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Joint Committee of Public Accounts and Audit
Department of the House of Representatives
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Via email

SUBMISSION – PUBLIC GOVERNANCE, PERFORMANCE AND ACCOUNTABILITY BILL 2013

The governance of the public sector in Australia is a product of both the formal rules framework and the informal sets of norms and expectations within public sector organisations. While legislation cannot hope to encompass all aspects of governance, it is vitally important. Along with the *Public Service Act 1999,* the *Financial Management and Accountability Act 1997 (FMA)* and the *Commonwealth Authorities and Companies Act 1997 (CAC)* are among the most important pieces of governance legislation for most public service agencies.

For this reason, there is a need for careful scrutiny of the present Bill that proposes to replace the key legislative underpinnings of financial governance.

It is worth reminding the JCPAA that the processes to replace the *Audit Act 1901* with the FMA and CAC Acts took around a decade. They involved a number of hearings of the JCPAA, open consultation, submissions from many Commonwealth departments and agencies, and detailed consideration of the pros and cons. The current Bill deserves the same sort of consideration, not a rushed process.

While the Bill arises out of the Commonwealth Financial Accountability Review (CFAR), the two public documents issued in that process (a Discussion Paper and then a Position Paper) contained various options. It was a set of high level principles rather than a substantive set of proposed framework changes – which the Position Paper itself notes (p4 - "…the reforms proposed in this paper are largely principles-based, with flexibility…").

The principles are of themselves good ones. The CAC/FMA distinction is no longer particularly useful in the current working environment for public sector agencies; clarity around public monies is desirable; and public sector agencies should definitely be engaging with risk rather than (as at present) mismanaging by seeking to avoid risks rather than manage them.

The key question is whether the present Bill translates those principles effectively.

Provisions in relation to finances themselves are covered well in the Bill (eg Part 2-4, 2-5, Chapter 3). Where the Bill is less specific, primarily in relation to accountability and performance, it is weak. The approach in the Bill is to leave the details up to Rules to be promulgated by the Finance Minister.

Centralised power

The introduction of as yet unspecified rules to give effect to the governance framework relies on a heroic assumption that the Finance Minister (and her/his department) in future will put in place a

set of rules that fosters good governance, rather than unnecessary checking procedures and pettifogging compliance.

The Bill is not reassuring on this score. For example the requirement that all agencies have to prepare a Corporate Plan (35 (1) a)) and provide it to the Finance Minister "in accordance with any requirements prescribed by the rules" (35(1) (b) and 35 (2)) introduces a level of centralised control by the Finance Minister that has not been seen before – although at present there are regulations that govern what needs to be included in the corporate plans of a sub-set of agencies, those classified as Government Business Enterprises. The practical outcome of this new approach will be to give the Finance department greater control over the workings of all Commonwealth agencies. The question is whether this level of power will be exercised responsibly.

This is not a reflection on any people currently working in that department, but the underlying incentives they work under. This Bill if enacted would give an unprecedented level of power and control to any future Finance Minister. Australia's system of governance, in accordance with long established constitutional principles, has established checks and balances over centralised power. It would be helpful for the JCPAA to ask for submissions on this matter.

Earned autonomy

Earned autonomy is conceptually attractive. It was the basis, for example, of reforms to schools management that I recommended in my review for the ACT government of schools based management. However, earned autonomy works best in situations such as that one where like bodies can be compared and the basis on which autonomy is earned – that is, the criteria that are applied –are both transparent and verifiable.

This approach, including verification, is more problematic where there are very different bodies with different objectives to be compared. How is the performance of a large department of state to be compared with that of a small regulatory body? What determines whether the former has 'earned' more autonomy than the latter?

If earned autonomy is reliant on the subjective judgment of advisers to the Finance Minister delivered with no scrutiny or oversight, then it opens up the possibility of capricious and unfair treatment of different agencies. Earned autonomy will only work if the criteria are transparent, discussed openly, and the basis for judgements revealed. The Bill provides for different rules for different agencies (s101 (2) (b)) but is silent on how this rule making power will be exercised. Before endorsing an earned autonomy approach, the JCPAA should seek information on the criteria on which it will be based.

Evaluation

The Explanatory Memorandum (p7) indicates that the Bill will put in place a requirement for agencies to undertake "effective monitoring and evaluation". That would be a good thing. However I cannot find any mention of evaluation in the Bill. The JCPAA might consider recommending including a reference to evaluation, and a requirement that independent evaluations of program and agency performance be carried out periodically and the results published. At present evaluation is presumably covered under the general heading of performance in Division 3, which indicates (s38)

that an accountable authority "must measure and assess the performance of the entity in achieving its purposes". It may be worth the JCPAA clarifying this.

I note that this is a commendable phrasing of why an entity should provide information – it is to measure performance against purposes, the objectives that entity is established and funded to achieve. That has been the objective of current and past performance measurement systems in the Commonwealth, but worth reinforcing in legislation.

Summary

This Bill contains a large number of other provisions that fundamentally change governance in the Commonwealth. The Explanatory Memorandum indicates that "Commonwealth entities have provided positive feedback about the direction of the reforms" but this feedback has not been published. The public service is too important to Australia to be reformed without more open and searching investigation of the issues. The JCPAA should seek a remit to conduct such an inquiry.

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Disclaimer: This submission represents my personal views, and is not a view of any organisation for which I work or with which I am associated. It is based on my experience in the field of public sector governance. Prior to my present work I was Professor of Governance and Director of the National Institute of Governance at the University of Canberra, and before that a Deputy Secretary and head of Budget Group in the Finance department.