



Dissenting Report—Coalition Members

Public Governance, Performance and Accountability Bill 2013

Dissenting Report from Coalition Members

The Joint Committee of Public Accounts and Audit Committee has been asked to inquire whether the creation of the Public Governance, Performance and Accountability Bill 2013 will impose additional and unnecessary reporting requirements on bodies subject to the Act and whether the application of this new Act will reduce transparency or remove important oversight where appropriate. While recognising the extensive consultation that has been undertaken as part of the broader Commonwealth Financial Accountability Review (CFAR), Coalition members are concerned that undue haste in securing Parliaments approval of the Bill may overshadow legitimate hesitations about the whether the time allowed for consultation over the Bill has been sufficient to ensure the practical implications of the new approach are fully understood.

Further, widespread concerns have been raised that none of the proposed Rules contemplated to give effect to the principles detailed in the Bill were able to be presented to the Committee in draft form during its deliberations or to agencies across Government.

Coalition members note the assurances provided by the Minister for Finance and Deregulation to the Committee regarding the development, scrutiny and finalisation of the Rules.

Coalition members are of the view that priority should be given to achieving precision in the Bill rather than securing a hasty approval by Parliament and that reform of this magnitude should proceed only after widespread endorsement for the Bill has been secured.

Coalition members believe the inquiry process has revealed sufficient caution on the part of a number of prominent agencies directly responsible for implementation and oversight of the administration of the Commonwealth's financial affairs.

In particular, Coalition members note the cautious attitude of the Auditor-General and the Australian Public Service Commissioner (APSC) about whether the Bill has undergone the necessary detailed review and consultation.

The Auditor General stated in evidence:

I normally appear before this Committee and give a fairly high level of assurance with respect to the work of my office. I am saying today to you ... that is not that same high level of assurance. I am giving you what an auditor would call limited assurance.¹

1 Mr Ian McPhee, Auditor-General, *Proof Committee Hansard*, Canberra, 24 May 2013, p. 12.

He added:

We would feel more comfortable with this legislation if the Bill had been subject to a more open process, given the number of entities and officials affected by it and because of the fundamental importance of the legislation ... We have also had no visibility of the complementary rules which, together with the legislation, will establish the Commonwealth's financial management framework and contribute significantly to it. For these reasons, our support for the legislation is more measured than it may have been under different circumstances and with more time.²

He echoed this concern at the Senate Estimates hearings the following week:

... some more time for consultation in respect of the draft Bill would have been, I think, helpful to increase the awareness of proposals within it and to bring everyone on board with the new approach.³

The APSC has stated in evidence to the Committee:

The Public Service Commissioner is sympathetic to the Auditor-General's view that it would have been preferable if the Bill had been subject to a longer exposure process, given the number of entities and officials affected by it and because of the fundamental importance of the legislation. It is to be hoped that the associated draft Rules will be made available for scrutiny at the earliest possible date.⁴

Coalition members note the Explanatory Memorandum states that one of the 'long lasting benefits' of the Bill is to deliver 'reduced red tape within the Commonwealth and for partners who contribute to the delivery of Australian Government programs and services, including grant recipients'. In this regard, Coalition members note further evidence from the Auditor General:

... The ANAO considers that the Bill provides less obvious support for achieving reforms in other areas, particularly in the areas of joined-up government (to better accommodate the concepts of collective responsibility and multiple accountabilities), and reducing red tape, including the compliance burden.⁵

and

In this latter respect, it is noteworthy that one of the key features of the Bill is that a range of duties are imposed on both

2 Mr Ian McPhee, Auditor-General, *Proof Committee Hansard*, Canberra, 24 May 2013, p. 11.

3 Mr Ian McPhee, Auditor-General, *Finance and Public Administration Committee Senate Estimates Hansard*, 28 May 2013, p. 24.

4 Australian Public Service Commission, *Submission 17*, p. 1.

5 Australian National Audit Office, *Submission 8*, p. 3.

accountable authorities and officials. For accountable authorities and officials, many of these, while not unreasonable, are additional to existing obligations reflected in the FMA and CAC Acts.⁶

The Coalition does not agree with comments from the Department of Finance that delay in the passage of the Bill will result in the benefits of the reform not being realised. Instead, a proper analysis of the full benefits and costs of the new approach to financial management can only be accurately understood following consideration of the Rules. To do so will require that the Rules be released for public consultation.

Coalition members draw attention to comments of the Auditor General that a delay in passage of the legislation would not undermine the future benefits of the reform.

There are no glaring issues that I am aware of at the moment that absolutely need to be dealt with in the next few months, rather than the next 12 months.⁷

Further, the Explanatory Memorandum clearly states 'the reforms will take several years to implement and integrate fully into the practices and processes of Commonwealth entities. Gradual introduction of the reforms will ensure they are appropriately tested and refined in light of experience.'

Coalition members are of the view that further consultation over a defined period would significantly enhance the benefits of reform by allowing for the refinement, enhancement and improvement of the Bill.

Coalition members recognise that successive Parliaments have endorsed the increasing use of 'Principles based' legislation where the Principles are delivered through the use of Rules and Regulations that are often developed and scrutinised after the passage of legislation.

However, we do not accept the statement in the Committee Report that:

Although some stakeholders may argue that the rules should be available for scrutiny at the same time as the legislation, the committee understands this is often impractical and sometimes undesirable.

Given this Bill is designed to drive significant financial reform across the bureaucracy, a more prudent approach would have been to adopt a more integrated approach to the development of the Bill and its accompanying Rules.

On this point, Coalition members agree with the sentiments of the Australian Institute of Company Directors which noted in private correspondence:

When governments are considering new laws, there should be appropriate consultation and full transparency of all aspects of the

6 Australian National Audit Office, *Submission 8*, p. 3.

7 Mr Ian McPhee, Auditor-General, *Proof Committee Hansard*, Canberra, 24 May 2013, p. 14.

proposal, including for associated regulations. This will ensure that issues of principle, unintended consequences and practical problems can be identified and addressed.

Recommendations

Coalition members are strongly of the view that financial reform of the magnitude proposed by the Bill should only proceed with bipartisan support of Parliament and with the widest possible endorsement across government.

Given the absence of bipartisan agreement on the extent of consultation on the Bill and the reservations of the Auditor General and the Australian Public Service Commissioner the Bill should not proceed without a further 6 months consultation period.

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 APSC.

If the Parliament passes the Bill before 30 June, Coalition members require:

- (a) the commitments made by the Minister for Finance and Deregulation in the correspondence of 28 May 2013 be closely monitored; and
- (b) a progress report on the development and drafting of the Rules be made available to the JCPAA by both the Department of Finance and the ANAO by 30 November.

Senator Dean Smith

Senator Anne Ruston

Mr Josh Frydenberg MP

Mr Jamie Briggs MP

Hon Alex Somlyay MP