Independent Review of Whole-of-Government Internal Regulation

Report to the Secretaries Committee on Transformation

Volume 1

Recommendations

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INDEPENDENT REVIEW OF WHOLE-OF-GOVERNMENT INTERNAL REGULATION (BELCHER RED TAPE REVIEW)

REPORT TO SECRETARIES COMMITTEE ON TRANSFORMATION

August 2015

Executive Summary

The cooperation given to this review, and the activities already underway across the public sector to reduce regulation, suggest that entities aspire to, and are prepared to work for, a public sector freed of excessive regulation and risk aversion.

Four whole-of-government themes have emerged in the course of the review. There is evidence across the public service of:
  o over regulation;
  o inefficient regulation;
  o unclear and inaccessible regulations and guidance; and
  o a culture of risk aversion.

The review's recommendations likely to yield the greatest reduction in regulation, if adopted, are those that propose:
  o removing requirements for baseline security clearances for ongoing staff, relying instead on basic employment screening;
  o reducing unnecessary and duplicated information collection processes (such as *Public Governance, Performance and Accountability Act 2013* (PGPA Act) compliance certification, evaluations of external law firms under the Legal Services Directions and (if possible) the Harradine motion for reporting on file titles);
  o reducing duplicated work by moving to online, continuously updated reporting on contracts, grants, consultancies and appointments, and enabling users to analyse the data and generate reports;
  o reducing printing and design costs by moving to electronic tabling in Parliament, and reducing requirements for government documents that continue to be tabled in Parliament in hard copy;
  o streamlining investment and assurance processes to focus on higher risk projects and removing processes that encourage a 'check-a-box' mentality;
  o streamlining and reducing property, fraud and financial reporting requirements, with particular emphasis on benefits to small entities;
  o better targeting of Information and Communications Technology (ICT) benchmarking to focus on heavy users of ICT, and gathering minimal data from lighter ICT users;
  o clarifying mandatory requirements and better practice suggestions in guidance; and
  o encouraging the creation of sample templates, processes, contracts and guidelines for lower and higher risk activities and functions, particularly for internal processes for procurement and human resources.

I was asked to report on principles that might influence the creation and removal of regulations in the future.

I have recommended the adoption of Principles for Internal Regulation that would require regulation to be:
- o the <u>minimum</u> needed to achieve whole-of-government or entity outcomes
- o <u>proportional</u> to the risks to be managed and supportive of a risk-based approach
- o <u>coherent</u> across government and <u>not duplicative</u>
- o designed in <u>consultation</u> with stakeholders for <u>clarity and simplicity in application</u>, and
- o <u>reviewed</u> periodically to test relevance and impact.

If the Principles are incorporated as part of normal business practices, they should result in containment of new regulation and a more considered approach to the way regulation is imposed.

The review identified two distinctive directions in Commonwealth public administration-
- o the push towards removing prescriptive legislative controls and moving to principles and duties-based accountability arrangements under the PGPA Act and the *Public Service Act 1999* (PS Act), with corresponding strengthening of mechanisms for risk management and public accountability for performance, and

- o the increasing central direction over some corporate functions and decisions through shared and common services, the digital transformation agenda, low risk procurement contracts and whole-of-government purchasing arrangements, new reporting requirements such as monthly reporting to the Australian Public Service Commission (APSC) of unscheduled absences and consolidation of Enterprise Resource Management systems.

It will be important that the second of those directions in particular be guided by the Principles.

I am aware that Finance, as part of its Public Management Reform Agenda, is seeking to progress a framework for differential or risk-based regulation (earned autonomy) for resource management. That has the potential to help all entities and especially, I would hope, those entities whose size sees them struggling under current compliance obligations.

The last of the objectives in my terms of reference was an assessment of the culture of entities in relation to the creation and removal of self-imposed requirements.

In the course of the last year, many entities have begun to address the cultural problem that has seen decision-making rise to very senior levels and a consequential diminution of experience at middle management and lower levels. There is a continuing role for senior management in identifying a way of managing risk that encourages innovation and gives responsibility and experience in decision-making to future leaders in the public sector.

There is, similarly, a need to identify and remove the many unnecessary requirements entities place upon themselves either to avoid risk or because, over time, myths have replaced facts.

Report

Introduction

The Independent Review of Whole-of-Government Internal Regulation (the review) was commissioned by the Secretaries Board in March 2015 in response to a perceived burgeoning of regulation within the Commonwealth public sector.

I was soon aware that many relevant government policies were already being reviewed, while others with the potential to reduce regulation were in the process of being implemented. They included the deregulation and smaller government agendas as well as Australian Public Service (APS) Transformation initiatives and reforms in the areas of digital transformation, shared services and contestability. The review has benefitted from the work already done, as it has from the work undertaken by departments in identifying their own regulation.

These activities and the openness with which I was assisted across entities suggest a willingness, indeed eagerness, to be rid of the layers of process that currently exist.

There are barriers, however, created in part by an aversion to risk; inadequate consideration of alternatives to, or better ways to introduce, new regulation; and a failure to ask whether regulation, perhaps once needed, has simply become unnecessary clutter.

This report responds to the review's Terms of Reference (TORs – Attachment B) which required that I assess the need for, and impact of, regulations. Regulation was defined as referring to *"requirements that are mandatory for all or most entities, or guidance, practice or procedure that is treated as such".*[1]

The review objectives were to:
- identify regulations that can be ceased or modified;
- assess the need for, and impact of, regulations against a set of common principles;
- recommend minimum levels of regulation required for entities to meet the needs of government and the public; and
- assess the culture of departments and selected entities with regard to the creation and removal of self-imposed requirements, identify characteristics and examples of good culture and practice, and make recommendations for structural and cultural improvements which could be adopted by entities.

The report sets out my observations and recommendations across the range of externally imposed and self imposed regulation, and makes observations on culture in the APS as it relates to regulation.

I have kept in mind current fiscal constraints, but some recommendations would require funding or reallocation of resources. I have not focussed on identifying savings, though some recommendations, if fully implemented, might lead to savings in the short or long term.

Methodology

The TORs state that *"the over-arching principle for the review is that regulators prove that regulation is needed"*. The methodology was designed with this principle in mind and to allow me to meet the review's requirements, which were to:
- critically assess current regulatory arrangements;
- recommend the cessation, modification or retention of large blocks of regulation;

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[1] Regulations that apply beyond the public sector, for example taxation and privacy legislation, are beyond the scope of this review.

- o identify opportunities to make structural and cultural improvements in relation to risk management with reference to good practice observed during the review; and
- o set out factors/principles that influence the creation and removal of regulations into the future.

I gave initial priority to discussions with the Secretaries and deputies of four key regulators of the public sector (the Department of the Prime Minister and Cabinet (PM&C), the Department of Finance (Finance), the Attorney-General's Department (AGD) and the APSC). Deputies from these four entities comprised a working group that oversaw the review. Officials from Finance and AGD provided secretariat support to the review.

The review has also been informed by:
- o face-to-face consultations with many accountable authorities or their deputies and senior officials and regulation-owners;
- o two workshops, each with over 50 attendees from corporate areas including with junior officers on whom the detailed work of compliance often falls (Attachment C provides further detail of consultations);
- o 50 written submissions covering 43 entities;
- o the Library of Obligations developed by the Australian Tax Office;
- o other recent reviews including work undertaken by the Efficiency Working Group and capability reviews; and
- o some departments' reviews of their own administrative requirements.

Key regulatory areas were identified with the assistance of the Deputy Secretary Working Group, Public Management Reform Agenda reference groups and a stock-take of regulation.

Assessments of these key regulatory areas against the TOR's "draft principles for internal regulation" were then prepared in consultation with regulation owners. Assessments and policy-specific recommendations are drawn on as case studies through the report, with recommendations set out at Attachment A. Volume Two of this report contains the full assessments of key regulatory areas.

The strength of stakeholder feedback, the impact of the regulation across government, access to evidence to assist analysis and the time available all influenced the level of analysis across key regulatory areas. For instance, where reform initiatives were already underway, recommendations have tended to be more specific as evidence was available to support detailed suggestions for action. Where activities had not been examined for some time, evidence was less readily available, so recommendations are more likely to be general or suggest further examination.

Where I have recommended action by entities, it will often be the case that there will also be a requirement for government, and potentially the Parliament, to endorse or give effect to the proposed change. While recommendations have taken account of implementation issues, and this report includes some observations in relation to implementation, I have not attempted to anticipate implementation strategies or processes.

Whole-of-system observations and recommendations

Common themes soon emerged across key regulatory areas and within entities. While the themes are reflected in the subject-specific assessments and recommendations, they warrant separate identification because they have been a constant refrain during the review and appear central to the problems implicit in regulation.

Over regulation

> **Observation:** The level and volume of internal regulation is growing. There appears to be a regulatory stance characterised by a default to regulation as a policy lever and an absence of a proportional approach to regulation.

A stock-take of regulation commissioned by Finance identified more than 8,000 requirements on Commonwealth entities, in over 600 documents. A requirement was indicated by an activity that entities "must", "should", "are required to" or "shall" do. Complexity and a range of other factors were not measured by the stock-take. By volume, most requirements are in documents issued by Finance, the Australian National Audit Office (ANAO), PM&C, Comcare, the Department of Defence (Australian Signals Directorate), National Archives of Australia, AGD, the APSC, and the Office of the Australian Information Commissioner (OAIC). Comparisons with a similar, but non-validated, exercise in 2009 demonstrate an increase in the volume of requirements. These requirements have a broad application to non-corporate Commonwealth entities and their officials within the APS.

Policy guidance material, such as Finance's Resource Management Guides and the ANAO's Better Practice Guides, were included in the stock-take. While this material often restates the requirements of relevant legislation and policy, some guidance also uses mandatory terminology beyond references to legislative and policy requirements.

Regulatory bracket creep accounts for some growth- a number of significant thresholds have not been adjusted for many years. For example, the $80,000 threshold for open tender procurement is often cited as contributing to over regulation. The threshold was established as part of the Australia-United States Free Trade Agreement in 2004. Entities suggest that both inflation and the nature of government contracting have significantly changed in the interim period, and the threshold requires entities to undertake unnecessary process for what is now a simple, low-value procurement.

Similarly, the threshold for reporting procurement contracts on Austender, set at $10,000 in 2005, captures too many non-material, low risk, procurements. If the threshold were raised to $20,000, it is estimated there would be a 28.4% reduction[2] in the number of contracts reported (a reduction of close to 20,000 contracts), but only a 0.7% reduction in the total value of contracts reported. Raising the threshold to $80,000 would still meet Australia's current international obligations and reduce almost 70% of the compliance burden of contract reporting, but reduce the value of contracts reported by only 3.7%. Government priorities for reporting, such as on small business and Indigenous contracting, and the requirements of the Parliament, are of course relevant factors to be considered.

There are some positive signs in recent regulatory practices. Since the 2009 survey discussed above, a number of internal and external requirements have been removed or reduced.
- o The Senate has agreed that AusTender can be used to meet elements of the Murray Motion for reporting on procurement contracts, rather than requiring separate reporting by entities.
- o In ICT policy, a number of plans and reports to government have ceased or been limited only to heavy users, including for ICT strategic plans and investment intentions; information security plans; implementation of cloud computing; surveys on data centre and telecommunications demand; ICT contractor numbers and workforce plans; Internet

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[2] Based on 2012-13 procurement contracts.

Protocol Version 6 preparedness; web accessibility; and disaster recovery surveys and risk assessment.
o In financial and budget reporting, the number and complexity of notes to the financial statements have been reduced, duplication between Budget paper 4 and Portfolio Budget Statement tables has been eliminated and information assets registers are no longer required.
o The Gateway, ICT Two Pass and Capital Works Two-Pass processes recently created a consistent threshold comprising a financial amount and a risk rating for the project/programme.

The task of assessing the value of regulation and the way it is imposed is crucial to achieving a lessening of regulatory burden and improved outcomes. Entities' transition to the PGPA Act's principles-based legislative framework for resource management is a case in point.

The PGPA Act was designed to enhance accountability, balancing additional planning and reporting obligations with scope to engage with risk and manage in a way that is appropriate to the operating environment. The PGPA Act and PGPA Rules set only very high level requirements leaving much of the work of entity management to accountable authorities, with a set of duties to govern them in discharging this obligation.

Entities have suggested that a range of other requirements have constrained their ability to realise benefits from the PGPA Act. For example, entity and whole-of-government procedures, manuals and policy require entities and officials to meet detailed compliance requirements, including through:
o sign-off being mandated at a particular level, e.g. in relation to budget estimates throughout the budget process;
o reporting in a particular way and frequency, e.g. annual fraud control initiatives, risks and significant events notifications to ministers, annual certificates of compliance, reporting monthly on unscheduled absences;
o mandatory internal or external process steps or approvals before action can commence (e.g. SES recruitment, international travel);
o requirements to document procedures in a prescriptive manner (e.g. fraud and the Protective Security Policy Framework); and
o the need to maintain records sufficient to meet prescriptive reporting on compliance with mandatory policies, e.g. environment, employment average staffing level (ASL), disability, carers, gender, span of control, unscheduled absences), FOI, legal services, and procurement (small business payments, Indigenous, advertising and market research).

These requirements might be examined as part of a planned project to develop a differential (or earned autonomy) approach to regulation in the resource management framework. In the meantime, however, entities report receiving mixed messages. On the one hand they are asked to engage with risk, be innovative, flexible, agile, and on the other they are required to conform to a large and growing volume of requirements that go to the detail of how they are to conduct their operations.

The central agencies will always need to gather information across entities, but they need to consider more carefully the way they do so. The review heard complaints of high-handed and ill-informed requests, with no attempt to make their purpose clear or to feed back useful information. Information was also sometimes sought well beyond the time it was genuinely required.

Unnecessary regulatory burdens are, however, not always imposed by central agencies or other regulatory entities. In discussions, I was given many examples of entities unnecessarily taking on additional regulatory burdens. Risk aversion is a common cause of over regulation, and that will be discussed later in the report in the context of culture.

An example is the tendency of entities to view policy guidance material from regulatory bodies, or Better Practice Guides from the ANAO, as setting the minimum standard for compliance, rather than a source of useful information to inform the setting of internal procedures according to business need and risk appetite. Some entities also impose additional internal process far in excess of the minimum requirements set by regulators, particularly in the areas of human resources and procurement.

Principles

I was asked to assess the need for and impact of the growing level of regulation against a set of common principles. Drawing on the approach of the Australian Government Guide to Regulation, Design Principles for the PGPA Rule, the draft principles for Internal Regulation in my TORs and better practice regulatory approaches observed in this review, I am of the view that internal regulation, either set by the centre or self-imposed, should be:

- o the minimum needed to achieve policy (or entity) outcomes.
  - Regulation should be created only where, in comparison to other options, it is justified by an analysis of the burden to be imposed against the benefits for policy outcomes or entity performance.
  - Regulation should not be the default option when problems arise. Mandatory requirements should be introduced only where policy failure cannot be dealt with through: better implementation of existing regulation; capability improvement and good practice guidance; self-assessment combined with internal or external audit; and incentive based approaches.
  - Regulation should be principles-based where possible to enable entities to determine the most efficient and appropriate way to respond given their objectives and operating environments.
  - Regulation should be fit for purpose and not apply equally across entities if policy outcomes can be achieved through application only to key entities without undue consequences for the policy framework.
  - In particular, the cumulative compliance burden imposed on small and micro entities should be considered as part of the balance between benefits and cost.

- o proportional to the risks to be managed and supportive of a risk-based approach.
  - A regulatory approach must recognise the diversity of the Commonwealth in terms of entity role, size and purpose. The Commonwealth is made up of entities ranging from the Department of Defence (95,222 ASL) and the Department of Human Services (30,461 ASL) which manage a widespread portfolio of responsibilities, through to tiny entities such as the National Competition Council (1 ASL) and the Office of the Auditing and Assurance Standards Board (7 ASL) which are responsible for narrow, but specialised functions.[3] The variety of roles and governance structures such entities require creates complexity within the current approach to regulation. A one size approach, or even two sizes, may not be sufficient.

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[3] Budget Paper No.4 2015-16

- Regulators should be willing to adjust their stance to the capacity, maturity, materiality and non-compliance risk of entities. To do otherwise imposes unnecessary costs on both the regulated entity and the regulator.
- Regulation should promote a culture that identifies relevant risks and mitigations, and accepts residual risk where eliminating risk would impose prohibitive costs or processes.

o coherent across government and not duplicative.
- Regulation should not conflict with, or overlap with, other regulatory requirements.
- Reporting should be based on the principle of "collect once, use many times" - regulators should seek to rely on or adjust existing reporting requirements rather than imposing new ones.
- Regulation should be internally consistent and align with other policies in the related area, including the content and timing of requirements.
- Regulation and guidance documents should be readily accessible.
- Regulators should consider how digital technology and web-based information accessibility can reduce compliance burden and decrease requests for information.
- In developing and implementing any differential or risk-based regulatory approaches, the reasons for differences should be clearly articulated and understood by regulators and entities.

o designed in consultation with stakeholders for clarity and simplicity in application.
- Regulators should consult in a genuine and timely way to ensure they have a full appreciation of stakeholder issues.
- Regulators should communicate the clear connection between the regulation design and desired policy outcomes.
- Regulators should communicate how information provided through reports is used and the value it adds.
- As far as possible, regulation should be designed to satisfy internal as well as external reporting and management requirements, including by aligning timing.
- Regulation should be designed and implemented with common sense, empathy and respect.
- Regulatory and guidance documents should be streamlined to reduce the burden of reading and to distil mandatory requirements. Regulators should focus on clarity and consistency in language (such as avoiding use of 'must' statements when suggesting better practice).

o reviewed periodically to test relevance and impact.
- Regulators should build in periodic review to assess:
- the continuing need for regulation;
- the costs and benefits of the regulatory option chosen in comparison to other options and whether it continues to be the minimum necessary; and
- the efficiency and effectiveness of the entity's administration of the regulation.
- The reviews should be considered by relevant decision-makers and made available to those regulated.

The assessment of key regulatory areas in Volume Two of this report have been made against these Principles for Internal Regulation.

The review identified several areas where policy is currently under development, or has recently been implemented, and there is the potential to create unnecessary regulatory burdens. These areas include:
  o Enhanced Commonwealth Performance Framework
  o Digital Transformation Agenda
  o ICT investment including cybersecurity reporting
  o Contestability Programme
  o Shared and Common Services
  o Campaign advertising arrangements

Common themes in the feedback received include that processes were unnecessary, excessive or duplicative of other activities, caused delays, and had thresholds that were too low or disproportionate to the risk and size of activity. I have decided, nevertheless, that these policies have not been tested to the point where they could be assessed against the Principles for Internal Regulation. For each of these areas I recommend that further development be aligned with the Principles to ensure minimal administrative burden is imposed, particularly on small entities.

Recommendation: Regulators use the following Principles for Internal Regulation to guide the development and assessment of internal regulation, which should be:
  - The <u>minimum</u> needed to achieve whole-of-government (or entity) outcomes
  - <u>Proportional</u> to the risks to be managed and supportive of a risk-based approach
  - <u>Coherent</u> across government and <u>not duplicative</u>
  - Designed in <u>consultation</u> with stakeholders for <u>clarity and simplicity in application</u>
  - <u>Reviewed</u> periodically to test relevance and impact.

Recommendation: Finance continue its work to develop a framework for differential or risk-based regulation (earned autonomy) in the PGPA Act context, informed by the Principles for Internal Regulation, with a view to the application of the framework to other areas of internal regulation.

Inefficient regulation

Observation: The nature, frequency and volume of data collection and compliance-focused reporting involves duplication and wasted effort, and undermines the development of a mature risk culture.

The nature, frequency and volume of data collection and compliance-focused reporting is not only growing, but is often not done efficiently or effectively. One of the issues most frequently raised with me, by both large and small entities, and senior and junior officials, was the volume of ad-hoc reporting and data collection, requiring input that had to be generated for that specific task and could not be re-used for other reports, and for which a purpose was not always clear.

A list of regular planning and reporting obligations, other than those that relate to the detail of Budget and classified matters, is at <u>Attachment D</u>. Entities, particularly small entities, wanted me to understand how many regular plans and reports were required to be undertaken, how duplicative and complex the reports could be, and how infrequently the reports added value to their entity or could be re-used for internal management reporting and decision-making.

By way of dismaying example, entities observed that they were required to report outside of their entity on either ASL or head count at least 21 times a year.[4] An entity reported that they undertook a further 23 instances of ASL/head count reporting within their entity, each time requiring generation of new ASL data.[5] These figures do not include figures reported through the Pre-Election Economic and Fiscal Outlook and the Question on Notice process, due to their irregular nature.

A detailed examination of the various planning and reporting requirements, such as those arising in the Budget or annual reporting context, was not possible given the time period, focus and scope of the review.[6] However, some general themes can be drawn from a brief review.

First, too often an external reporting requirement is imposed on all entities when alternative approaches to ensuring compliance with a policy could be considered. Alternatives include relying on internal and external audit to identify and recommend strategies to improve non-compliance, motivating performance by methods such as performance agreements or using awards (such as the IPAA annual report awards), targeting reporting to material or large entities, or requiring compliance self-assessment and the reporting of material breaches by exception.

Secondly, policy owners could not consistently demonstrate that the information reported to them was actually being used. Some policy owners could not demonstrate how many entities had used benchmarking and good practice information to inform their investment intentions, or how the data informed and changed policy outcomes or ministerial or parliamentary debate.

An example, mentioned many times in my discussions and in submissions, was that of annual reports which contain a large amount of mandatory information but, on the evidence I was given at official and parliamentary levels, go virtually unread.

Thirdly, duplicative reporting requirements are imposed across and within regulating entities, and by ministers and Parliament. This arises partly because information is not made widely or publicly available in a way that enables users, including other regulators, to access and analyse the data. Lack of accessibility and poor design have resulted in duplicated requests and poor data quality.

Finally, and of significant concern, the information requested too often focuses on technical compliance issues. It does not assist internal management reporting or decision-making because formats are prescriptive and, along with time periods, are inconsistent. Some of the information requested might be useful if combined and compared with other entities, but this is not usually supplied to entities or, if it is, is not done in a timely manner. Major re-working often results in order to generate data in slightly different formats for different requesting entities, with no benefit to the entity.

> **Recommendation:** Finance coordinate a review by regulators of their data collection exercises and planning and reporting requirements against the Principles for Internal Regulation to optimise usefulness of the resulting product to Parliament, government and entities, including by

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[4] Entities are required to report in portfolio budget and additional estimates submissions and statements, their corporate plan and annual report, the state of the service survey and the APSC's monthly report via APSED.

[5] These entities reported that they were required to generate ASL reports monthly, quarterly, to support dashboard reporting, and as part of Senate Estimates briefing.

[6] For example, annual reporting obligations in relation to an entity's approach to energy efficiency or environmental sustainability, disability, carer's or multicultural activities, were not addressed in detail in the review.

aligning content and timing with other regulators and with management reporting of entities wherever possible.

Recommendation: Regulators increase their focus on better using digital technology and making information more widely accessible to reduce repeated requests for information.

Unclear and inaccessible regulations and guidance

Observation: There is confusion about what regulation is mandatory and what guidance is to be applied if it makes good sense.

Regulators may issue guidance to assist entities to comply with mandatory requirements contained in legislation, subordinate legislation such as regulations and rules, or government policy issued by the Prime Minister, Cabinet or responsible ministers. However, such guidance is often expressed in terms that suggest additional mandatory requirements. Regulations and guidance documents should clearly state the authority for any mandatory requirements cited.[7]

It is reasonable to expect that technical or procedural requirements to ensure a complex system operates as intended, such as those set out in the Information Security Manual, certain Estimates Memoranda or the Legislation Handbook, would be directive. It is also reasonable to assume that guidance documents will include, for convenience, the legislative requirements to which they relate. Much of the guidance and guidelines developed to assist entities, however, incorrectly use mandatory language, implying an authority that they do not have.

Conversely, where authority exists, documents can be mislabelled as guidance. These should be clearly recognised as government policy which sets out mandatory requirements for non-corporate Commonwealth entities.

Compliance with documents labelled as 'better practice' was raised with me by a number of entities. Entities perceive such guidance documents as being mandatory or setting minimum standards for audit review, notwithstanding that, at least with the ANAO's Better Practice Guides, they have, particularly in recent years, been clearly identified as being for guidance only and not mandatory. Entities advise that internal and external auditors have tended to conduct audits against the Guides which has reinforced the mistaken perception.

Attempting compliance with better practice or guidance material rather than mandatory policy is particularly problematic if, as a number of comments have suggested, the guidance is designed to address the issues faced by large, complex and high risk entities, and are not adaptable to the needs of smaller entities. This leads to entities adopting more extensive processes than necessary, impeding attempts by policy owners to encourage risk and performance-based management.

Most regulators have indicated a good working relationship with the ANAO in relation to guidance. They note a mutual willingness to work together to ensure a clarity of requirements including identification of the source of the requirements against which audits should be conducted. Consideration should be given, on a policy by policy basis, to incorporating the substance of ANAO Better Practice Guides into policy guidance material produced by the policy

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[7] In Finance's stock-take of regulation - that is, references to things that entities and officials 'must', 'should', 'are required to' or 'shall' do - 78 per cent of the over 8,400 mandatory requirements identified were contained in documents entitled 'guidance', 'guidelines' or 'manuals'.

owner, to ensure a single, clear source of mandatory minimum requirements and better practice guidance.

Observation: It is not easy to find or understand what entities' obligations are.

The review identified 8,400 plus regulatory requirements which are contained in over 600 documents across over 14,000 pages. In some cases, an end-user is required to read multiple pages before finding or understanding a 'requirement'. The sheer volume of pages to be read in order to identify what needs to be done represents a significant burden.

For example:
- o The Administrative Functions Disposal Authority document issued by the National Archives of Australia is approximately 398 pages long and contains 36 requirements.
- o The Australian Government Architecture Reference Models (version 3.0) 2011, released by Finance, is 304 pages with 16 requirements. To add complexity, in order to understand this document, users are required to read the Australian Government Architecture Reference Models – How to Use Guide which is a further 46 pages containing 19 requirements.
- o The Work Health and Safety Code of Practice – Volume 5, released by Comcare, contains 25 requirements over 119 pages.

A number of entities asked that policy owners produce optional, adaptable templates and worked samples of documents and reports, in order to reduce the compliance burden of interpreting complex policies and better practice guidance. Smaller entities with limited corporate governance capacity would find that particularly useful. Policy owners are sometimes reluctant to do this for two reasons, according to feedback to the review. First, entities may feel constrained by the sample approach despite the templates being optional. Secondly, entities may do the minimum necessary to fill in the template rather than genuinely considering issues of strategic approach, risk and business need.

Notwithstanding these concerns, many entities feel that more support is required to understand and comply with regulation, and templates and worked samples would provide a useful indicator of expectations, and clarify minimum standards. The Model Accountable Authority Instructions, which provide sample minimum instructions and factors to consider in designing more extensive instructions according to risk and business need, is one example of how this could be done. Where such templates are made available, they should be digital by design and consistent with the Digital Service Standard, to reduce the burden on entities to comply with disability accessibility requirements.

Some requirements are over-classified, making it difficult to access by officers who must comply with them. For example, the Cabinet Manual is available only on request but could instead be published, and some Estimates Memoranda are unnecessarily classified. Some policy owners, however, have provided guidance, templates and other tools online (with a note that they would be classified once completed) and have accompanied these with classified guidance for the more sensitive material.

Other requirements are not readily accessible even when unclassified. Some entity websites are cluttered with out of date regulation and guidance.

Comcare provides an example of better practice web accessibility with its user-friendly website that allows easy access to documents, catalogued by year, with clear reference to superseded versions.

Attempts to list all requirements across government are time consuming, and the lists are current for only a short time. While a database of policy and guidance similar to Comlaw would be very useful, and supported by some to whom I spoke, it is not clear that such an investment would be useful and appropriate given the smaller group of users (public sector only), and the volume of documents and the frequency with which they are issued and re-issued would mean a significant investment of resources. It would, however, be useful for a linked index of regulation imposed by key regulators to be maintained centrally as an initial step, as a way to remove the need for periodic stock-takes. Attachment D might form the basis of such a repository.

Recommendation: Regulators ensure that guidance documents assist entities to meet mandatory requirements contained in legislation, subordinate legislation, or policy issued by ministers, and do not set out additional requirements as if they were mandatory.

Recommendation: Regulators ensure that regulation imposing mandatory requirements is not described as 'guidance' or 'guidelines'.

Recommendation: Finance develop, in consultation with key regulators, a short guide to promote clarity and consistency in language used in regulatory and guidance documents, whereby:
- mandatory requirements are suggested through the use of language such as 'must, shall, require/required to and should'
- better practice guidance uses terms like 'may', 'could' or 'are encouraged to'
- references to mandatory requirements imposed by other documents or legislation are clearly cited and not paraphrased.

Recommendation: Regulators review their websites to ensure regulation and guidance documents are current, accessible and logically presented.

Recommendation: The ANAO take the opportunity, where regulators and policy owners have developed or are developing policy guidance material, to review whether there is a continuing need for it to develop, release and maintain its own separate guidance.

Recommendation: Regulators should produce optional and flexible templates and sample reports to reduce the burden of compliance with whole-of-government policies. Where these are offered, they should be compliant with the Digital Service Standard (particularly with respect to disability accessibility).

Recommendation: Finance develop and maintain a central repository or linked index of regulation that can be updated by regulators as requirements are amended or repealed.

Small entities

Observation: Small entities are struggling under their compliance burden to the detriment of their primary purposes.

Small entities generally face the same regulatory requirements as entities with a greater human resource and financial capacity. The burden is felt particularly in corporate areas, where one person might be responsible for a significant proportion of compliance and reporting obligations. Staff turnover in such situations leaves a small entity with little corporate knowledge.

The risks to smaller entities and their impact on achieving whole-of-government policy outcomes is generally, but not always, less than those larger entities. There is scope to consider whether regulatory requirements could be tiered to reflect this lower risk.

There is not a precise definition of a small entity. An entity with very few staff (e.g. 50) might manage significant resources and so be 'material' from a budget and financial management perspective, but 'small' from a human resource management perspective. Other entities have over 300 staff so may not be considered 'small', but manage little money so are not 'material'. One approach might be an outcomes focused materiality test, whereby an entity be considered "small" where its full compliance with a regulation is not necessary to achieve policy outcomes.

There are some regulatory frameworks that take account of entity materiality, for example:

- o the whole-of-government financial reporting process requires more detailed and frequent inputs from the approximately 60 material entities (representing the top 99 per cent of the aggregate of the total income, expenses, assets and liabilities of all entities) than is required for the approximately 120 smaller entities. This includes smaller entities not being required to provide underlying cash balance reporting each month to Finance, and having an additional two weeks each year to finalise and enter audit-cleared financial statements into the Central Budget Management System; and
- o the new ICT benchmarking model adopts tiered requirements for entities based on their proportion of whole-of-government ICT spend. Small entities would complete very limited data sets necessary to provide a whole-of-government expenditure figure, whereas heavy ICT users complete extensive data sets to enable sound benchmarking.

Other frameworks tailor requirements to reflect entity, project or programme risk.

- o The Commonwealth Risk Management Policy outlines nine principles with minimal prescribed content. This approach has allowed entities to scale their risk management systems and practices to reflect their size, complexity of their operating environment and risk profile.
- o Similarly, the Comcover risk management survey allows entities to select a target risk maturity which is fit for purpose. Benchmarking current risk management capability against a target state allows entities to identify areas which require further investment to reach their target. Alternatively, areas which exceed target maturity may indicate there is an opportunity to reallocate resources. The survey's response options are structured in order of maturity. This approach allows entities to understand the competencies and behaviours required to achieve a higher level of risk management maturity. The survey aims to build capability by providing entities with the ability to analyse their results against other participating entities, enabling entities to share examples of better practice.
- o ICT Two Pass Review, Two Stage Capital Works Approval and Gateway Review processes are triggered through a combination of financial and risk thresholds. Entity capability is a consideration in determining risk.

Of course, sometimes 100 per cent participation is required as a regulation is designed to achieve a consistent approach across government, or the risks are such that every entity is material regardless of its size or budget. Regulators should be encouraged, however, to test such propositions in design and review processes.

Departments can, and often do, assist small entities in their portfolio, but more could be done to reduce the compliance burden. For example, most portfolios coordinate responses to questions on notice and other central requests for information. Portfolio departments could also seek to ease the burden of estimates hearings processes by more actively seeking clarification on attendance requirements for small entities, and asking that they be permitted to give evidence by video conference if the entity is outside Canberra and has other pressing priorities.

While most departments that coordinate information requests across their portfolio entities clarify requirements and methodology with the policy owner and then provide advice to small entities, others undertake some pre-population of response reports, based on their experience of the entity or information held in the portfolio department. Discussions between departments and small entities are likely to encourage identification of further possibilities for assistance.

The emerging shared services approach may also assist smaller entities in particular to focus on achieving their purposes. Shared and common service providers have the incentive to create efficient standard business processes which would be common across entities, and thereby maximise economies of scale, consistency and quality. There was, however, mixed feedback to the review from smaller entities, some of whom feel that they will be paying more for services, and/or that the current service offerings and business processes are designed for larger entities and are not appropriate to their circumstances.

Recommendation: Regulators consider whether regulatory requirements could be further tiered to reflect the size of an entity where policy outcomes and risk considerations allow.

Recommendation: Portfolio departments take an active role to assist small entities to meet regulatory requirements.

Culture of risk aversion

Observation: There are two dominant and related behaviours that influence the creation and retention of regulatory requirements. The first relates to decision-making at very senior levels, with limited responsibility given to middle management and below. The second is risk aversion in the form of internal regulation often resulting from overreaction or detrimental reaction to minor mistakes or embarrassment.

Of the 18 capability reviews conducted between August 2012 and July 2014, 13 identified significant levels of risk aversion and centralised decision-making at senior (often very senior) levels, which restricted innovation and was detrimental to staff morale.

My discussions with entities, especially with staff below the SES level, corroborated those findings. Many examples were provided, of which a small sample follows.

- Praise was rarely given for a well-conducted process or successful policy implementation, but there was little or no tolerance of mistakes, especially if they caused embarrassment to the entity.
- Junior staff were frustrated that their supervisors took so little responsibility; for example, an EL2 was unwilling, or perhaps not permitted, to sign off on internal emails about process.
- SES sign-off was required to enable an officer, newly recruited or simply transferred within the entity, to be given access to the shared network drive despite the recruitment/transfer having been approved at SES level – indeed sometimes at executive board level. If the

relevant SES officer was busy or not available, a day or more might pass before access was given.

Contributors at workshops spoke of increased involvement of senior officers in the detail of administration. An example was given of work once undertaken by an EL2 now being handled by a SES Band 2.

Among the explanations most commonly put forward for raised levels of clearance was that close media and parliamentary scrutiny has made governments, individual ministers and therefore senior public servants more cautious or risk averse. The response to mistakes or misjudgements is often to put more checks in place and move clearances and decision-making to a higher level.

It is possible too that the marked increase in the number of SES officers in the years 2006 to 2013 contributed to greater involvement of senior officers in detailed work, especially if Secretaries and Deputy Secretaries alone took responsibility for corporate leadership.

More important than possible causes of the problems, however, are the steps being taken by some entities to address both high level decision-making and risk aversion, and the widespread desire to develop better practices.

Examples of good practice
Many departments have reported recent changes as a result of their own reviews of internal regulation, including the levels at which delegations are held and decisions made. Advances are numerous, and the following initiatives are provided by way of example.

- The Department of the Environment in 2014 established four committees with membership at the SES Band 1 and 2 levels and gave them responsibility for decision-making across designated areas of strategic management (people, policy, budget and risk). The committees report to the Executive Board and, while they may refer matters to the Board for final decision, that is not encouraged.

- The ATO has significantly reduced its volume of corporate internal processes and associated documentation. Since 2013:
  - external consultation arrangements have been reduced from 68 committees down to 8 committees. Consultation has been enhanced through a 'project like' approach on specific issues. Internal management committees were reduced from 45 to 22;
  - strategic risk management was sharpened with the introduction of a new framework with six key strategic risks. Other operational type risks have been reduced from 270 to 106 through amalgamation and removing duplication;
  - practice statements for staff were replaced with modern and contemporary Chief Executive Instructions focusing on core obligations. The number of polices was reduced from 178 to 55, a reduction from 1300 pages to 172 pages; and
  - processes to ensure compliance with mandatory obligations were reduced by 87%. Internal documentation was reduced from 3200 pages to 400 pages whilst ensuring optimal key controls were maintained.

- Not alone among entities, the Department of Foreign Affairs and Trade has reviewed the levels at which approvals are required for administrative matters. DFAT has reduced

many of its approval points to Divisional Coordinator level (usually APS6/EL1), including some that were previously at SES Band 2 level or above.

- Some entities have chosen to trial a reduction of delegation and decision-making levels for a month; others have reported a significant reduction in the number of internal corporate and policy committees, while others are attracted to Deloitte's approach of adopting a new attitude of 'what must go right' rather than 'what could go wrong'.

- The APSC has streamlined the State of the Service report (from 400 in 2014 to 80 pages in 2015), including reducing the volume of data requested from Commonwealth entities (from 156 to 52 questions).

Benefits of diffused responsibility
The advantages of moving greater responsibility to EL and APS officers include the freeing of the SES to take more strategic policy and management roles, and improved morale at the more junior levels. More significantly still, it might avert a looming problem that the next generation of SES will lack experience in independent decision-making and acceptance of risk.

In other words, the accretion of responsibility at the most senior levels will in time see the public sector permanently weakened.

Attitudes to risk
The review heard consistently that risk aversion is a dominant aspect of entities' culture. One of the more compelling views put to me was that "the impact of embarrassment is exaggerated".

Staff do not doubt the impact of a serious error, but would like to see that judged differently from criticism or mockery over a minor error or a poor choice of words. The media might be an ever-present hobgoblin, but the life span of its reports is increasingly short and the content not always worthy of a reaction.

Obviously the political environment is relevant to the handling of mistakes and embarrassment, and some political environments are more difficult than others. As they often do, senior officers can choose to bear the rage of ministerial overreaction without passing it down the line.

An entity's appetite for risk can be set satisfactorily only by senior management. Each entity will differ in some way from another and the level of acceptable risk will vary between activities.

Entities should assess their internal processes and rules against the proposed Principles for Internal Regulation. While there is an obvious need for entities to have effective internal control systems, the review found many examples of practices that were not required and that added to the burden of process without discernible benefit. The requirement for a statutory declaration if a receipt has been lost, or for a Deputy Secretary to approve the provision of a mobile phone for work purposes, are just two illustrations of the need to consider risk profiles and priorities more generally.

Recommendation: Entities maximise the opportunities for SES Band 1 and 2s to be responsible for strategic corporate decision-making.

Recommendation: Entities' current internal reviews of regulation identify all instances where delegations can responsibly be moved to more junior levels, including EL and APS officers.

Recommendation: Senior management of entities:
- provide by both example and guidance an understanding that the acceptance of risk is necessary to support innovation and develop a responsible and experienced workforce,
- encourage at all levels of the entity an acceptance that mistakes will occasionally be made and that reaction needs to be appropriate to the risk(s) to be managed and the nature of the mistake.

Conclusion

The recommendations in the report, including those in Volume 2, are, I hope, self-standing and, above all, useful.

I will therefore limit my concluding remarks to just three.

Implementation of any accepted recommendations is for Secretaries to determine, but I would like to think that the large number of recommendations, and the wish for continuous improvement in the area of regulation, would not lead to more unnecessary burdens on entities by way of a 'red tape reduction industry' of the kind that lead to unwieldy and stultifying risk registers.

Secretaries might also wish to consider, when establishing reviews within their portfolios, whether they should include in the terms of reference a standard requirement to avoid the imposition of any new, avoidable regulation and perhaps even to identify possible scope for a reduction in regulatory burden.

Finally, the most important message for the future is that the current impetus to reduce regulation should not be lost and that regulators, both external and internal, should periodically ask why the regulation they impose is needed and whether it is being imposed in the best possible way.

Index of Attachments

A. Recommendations
B. Terms of Reference
C. Consultations
D. Mandatory Requirements
E. Glossary

Attachment A: Recommendations

Whole-of-System Recommendations

1 Over regulation

1.1 Regulators use the following Principles for Internal Regulation to guide the development and assessment of internal regulation, which should be:
- o The <u>minimum</u> needed to achieve whole-of-government (or entity) outcomes;
- o <u>Proportional</u> to the risks to be managed and supporting a risk-based approach;
- o <u>Coherent</u> across government and <u>not duplicative;</u>
- o Designed in <u>consultation</u> with stakeholders for <u>clarity and simplicity in application</u>; and
- o <u>Reviewed</u> periodically to test relevance and impact.

1.2 Finance continue its work to develop a framework for differential or risk-based regulation (earned autonomy) in the PGPA Act context, informed by the Principles for Internal Regulation, with a view to the application of the framework to other areas of internal regulation.

Inefficient regulation

1.3 Finance coordinate a review by regulators of their data collection exercises and planning and reporting requirements against the Principles for Internal Regulation to optimise usefulness of the resulting product to Parliament, government and entities, including by aligning content and timing with other regulators and with management reporting of entities wherever possible.

1.4 Regulators increase their focus on better using digital technology and making information more widely accessible to reduce repeated requests for information.

Unclear and inaccessible regulations and guidance

1.5 Regulators ensure that guidance documents assist entities to meet mandatory requirements contained in legislation, subordinate legislation, or policy issued by ministers, and do not set out additional requirements as if they were mandatory.

1.6 Regulators ensure that regulation imposing mandatory requirements is not described as 'guidance' or 'guidelines'.

1.7 Finance develop, in consultation with key regulators, a short guide to promote clarity and consistency in language used in regulatory and guidance documents, whereby:
- o mandatory requirements are suggested through the use of language such as 'must, shall, require/required to and should';
- o better practice guidance uses terms like 'may', 'could' or 'are encouraged to'; and
- o references to mandatory requirements imposed by other documents or legislation are clearly cited and not paraphrased.

1.8 Regulators and policy owners review their websites to ensure regulation and guidance documents are current, accessible and logically presented.

1.9 The ANAO to take the opportunity, where regulators and policy owners have or are developing policy guidance material, to review whether there is a continuing need for the ANAO to develop, release and maintain guidance.

1.10 Regulators and policy owners should produce optional and flexible templates and sample reports to reduce the burden of compliance with whole-of-government policies. Where these are offered, they should be compliant with the Digital Design Standard (particularly with respect to disability accessibility).

1.11 Finance develop and maintain a central repository or linked index of regulation that can be updated by regulators as requirements are amended or repealed.

Small entities

1.12 Regulators consider whether regulatory requirements could be further tiered to reflect the size of an entity where policy outcomes and risk considerations allow.

1.13 Portfolio departments take an active role to assist small entities to meet regulatory requirements.

Culture of risk aversion

1.14 Entities maximise the opportunities for SES Band 1 and 2s to be responsible for strategic corporate decision-making.

1.15 Entities' current internal reviews of regulation identify all instances where delegations can responsibly be moved to more junior levels, including EL and APS officers.

1.16 Senior management:
- o provide by both example and guidance an understanding that the acceptance of risk is necessary to support innovation and develop a responsible and experienced workforce; and
- o encourage at all levels of the entity an acceptance that mistakes will occasionally be made and that reaction needs to be appropriate to the risk(s) to be managed and the nature of the mistake.

2 Budget

Budget Process Operating Rules (BPORs)

2.1 Finance streamline the BPORs to the extent possible for the 2016-17 Budget including a review of thresholds to ensure their continuing relevance and materiality more generally.

2.2 Finance, in consultation with material and non-material entities during development, to consider the BPORs against the Principles for Internal Regulation with the aim of producing, with professional drafting expertise assistance, further streamlined BPORs and related requirements for the 2017-18 Budget process, including consideration of:
- o how the structure and presentation of the BPORs can be improved to enhance accessibility and understanding; and

> o how to consolidate and streamline requirements to support a "report once, use often" approach, reducing duplication and double handling of data.

2.3 As part of Finance reviewing the BPORs for 2017-18, Finance continue its work examining the current mix of rules on Budget preparation and Budget management, with a view to:
> o restricting the use of the BPORs to matters directly relating to the preparation and consideration of New Policy Proposals (NPPs) and related matters in a Budget/Estimates context;
> o matters covering the ongoing or recurring management of Budget arrangements being removed and publicly released as directions from Finance to improve access to and knowledge of entity obligations; and
> o matters of a Budget in confidence nature that need to be classified continuing to be distributed through the use of Estimates Memoranda.

Training and education

2.4 Finance's proposed Budget engagement strategy and outreach programme be endorsed as an important means to enhance entity officials' understanding of the Budget process and the related framework, business processes, information requirements and systems obligations, with the aim of reducing compliance burdens and rework.

Communicating and responding to requirements and deadlines

2.5 Finance streamline and simplify the range of and access to the directions and guidance material it releases in relation to estimates preparation and resource management through:
> o focusing Estimates Memoranda on directions relating to the preparation of estimates and related matters;
> o establishing a new category (possibly known as Resource Management Directions) to cover directions on matters addressing entities' resource management and ongoing governance and financial administration;
> o keeping the volume of directions in both categories to the minimum necessary for the effective coordination and direction of government operations;
> o wherever possible, communicating information on standard processes and data standards to entities through separate means such as policy manuals and guides that are made publicly available;
> o Finance reviewing the classification of matters currently included in Estimates Memoranda to ensure that matters of a procedural nature are not unnecessarily classified and thereby limiting timely access by staff in entities;
> o as a general approach, not classifying the proposed Resource Management Directions, and making them publicly available as well as communicating them directly to entities;
> o as a means of reducing the number of Estimates Memoranda (and future Resource Management Directions), Finance providing and communicating a readily accessible calendar of key dates and events to entities across its areas of responsibility, with further notification of dates limited to changes in deadlines; and
> o Finance taking opportunities to minimise the need for manual returns, clearances and sign-offs, given the volume of information included by entities in the Central Budget Management System and validated by Finance.

Treatment of small entities

2.6   Finance consider whether the material/non material classification could be further utilised in the conduct of the Budget process to reduce the burden on those smaller entities whose contribution would not affect whole-of-government outcomes.

Operating losses

2.7   Finance consider whether the current annual approval process for operating losses be streamlined, or waived in specific circumstances, such as:

- o   allowing for a pre-approval of operating loss amounts within an agreed threshold for an entity that is funded mainly through cost-recovery or other external funding sources – the entity would operate within an envelope of multi-year equity results, with pre-approval for an annual operating loss of up to (for example) 5 per cent of revenue, where any losses are offset by subsequent surpluses over a four-year budget period; and/or
- o   amending the criteria against which operating loss applications are assessed to allow entities dependent on cost-recovered activities to manage alignment of expenses and cost-recovery revenue over the business cycle of the cost recovered activity, provided this does not represent a risk to entity financial sustainability.

Resource management framework

2.8   Finance, in consultation with entities and other stakeholders:

- o   continue to review and reform the Commonwealth resource management framework and its key components to address misalignments and inconsistencies within the framework and its application within entities including:
  - -   balancing whole-of-government Budget management with the responsibility of entities to manage their operations in a sustainable manner;
  - -   aligning and streamlining whole-of-government resource, appropriation and performance reporting with entity level performance reporting;
  - -   processes relating to the development, presentation and reporting of the Budget;
  - -   appropriation structures, classifications and arrangements;
  - -   outcome and programme structures and arrangements;
  - -   the effectiveness and sustainability of the Budget funding model for entities; and
  - -   whole-of-government cash management practices and their application to entities.

Constitutional consideration and legislative authority

2.9   AGD clarify whether there are circumstances in which, generally, new or updated legal advice in relation to constitutional considerations and legislative authority is not required and reflect any such 'exemptions' in guidance for entities.

3 Investment and assurance process

Gateway Reviews

3.1   Finance develop an evidence base and review the effectiveness of the investment and assurance framework, including Gateway and Implementation Readiness Assessments, ICT and Capital Works Two-pass, and the ICT Investment Framework, against the Principles for Internal Regulation, to determine the most appropriate and effective approach to assuring major project and programme implementation and improving capability, reporting to the relevant Secretaries Board subcommittee by July 2017.

3.2   Finance work to streamline and make more coherent investment and assurance processes, including:
- o   removing duplication and, where appropriate, inconsistency in risk criteria between the Risk Potential Assessment Tool (RPAT), grant guidelines, and thresholds for Gateway and ICT and Capital Works Two Pass as informed by the Commonwealth Risk Management Policy;
- o   creating a central inception point for major project or programme assurance processes, and enabling tiered assurance based on proposal size and complexity;
- o   allowing entities with a successive Green rating for Gate 0, Gate 1 and Gate 2 to apply to opt-out from further Gateway reviews;
- o   removing the mandatory requirement for Gateway Gate 0 and 1 for proposals that have been through ICT Two Pass or through Capital Works Two Pass; and/or
- o   lifting the ICT threshold for Gateway above $10 million in line with lifting the ICT Two Pass thresholds.

3.3   Finance better use existing Gateway data to provide a portfolio view of the number and status of high-risk programmes/projects across government, to inform government decisions on additional high-risk programmes/projects.

ICT Two Pass Review process (ICT2PR)

3.4   Finance lift the ICT-component threshold of ICT2PR above $10 million and the non-ICT threshold above $30 million to ensure greater focus on high risk proposals.

Risk Potential Assessment Tool

3.5   Finance require only proposals with an estimated financial implication of $30 million or above to complete a RPAT. The RPAT may still be used as an opt-in better practice measure for NPPs with financial implications of less than $30 million.

3.6   Finance engage with key stakeholders, including Cabinet Ministers and the Secretaries Committee on Transformation, to scope ways to improve consideration of risk in Government decision-making, including simplifying and increasing the usefulness of the RPAT template.

Agency Capability Initiative (P3M3®)

3.7   Finance cease the mandatory Agency Capability Initiative (P3M3®).

3.8 Finance enable flexibility in demonstrating capability through removing the requirement to have a P3M3® assessment completed in the prior 12 months for the ICT Two Pass first pass business case.

3.9 Finance, in consultation with PM&C, investigate alternative approaches to building project and programme management capability. This may include continuing the current community of practice or assessing the feasibility of offering a voluntary shared Project Management Office for use by small entities and small users of ICT to strengthen project management capability and assist with compliance activities (consistent with the shared services model).

4 Grants and programmes

4.1 Finance continue to work with entities to develop a set of templates for guidelines, applications and agreements, in particular addressing issues of low risk, cross-entity, ad hoc or one-off grants.

4.2 Finance work with entities to explore opportunities to streamline entity acquittal and reporting processes.

4.3 Finance develop a proposal for the Government to consider changing the role of the Finance Minister in reviewing low risk programme guidelines to allow escalation by exception rather than notification of all low risk guidelines.

4.4 Finance develop a proposal for the Government to engage with the Senate to seek amendment of the Senate Orders 13 (Murray motion) and 16 (Minchin motion) to enable reliance on grants.gov.au, once it is fully operational.

4.5 Finance develop a proposal for the Government to review the reporting timeframe for grants awarded in order for agencies to be able to better align grants reporting with other entity reporting requirements.

5 Procurement

Commonwealth Procurement Framework

5.1 Finance update and extend the procurement Accountable Authority Instructions (AAIs) or other guidance for internal entity procurement to provide sample processes for low and high risk procurements, which entities could adopt depending on the risk profile of the procurement.

5.2 Policy owners review the requirement for the Indigenous Procurement Policy, the Workplace Gender Equality Procurement Principles and User Guide, the Australian Industry Participation Plans for Government Procurement, and the Building Code to be connected to a procurement decision by mid-2017 against the Principles for Internal Regulation. The reviews should also focus on identifying the costs and benefits of the current approach, and alternative options for implementing the government policy in a more efficient and effective manner.

5.3   Finance in consultation with entities, develop guidance and flexible templates to support entities' management of contracts and associated legal risk for contracts above $200,000.

Procurement contract reporting (including AusTender and Murray motion)

5.4   Finance reinvigorate its efforts to introduce a higher reporting threshold in the CPRs for mandatory reporting of non-corporate Commonwealth entity procurement contracts to reduce the compliance burden by decreasing publication of low value contracts.

5.5   Entities review their AusTender notification systems and processes to ensure appropriate approval and correct data entry with the minimum necessary process.

Whole-of-government coordinated ICT procurement arrangements, and entity ICT panels

5.6   Finance review the whole-of-government coordinated procurements against the Principles for Internal Regulation:
- o   periodically or at appropriate trigger points;
- o   in consultation with entities;
- o   including with respect to cost/benefit and governance arrangements;
- o   to ensure that they are fit-for-purpose given market conditions and entity capability; and
- o   to communicate review outcomes to entities and the public.

Refer to whole-of-government ICT opt-out policy (Recommendation 7.12).

6 Property

Reporting and information requirements

6.1   Finance discontinue the requirement for the preparation of a Property Capital Expenditure Forecast Report.

6.2   Finance review the need for the current number and range of other property-related reports required as part of the Budget process and during the course of the year to:
- o   assess the continuing need for such reporting informed by the extent to which the information collected is used;
- o   assess whether reports can be combined or consolidated, and whether increased access to and availability of a central property data repository could reduce reporting requirements; and/or
- o   reduce manual preparation and reporting processes.

Management of Commonwealth lease holdings

6.3   Finance take on a greater facilitation role regarding the consolidation of Commonwealth lease holdings that, over the longer term, allows it to focus more on strategic property management and encourages entities to co-locate and/or sub-lease rather than needing Finance to review and approve each transaction.

Public Works Committee

6.4   Finance examine whether the threshold for projects to be referred to the Public Works Committee (the Committee) could be increased to allow the Committee to focus on higher risk and higher value proposals with more significant public impact.

6.5   Finance examine the need for the inclusion of fit-outs within the scope of the Committee's consideration and if they are retained, consider increasing the level of the thresholds involved, as for Recommendation 6.4 (above), to allow for a focus on higher risk and higher value proposals.

6.6   Finance propose to the Committee that project risk be incorporated into the criteria for referral of projects to the Committee.

Lands Acquisition Act 1989

6.7   Finance review the *Lands Acquisition Act 1989* and related administrative and delegated arrangements with a view to simplifying arrangements and removing unnecessary processes relating to the acquisition and disposal of properties.

7 Information and Communications Technology (ICT)

Cloud Computing and related ICT policies

7.1   Finance consolidate the Australian Government Cloud Policy, Australian Government Open Source Software Policy and ICT Customisation and Bespoke Development Policy into a single policy promoting better practice through a principles-based approach where practical and appropriate.

7.2   Finance cease the Agency Solutions Database.

7.3   Finance work with Defence (Australian Signals Directorate) to clarify, integrate and streamline the web presence and guidance, particularly to make clear the relationship between the Certified Cloud Services List and the Cloud Services Panel.

Data Centres

7.4   Finance amend guidance on the application of the Data Centre Strategy to clarify its application to small entities, and to clarify Finance's role in the Data Centre panels process to vendors and entities.

7.5   Finance cease the Data Centre Migration Services Panel.

7.6   Finance remove the requirement for entities to:
   o   confirm to Finance that an appropriation exists to support a request for quote through the panel arrangements; and
   o   use the Data Centre Migration Services Panel, making this arrangement opt-in if the panel is not ceased.

7.7   Finance not reissue the Data Centre Optimisation Targets Policy.

ICT Benchmarking

7.8 Finance implement current reforms to the ICT Benchmarking Framework (ICTBM) by:
- o reducing the ICTBM burden on small and micro entities by collecting only total ICT expenditure, total numbers and cost of internal and external ICT FTE, and total expenditure on services outsourced to both Commonwealth entities and external providers from those entities, whilst encouraging these entities to opt-in to additional data collection where they see value; and
- o supplementing data with data from AusTender, Budget Papers, entity performance reporting and global benchmarking.

7.9 Finance commit to validating whole-of-government benchmarking data within two months of data being received, releasing it to entities within one month of validation, and releasing whole-of-government aggregate data to data.gov.au in a searchable format within three months of receipt.

7.10 Finance work with selected entities to investigate options to build automated data collection systems leveraging the Common and Shared Services Enterprise Resource Planning (ERP) consolidation.

7.11 Finance review the revised ICTBM for value and effectiveness against the Principles for Internal Regulation and report to the relevant Secretaries Committee by July 2018 on whether the ICTBM should cease.

Whole-of-government ICT arrangements opt-out process

7.12 Finance create an updated opt-out policy for ongoing mandatory ICT and procurement policies and coordinated arrangements, excluding those implementing Budget, legislative and parliamentary requirements, which:
- o enables consideration of an opt-out business case for the entity, a line of business, or a particular programme, project, transaction or contract;
- o is based on consideration of a business case against consistent criteria, e.g. in relation to business need, capability, value for money, risk and impact on whole-of-government outcomes; and
- o is considered by tiered approvers which are determined following consideration of consistent criteria (e.g. relative roles of the Expenditure Review Committee, Ministers, the Secretaries Committee on Transformation, responsible Secretaries in relation to the policy area, risk, impact, and compliance burden)

noting that better practice suggests policy owners should be given the opportunity to explore whether the policy can be clarified or adjusted before an opt-out process is initiated.

Other compulsory ICT policies

7.13 Finance and the Digital Transformation Office (DTO) retire or update exhausted Australian Government Information Management Office circulars, policies and frameworks, including:
- o The Common Parliamentary Workflow Language;
- o Protective Markings in Email Standard and Implementation Guidance;
- o Portfolio Panels for IT Services Policy;
- o Engagement of an Individual Process Patterns;

o   Gatekeeper Public Key Infrastructure Framework; and
o   Third Party Identity Services Assurance Framework.

8   *Public Governance, Performance and Accountability Act 2013 (PGPA Act)*

PGPA Act (excluding compliance and enhanced Commonwealth performance framework)

8.1   Finance continue to work with the ANAO and entities, both directly and through bodies such as Secretaries Board and the Efficiency Working Group to clarify the principles-based approach and to fully achieve the potential efficiencies/benefits provided by the PGPA Act.

8.2   Finance re-examine the Model Accountable Authority Instructions with a view to reducing the model instructions on core requirements, streamlining to avoid unclear duplication and overlap with the PGPA Act, regulations, and re-examining each section for clarity.

8.3   Finance and the APSC continue to examine opportunities to harmonise the PGPA Act and Public Service Act frameworks. In addition to legislative change this might involve joint guidance (for example on officials' duties).

Resource Management Framework compliance reporting

8.4   Finance cease centrally mandated compliance certification, monitoring and reporting.

Organisation and appointment registers

8.5   Finance develop a single digital source of publicly available information on organisations and appointments, which:
o   at a minimum provides publicly the same scope and depth of information as that provided by the Australian Government Organisations Register (AGOR), AusGovBoards, and the Government Online Directory;
o   enables interrogation of data and generation of reports by users;
o   is updated sufficiently frequently to meet the Parliament's requirements under Senate Order 15 and government policy in relation to gender reporting;
o   finds innovative ways to use IT, business process changes, governance arrangements and other sources of data (e.g. automatic links to update remuneration information from the Remuneration Tribunal) to reduce the frequency of updating by agencies and ensure the appropriate quality of the data for its different uses; and
o   has been evaluated to confirm that information requested is the minimum necessary to provide transparency and inform policy development.

8.6   Following the implementation of the above recommendation, Finance support the Government to engage with the Parliament to seek modification of Senate Order 15 to rely on information and reports published on the single digital source in place of hard copy tabling, as has occurred recently with the Murray motion in relation to AusTender.

9 Risk management

9.1   Finance prepare better practice guidance templates and examine opportunities to develop capability improvement tools, tailored to individual entity risk profiles and functions.

9.2   Finance review the Risk Management Benchmarking Programme to:
- o   ensure entities derive value from the benchmarking process; and
- o   identify opportunities for entities to use existing sources of data to complete parts of the survey.

10 Financial accountability and resource management

Monthly reporting of expenditure

10.1   Should entities wish to remove the need to report separately to Finance and to their portfolio department as part of whole-of-government monthly expenditure performance reporting, they could consider requesting Finance to provide to their portfolio departments view access to their information on the Central Budget Management System to:
- o   The Appropriation and Cash Management module; and
- o   The monthly estimates and monthly reporting components of the Budget Estimates and Actuals Management module.

Reduced disclosure regime

10.2   Finance continue to work with the ANAO, Australian Accounting Standards Board and entities to develop and implement a differential approach to financial reporting to optimise benefits at both the entity and whole-of-government levels.

11 Planning and reporting

11.1   Finance re-focus the annual report which is tabled in Parliament around the entity's performance in achieving its purposes, and remove unnecessary detail that obscures this primary purpose. This would include:
- o   retaining in the tabled report an assessment of the effectiveness of the entity's organisational strategies in contributing to achieving its purposes, and the financial statements of the entity; and
- o   requiring that entities remove useful but not essential detail from the published annual report, potentially placing it on websites if complete removal is deemed inappropriate, including the current mandatory departmental overview, corporate governance information, notes to the financial statements, and other detailed mandatory reports.

11.2   Finance work to remove duplication in reporting on consultancies by:
- o   removing consultancy reporting from annual reports; and
- o   engaging with the Parliament to seek agreement that AusTender be used to provide reports on the contract value of consultancy contracts.

11.3 Regulators review in-year and annual planning and reporting requirements (whether associated with annual reports or not) to determine whether:
- they continue to be required and are the minimum necessary, including whether small and micro entities could be relieved of the reporting obligation;
- data can be made available online in a format accessible to and manipulable by users, and published concurrent with annual reports; and/or
- such reports can be removed from annual reports.

11.4 Finance and the DTO work together to progress the co-location of common entity documents, including annual reports, corporate plans, budget documents and other mandatory reports. As a first step, this could be accessible via links from a central portal to entity websites if required but in time transitioning to a single location which facilitates central archiving.

12 Publishing and tabling

Australian Government Web Publishing

12.1 Where templates and sample reports are offered, regulators and policy owners should ensure that they are compliant with the Digital Design Standard or, where not completely compliant due to functionality (e.g. calculations in financial tables), should be accompanied by guidance on the steps required to achieve compliance in the final product.

Parliamentary tabling requirements (electronic tabling)

12.2 PM&C and Finance work with relevant entities and the Parliament to:
- scope and develop a system, to commence at the beginning of the next Parliament, for centralised electronic tabling of government documents (not including legislation documents at this time); and
- once a system has been developed:
  - remove or substantially reduce the current requirements for hard copies of government documents to be printed; and
  - approach the Joint Committee on Publications to remove the requirement for documents to be printed in a B5 format.

13 Senate orders of continuing effect

13.1 PM&C and Finance initiate a process to enable the Government to seek the Senate's agreement to:

- repeal the Senate order of continuing effect implementing the Harradine motion for biannual production of file lists; and
- review existing Senate orders of continuing effect at the end of each Parliament.

14 Cabinet processes

14.1 To reduce the administrative burden in preparing portfolio budget submissions and recognising the role of the green brief to provide summary information and support decision-making, PM&C should streamline the portfolio budget submission to:
- limit its purpose to presenting portfolio NPPs to ministers; and

  o provide only essential information to assist ministers to make a decision without duplicating material in the relevant NPPs.

14.2 PM&C work with departments to:
  o streamline and consolidate processes for approval of Cabinet documents; and
  o consider rationalising documents required to be developed and presented to ministers.

14.3 Departments with internal processes for hard copy distribution of Cabinet documents work with PM&C to prioritise implementing a system for secure electronic distribution of such documents.

14.4 PM&C update the Cabinet Manual to reflect the current Cabinet Handbook.

14.5 PM&C and Finance ensure requirements set out in Cabinet Circulars, Estimates Memoranda and the BPORs are coherent and consistent.

15 Legislation processes

15.1 PM&C update the Legislation Handbook published in 1999 and amend it to:

  o reflect contemporary practice and be as user friendly as possible;
  o clarify that the relevant minister can give policy approval to measures in Bills, technical or otherwise, that are consistent with the intention of existing policy;
  o encourage departments seeking further policy approval as part of the legislation process to show a draft to OPC prior to submitting the request to ministers;
  o where measures proposed in a Bill would amend legislation administered by another minister, enable the affected department to agree to the amendments in appropriate circumstances, rather than requiring correspondence between ministers; and
  o explain the purposes of forms required in the legislation process.

15.2 PM&C consider whether there is scope to streamline information required to support the legislation process, including whether an electronic system could be developed to reduce the administrative burden on staff managing the process across departments.

16 Deregulation

16.1 PM&C implement all recommendations of the Review of the Government's Red Tape Reduction Framework, prepared by Treasury on behalf of the SES Deregulation Reference Group, as closely as possible to reduce the regulatory burden imposed on entities.

16.2 In recognition that measures implementing the Government's deregulation agenda impose a significant administrative burden on entities, PM&C approach Government to remove the requirement:
  o for comprehensive portfolio annual reports (whether public or for internal reporting purposes) on deregulation, with only significant deregulation measures being reported centrally in the Australian Government Annual Deregulation Report; and

o   for Deputy Secretary or Secretary level approval of Regulation Impact Statements, to give departments flexibility to determine an appropriate level of clearance for individual measures.

16.3   PM&C and Finance review requirements under the PGPA Act's Enhanced Commonwealth Performance Framework and the Regulator Performance Framework after a full cycle and consider whether they could be merged.

17 Freedom of information (FOI)

17.1   Entities:

o   examine their FOI practices to ensure they impose the least burdensome mechanisms for responding to FOI requests; and
o   consider more active publication of information to decrease FOI requests.

17.2   AGD in consultation with relevant entities consider whether the Information Publication Scheme could be consolidated with other government initiatives for enhancing public accessibility of government information, such as the digital transformation agenda.

17.3   To reduce the administrative burden on entities arising from managing FOI requests, AGD should:

o   reduce the frequency of reporting imposed on entities for FOI matters from quarterly to annually;
o   recognising challenges with the current legislative environment, seek the Government's agreement to prioritise implementing recommendations of the Review of Freedom of Information laws (the Hawke report) that would reduce the regulatory burden on entities and improve the operation of the *Freedom of Information Act 1982* (FOI Act); and
o   consider issues raised about exemptions and the scope of access to information under the FOI Act to enhance the operation of the Act.

18 Records and information management

18.1   The National Archives of Australia (Archives) publish its annual reports to government as part of the digital continuity policy.

18.2   Archives work with entities to be more closely involved in policy development processes and decision-making forums on government information management, including digital transformation-related matters, to:

o   reduce the administrative burden arising from meeting their responsibilities under the *Archives Act 1983*; and
o   ensure government information and data is usable for the future.

18.3   AGD work with the Archives to develop a proposal to amend the 90 day requirement for processing requests for access to information under the *Archives Act 1983* to reduce the administrative burden by:

o   changing the calendar day requirement to a business day requirement; and
o   provide greater flexibility for the Archives to consult relevant entities on information requested under the Act.

18.4 AGD begin work with relevant entities to scope and develop a simpler and more coherent legislative framework for managing and accessing government information during its life-cycle in a digital environment through staged reforms, commencing with legislation regulating archives.

19 Commonwealth Fraud Control Framework

19.1 AGD consider removing certain mandatory elements of the Commonwealth Fraud Control Policy to enable entities to adopt a risk-based approach, in particular in the areas of fraud prevention, training and reporting.

19.2 AGD, in consultation with the ANAO, review existing guidance relevant to fraud control with a view to ensuring it is streamlined and consolidated into the framework.

19.3 AGD cease its annual report on fraud compliance to the Minister for Justice, and instead work with the Australian Institute of Criminology (AIC) to develop and publish a single whole-of-government annual report on fraud control.

19.4 AGD work with the AIC to revise its annual survey on fraud to make it less burdensome and provide clearer guidance for more consistent reporting across entities.

19.5 AGD, APSC and PM&C work together to better manage the apparent overlap between the Fraud Control Framework, the *Public Interest Disclosure Act 2013* and the APS Code of Conduct.

19.6 AGD coordinate work with relevant stakeholders to identify and address issues associated with entities' authority to seek and disclose personal information relevant to a fraud investigation.

20 Legal Services Directions

20.1 AGD's review of legal services should apply the Principles for Internal Regulation in considering the future arrangements for the Legal Services Directions, in particular the principle that regulation should be proportional to the risks to be managed and support a risk-based approach where possible.

20.2 AGD seek the Attorney-General's agreement to repeal the mandatory requirement under the Legal Services Directions to submit evaluations of Commonwealth legal work undertaken by external legal services providers as it imposes a disproportionate regulatory burden on entities.

20.3 AGD consider and respond to other issues raised with this review as part of its review of legal services.

21 Protective Security Policy Framework (PSPF)

PSPF Governance

21.1   AGD review the governance component of the PSPF in accordance with the Principles for Internal Regulation, in particular to streamline requirements and remove duplication with other requirements imposed on entities.

21.2   AGD improve communication and support to entities to implement the PSPF, in particular to assist entities adopt a sound risk-based approach.

21.3   AGD consider whether fraud control and anti-corruption measures could be integrated into the PSPF to streamline and enhance the effectiveness of these frameworks.

PSPF Information Security

21.4   To enhance the coherence of the PSPF, AGD and Defence:
   o   better incorporate the Information Security Manual within the framework; and
   o   consider how the Information Security Manual could be improved to assist business users of entities to make informed, risk-based decisions, for instance by providing clearer guidance on how particular controls apply to specific risks.

PSPF and Security Vetting

21.5   To reduce the regulatory burden on staff and improve security outcomes, AGD work with Defence and other relevant entities to develop and cost options for reform to personnel security policy which would:
   o   apply the Principles for Internal Regulation identified in this review, in particular the principle that regulation should be proportional to the risks to be managed;
   o   replace Baseline security clearances for ongoing staff with a consistent level of basic employment screening for the Australian Government;
   o   reduce the amount of information staff are required to produce for security clearances by electronically seeking information from relevant government and private sources; and
   o   develop a continuous evaluation and assessment model for security clearances which, once implemented, would reduce requirements imposed on staff for revalidation of security clearances.

21.6   AGD work with the APSC to coordinate work across entities to identify and resolve potential privacy impediments arising from consent requirements for employment screening or security vetting processes.

21.7   Defence provide entities with greater visibility of information about security clearance holders identified through centralised security vetting processes to enable those risks to be proactively managed in entities.

22 Employment arrangements

General matters – employment arrangements

22.1   The APSC develop and communicate streamlined models of core Human Resources (HR) policies and processes that Commonwealth entities may apply or adapt to their own circumstances and risk profiles.

22.2   The APSC assume an active role in supporting Commonwealth entities in their implementation of fit for purpose HR policies and practices, including:
   o   developing a suite of policy and practice options for small and medium size entities that are appropriate and proportional to the scale of the entities and their operations.

22.3   The APSC produce guidance for entities on the minimum requirements for core HR policies and practices, including performance management, managing underperformance and recruitment.

22.4   The APSC conduct regular and ongoing evaluations of the impact on entities of its policies and guidance in order to ensure implementation by entities is proportional and fit for purpose.

Performance management

22.5   Entities review their performance management systems and evaluate whether they add real value to improving performance for both the entity and the employee. In the interest of removing the compliance burden that many performance systems impose on managers and employees, entities consider alternatives, such as adopting a simpler satisfactory/unsatisfactory categorisation, supplemented by an emphasis on the importance of regular performance feedback.

22.6   The APSC ensure managers have access to practical support and guidance to improve their capacity to improve the performance of their staff and address underperformance.

22.7   Entities examine their dispute resolution processes to ensure they promote informal consultation processes as a first resort.

Recruitment

22.8   The APSC develop and communicate streamlined recruitment models and practices that Commonwealth entities may apply or adapt to their own circumstances and risk profiles, giving consideration to ways to:
   o   in consultation with the Merit Protection Commissioner, streamline, and shorten the APS promotion review process while still protecting the right of an individual to ensure the application of merit;
   o   enable agencies to piggy-back on other agencies' orders of merit; and
   o   discourage lengthy written applications and the Integrated Leadership System as selection criteria.

22.9   Entities, informed by the APSC (in line with the above recommendation), should review their recruitment processes to ensure they do not unnecessarily go beyond minimum mandatory requirements and do not waste time and resources.

22.10 The APSC assess whether current legislative and policy requirements result in a choice of engagement type inconsistent with the business requirements of an entity, with any such requirements being reviewed and amended accordingly.

22.11 The APSC review the relevant provisions of the Australian Public Service Commissioner's Directions 2013 to provide greater flexibility for an entity to extend non-ongoing engagements beyond a 12 month period without advertising, where such an extension is:
- o for a defined period;
- o for an incumbent who has been assessed as satisfactory; and
- o assessed as representing a more efficient use of public resources than undertaking a recruitment process for the additional defined period.

Workforce management reporting

22.12 The APSC, consulting as necessary with Finance, review their data collection processes and practices against the Principles for Internal Regulation with a view to streamlining and minimising the impact of reporting and compliance requirements imposed on entities.

Remuneration

22.13 The APSC continue to examine ways in which the current enterprise bargaining process can be streamlined within the government's policy parameters, tailored to the range of employment environments, diversity of roles and the size of entities within the public sector.

22.14 The APSC review guidance and communication strategies in relation to remuneration and enterprise bargaining arrangements to assist entities develop a more comprehensive understanding of arrangements and processes.

Code of Conduct and Public Interest Disclosure

22.15 The APSC and PM&C work together to better manage the apparent overlap between the APS Code of Conduct and the *Public Interest Disclosure Act 2013*.

Rehabilitation and Work, Health and Safety

22.16 Comcare, as part of its efforts towards a more coherent approach to regulation that is fit for purpose for entities, apply lessons learnt from its review of RMS in small entities to other areas of its administration and to its dealings with the broader public sector.

22.17 Comcare, as part of applying a risk-based, differential approach to the obligations on entities in relation to RMS audits:
- o explain the extent to which entities are required to conduct a formal audit annually; and
- o review the current restrictions on who can conduct an audit and whether there are opportunities to widen the pool of assessors and constrain costs for entities.

22.18 Comcare review its current guidance and advice in order to clarify what requirements are based in legislation or government policy and are therefore mandatory, and which matters are being suggested as better practice.

22.19 Comcare implement a data collection and sharing approach that:

- o consults with Commonwealth entities (and its private sector licensees where appropriate) on proposed data collection exercises to determine the workload involved, and the most effective means of collection;
- o communicates why the data is required, the relevance of its collection, and how it will be used;
- o makes use of risk-based, differential approaches to the collection of data and imposition of reporting obligations on entities; and
- o shares resulting information with contributors in a timely fashion.

Attachment B: Terms of Reference

Engagement of Independent Reviewer - Terms of Reference

Context

The Australian Public Service needs to be more agile and responsive to the needs of government and the public, by developing a culture of risk management rather than regulation. The current state of regulation imposed on Commonwealth entities is an obstacle to the public service making this transformation.

As part of addressing the problem, an Independent Reviewer will be engaged to assess the need for, and impact of regulations imposed on Commonwealth entities, in particular, non-corporate Commonwealth entities that engage staff under the *Public Service Act 1999* (entities).

Regulation can be set in many ways – by Parliament, through legislation; by central agencies; and by agencies practices themselves. Each source of potentially inefficient regulation is in scope for Review.

The *Public Governance, Performance and Accountability Act 2013* (PGPA Act*)* implemented a significant shift in public sector governance, incorporating a requirement for accountable authorities to manage risk, and giving them more power to set their own operational requirements, based on a risk managed approach, for example in relation to the commitment of relevant money and drawing rights of appropriations.

Objective

To:

- o identify regulations that can be ceased or modified;
- o assess the need for, and impact of, regulations against a set of common principles;
- o recommend minimum levels of regulation required for entities to meet the needs of government and the public; and
- o assess the culture of departments and selected entities with regards to the creation and removal of self imposed requirements; make recommendations if cultural changes need to take place proportional to the risk tolerance of an agency; and identify characteristics and examples of good culture and practice.

Scope

The review will be able to draw upon the following:

- o 2015 Deloitte Stocktake which is currently underway;
- o the Library of Obligations developed by the Australian Tax Office;
- o reviews undertaken by the Efficiency Working Group;
- o Contestability Reviews;
- o Capability Reviews;
- o internal reviews that departments are conducting on their own internal requirements; and
- o interviews with senior officers.

Regulations are requirements that are mandatory for all or most entities, or guidance, practice or procedure that is treated as such.

Methodology

The over-arching principle for the Review is that regulators prove that regulation is needed.

The objectives of the Review will be achieved through interviews with nominated entities, in particular key staff (such as Chief Operating Officers) and senior people in each department responsible for regulatory processes and reporting, and input from the Deloitte stocktake. The Review may also wish to seek submissions, and the work being undertaken by departments to examine the red tape they impose on themselves.

The Review may also draw on feedback from and conversations with the Deputy Secretary Working Group on Internal Red Tape, the Secretaries Sub-Committee on Transformation and the Secretaries Board.

The Review will provide a progress report to the Secretaries Sub-Committee in June 2015.
If required, the Reviewer will be supported by a team within the Department of Finance, along with support from AGD, PM&C and APSC.

Deliverables

The Reviewer will report to the Secretaries Board between July and August 2015.

The Review will:

- o critically assess current regulatory arrangements;
- o recommend the cessation, modification or retention of large blocks of regulation;
- o indentify opportunities to make structural and cultural improvements in relation to risk management with reference to good practice observed during the review; and
- o set out factors /principles that influence the creation and removal of regulations into the future.

The progress and final report will be for official use only.

Engagement Strategy

In carrying out its work the Reviewer will consult key stakeholders, and may invite submissions.

Draft Principles – Internal Regulation

Internal public sector regulation should be:

- - The <u>minimum</u> needed to achieve the public sector the Government wants
- - <u>Proportional</u> to the risks to be managed
- - <u>Coherent</u> at the system level – the same risks should not be regulated differently from different perspectives
- - <u>Designed</u> with best practice regulation principles in mind, including <u>simplicity</u> in application

- <u>Reviewed</u> periodically to test their relevance and impact

  o Benefits and costs of regulatory and accountability arrangements for government are to be assessed at the whole-of-government level, not just at the level of individual agencies.
  o The Australian Government operates in a devolved environment – Ministers and Secretaries need to have flexibility and discretion, consistent with the achievement of whole-of-government goals.
  o Centralisation of specific activities needs to be judged against a business case which weighs up whole-of-government benefits and costs.
  o A presumption of the regulatory framework is to prove that regulation is needed.

The above principles form the basis for <u>testing</u> the suitability of current internal regulations at the whole-of-government level, and a basis for <u>assessing</u> agency self imposed regulation.

Attachment C: Consultation

The Review draws on feedback from the Deputy Secretary Working Group on Internal Red Tape and the Secretaries Sub-Committee on Transformation and the Secretaries Board. Further, the following regulators or policy owners were consulted:

Regulators
Attorney-General's Department
Australian National Audit Office
Australian Public Service Commission
Comcare
Department of Defence
Department of Employment
Department of Finance
Department of the Prime Minister and Cabinet
Digital Transformation Office
National Archives of Australia
Office of the Australian Information Commissioner

Over the last three months, Ms Belcher and the Red Tape Review Secretariat have engaged with a cross section of agencies, staff at various levels (from processing staff through to senior managers), and with respect to particular frameworks (e.g. ICT, procurement, information security, budget etc), and to seek input on areas in which red tape could be reduced. Consultation has included seeking the views in relation to the extent and effectiveness of whole-of-government regulation currently in place.

To date approximately **50** meetings have been attended with approximately **79** entities represented either individually or in reference group/workshop format. Meetings have been held with small and material corporate Commonwealth entities and non-corporate Commonwealth entities. In some instances multiple meetings have been held in an agency where responsibility for specific subject matter is in differing areas within the agency.

Consultation meetings with entities
Attorney-General's Department
Australian National Audit Office
Australian Public Service Commission
Australian Signals Directorate
Australian Taxation Office
Clerk of the House of Representatives
Clerk of the Senate
Commonwealth Scientific and Industrial Research Organisation

Department of Communications
Department of Defence
Department of Employment
Department of Finance
Department of Foreign Affairs and Trade
Department of Industry and Science
Department of the Prime Minister and Cabinet
Department of the Treasury
Digital Transformation Office
Museum of Australian Democracy at Old Parliament House
National Archives of Australia
New South Wales Health Department
Office of Parliamentary Counsel
The Australian Institute of Marine Science
The Independent Hospital Pricing Authority

Discussions were also held with the Chair of the Joint Committee of Public Accounts and Audit, Dr Andrew Soutcott MP, and the Chair of the Senate Finance and Public Administration References Committee, Senator Cory Bernardi.

Workshops

Two workshops were held during the consultation process to gain the perspective of differing groups of officials from entities across the Commonwealth.

The first workshop was held with senior officials and focussed on the strategic high level aspects of regulation. Representatives from **36** entities attended (and in some instances multiple representatives attended from each entity), these entities are detailed below.

Workshop No.1
Attorney-General's Department
Australian Broadcasting Corporation
Australian Commission for Law Enforcement Integrity
Australian Commission on Safety and Quality in Health Care
Australian Communications and Media Authority
Australian Competition & Consumer Commission
Australian Financial Security Authority
Australian Government Solicitor
Australian Institute of Criminology
Australian Maritime Safety Authority

Australian Pesticides and Veterinary Medicines Authority
Australian Research Council
Australian Sports Anti-Doping Authority
Australian Taxation Office
Australian War Memorial
Bureau of Meteorology
Cancer Australia
Civil Aviation Safety Authority
Clean Energy Regulator
Commonwealth Scientific and Industrial Research Organisation
Department of Agriculture
Department of Communications
Department of Employment
Department of Human Services
Department of Infrastructure
Department of Social Services
Department of the Environment
Department of the House of Representatives
Department of the Senate
Department of Veterans' Affairs
Museum of Australian Democracy Old Parliament House
National Gallery of Australia
National Museum Australia
National Portrait Gallery
Professional Services Review Agency
Safe Work Australia

The second workshop focussed on the end-user (e.g. Executive Assistants, Administration Officers and Executive Officers) - the people responsible for filling in the forms and carrying out the business processes within an organisation. Representatives from **28** entities attended, again with multiple representatives attended from each entity.

Workshop No.2

Attorney-General's Department

Australian Competition and Consumer Commission

Australian Electoral Commission

Australian Federal Police

Australian Nuclear Science and Technology Organisation

Australian Strategic Policy Institute

Australian Taxation Office

Australian Trade Commission

Australian War Memorial

Cancer Australia

Civil Aviation Safety Authority

Commonwealth Scientific and Industrial Research Organisation

ComSuper

Department of Communications

Department of Employment

Department of Finance

Department of Human Services

Department of Immigration and Border Protection

Department of Infrastructure

Department of the Environment

Department of the Prime Minister and Cabinet

Department of the Senate

Department of Veterans' Affairs

National Archives of Australia

Safe Work Australia

Public Management Reform Agenda Reference Group meetings

Four reference group meetings were held during the consultation process to gain the perspective of differing groups. These reference groups are made up of senior officials from non-corporate Commonwealth entities and corporate Commonwealth entities.

Governance, Risk Management and Culture Reference Group (representatives from 16 entities)

Attorney-General's Department

Australian National Audit Office

Australian Office of Financial Management

Australian Public Service Commission

Australian Taxation Office

Commonwealth Scientific and Industrial Research Organisation

Department of Defence

Department of Education and Training

Department of Health

Department of Human Services

Department of Industry and Science

Department of Social Services

Department of the House of Representatives

Department of the Prime Minister and Cabinet

Grains Research and Development Corporation

Indigenous Business Australia

Planning, Reporting and Streamlining Reference Group (representatives from 16 entities)

AirServices Australia

Australian National Audit Office

Australian Public Service Commission

Australian Taxation Office

Commonwealth Scientific and Industrial Research Organisation

Department of Agriculture

Department of Defence

Department of Foreign Affairs and Trade

Department of Health

Department of Human Services

Department of Parliamentary Services

Department of the Environment

Department of the Prime Minister and Cabinet

Department of the Senate

Department of the Treasury

Fisheries Research and Development Corporation

Sydney Reference Group (representatives from 13 entities)

Australian Broadcasting Corporation

Australian Commission on Safety and Quality

Australian Hearing Hub

Australian Institute of Marine Science

Australian National Maritime Museum

Australian Prudential Regulation Authority

Australian Securities and Investments Commission

Australian Human Rights Commission

Export Finance and Insurance Corporation

Federal Court of Australia

Independent Hospital Pricing Authority

Reserve Bank of Australia

Special Broadcasting Service

Melbourne Reference Group (representatives from 9 entities)

Australian Accounting Standards Board

Australian Institute of Company Directors

Australian Postal Corporation

Bureau of Meteorology

Commonwealth Scientific and Industrial Research Organisation

Fair Work Commission

Fair Work Ombudsman

Future Fund Management Agency

Productivity Commission

Attachment D: Mandatory Requirements

List of mandatory reporting and data collection obligations

Regulatory Area	Name	Access	Frequency
Deregulation policy	Portfolio deregulation annual report	Public via website	Annually
Employment arrangements	APS Remuneration Data Collection	Policy agency	Annually
Employment arrangements	Average staffing level	Policy agency	Annually
Employment arrangements	Comcare full-time equivalent actual and estimates	Policy agency	Annually
Employment arrangements	Senior Executive Service numbers	Policy agency	Monthly
Employment arrangements	State of the Service Agency Survey	Public via website	Annually
Employment arrangements	APS Unscheduled Absence Portal	Policy agency	Monthly
Employment arrangements	Workforce data collection to APSED system	Policy agency	Monthly
Environment	Energy Efficiency in Government Operations (EEGO) - energy performance summary report via OSCAR system	Policy agency	Annually
Environment	Emissions and Energy Reporting System - report on energy consumption	Policy agency	Annually
Environment	National Australian Built Environment Rating System (NABERS) energy reporting - report on energy efficiency	Policy agency	Annually
Financial management reporting and accounting policy	Pre-Expenditure Review Committee update report into CBMS	Policy agency	Annually
Financial management reporting and accounting policy	Budget entry into CBMS	Public via website	Annually

Regulatory Area	Name	Access	Frequency
Financial management reporting and accounting policy	Application for operating loss	Policy agency	Annually
Financial management reporting and accounting policy	Audit cleared financial statements and notes	Policy agency	Annually
Financial management reporting and accounting policy	Financial statements audit	Policy agency	Annually
Financial management reporting and accounting policy	Interim audit by ANAO	Policy agency	Annually
Financial management reporting and accounting policy	Mid-Year Economic and Fiscal Outlook (MYEFO)	Policy agency	Annually
Financial management reporting and accounting policy	Monthly actuals into CBMS	Policy agency	Monthly
Financial management reporting and accounting policy	Monthly bank and account reconciliations into CBMS	Policy agency	Monthly
Financial management reporting and accounting policy	Monthly estimates into CBMS	Policy agency	Semi-annually
FOI	Freedom of Information reporting	Policy agency	Quarterly
FOI	Information publication scheme info survey	Public via website	Every 5 years
Fraud	Fraud Control Plan	Entity	As required
Fraud	Commonwealth Fraud Control Survey	Policy agency	Annually
Fraud	Fraud Control Report	Minister	Annually
Grants and programmes	Web-based grant reporting requirement on grants awarded	Public via website	As required
ICT	Digital transformation plan	Policy agency	Annually
ICT	Agency Solutions Database	Policy agency	As required

Regulatory Area	Name	Access	Frequency
ICT	ICT Benchmarking	Policy agency	Annually
ICT	Agency ICT Capability Initiative	Policy agency	3-yearly
Legal Services Directions	Legal Services Directions – letter of compliance	Policy agency	Annually
Legal Services Directions	Legal services reporting – financials	Policy agency	Annually
Legal Services Directions	Legal services reporting – web publishing	Public via website	Annually
PGPA Act	PGPA Act Corporate Plan	Public via website	Annually
PGPA Act	PGPA Act Performance Statement	Public via website	Annually
PGPA Act	PGPA Act Compliance Report	Minister	Annually
PGPA Act	Annual Report	Annual report via website	Annually
Legislation processes	Report on *Work Health and Safety Act 2011* (included in entity Annual Report)	Annual report via website	Annually
Legislation processes	Report on Advertising and Market Research as required under the *Commonwealth Electoral Act 1918* (included in entity Annual Report)	Annual report via website	Annually
Legislation processes	Report on Ecologically Sustainable Development and Environmental Performance as required under the *Environment Protection and Biodiversity Conservation Act 1999* (included in entity Annual Report)	Annual report via website	Annually

Regulatory Area	Name	Access	Frequency
Legislation processes	In the case of a 'public service care agency', Report on *Carer Recognition Act 2010* (included in entity Annual Report)	Annual report via website	Annually
Legislation processes	Business activity statement	Policy agency	Monthly
Legislation processes	Fringe benefits tax return	Policy agency	Annually
Legislation processes	Lands Acquisition Act	Policy agency	Annually
Legislation processes	Report on *Public Interest Disclosure Act 2013*	Policy agency	Annually
Parliamentary requirements	Indexed lists of entity files (Senate Order 12 - Harradine motion)	Parliament	Semi-annually
Parliamentary requirements	Entity contracts of $100,000 or more (Senate Order 13 - Murray motion)	Parliament	Semi-annually
Parliamentary requirements	Campaign advertising funding (Senate Order 14)	Parliament	As required
Parliamentary requirements	Appointments and vacancies (Senate Orders 15)	Parliament	3 times a year
Parliamentary requirements	List of all grants approved (Senate Order 16 - Minchin motion)	Parliament	3 times a year
Parliamentary requirements	Portfolio Budget Statements	Parliament	Annually
Parliamentary requirements	Response to Questions on Notice	Parliament	As required
Procurement	Report contracts and amendments on AusTender as required under the Commonwealth Procurement Rules	Public via website	As required
Procurement	Procurement plan as required under the Commonwealth Procurement Rules	Public via website	Annually

Regulatory Area	Name	Access	Frequency
Procurement	Whole-of-Government Common Operating Environment	Policy agency	Annually
Property	Australian Government property data collection (PRODAC)	Policy agency	Annually
Property	Commonwealth land audit	Policy agency	Annually
Property	Property management plan	Policy agency	5-yearly
Protective Security Policy Framework	Agency protective security policy, plan and procedures (GOV 4 & 5)	Entity	As required
Protective Security Policy Framework	Protective Security compliance report (GOV 7)	Minister	Annually
Records management, archives and meta data	Check-up Digital questionnaire	Policy agency	Annually
Risk policy	Comcover renewal survey	Policy agency	Annually
Risk policy	Comcover Risk Management Benchmarking Survey	Policy agency	Annually
Other	Australian Packaging Covenant annual report - report on packaging recycling	Public via website	Annually
Other	Various Australian Bureau of Statistics surveys	Policy agency	Ad hoc
Other	Multicultural plan	Public via website	2-yearly

Attachment E: Glossary

Accountable authority	Under the PGPA Act, the person or group of persons responsible for, and control over, each <u>Commonwealth entity's</u> operations.
Accountable Authority Instructions	Section 20A of the PGPA Act authorises accountable authorities to give instructions to officials in their entities on any matter necessary or convenient for carrying out or giving effect to the Act or the rules.
Central Budget Management System	The ICT system used to manage the flow of financial information between Finance and Commonwealth entities to facilitate cash and appropriations management, the preparation of budget documentation and financial reporting.
corporate Commonwealth entity (CCE)	A Commonwealth entity that is a body corporate. Corporate Commonwealth entities are legally separate from the Commonwealth, and the majority are financially separate as well.
non-corporate Commonwealth entity (NCE)	A Commonwealth entity that is not a body corporate. Such entities: • are part of the Commonwealth; and • are not legally and financially separate from the Commonwealth.
Policy owner	A Commonwealth entity responsible for issuing non-mandatory guidance.
Red tape	a process or other requirement of government perceived to impose an unwelcome burden on business, community organisations or individuals.
Risk	The effect of uncertainty on objectives.
Regulation	Requirements that are mandatory for all or most entities, or guidance, practice or procedure that is treated as such. Regulations that apply beyond the public sector, for example taxation and privacy legislation, are beyond the scope of this review.
Regulator	A Commonwealth entity responsible for imposing a regulation.