

NATIONAL CONGRESS
OF AUSTRALIA'S FIRST PEOPLES

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Inquiry Secretary
Joint Committee of Public Accounts and Audit
PO Box 6021
Parliament House
Canberra ACT 2600

Dear

Thank you for the invitation to the National Congress of Australia's First Peoples to provide comments to the Joint Committee of Public Accounts and Audit regarding the *Public Governance, Performance and Accountability Bill 2013*.

About the National Congress of Australia's First Peoples

The National Congress of Australia's First Peoples (Congress) is a national representative body for Aboriginal and Torres Strait Islander Australians. Congress is an independent national voice, a leader, an advocate, and a source of advice and expertise for First Peoples. Drawing strength from culture and history, Congress aims to bring equality, freedom, opportunity and empowerment to all First Peoples. Founded in 2010 and guided by traditions of unity, democracy and culture, Congress is owned and controlled by its membership and is independent of Government.

Congress acknowledges and pays respect to our ancestors, our Elders and all traditional owners of this ancient land.

The *Public Accounts and Audit regarding the Public Governance, Performance and Accountability Bill 2013*

As Congress is a company limited by guarantee, and not a Commonwealth entity as defined in the Bill, we believe we are not directly affected by the majority of this Bill.

However, as a recipient of Commonwealth Government funding, Congress expects that we may come within the ambit of Clause 18 of the Bill which – according to the Bill's Explanatory Memorandum – places a positive duty on Government agencies to consider the compliance, reporting and other obligations they impose on recipients of public resources. Congress further considers that many of our member organisations would similarly be subject to this provision, once enacted.

Congress would therefore like to provide comment in relation to the drafting and potential impact of Clause 18 of the Bill, specifically in relation to how it may impact on Congress, and more generally as it may apply to Aboriginal and Torres Strait Islander community organisations.



Drafting issues

Clause 18 provides:

18 Duty in relation to requirements imposed on others 9

When imposing requirements on others in relation to the use or management of public resources for which the accountable authority of a Commonwealth entity is responsible, the accountable authority must take into account:

- (a) the risks associated with that use or management; and*
- (b) the effects of imposing those requirements.*

Congress notes that "others" is not defined within the Bill, but that Explanatory Memorandum states that "Others should be interpreted broadly. It includes other Commonwealth entities, other jurisdictions, and other public and private bodies and organisations including in the not-for-profit sector." (para 144)

Given the very broad range of Aboriginal and Torres Strait Islander community organisations and projects in receipt of Commonwealth funding, Congress suggests that the Bill could benefit from the inclusion of a clear definition of this term to ensure that there is greater clarity around those entities that clause 18 is intended to apply to.

We also note that clause 18 as currently drafted is very broadly worded. While the Explanatory Memorandum states that this provision "places a positive duty on an accountable authority to ensure that the compliance, reporting and other obligations imposed on others in relation to the use or management of public resources must take into account the risks associated with that use or management" and that the "clause aims to encourage accountable authorities to think carefully about unnecessary administrative requirements that their entity imposes in its individual relationships with other parties" (para 147) we do not believe the provision as currently drafted reflects these intentions and could in the future be utilised in an unintended manner, to in fact place greater burdens on organisations.

Congress notes that no provision, similar to proposed clause 18, appears to exist in either of the Acts underpinning the Commonwealth's current financial framework: the Financial Management and Accountability Act 1997 (FMA Act) and the Commonwealth Authorities and Companies Act 1997 (CAC Act). As such, there is no precedent which can be referred to for guidance on how this provision may operate in practice. We suggest that further detailed guidance will need to be developed to ensure that the intention of the provision can be met.

Implementation issues

Congress currently receives funding through two Commonwealth agencies, the Department of Families and Housing, Community Services and Indigenous Affairs (FaHCSIA) and the Department of Health and Ageing (DoHA).

Following introduction of the Bill on 16 May, Congress sought urgent advice from both agencies about the likely impact of clause 18 on Congress' future funding deeds, particularly in relation to compliance, reporting and other obligations. Unfortunately both agencies advised that they were unable to provide this advice within the short timeframes necessary for Congress to provide this comment to the Committee.

FaHCSIA referred Congress to the Department of Finance and Deregulation (DoFD) who advised that clause 18 was intended to reduce rather than increase the reporting and compliance burden on



organisations, and drew our attention to the Explanatory Memorandum, which suggests that one of the outcomes of the reforms would be to “reduced red tape within government and for partners who contribute to the delivery of Australian government programs and services, including grant recipients.” (para 18) While we welcome this intent, in the absence of advice from the agencies we work with, we presently have no way of assessing whether this Bill will achieve this end.

We have also been advised by DoFD that this issue was specifically discussed during the Committee’s hearings on 24 May 2013. Unfortunately, at the time of writing, the transcript from the hearing was not available.

Notwithstanding the consultation process that has occurred since December 2010 as part of the Commonwealth Financial Accountability Review, it is regrettable that the legislative process for this Bill appears to be extremely rushed. Consequently stakeholders have not been provided with requisite time to consider and respond to the issues involved, and Government departments who will be required to implement the provisions have not had sufficient time to consider how they will work in practice in relation to their key stakeholders.


These concerns are equally valid in relation to Congress, our member organisations and other Aboriginal and Torres Strait Islander community organisations and projects.

As the Committee is aware, Congress has previously raised our significant concerns with the manner in which Government agencies administer their funding grants to Aboriginal and Torres Strait Islander community organisations and service providers. In particular, our March 2013 submission to the Committee – in relation to its *Review of Auditor-General’s Reports Nos. 2 to 10 (2012–13) and related reports* – highlighted the adverse impact of short term contracts and funding agreements; the problems associated with stop-start funding; the burden of reporting and compliance mechanisms on community organisations; and the need for stronger governance structures – including mechanisms for accountability and evaluation, performance monitoring and reporting – attached to Government programs and service delivery. Our submission is available at <http://nationalcongress.com.au/wp-content/uploads/2013/04/Congress-Statement-Joint-Committee-Public-Accounts-Audits.pdf>

If these are the sorts of changes envisaged by the current reform agenda and this Bill, then they will certainly improve the experience of Aboriginal and Torres Strait Islander community organisations and service providers in their interaction with Government agencies.

Congress again thanks the Committee for seeking our views in relation to the *Public Governance, Performance and Accountability Bill 2013*.

Yours sincerely

 LINDON COOMBS
CEO

