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24 March 2014

Mr David Brunoro  
Secretary  
Joint Committee of Public Accounts and Audit  
Parliament House  
CANBERRA ACT 2600

**BY EMAIL:** [jcpaa@aph.gov.au](mailto:jcpaa@aph.gov.au)

Dear Mr Brunaro

**INQUIRY INTO PUBLIC GOVERNANCE, PERFORMANCE AND ACCOUNTABILITY  
ACT 2013 RULES DEVELOPMENT: SUBMISSION ON BEHALF OF NAMED  
STATUTORY RDCS**

**1. Background**

- 1.1 The Joint Public Accounts and Audit Committee (**JCPAA**) is currently inquiring into the development of the rules to be made under the *Public Governance, Performance and Accountability Act 2013 (PGPA Act)*. The JCPAA is considering the process for the development of the rules, the impact of the rules, and the purpose of the rules in the context of Public Management Reform Agenda.
- 1.2 Cotton Research and Development Corporation (**CRDC**), Fisheries Research and Development Corporation (**FRDC**), Grains Research and Development Corporation (**GRDC**), Grape and Wine Research and Development Corporation (**GWRDC**) and Rural Industries Research and Development Corporation (**RIRDC**) (together the **Statutory RDCs**) are Commonwealth statutory research and development corporations established under the *Primary Industries Research and Development Act 1989 (PIRD Act)*. The Statutory RDCs are significantly impacted by the Public Management Reform Agenda and have participated extensively in the consultation process relating to the introduction of the PGPA and the development of the rules.
- 1.3 The Statutory RDCs have considered the submission by the Department of Finance to the JCPAA dated 5 March 2014, including an exposure draft of the Rules (**Exposure Draft Rules**), as well the two supplementary submissions dated 18 March 2014.
- 1.4 The Statutory RDCs wish to take this opportunity to compliment the Department of Finance on its engagement in this important process and on the quality of the information it has provided and to make the following submissions to the JCPAA with reference to the Exposure Draft Rules.

1.5 This submission has been coordinated by CRDC in consultation with the other Statutory RDCs and is submitted with their approval.

## 2. Summary

2.1 The Statutory RDCs seek amendments to, or clarification of, the Draft Exposure Rules as follows:

- (a) Exposure Draft Rule 14(4): replace “The official must ensure that the disclosure is recorded in the minutes of the meeting” with “The disclosure must be recorded in the minutes of the meeting”;
- (b) Exposure Draft Rule 16: confirm that the term “instructions” encompasses internal policies of a corporate Commonwealth entity;
- (c) Exposure Draft Rule 17(4): clarify that the term “employee” does not include a member of the relevant accountable authority of a corporate Commonwealth entity;
- (d) Exposure Draft Rule 18(1): amend the rule so that rule 18(1) does not apply to corporate Commonwealth entities; and
- (e) Exposure Draft Rules 19-21: reinsert the exception that an official of a Commonwealth entity who receives relevant money is not required to bank the money, when the banking of the money, in the opinion of the relevant accountable authority, is uneconomical.

2.2 The Statutory RDCs encourage further consideration of the implementation of the concept of earned autonomy.

## 3. Exposure Draft Rules 12-16: Officials’ duty to disclose interests

3.1 The Statutory RDCs note Exposure Draft Rule 12, which sets out the circumstances in which section 29(1) of the PGPA Act does not apply (generally reflecting the provisions of section 27F(2) of the *Commonwealth Authorities and Companies Act 1997 (CAC Act)*). The inclusion of this Exposure Draft Rule is consistent with the submission made by the Statutory RDCs to the Department of Finance in January 2014 and is a welcome change.

3.2 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).

3.3 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 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.

**4. Exposure Draft Rule 17: Audit committee for Commonwealth entities**

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).

**5. Exposure Draft Rule 18: Approving commitments of relevant money**

5.1 The Statutory RDCs expressed concern in their submission to the Department of Finance in February 2014 about the requirement to record “proposed expenditure” in writing. Although the wording in the Exposure Draft Rule is different (it now refers to “commitment of relevant money”) and the Statutory RDCs’ concerns in this regard remain.

5.2 The Statutory RDCs understand that the intention is for this rule to formalise what takes place in practice. However, there are various circumstances where a Statutory RDC may not grant approval prior to making a commitment for a specific item or for a specific amount in writing and the rule lacks clarity on the level at which the approval must occur. For example, a Statutory RDC may engage a supplier to perform a particular task on an on-going basis (for example a telecommunications provider). The engagement may be approved in writing but the specific amount is not necessarily approved, except by payment of the invoice. The Statutory RDCs are concerned that this Exposure Draft Rule may, in effect, 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. The working draft of the Resource Management Guide on Approval and commitment of relevant money issued by the Department of Finance and dated 13 March 2014 gives some comfort in relation to this issue but it does not provide the clarity which the Statutory RDCs seek on this issue.

5.3 The Statutory RDCs regulate expenditure in accordance with:

- (a) their obligations under the *Primary Industries Research and Development Act 1989* (see for example section 33); and
- (b) internal policies, which reflect the broad obligations under sections 15 and 16 of the PGPA Act (that is, that the accountable authority must govern in a way that promotes proper use and management of public resources and must establish and maintain appropriate systems of risk control).

5.4 Otherwise, there are no prescriptive controls of procedures for commitments and expenditure and it is the understanding of the Statutory RDCs that this has not resulted in unsatisfactory outcomes from any perspective.

5.5 As stated in the Department of Finance’s statement of Public Management Reform Agenda Key Principles, “Compliance requirements should focus on areas of high risk, without prescribing procedures that are better addressed

through internal controls.” In our view, this Exposure Draft Rule does not target an area of high risk and therefore it ought not apply to corporate Commonwealth entities at all.

- 5.6 We therefore propose that the Exposure Draft Rule be amended by inserting a new sub-rule:

“Rule 18(1) does not apply to corporate Commonwealth entities.”

- 5.7 Alternatively, we seek clarification within 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.

**6. Exposure Draft Rules 19 - 21: Banking of bankable money received by officials**

- 6.1 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”.

- 6.2 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.

**7. “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.

**8. Conclusion**

Correspondence in relation to this submission should be addressed to the writer on behalf of the Statutory RDCs.

Yours sincerely



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General Manager Business & Finance