or governing board that fulfills the role of governing an entity. Under the PGPA Act, the accountable authority of a Commonwealth entity has a duty to govern the entity in a way that:
 - a) promotes the proper use and management of public resources for which the authority is responsible;
 - b) promotes the achievement of the purposes of the entity; and
 - c) promotes the financial sustainability of the entity.
6. In this context, proper is defined by the PGPA Act as the efficient, effective, economical and ethical use or management of public resources.

7. Under the PGPA Act, officials, who are in or form part of a Commonwealth entity, must exercise powers and perform functions with a duty:
 - a) of care and diligence;
 - b) to act honestly, in good faith and for a proper purpose;
 - c) in relation to use of position;
 - d) in relation to use of information; and
 - e) to disclose interests.
8. The accountable authority has a duty to keep the responsible Minister and Finance Minister informed in respect to the entity, including notifying of any significant issue that has affected the entity (under section 19(1)(e) of the PGPA Act). This includes significant non-compliance with the finance law.

Annual Report

9. Transparency and accountability in respect to this section 19 duty is maintained through the requirement to report the following in the entity annual report:
 - a) a statement of any significant issue reported to the responsible Minister under section 19(1)(e) of the PGPA Act.
 - b) information on significant developments during the reporting period in respect to external scrutiny of the entity, and the entity's response to that scrutiny. This includes scrutiny by the Auditor-General, Parliamentary Committees and the Commonwealth Ombudsman. It also includes reporting of judicial decisions, decisions of administrative tribunals or the Australian Information Commissioner, where they have had a significant effect on the operations of the entity.
10. Non-corporate Commonwealth entities (NCEs) and corporate Commonwealth entities (CCEs) are bound by the fraud rule (under section 10 of the PGPA Rule), which requires the accountable authority to take all reasonable measures to prevent, detect and deal with fraud relating to the entity.
11. NCEs are also bound by the Attorney-General's Fraud Policy, which supports accountable authorities to effectively discharge their responsibilities under the Fraud Rule. CCEs are encouraged to consider Fraud Policy as better practice.
12. NCEs are required to report information on compliance with the fraud requirements in their annual report, including by certifying compliance or exceptions to compliance.

The Commonwealth Grants Rules and Guidelines

13. The Commonwealth Grants Rules and Guidelines (CGRGs) establishes the Commonwealth grants policy framework. The CGRGs apply to grants administration performed by ministers, accountable authorities, officials and third parties that undertake grants administration on behalf of the Australian Government. The CGRGs provide accountable authorities and officials with flexibility to develop and implement grant administration processes that are best suited and proportional to the specific granting activities, while maintaining accountability, probity and transparency. Officials must have regard to the key principles set out in the CGRGs.
14. One of the principles is 'Probity and transparency'. The CGRGs provide that probity relates to ethical behaviour. Establishing and maintaining probity involves applying and complying with the duties of officials as required by the PGPA Act sections 25-29.

The Commonwealth Procurement Framework

15. The Commonwealth Procurement Framework is a key enabler for the government to achieve its priorities in supporting Australian citizens and to advance Australia's national interests.
16. Procurement under the Commonwealth Procurement Rules (CPRs) is both expansive and diverse. It is used to source the broad range of goods and services required to support administration of Commonwealth entities and deliver outcomes and services to the Australian public.
17. The Commonwealth Procurement Framework requires officials undertaking procurement to act ethically throughout the procurement process including recognising and dealing with conflicts of interest.
18. The CPRs require that procuring officials not seek to benefit from dishonest, unethical or unsafe supplier practices and should seek confirmation from tenderers that they do not have unsettled judicial orders against them.
19. Officials can exclude a potential supplier's tender response from consideration on various grounds, including if the supplier's practices are dishonest, unethical or unsafe. Examples of dishonest, unethical or unsafe supplier practices may include tax avoidance, fraud, corruption, exploitation, unmanaged conflicts of interest and modern slavery practices.

Finance's stewardship role

20. Finance's stewardship approach supports Commonwealth entities to meet the requirements of the Resource Management Framework.
21. Finance does this by working across 189 Commonwealth entities to educate, inform and provide advice using a number of mechanisms as set out below.

Support for accountable authorities

22. The Finance Secretary writes to all new accountable authorities to advise them of their duties and responsibilities under the PGPA Act. This is supplemented by the offer of face-to-face briefings, which are commonly accepted by new accountable authorities.
23. Finance's engagement with new accountable authorities supports entities to build and strengthen governance and accountability by supporting and equipping accountable authorities to understand their duties in governing their entity and the duties of the officials of the entity.
24. In 2022-23, 36 new accountable authorities were provided with advice and 15 requested face-to-face briefings.
25. The [New Entity Startup Guide](#) provides information to a new accountable authority and officials where they are establishing a new entity. That guidance covers resource management activities such as accommodation, staffing, IT and security, risk and insurance and information management. Finance has worked closely with 12 entities, including the Australian Public Service Commission, to deliver that service and contact information, which helps new Commonwealth entities can implement comprehensive resource management systems early.

Resource Management Guides

26. Finance provides and maintains a suite of [Resource Management Guides \(RMGs\)](#) to support accountable authorities and officials to meet the requirements of the Resource Management Framework.
27. [RMG 200](#) is specific to accountable authorities, providing information on their duties and legal obligations under the PGPA Act, actions they need to take and the governance and accountability mechanisms they need establish and maintain.
28. The RMGs are reviewed and updated to reflect changes in government policy or finance law, to take account of recommendations made by Parliamentary Committees and ANAO Reports and highlight better practice examples to support entities.
29. A digital first approach to guidance is used to ensure entities can access the latest guidance at all times.
30. Issue specific guidance, supporting material and tools and templates are also provided on the Finance website for [grants](#) and [procurement](#).

Communities of Practice and other forums

31. Finance facilitates a range of Community of Practice forums on specific issues including grants, procurement and contract management and non-financial performance reporting. Sessions are run on a regular basis.

32. Finance also facilitates a number of other forums to engage with officials on specific issues including a the cross-agency Grants Framework Working Group and the Chief Procurement Officers Roundtable.
33. Other forums include regular information sessions and tailored presentations to individual entities based on their needs.

PGPA Newsletters

34. [PGPA Newsletters](#) are distributed regularly and published online. These newsletters advise officials of PGPA framework matters, including those relating to grants and procurement.
35. There around 3,500 subscribers to the newsletter across the Commonwealth.

Conclusion

36. Built into the Finance stewardship approach is the ongoing review of the way we work with entities to support them in meeting the requirements of the Resource Management Framework. This is informed by learnings from Committee and audit activity and feedback from the various forums Finance facilitates or is engaged with.