



fact sheet

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Public Governance, Performance and Accountability Act 2013 – what are the key changes for Commonwealth companies?

The *Public Governance, Performance and Accountability Act 2013* (the PGPA Act) creates a new framework covering governance, accountability, performance and the use of resources across Commonwealth bodies currently governed by the *Commonwealth Authorities and Companies Act 1997* (the CAC Act) and the *Financial Management and Accountability Act 1997* (the FMA Act).

Sections 1 to 5 of the PGPA Act commenced operation on 1 July 2013. The remainder of the provisions of the PGPA Act (that is, those provisions that will impose substantive obligations on Commonwealth bodies) will not commence operation until 1 July 2014 or another date fixed by proclamation. When its substantive provisions commence operation, the PGPA Act will replace the CAC Act and the FMA Act.

Importantly, much of the detail of the legislative framework will be contained in rules made by the Finance Minister under the PGPA Act. Those rules, which are yet to be made, will be critical in determining the scope and operation of the legislation.

This fact sheet describes in very general terms:

- key changes the PGPA Act will make for Commonwealth companies
- key issues the rules to be made under the PGPA Act may deal with that are particularly relevant to Commonwealth companies.

The fact sheet contains general information only and should not be relied upon as an exhaustive guide to the operation of the PGPA Act.¹

A large number of provisions of the PGPA Act will apply to 'Commonwealth entities' (which will include 'corporate Commonwealth entities' such as most current CAC Act authorities, and 'non-corporate Commonwealth entities' such as most current FMA Act agencies) or to 'the Commonwealth'. Commonwealth companies will not be Commonwealth entities and are not the Commonwealth, so the provisions of the PGPA Act that apply specifically to Commonwealth entities and/or the Commonwealth will not apply to Commonwealth companies.

The PGPA Act also imposes a number of duties on the 'officials' and 'accountable authorities' of Commonwealth entities. These duties are not relevant to Commonwealth companies or their staff. Rather, the directors and officers of Commonwealth companies will be subject to the duties in the *Corporations Act 2001* (the Corporations Act), which will remain the principal regulatory framework for Commonwealth companies.

¹ Further general information about the PGPA Act and its development can be found in the revised explanatory memorandum to the Public Governance, Performance and Accountability Bill 2013.

However, Ch 3 of the PGPA Act will impose various obligations on Commonwealth companies. A ‘Commonwealth company’ is a Corporations Act company that the Commonwealth controls (other than a subsidiary of a Commonwealth company, a corporate Commonwealth entity or the Future Fund Board of Guardians – see s 89(1) of the PGPA Act).

Key changes

Under the PGPA Act:

- *Directors of wholly-owned Commonwealth companies will be required to keep the responsible minister and the Finance Minister informed (s 91)* – to some extent this provision reflects requirements currently in ss 40 and 41 of the CAC Act. However, s 40 of the CAC Act requires the directors of a wholly-owned Commonwealth company to notify the responsible minister if the company or any of its subsidiaries decide to do particular listed things (including forming a company; participating in the formation of a company; or participating in a significant partnership, trust, unincorporated joint venture or similar arrangement). In contrast, s 91 of the PGPA Act will require the directors to notify the responsible minister:
 - as soon as practicable after the directors make a ‘significant decision’ in relation to the company or any of its subsidiaries
 - if the directors become aware of any ‘significant issue’ that may affect the company or any of its subsidiaries
 - as soon as practicable after the directors become aware of any ‘significant issue’ that has affected the company or any of its subsidiaries.

The rules may prescribe matters relevant to the exercise of this duty – see the discussion of key issues that may be dealt with by the rules set out below.

- *All Commonwealth companies will be required to prepare a corporate plan (s 95)* – currently, only wholly-owned Commonwealth companies that are government business enterprises (GBEs) are required by the CAC Act to produce a corporate plan (s 42). Further, if a statement of the Australian Government’s key priorities and objectives is published under s 34 of the PGPA Act and the purposes of a Commonwealth company relate to those priorities and objectives, the corporate plan for the company must set out how the activities of the company will contribute to achieving the Government’s priorities and objectives.
- *Wholly-owned Commonwealth companies will be required to prepare budget estimates (s 96)* – currently, wholly-owned Commonwealth companies that are GBEs are not required to prepare budget estimates under the CAC Act (s 39).

What will not change much?

Under the PGPA Act:

- *the Finance Minister will have an express power to form, participate in forming and acquire shares in companies (s 85)* – a similar power was recently inserted in the FMA Act (s 39B)
- *wholly-owned Commonwealth companies will be required to have an audit committee (s 92)* – this provision will impose similar requirements to s 44 of the CAC Act
- *wholly-owned Commonwealth companies can be required to comply with government policy orders made by the Finance Minister (s 93)* – this section will impose similar requirements to s 43 of the CAC Act (which refers to orders made by the Finance Minister as ‘general policy orders’). One difference is that a government policy order will be able to apply to one or more wholly-owned Commonwealth companies.

- *a Commonwealth company must provide annual reports to the responsible minister (s 97)* – this section will impose similar requirements to s 36 of the CAC Act
- *the Auditor-General must either be the auditor for a Commonwealth company or give a report on its financial statements (s 98)* – this section will impose similar requirements to s 35 of the CAC Act
- *a subsidiary of a Commonwealth company must have its financial statements audited (s 99)* – this section will impose similar requirements to s 37 of the CAC Act.

Key issues that may be dealt with by the rules

The rules to be made under the PGPA Act will prescribe which Commonwealth companies are GBEs (the *Commonwealth Authorities and Companies Regulations 1997* currently do this). The rules may also deal with a range of other matters including:

- a Commonwealth company discharging its duty to keep the responsible minister informed, including matters to be taken into account in determining whether a decision or issue is 'significant' (s 91(2))
- the constitution and functions of an audit committee of a Commonwealth company (s 92(2))
- the content of a Commonwealth company's corporate plan, as well as how the plan must be published and given to the responsible minister and the Finance Minister (ss 95(1)(a), 95(2) and 95(4))
- the content of the annual report of a wholly-owned Commonwealth company (s 97(1)(b)).

The rules may prescribe matters in relation to a particular Commonwealth company or class of Commonwealth companies, or make different provision in relation to different Commonwealth companies or classes of Commonwealth companies (s 101(2)).

The Department of Finance and Deregulation (Finance) has advised AGS that it will develop the rules during 2013–14 and release draft rules for public consultation. We understand that Finance strongly encourages Commonwealth companies to assist it to finalise the rules by providing it with any comments they may have about the draft rules.

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