

Effectiveness of Board Governance at Old Parliament House

Old Parliament House

© Commonwealth of Australia 2019

ISSN 1036–7632 (Print)

ISSN 2203–0352 (Online)

ISBN 978-1-76033-442-0 (Print)

ISBN 978-1-76033-443-7 (Online)

Except for the content in this document supplied by third parties, the Australian National Audit Office logo, the Commonwealth Coat of Arms, and any material protected by a trade mark, this document is licensed by the Australian National Audit Office for use under the terms of a Creative Commons Attribution-NonCommercial-NoDerivatives 3.0 Australia licence. To view a copy of this licence, visit <http://creativecommons.org/licenses/by-nc-nd/3.0/au/>.

You are free to copy and communicate the document in its current form for non-commercial purposes, as long as you attribute the document to the Australian National Audit Office and abide by the other licence terms. You may not alter or adapt the work in any way.

Permission to use material for which the copyright is owned by a third party must be sought from the relevant copyright owner. As far as practicable, such material will be clearly labelled.

For terms of use of the Commonwealth Coat of Arms, visit the *It's an Honour* website at <https://www.pmc.gov.au/government/its-honour>.

Requests and inquiries concerning reproduction and rights should be addressed to:

Senior Executive Director
Corporate Management Branch
Australian National Audit Office
19 National Circuit
BARTON ACT 2600

Or via email:

communication@anao.gov.au.



Canberra ACT

18 April 2019

Dear Mr President

Dear Mr Speaker

In accordance with the authority contained in the *Auditor-General Act 1997*, I have undertaken an independent performance audit in Old Parliament House. The report is titled *Effectiveness of Board Governance at Old Parliament House*. Pursuant to Senate Standing Order 166 relating to the presentation of documents when the Senate is not sitting, I present the report of this audit to the Parliament.

Following its presentation and receipt, the report will be placed on the Australian National Audit Office's website — <http://www.anao.gov.au>.

Yours sincerely



Grant Hehir
Auditor-General

The Honourable the President of the Senate
The Honourable the Speaker of the House of Representatives
Parliament House
Canberra ACT

AUDITING FOR AUSTRALIA

The Auditor-General is head of the Australian National Audit Office (ANAO). The ANAO assists the Auditor-General to carry out his duties under the *Auditor-General Act 1997* to undertake performance audits, financial statement audits and assurance reviews of Commonwealth public sector bodies and to provide independent reports and advice for the Parliament, the Australian Government and the community. The aim is to improve Commonwealth public sector administration and accountability.

For further information contact:
Australian National Audit Office
GPO Box 707
Canberra ACT 2601

Phone: (02) 6203 7300
Fax: (02) 6203 7777
Email: ag1@anao.gov.au

Auditor-General reports and information about the ANAO are available on our website:
<http://www.anao.gov.au>

Audit team

Grace Guilfoyle
Kelly Williamson
Shane Armstrong
Michelle Page

Contents

Summary and recommendations.....	7
Background	7
Boards and corporate governance	7
Conclusion	9
Supporting findings.....	9
Recommendations.....	10
Summary of entities' responses	10
Key messages from this audit for all Australian Government entities	11
Audit findings.....	13
1. Background	14
Introduction.....	14
Boards and corporate governance	14
Rationale for undertaking the audit	22
Audit approach	23
2. OPH board governance arrangements	25
Are the board's governance and administrative arrangements consistent with relevant legislative requirements and has the board structured its own operations in a manner that supports effective governance?	25
3. OPH board arrangements to oversight compliance with key legislative and other requirements.....	38
Has the board established fit-for-purpose arrangements to oversight compliance with key legislative and other requirements?	38
Appendices	51
Appendix 1 Entity responses	52
Appendix 2 General duties as an accountable authority	56
Appendix 3 General duties as an official	57
Appendix 4 Selected PGPA Act requirements.....	58
Appendix 5 Extract of PGPA Rule 2014	60
Appendix 6 Extract of PGPA Rule 2014 section 17	63

Summary and recommendations

Background

1. The governing board of a corporate Commonwealth entity is the accountable authority for the entity under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act)¹, with responsibility for ‘leading, governing and setting the strategic direction’ for the entity.²
2. Around 60 corporate Commonwealth entities subject to the PGPA Act have governing boards, comprising a total of approximately 510 board positions.³ Corporate Commonwealth entities with governance boards vary significantly by function, and governance boards may also vary in their composition, operating arrangements, independence and subject-matter focus, depending on the specific requirements of their enabling legislation and other applicable laws.

Boards and corporate governance

Duties and roles

3. Sections 15 to 19 of the PGPA Act impose duties on accountable authorities in relation to governing the corporate Commonwealth entity for which they are responsible.⁴ As the accountable authority, members of Commonwealth governing boards are also officials under the PGPA Act and subject to the general duties of officials in sections 25 to 29 of the Act.⁵ Guidance issued to accountable authorities by the Department of Finance (Finance) observes that ‘each of these duties is as important as the others’.⁶
4. Boards play a key role in the effective governance of an entity. Corporate governance is generally considered to involve two dimensions, which are the responsibility of the governing board. These are:

Performance—monitoring the performance of the organisation and CEO...

1 Section 12 of the *Public Governance, Performance and Accountability Act 2013*.

2 Department of Finance, *Guide to the PGPA Act for Secretaries, Chief Executives or governing boards (accountable authorities) - RMG 200*, Summary: Governing your entity [Internet], Department of Finance, December 2016, available from <https://www.finance.gov.au/resource-management/accountability/accountable-authorities/> [accessed March 2019].

3 Under the PGPA Act, the accountable authority of a Commonwealth entity may be a single person or group of persons (section 12). This total is based on the Department of Finance’s *List of Commonwealth entities and companies under the Public Governance, Performance and Accountability Act 2013 (PGPA Act)* as at 28 August 2018. It includes those entities that have a collective accountable authority and includes governing bodies which have the title of board, authority, commission, corporation, council, or trust. The number of people for each entity was derived from the number of people included as the accountable authority in each entity’s 2018 annual report as at 30 June 2018.

4 For full details of the general duties as an accountable authority, refer to Appendix 2 of this audit report.

5 For full details of the general duties as an official, refer to Appendix 3 of this audit report.

6 Department of Finance, *Guide to the PGPA Act for Secretaries, Chief Executives or governing boards (accountable authorities) - RMG 200*, Summary: Your general duties as an accountable authority [Internet], Department of Finance, December 2016, available from <https://www.finance.gov.au/resource-management/accountability/accountable-authorities/> [accessed March 2019].

Conformance—compliance with legal requirements and corporate governance and industry standards, and accountability to relevant stakeholders.

... it is important to understand that governing is not the same as managing. Broadly, governance involves the systems and processes in place that *shape, enable* and *oversee* management of an organisation. Management is concerned with *doing* – with co-ordinating and managing the day-to-day operations of the business.⁷

Old Parliament House

5. Old Parliament House (OPH) has a governing board and operates under the Public Governance, Performance and Accountability (Establishing Old Parliament House) Rule 2016 (OPH Rule) as a not-for-profit corporate Commonwealth entity. OPH key functions include to conserve, develop and present the OPH building and collections; and to provide public programs and research activities related to Australia's social and parliamentary history.⁸

Rationale for undertaking the audit

6. This topic was selected for audit as part of the ANAO's multi-year audit program that examines aspects of the implementation of the PGPA Act. This audit provides an opportunity for the ANAO to review whether boards have established effective arrangements to comply with selected legislative and policy requirements and adopted practices that support effective governance. The audit also contributes to the identification of practices that support effective governance that could be applied in other entities. This audit is one of a series of governance audits that apply a standard methodology to the governance of individual boards.

Audit objective, criteria and scope

7. The objective of the audit was to assess the effectiveness of the governance board in Old Parliament House.

8. To form a view against the audit objective the following high level criteria were adopted:

- the board's governance and administrative arrangements are consistent with relevant legislative requirements and the board has structured its own operations in a manner that supports effective governance; and
- the board has established fit-for-purpose arrangements to oversight compliance with key legislative and other requirements.

9. The audit examined the period July 2016 until March 2019.

7 M Edwards and R Clough, 'Corporate Governance and Performance: An Exploration of the Connection in a Public Sector Context', Corporate Governance ARC Project, Paper No.1, January 2005, pp. 2–3.

8 Minister for Finance, Public Governance, Performance and Accountability (Establishing Old Parliament House) Rule 2016 *Explanatory Statement Issued by the Authority of the Minister for Finance* [Internet], Federal Register of Legislation, August 2016, available from <https://www.legislation.gov.au/Details/F2016L00739/Explanatory%20Statement/Text> [accessed March 2019].

10. Guidance to boards issued by Finance was reviewed by the ANAO having regard to the report of the 2019 Hayne Royal Commission⁹, which was released in the course of this audit, and other key reviews of board governance.¹⁰

Conclusion

11. The governance and oversight arrangements adopted by the Old Parliament House board are effective.

Supporting findings

Guidance

12. The 2018 APRA Prudential Inquiry and 2019 Hayne Royal Commission have again highlighted the criticality of effective governance, and there would be merit in the Department of Finance issuing guidance which has regard to the key insights and messages of those inquiries directed to accountable authorities including governance boards.

OPH board governance arrangements

13. The board's governance and administrative arrangements are consistent with relevant legislative requirements and the board has structured its own operations in a manner that supports effective governance.

14. The ANAO has identified a number of opportunities for improvement relating to:

- enhancing the board charter by including details of its processes for decisions without meetings, clearly defining the respective roles of the accountable authority and the employer on strategic issues such as remuneration policy and work, health and safety risks, and including behavioural expectations for board members;
- the board taking a more active role in approving key policies;
- providing board members with key policies and frameworks at induction;
- the board formally setting expectations for reporting to it by management;
- providing board members with consolidated progress results against all performance targets in the Corporate Plan; and
- annually reviewing the risk register.

OPH board arrangements to oversight compliance with key legislative and other requirements

15. The board has established fit-for-purpose arrangements to oversight compliance with key legislative and other requirements.

9 K M Hayne, *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry*, Final Report, 1 February 2019.

10 N Owen, *The Failure of HIH Insurance*, The HIH Royal Commission, 4 April 2003 and the Australian Prudential Regulation Authority (APRA) *Prudential Inquiry into the Commonwealth Bank of Australia (CBA) Final Report*, 30 April 2018.

16. The ANAO made a number of suggestions for improvement in relation to:
- including a reference to the Statement of Expectations and Statement of Intent in future corporate plans and annual reports;
 - expanding the existing Certificate of Compliance process to include compliance with enabling legislation and other legislative requirements, and including details of the basis for compliance;
 - updating materials in the board induction pack;
 - referencing OPH's Corporate Plan in OPH strategy documents;
 - reviewing the scheduling of audit committee meetings;
 - systematically capturing instances of non-compliance;
 - reviewing the board charter to better reflect the specific requirements of the PGPA Act; and
 - considering the application of the entertainment and hospitality policy to board members.

Recommendations

Recommendation no. 1
Paragraph 1.20 The Department of Finance update its guidance to accountable authorities having regard to the key insights and messages for accountable authorities identified in recent inquiries and reviews.

Department of Finance response: *Agree.*

Recommendation no. 2
Paragraph 3.17 Old Parliament House ensure its corporate plan meets all the minimum requirements of the Public Governance, Performance and Accountability Rule 2014.

Old Parliament House response: *Agree.*

Summary of entities' responses

17. The proposed report was provided to OPH which provided a summary response that is set out below. An extract of the report was provided to the Department of Finance which also provided a summary response that is set out below. The full responses from OPH and Finance are provided at Appendix 1.

Old Parliament House

18. OPH notes the ANAO's very positive findings that:
- governance and oversight arrangements adopted by the OPH board are effective;
 - OPH board governance and administrative arrangements are consistent with relevant legislative requirements and the board has structured its own operations in a manner that supports effective governance; and
 - OPH has fit-for-purpose arrangements to oversight compliance and alignment with key legislative and policy requirements.

19. OPH notes the ANAO's recommendation relating to ensuring OPH's corporate plan meets all the minimum requirements of the *Public, Governance, Performance and Accountability Rule 2014*. OPH is taking steps to ensure that all future OPH Corporate Plans are updated to include more dialogue around risk and capabilities across the four year period covered by the plan to ensure they meet the minimum requirements of the *Public Governance, Performance and Accountability Rule 2014*.

Finance

20. The Department of Finance agrees with the findings of the report.

Key messages from this audit for all Australian Government entities

21. This audit is one of a series of governance audits that apply a standard methodology to the governance of individual boards. The four entities included in the ANAO's 2018–19 board governance audit series are:

- Old Parliament House;
- the Special Broadcasting Service;
- the Australian Institute of Marine Science; and
- the Sydney Harbour Federation Trust.

22. Key messages from the ANAO's series of governance audits will be outlined in an upcoming ANAO Insights product available on the ANAO website.

Audit findings

1. Background

Introduction

Governance boards

1.1 The governing board of a corporate Commonwealth entity is the accountable authority for the entity under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act)¹¹, with responsibility for ‘leading, governing and setting the strategic direction’ for the entity.¹²

1.2 Around 60 corporate Commonwealth entities subject to the PGPA Act have governing boards, comprising a total of approximately 510 board positions.¹³ Corporate Commonwealth entities with governance boards vary significantly by function, and governance boards may also vary in their composition, operating arrangements, independence and subject-matter focus, depending on the specific requirements of their enabling legislation and other applicable laws.

Boards and corporate governance

Duties and roles

1.3 Sections 15 to 19 of the PGPA Act impose duties on accountable authorities in relation to governing the corporate Commonwealth entity for which they are responsible (see Box 1).¹⁴ As the accountable authority, members of Commonwealth governing boards are also officials under the PGPA Act and subject to the general duties of officials in sections 25 to 29 of the Act (see Box 1).¹⁵ Guidance issued to accountable authorities by the Department of Finance (Finance) observes that ‘each of these duties is as important as the others’.¹⁶

11 Section 12 of the *Public Governance, Performance and Accountability Act 2013*.

12 Department of Finance, *Guide to the PGPA Act for Secretaries, Chief Executives or governing boards (accountable authorities)-RMG 200*, Summary: Governing your entity [Internet], Department of Finance, December 2016, available from <https://www.finance.gov.au/resource-management/accountability/accountable-authorities/> [accessed March 2019].

13 Under the PGPA Act, the accountable authority of a Commonwealth entity may be a single person or group of persons (section 12). This total is based on the Department of Finance’s *List of Commonwealth entities and companies under the Public Governance, Performance and Accountability Act 2013 (PGPA Act)* as at 28 August 2018. It includes those entities that have a collective accountable authority and includes governing bodies which have the title of board, authority, commission, corporation, council, or trust. The number of people for each entity was derived from the number of people included as the accountable authority in each entity’s 2018 annual report as at 30 June 2018.

14 For full details of the general duties as an accountable authority, refer to Appendix 2 of this audit report.

15 For full details of the general duties as an official, refer to Appendix 3 of this audit report.

16 Department of Finance, *Guide to the PGPA Act for Secretaries, Chief Executives or governing boards (accountable authorities) - RMG 200*, Summary: Your general duties as an accountable authority [Internet], Department of Finance, December 2016, available from <https://www.finance.gov.au/resource-management/accountability/accountable-authorities/> [accessed March 2019].

Box 1: Department of Finance, Guide to the PGPA Act for Secretaries, Chief Executives or governing boards (accountable authorities) – RMG 200, December 2016

General duties as an official

You must exercise your powers, perform your functions and discharge your duties:

- with the degree of care and diligence that a reasonable person would exercise if the person had the same responsibilities as you ([section 25](#))
- honestly, in good faith and for a proper purpose ([section 26](#))

You must not improperly use your position, or information you obtain in that position, to:

- gain, or seek to gain, a benefit or an advantage for yourself or any other person ([section 27](#))
- cause, or seek to cause, detriment to your entity, the Commonwealth or any other person ([section 28](#)).

Like all officials, you must disclose material personal interests that relate to the affairs of your entity ([section 29](#)) and you must meet the requirements of the [finance law](#).

Accountable authorities who do not comply with these general duties can be subject to sanctions, including termination of employment or appointment.

General duties as an accountable authority

The additional duties imposed on you as an accountable authority are to:

- govern your Commonwealth entity ([section 15](#))
- establish and maintain appropriate systems relating to risk management and oversight and internal controls ([section 16](#))
- encourage officials to cooperate with others to achieve common objectives ([section 17](#))
- take into account the effects of imposing requirements on others ([section 18](#))
- keep your minister and the Finance Minister informed ([section 19](#)).

Source: Department of Finance, *Guide to the PGPA Act for Secretaries, Chief Executives or governing boards (accountable authorities)* - RMG 200, Summary: Governing your entity [internet].

1.4 Boards play a key role in the effective governance of an entity. Corporate governance is generally considered to involve two dimensions, which are the responsibility of the governing board:

Performance — monitoring the performance of the organisation and CEO. This also includes strategy — setting organisational goals and developing strategies for achieving them, and being responsive to changing environmental demands, including the prediction and management of risk. The objective is to enhance organisational performance;

Conformance — compliance with legal requirements and corporate governance and industry standards, and accountability to relevant stakeholders.

... it is important to understand that governing is not the same as managing. Broadly, governance involves the systems and processes in place that *shape*, *enable* and *oversee* management of an

organisation. Management is concerned with *doing* – with co-ordinating and managing the day-to-day operations of the business.¹⁷

1.5 The relationship between effective corporate governance and organisational performance is summarised in Box 2.

Box 2: The relationship between corporate governance and organisational performance

Narrowly conceived, corporate governance involves ensuring compliance with legal obligations, and protection for shareholders against fraud or organisational failure. Without governance mechanisms in place — in particular, a board to direct and control — managers might ‘run away with the profits’. Understood in this way, good governance minimises the possibility of poor organisational performance ... more recent definitions of good governance emphasise the contribution good governance can make to improved organisational performance by highlighting the strategic role of the board. Legal compliance, ongoing financial scrutiny and control, and fulfilling accountability requirements are fundamental features of good corporate governance. However, a high-performing board will also play a strategic role. It will plan for the future, keep pace with changes in the external environment, nurture and build key external relationships (for example, business contacts) and be alert to opportunities to further the business. The focus is on performance as well as conformance. The board is not there to simply monitor and protect but also to enable and enhance.¹⁸

In summary, research conducted by those working closely with boards suggests that:

- The ‘hard attributes’ of governance such as board independence may be necessary but are not sufficient. At best, they form minimal standards of good governance. More accurately, it is the interplay of these ‘hard’ but easy to measure attributes and ‘soft’ attributes that lead to good governance.
- The ‘soft attributes’ of governance such as the chair/CEO relationship, board behaviours and board culture are critical to good governance.¹⁹

Culture and governance

1.6 The interplay of the ‘hard’ and ‘soft’ attributes of governance—and the criticality of board and organisational culture to an entity’s performance, values and conduct—have been central themes in notable Australian inquiries into organisational misconduct. These have included the 2003 Royal Commission into the failure of HIH Insurance²⁰, the 2018 APRA Prudential Inquiry into the Commonwealth Bank of Australia²¹ and the 2019 Royal Commission into the financial services

17 M Edwards and R Clough, ‘Corporate Governance and Performance: An Exploration of the Connection in a Public Sector Context’, Corporate Governance ARC Project, Paper No. 1, January 2005, pp. 2–3.

18 Ibid., pp. 4–5.

19 Ibid., p. 14.

20 N Owen, *The Failure of HIH Insurance Volume 1: A Corporate Collapse and its Lessons*, The HIH Royal Commission, 4 April 2003 (all references in this audit are to vol. 1 of the report).

21 Australian Prudential Regulation Authority (APRA), *Prudential Inquiry into the Commonwealth Bank of Australia (CBA) Final Report*, 30 April 2018.

industry.²² While the specific focus of these inquiries was on financial institutions, their key insights on culture and governance have wider applicability and provide lessons for all accountable authorities, including governance boards. Many Auditor-General Reports have made findings consistent with those appearing in these inquiries.²³

2003 HIH Royal Commission

1.7 The HIH Royal Commissioner defined corporate governance as the framework of rules, relationships, systems and processes within and by which authority is exercised and controlled in corporations—embracing not only the models or systems themselves but also the practices by which that exercise and control of authority is in fact effected. Justice Owen observed by way of introduction that:

A cause for serious concern arises from the [HIH] group's corporate culture. By 'corporate culture' I mean the charism[a] or personality—sometimes overt but often unstated—that guides the decision-making process at all levels of an organisation ...

The problematic aspects of the corporate culture of HIH—which led directly to the poor decision making—can be summarised succinctly. There was blind faith in a leadership that was ill-equipped for the task. There was insufficient ability and independence of mind in and associated with the organisation to see what had to be done and what had to be stopped or avoided. Risks were not properly identified and managed. Unpleasant information was hidden, filtered or sanitised. And there was a lack of sceptical questioning and analysis when and where it mattered.

At board level, there was little, if any, analysis of the future strategy of the company. Indeed, the company's strategy was not documented and it is quite apparent to me that a member of the board would have had difficulty identifying any grand design ...

... A board that does not understand the strategy may not appreciate the risks. And if it does not appreciate the risks it will probably not ask the right questions to ensure that the strategy is properly executed. This occurred in the governance of HIH. Sometimes questions simply were not posed; on other occasions the right questions were asked but the assessment of the responses was flawed.

1.8 More specifically, Justice Owen reported in chapter 6 of the report—which was dedicated to corporate governance—on key aspects of board operations and the importance of:

- clearly defined and recorded policies or guidelines;
- clearly defined limits on the authority of management, including in relation to staff emoluments;
- independent critical analysis by the board;
- recognition and resolution of conflicts of interest;
- dealing with governance concerns;

22 K M Hayne, *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry*, Final Report, 1 February 2019 (all references in this audit are to vol. 1 of the report).

23 With particular reference to the importance of culture in risk management, see G Hehir (Auditor-General), *Strategic governance of risk: Lessons learnt from public sector audit*, [Internet], Australian National Audit Office, August 2018, available from <https://www.anao.gov.au/work/speech/strategic-governance-risk-lessons-learnt-public-sector-audit> [accessed March 2019].

- maintaining control of the board agenda; and
- providing relevant information to the board.

2018 APRA Prudential Inquiry

1.9 The APRA Prudential Inquiry also dedicated substantial sections of its report to culture and governance. The review panel observed that:

Culture can be thought of as a system of shared values and norms that shape behaviours and mindsets within an institution. Once established, the culture can be difficult to shift. Desired cultural norms require constant reinforcement, both in words and in deeds. Statements of values are important in setting expectations but their impact is *sotto voce*. How an institution encourages and rewards its staff, for instance, can speak more loudly in reflecting the attitudes and behaviours that it truly values.²⁴

1.10 The Prudential Inquiry associated weaknesses in board oversight and organisational culture with:

- insufficient rigour and urgency by the Board and its Committees around holding management to account in ensuring that risks were mitigated and issues closed in a timely manner;
- gaps in reporting and metrics hampered the effectiveness of the Board and its Committees; and
- a heavy reliance on the authority of key individuals that weakened the Committee construct and the benefits that it provides.²⁵

2019 Hayne Royal Commission

1.11 The Hayne Royal Commission similarly incorporated a substantial chapter on culture, governance and remuneration in the final report. Commissioner Hayne reported that the evidence before the Commission showed that:

... too often, boards did not get the right information about emerging non-financial risks; did not do enough to seek further or better information where what they had was clearly deficient; and did not do enough with the information they had to oversee and challenge management's approach to these risks.

Boards cannot operate properly without having the right information. And boards do not operate effectively if they do not challenge management.²⁶

1.12 The Commissioner challenged governance boards to actively discharge their core functions, including the strategic oversight of non-financial risks such as compliance risk, conduct risk and regulatory risk:

24 APRA, *Prudential Inquiry into the Commonwealth Bank of Australia (CBA) Final Report*, 30 April 2018, p.81.

25 Ibid., p. 14.

26 K M Hayne, *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry*, Final Report, 1 February 2019, pp. 393–94.

Every entity must ask the questions provoked by the Prudential Inquiry into CBA:

- Is there adequate oversight and challenge by the board and its gatekeeper committees of emerging non-financial risks?
- Is it clear who is accountable for risks and how they are to be held accountable?
- Are issues, incidents and risks identified quickly, referred up the management chain, and then managed and resolved urgently? Or is bureaucracy getting in the way?
- Is enough attention being given to compliance? Is it working in practice? Or is it just 'box-ticking'?
- Do compensation, incentive or remuneration practices recognise and penalise poor conduct? How does the remuneration framework apply when there are poor risk outcomes or there are poor customer outcomes? Do senior managers and above feel the sting?²⁷

1.13 Key observations made in the Hayne Royal Commission on governance boards' use of information, and the link between culture, governance and remuneration, are summarised in Box 3.

Box 3: 2019 Hayne Royal Commission

Information going to boards and its effective use

The Royal Commission observed that 'it is the role of the board to be aware of significant matters arising within the business, and to set the strategic direction of the business in relation to those matters,'²⁸ and identified 'the importance of a board getting the right information and using it effectively'.²⁹

Boards must have the right information in order to discharge their functions. In particular, boards must have the right information in order to challenge management on important issues including issues about breaches of law and standards of conduct, and issues that may give rise to poor outcomes for customers. Without the right information a board cannot discharge its functions effectively.

When I refer to boards having the right information, I am not referring to boards having more information ... it is the quality, not the quantity, of information that must increase. Often, improving the quality of information given to boards will require giving directors less material and more information. ...

Boards must also use the information that they have to hold management to account. Boards cannot, and must not, involve themselves in the day-to-day management of the corporation. Nothing in this Report should be taken to suggest that they should. The task of the board is overall superintendence of the company, not its day-to-day management. But an integral part of that

27 Ibid., pp. 332–33. The Commissioner also commented at p.384 that 'the value of the [APRA] Inquiry goes beyond its application to CBA. The report provides a very valuable, publicly available account of the ways in which failings of culture, governance and remuneration can act as drivers of misconduct. And it explains how those problems can be addressed.'

28 Ibid., p. 397.

29 Ibid., p. 394.

task is being able and willing to challenge management on key issues, and doing that whenever necessary.³⁰

Culture, governance and remuneration

The Royal Commission highlighted the importance of governance boards focusing on entity remuneration policy, because ‘the remuneration arrangements of an entity show what the entity values’.³¹ The Commission concluded that ‘Culture, governance and remuneration march together.’³²

When remuneration arrangements are designed or implemented in a way that sees executives rewarded with large bonuses despite their poor management of risks, those remuneration arrangements increase the likelihood that the entity will engage in misconduct, or conduct that falls below what the community expects. By contrast, when remuneration arrangements are designed and implemented in a way that properly takes into account the way that executives have managed risks—including compliance risk, conduct risk and regulatory risk—those remuneration arrangements will decrease the likelihood that the entity will engage in misconduct, or conduct falling below community standards and expectations. As I said earlier, an entity’s remuneration arrangements, especially variable remuneration programs, tell staff what the entity rewards and what the entity values.³³

Assessment of culture and governance by boards

1.14 Recommendation 5.6 of the Hayne Royal Commission—titled ‘changing culture and governance’—was that entities should, as often as reasonably possible, take proper steps to: assess the entity’s culture and its governance; identify any problems with that culture and governance; deal with those problems; and determine whether the changes it has made have been effective.

1.15 Underlining the criticality of organisational culture to entity performance, values and conduct, the Royal Commissioner emphasised that this recommendation, ‘although it is expressed generally, can and should be seen as both reflecting and building upon all the other recommendations that I make.’³⁴

30 Ibid., pp. 398–99. For example, the Royal Commission reported at pages 394–96 on instances where the audit committee and/or governance board did not ask to see a copy of key audit reports, and did not challenge, or at least adequately challenge, management about why successive audit reports for the same issue over a period of years had all been rated ‘red’, or about management’s assurances that the matter was being dealt with.

31 Ibid., p. 365.

32 Ibid., p. 409.

33 Ibid., p. 346.

34 Ibid., p. 391. The Commissioner indicated at pages 376 and 379 that the recommendation built on the APRA prudential standard issued in January 2015, which requires the board of an APRA-regulated institution to, among other things, ensure that it: forms a view of the risk culture in the institution, and the extent to which that culture supports the ability of the institution to operate consistently within its risk appetite; identifies any desirable changes to the risk culture; and ensures the institution takes steps to address those changes. The Commissioner went on to state that: ‘Culture can—and must—be assessed by financial services entities themselves ... that is a requirement of APRA’s prudential standards (at least in relation to ‘risk culture’). It is also common sense. Given the potential for aspects of an entity’s culture to drive misconduct, an entity must form a view of its own culture, identify problematic aspects of that culture, develop and implement a plan to change them, and then re-assess to determine whether it has succeeded’ (p. 376).

1.16 In a similar vein, the HIH Royal Commission had warned in 2003 of the dangers of a ‘tick the box’ mentality towards corporate governance, and the benefits of periodic review by boards of corporate governance practices to ensure their suitability.

The Public Governance, Performance and Accountability Act 2013 (PGPA Act)

1.17 The objects of the PGPA Act include: to establish a coherent system of governance and accountability across Commonwealth entities; and to require the Commonwealth and Commonwealth entities to meet high standards of governance, performance and accountability.³⁵

1.18 As discussed in paragraph 1.3 of this audit report, the PGPA Act includes both general duties of accountable authorities and general duties of officials. It also establishes obligations relating to the proper use of public resources (that is, the efficient, effective, ethical and economical use of resources).³⁶ In so doing, the PGPA Act establishes clear cultural expectations for all Commonwealth accountable authorities and officials in respect to resource management. Finance, which supports the Finance Minister in the administration of the PGPA Act framework, has also issued a range of guidance documents on the technical aspects of resource management under the framework.

1.19 Finance issued a Resource Management Guide (RMG 200) in December 2016 to assist accountable authorities³⁷, which is principally a factual and procedural guide with a focus on legal compliance. There is no equivalent in the Commonwealth public sector of resources built up over time—such as the ASX Corporate Governance Council’s *Corporate Governance Principles and Recommendations*³⁸ and Australian Institute of Company Directors resources—to support public sector governance boards. In consequence, public sector accountable authorities would need to rely on a combination of personal experience and other resources to supplement the guidance released by Finance. As discussed, the recent APRA Prudential Inquiry and Hayne Royal Commission have again highlighted the criticality of effective board governance, corporate culture and the interplay of the ‘hard’ and ‘soft’ attributes of governance, and there would be merit in Finance issuing guidance which has regard to the key insights and messages of those inquiries directed to accountable authorities.

35 Section 5, PGPA Act.

36 Section 8, PGPA Act.

37 See Box 1 of this audit report. Department of Finance, *Guide to the PGPA Act for Secretaries, Chief Executives or governing boards (accountable authorities)-RMG 200* [Internet].

38 ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations* [Internet], ASX, February 2019, available from <https://www.asx.com.au/regulation/corporate-governance-council.htm> [accessed March 2019]. The fourth edition, released on 27 February 2019, includes recommendations on corporate culture and references guidance provided in a joint publication of the Institute of Internal Auditors-Australia, The Ethics Centre, the Governance Institute of Australia and Chartered Accountants Australia and New Zealand, *Managing Culture: A good practice guide* [Internet], the Institute of Internal Auditors Australia, First edition, December 2017, available from http://iia.org.au/sf_docs/default-source/default-document-library/424_managing-culture-a-good-practice-guide_v8.pdf?sfvrsn=2 [accessed March 2019].

Recommendation no.1

1.20 The Department of Finance update its guidance to accountable authorities having regard to the key insights and messages for accountable authorities identified in recent inquiries and reviews.

Department of Finance response: *Agree.*

1.21 *Finance agrees the recommendation, which reflects the work already undertaken by Finance, both prior to this audit, and subsequently.*

1.22 *Finance undertakes, on a continuous basis as part of our core business, the review and refinement of guidance material to support entities and accountable authorities under the Public Governance, Performance and Accountability Act 2013 to meet their duties under the Act. We actively consider the outcomes of inquiries and reviews and apply these to guidance, tools and materials as appropriate.*

1.23 *Further, following the completion of the PGPA Act and Rule Independent Review, Finance has commenced reviewing guidance material to support a maturing framework through enhanced and strengthened guidance, including Resource Management Guide 200 referenced in the proposed report, with a strong focus on self-service and stewardship.*

Rationale for undertaking the audit

1.24 This topic was selected for audit as part of the ANAO's multi-year audit program that examines aspects of the implementation of the PGPA Act. This audit provides an opportunity for the ANAO to review whether boards have established effective arrangements to comply with selected legislative and policy requirements and adopted practices that support effective governance. The audit also contributes to the identification of practices that support effective governance that could be applied in other entities. This audit is one of a series of governance audits that apply a standard methodology to the governance of individual boards.

1.25 The four entities included in the ANAO's 2018–19 board governance audit series are:

- Old Parliament House;
- the Special Broadcasting Service;
- the Australian Institute of Marine Science; and
- the Sydney Harbour Federation Trust.

Old Parliament House (OPH)

1.26 OPH ³⁹ was the seat of the Parliament of Australia from 1927 to 1988. After the Commonwealth Parliament transferred to the new Parliament House in 1988 the OPH building was left vacant for several years. In 1992, the building reopened and was run as a museum. The building

39 OPH was formerly known as the Provisional Parliament House.

was rebranded and re-opened in May 2009 as the Museum of Australian Democracy at Old Parliament House (MoAD).⁴⁰

1.27 OPH operates under the Public Governance, Performance and Accountability (Establishing Old Parliament House) Rule 2016 (OPH Rule) as a not-for-profit Corporate Commonwealth Entity. OPH became a Commonwealth Corporate Entity in July 2016. Prior to that time OPH had operated as a non-corporate Commonwealth entity with an advisory board. Establishing OPH as a corporate Commonwealth entity was intended to:

provide the most efficient and effective governance structure to promote Australia's democracy and provide greater access for all Australians to our nation's first parliament house and preserve it for future generations.⁴¹

1.28 OPH key functions include to conserve, develop and present the OPH building and collections; and to provide public programs and research activities related to Australia's social and parliamentary history.⁴² OPH is accountable to the Minister for Communications and the Arts and is governed by a board.⁴³ Under the OPH Rule, the board consists of the Board Chair, Deputy Board Chair, Director, and not more than four other members. At the time of the audit fieldwork there were six board members including the Director. The functions of the board set out in the OPH Rule are to decide the objectives, strategies and policies to be followed by OPH and to ensure the proper and efficient performance of OPH's functions. The Director is responsible for the day-to-day administration of OPH.

1.29 OPH has a staff of approximately 74 (and 65 volunteers), receives around \$16 million in appropriations, and generates approximately \$2 million in own source revenue.

Audit approach

Audit objective, criteria and scope

1.30 The objective of the audit was to assess the effectiveness of the governance board in Old Parliament House.

1.31 To form a conclusion against the audit objective the following high level criteria were adopted:

40 The entity's legal title remains Old Parliament House.

41 Minister for Finance, Public Governance, Performance and Accountability (Establishing Old Parliament House) Rule 2016 *Explanatory Statement Issued by the Authority of the Minister for Finance* [Internet], Federal Register of Legislation, August 2016, available from <https://www.legislation.gov.au/Details/F2016L00739/Explanatory%20Statement/Text> [accessed March 2019].

42 Ibid. On 3 April 2019, the Joint Standing Committee on the National Capital and External Territories released a report in relation to its inquiry into Canberra's national institutions. The report made a number of recommendations including recommendations to government relating to MoAD specifically and recommendations to all the cultural institutions involved in the inquiry. The report can be accessed at https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Capital_and_External_Territories/NationalInstitutions/Report.

43 For the purpose of this report the accountable authority will be referred to as the OPH board or the board.

- the board's governance and administrative arrangements are consistent with relevant legislative requirements and the board has structured its own operations in a manner that supports effective governance; and
- the board has established fit-for-purpose arrangements to oversight compliance with key legislative and other requirements.

1.32 The audit examined the period July 2016 until March 2019.

1.33 Guidance to boards issued by the Department of Finance was reviewed by the ANAO having regard to the report of the 2019 Hayne Royal Commission⁴⁴, which was released in the course of this audit, and other key reviews of board governance.⁴⁵

Audit methodology

1.34 In undertaking the audit the ANAO:

- reviewed board and audit committee papers and minutes from July 2016 to December 2018;
- reviewed a range of relevant documentation including entity corporate plans, strategy documents, board and audit committee charters, risk registers, and conflict of interest declarations;
- interviewed current board members;
- attended two board meetings (September and November 2018) and one audit committee meeting (August 2018) as an observer; and
- reviewed relevant guidance and reviews on board and corporate governance.

1.35 The audit was conducted in accordance with the ANAO Audit Standards at a cost to the ANAO of approximately \$203,000. The team members for this audit were Grace Guilfoyle, Kelly Williamson, Shane Armstrong and Michelle Page.

44 K M Hayne, *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry*, Final Report, 1 February 2019.

45 N Owen, *The Failure of HIH Insurance*, The HIH Royal Commission, 4 April 2003 and the Australian Prudential Regulation Authority (APRA) *Prudential Inquiry into the Commonwealth Bank of Australia (CBA) Final Report*, 30 April 2018.

2. OPH board governance arrangements

Areas examined

This chapter examines whether the board's governance and administrative arrangements are consistent with relevant legislative requirements and whether the board has structured its own operations in a manner that supports effective governance.

Conclusion

The board's governance and administrative arrangements are consistent with relevant legislative requirements and the board has structured its own operations in a manner that supports effective governance.

Areas for improvement

The ANAO has identified a number of opportunities for improvement relating to:

- enhancing the board charter by including details of its processes for decisions without meetings, clearly defining the respective roles of the accountable authority and the employer on strategic issues such as remuneration policy and work, health and safety risks, and including behavioural expectations for board members;
- the board taking a more active role in approving key policies;
- providing board members with key policies and frameworks at induction;
- the board formally setting expectations for reporting to it by management;
- providing board members with consolidated progress results against all performance targets in the Corporate Plan; and
- annually reviewing the risk register.

Are the board's governance and administrative arrangements consistent with relevant legislative requirements and has the board structured its own operations in a manner that supports effective governance?

The board's governance and administrative arrangements are consistent with relevant legislative requirements and the board has structured its own operations in a manner that supports effective governance.

2.1 Old Parliament House (OPH) operates under the Public Governance, Performance and Accountability (Establishing Old Parliament House) Rule 2016 (OPH Rule). The ANAO examined whether:

- the board's governance and administrative arrangements were consistent with the enabling legislation; and
- whether the board had structured its own operations in a manner that supports effective governance.

2.2 The results of the ANAO's assessment against each of these requirements and any suggestions for improvement are outlined below.

Consistency of governance and administrative arrangements with the OPH Rule

Membership and appointment of board members

2.3 The OPH Rule outlines the requirements for board membership, with the Arts Minister responsible for appointments. The Rule requires the appointment of:

- a Chair;
- a Deputy Board Chair;
- the Director; and
- not more than four other members.

2.4 The board met all of these requirements. During the period July 2016 to March 2019, board numbers varied from four to seven members. From 1 January 2017 until 21 November 2017 the board consisted of a Chair, a Deputy Chair, a Director, and only one other member. All board members had been appointed by the Minister for three year terms, consistent with the OPH Rule.

2.5 In respect to oversight of the appointments process, there is evidence that in 2016 the Director considered the skills needed for new board appointments and provided OPH's portfolio department⁴⁶ with advice on preferred candidates and skill requirements to support the initial establishment of the board as the accountable authority. In 2017 the Chair similarly provided the department with advice on preferred candidates and skill requirements for further appointments.

2.6 The OPH board charter provides a general expectation that board members have relevant skills and experience and OPH management maintain a document that outlines desirable board member skills. Some of the board members interviewed by the ANAO identified desirable skills to have on the board which were not held by the current members of the board.

2.7 There would be benefit in the board engaging with the department and the Minister in relation to the skill requirements for future board appointments.

Acting arrangements for the board Chair and board members

2.8 The OPH Rule enables the Arts Minister to: appoint a board member to act as the board Chair; appoint a person to act as a board member other than the board Chair; and appoint a person to act as the Director. OPH management advised the ANAO that there were no acting arrangements required for board members or the board Chair in the period covered by the audit.

Meeting requirements, quorum, presiding at meetings and voting

2.9 The OPH Rule states that the board Chair must convene such meetings of the board as are, in his or her opinion, necessary for the efficient conduct of its affairs, and that the board Chair must convene at least two meetings of the board in each calendar year.⁴⁷ During the period reviewed by the ANAO the board met more frequently than these minimum requirements (three times in the period July 2016–December 2016) and four times in both 2017 and 2018.

46 The Department of Communications and the Arts.

47 The board Chair must also convene a meeting of the board if directed to do so by the Arts Minister or on receipt of a written request signed by a majority of the board members. OPH advised the ANAO that neither of these events occurred in the period subject to ANAO review (July 2016–December 2018).

2.10 In relation to board meetings, the OPH Rule specifies that a quorum is constituted by a majority of the board members for the time being holding office. The ANAO reviewed board meetings from July 2016 to December 2018 and a quorum was achieved at each board meeting.

2.11 The OPH Rule specifies that a question is decided by a majority of the votes of board members present and voting and that the board member presiding at the meeting has a deliberative vote and, in the event of an equality of votes, a casting vote. OPH advised the ANAO that all decisions were made by consensus during the period examined by the audit.

2.12 The OPH Rule specifies that the board Chair must preside at all meetings of the board at which he or she is present and if the Chair is not present, the Deputy Chair, if present, must preside at the meeting. If neither the Chair nor the Deputy Chair is present at a meeting of the board, the board members present must elect one of their number to preside at the meeting. The ANAO reviewed minutes from board meetings from July 2016 to December 2018. The board Chair attended and presided at all meetings.

Decisions without meetings

2.13 The OPH Rule allows for decisions to be taken without meetings, where a majority of the board members entitled to vote on the proposed decision indicate agreement with the decision; and that agreement is indicated in accordance with the method determined by the board. In November 2016 at its first full meeting the OPH board considered and approved a mechanism for decisions without meetings with what is known as “out of session approvals”. This involves emailing requests to board members to approve documents via a circular resolution.

2.14 The ANAO identified five instances of decisions being taken outside of meetings during the testing period, all of which met the legislative requirements and the mechanism agreed to by the OPH board. Decisions via circular resolution have been reported in board papers as a standing agenda item at each board meeting since June 2017. Reference to the legislative power allowing decisions to be taken without meetings was reflected in the board charter approved in 2016 and the revised 2018 board charter, but not details of the specific circular resolution method agreed and adopted by the board.

Opportunities for improvement

2.15 There is an opportunity for the OPH board to include, in the board charter, its circular resolution process for decisions without meeting. This would assist board members and those providing secretariat services to better understand expectations, particularly if new to the role.

Appointment and responsibilities of Director

2.16 The OPH Rule specifies that there is to be a Director appointed by the Arts Minister in the case of the first appointment, and otherwise by the board, with the Arts Minister’s agreement in writing. The Director of OPH was appointed on 2 April 2013 by the Arts Minister, and was reappointed by the board on 28 February 2018 (with the term to commence on 1 April 2018) following written approval from the Arts Minister. This process is consistent with the OPH Rule. In relation to the reappointment of the Director, OPH documentation indicates: the board discussed the performance of the Director; the Director provided the Chair of the OPH board with details of key achievements; and the Chair of the OPH board provided a letter of recommendation for reappointment to the Minister, which included some details of the Director’s achievements.

2.17 The OPH Rule further states that the Director is responsible for the day-to-day administration of OPH; that the board may give written directions to the Director about the performance of the Director's role; and that the Director is to act in accordance with any policies determined, and any directions given, by the board. The board charter provides further guidance, specifying that the Director is accountable to the board for OPH's performance, and the performance of its staff. The board delegated authority to the Director through an Instrument of Financial Delegations in July 2016.⁴⁸

2.18 Typically, an entity's accountable authority is the employer. OPH is a statutory agency under the *Public Service Act 1999*. The Director of OPH is the agency head and the employer of OPH staff. This means that the Director has responsibility for issues relating to employment and workplace health and safety (WHS).

Opportunities for improvement

2.19 In circumstances such as these, where the agency head and not the accountable authority is the employer, a challenge for a governance board is to clearly define the respective roles of the accountable authority and the employer on strategic issues, such as remuneration policy and WHS risks. These issues could be usefully drawn out in the board charter.

Outside employment

2.20 The OPH Rule states that if the Director is appointed on a full-time basis, that the Director must not engage in paid employment outside the duties of the Director's office without the board Chair's approval. OPH advised the ANAO that the Director has not engaged in outside employment. As discussed further in Table 3.1, conflict of interest declaration is a standing item at board meetings.

Board operations

2.21 Paragraphs 1.3 to 1.16 of this audit report outlined key insights on corporate governance and board operations, including in recent reviews and inquiries. Key themes include the need for:

- recognition and management of conflicts of interest;
- board members to question and challenge management;
- risk to be properly identified, considered and managed;
- boards to consider future strategy and key policies, including remuneration policy;
- boards to periodically assess corporate governance and organisational culture; and
- appropriate oversight of compliance.

2.22 The ANAO attended two board meetings at OPH (September and November 2018) and one audit committee meeting (August 2018). In those meetings, and through the review of board and audit committee papers and minutes, and interviews and interactions with board members, the

48 The delegated powers are: the power to approve expenditure and enter into contracts in the name of the OPH up to \$1,000,000; the power to delegate to OPH staff to approve expenditure and enter into contracts in the name of OPH as detailed in the financial delegations; the power to approve all necessary financial and accounting arrangements for the operation of OPH and the activities of the Board; and the authority to issue, change and amend financial delegations, excepting those of the Director.

ANAO observed board members collectively displaying a range of qualities and behaviours that indicated the existence of a positive governance culture at board level. These included:

- an openness to declaring conflicts of interest;
- a willingness to challenge management, engage in robust debate, explore various options and seek further clarification as needed;
- an ability to conduct meetings in a professional, collegiate and respectful manner;
- an understanding of their obligations as the accountable authority and the challenges facing the entity;
- a desire and commitment to act in the best interests of the entity; and
- a willingness to undertake sufficient preparation to enable meetings to be conducted in a productive manner.

2.23 At board meetings the ANAO observed discussion relating to OPH's strategic direction, including the content of exhibitions and promoting and protecting democracy and the heritage building. This focus was also reflected in board papers and minutes. OPH exhibition content and governance (particularly risk management) are interconnected as exhibitions have the potential to give rise to reputational risk. Other risks related to content include the risks of a significant drop in visitor numbers; that programs and activities are unable to be delivered to an appropriate standard; that staff, contractors and public safety are not managed effectively; and that key assets and visitor experiences are not properly managed and maintained.

2.24 Board meetings observed included a verbal update from OPH's Audit, Finance and Risk Committee⁴⁹ and discussion of items included in the management reports provided in the board papers. The board papers include the Director's report, which provides information on finance and risk, governance and WHS, learning, heritage, content, exhibitions and engagement, facilities and IT. The board papers also contain a finance report, and section reports from business areas including Exhibitions, Digital, Museum Experience, Museum Engagement, Learning; Heritage and Collections; Content; Facilities and Information Technology; People and Strategy; Digital; and Communications and Partnerships.

2.25 The ANAO observed that senior and other OPH staff attend board meetings to present details of activities. This enables board members to have direct engagement with staff. Board members advised the ANAO that their ability to access and question a cross section of staff provided them with additional comfort and assurance.

2.26 The remainder of this section examines specific aspects of the board's governance and administrative arrangements.

Does the board have a charter?

2.27 A board charter is a written document that sets out such things as:

- the functions, powers, and membership of the board;

49 OPH's Audit Finance and Risk Committee will be referred to as the 'audit committee' throughout this report.

- role, responsibilities and expectations of members, both individually and collectively, and of management⁵⁰;
- role and responsibilities of the chairperson⁵¹;
- procedures for the conduct of meetings⁵²; and
- policies on board performance review.

2.28 A charter can provide a single reference point that clearly sets out the functions, powers and membership of the board, as well as roles, responsibilities and accountabilities, consistent with relevant legislative requirements. Board charters can also articulate the desired culture of the board and address the ‘soft attributes’ of governance discussed in chapter 1 of this audit report relating to board culture and behaviours, which are critical to good governance.⁵³ The Australian Institute of Company Directors has indicated that:

In most organisations the governance framework is determined by the legislation that it has been created under...However, there are many aspects of modern governance which the board must consider and act upon that lie outside legal requirements. The board charter is one way of documenting these matters.⁵⁴

2.29 OPH has a board charter, approved by the board in November 2016 and reviewed and approved again in September 2018.⁵⁵ The charter provides an overview of the board and its role, including references to the enabling legislation and duties under the PGPA Act. The charter states that the board should ‘approve the objectives, strategies and policies to be followed by OPH, and ensure the proper and efficient performance of OPH’s functions’. OPH’s functions are stated in the Charter, including undertaking ‘other relevant tasks as the Arts Minister may require from time to time’. The charter includes information on the functions of OPH and the board, powers of the board, powers delegated to the Director, board composition, appointments and terms of board members, mechanisms to keep board members informed, the potential for a ministerial statement, and the capacity for access to independent advice. The charter also provides guidance on independence of board members, conflict of interest, outside employment, performance review, board procedures including quorum, voting, minutes, and resolutions without meetings, confidentiality, and

50 This can include: requiring members to act ethically and in the best interests of the entity; manage and declare conflicts of interest; conduct themselves in a professional and respectful manner; devote sufficient time to undertaking the required duties (for example, by reading papers prior to meetings and attending meetings); participate fully in meetings; apply due diligence; maintain confidentiality over information and provide guidance on how members can raise concerns outside board meetings; and protocols for dealing with media, politicians and lobbyists.

51 This can include: promoting full participation by all members; ensuring meetings are conducted in a professional and constructive manner; summing up to obtain clarity of decisions made; ensuring adequate reporting of key decisions and relationship management with the entity, Minister and key stakeholders.

52 Relating, for example, to the agenda, papers, minutes, powers of the Chair, voting procedures, and frequency of meetings.

53 That discussion begins at page 10.

54 Australian Institute of Company Directors, *Director Tools: Board charter Role of the board* [Internet], Australian Institute of Company Directors, July 2016, p. 1, available from https://aicd.companydirectors.com.au/-/media/cd2/resources/director-resources/director-tools/pdf/05446-5-3-mem-director-rob-board-charter_a4-web.ashx [accessed February 2019].

55 The charter does not specify how often the charter should be reviewed.

additional board member obligations. The charter also advises that legal action can be taken in regards to breaches of statutory and fiduciary duties.

2.30 The 2016 Board Charter, updated in 2018 to include the name of the Museum of Australian Democracy, contains an extract from Division 3 of the OPH Rule which states that the board may conduct meetings as it thinks fit, subject to the Act. The same extract also contains procedures relating to the convening of meetings, quorum, presiding at meetings, voting at meetings, minutes and decisions without meetings.

2.31 The charter contains some behavioural guidance for board members relating to confidentiality and conflicts of interest. As discussed in chapter 1 of this audit, it is valuable for boards to address the range of 'soft attributes' of governance relating to board culture and behaviours, which are critical to good governance.

Opportunities for improvement

2.32 There is an opportunity for the OPH board to address in its charter key behavioural and cultural expectations for board members.

Does the accountable authority approve or have oversight of key policies?

2.33 The following policies, procedures and frameworks were reviewed and endorsed by the board during the period examined by the ANAO:

- Financial Delegations, approved by the board in July 2016;
- Risk Management Framework, approved by the board in March 2017;
- Investment Policy, approved by the board in June 2017;⁵⁶
- Accountable Authority Instructions, approved by the board in December 2017; and
- Fraud Control Policy and Framework approved by the board in November 2018.

2.34 OPH does not have its own code of conduct, but its employees are bound by the APS Code of Conduct.

Opportunities for improvement

2.35 There is an opportunity for the OPH board to consider the policies it reviews and endorses with a view to ensuring the board periodically and systematically reviews and approves all key policies, particularly those that relate to the duties of an accountable authority. Board review of key policies and frameworks such as financial delegations, fraud, risk management, work health and safety can assist board members gain assurance that they are effectively discharging their duties as the accountable authority by setting the framework for compliance with relevant legislation. Having the board approve policies such as a code of conduct, remuneration and key quality assurance frameworks (if applicable) enables boards to influence behaviours and can be an important mechanism in communicating the desired culture within the entity. Recent reviews such as the 2018 APRA Prudential Review and the 2019 Hayne Royal Commission have highlighted that boards need

56 The board was advised in May 2018 that management had reviewed the policy, with no changes required.

to be alive to how incentives in organisations can drive inappropriate behaviours.⁵⁷ Periodic board review of key policies can assist a board in its messaging to the entity about the organisational culture it wishes to promote.

Are board members provided with relevant information at induction?

2.36 Upon induction, board members are provided with a range of information. This includes:

- a high level overview of the role of OPH, which includes references to the PGPA Act and PGPA Rule establishing OPH, and the staffing structure;
- an overview of the audit committee, work health and safety obligations, and finance and funding;
- an overview of board meetings and board composition;
- overviews of business areas, including exhibitions and events, learning and visitor experience, heritage and collection management; and
- the board charter.

2.37 All board members indicated to the ANAO that they were satisfied with the information provided at induction.

Opportunities for improvement

2.38 At induction, there is an opportunity for OPH to provide board members with key policies and frameworks including those relating to delegations, risk, fraud, work health and safety and remuneration.

Has the board set expectations for reporting to it by management?

2.39 The board has not formally set expectations for reporting to it by management. Management reports to the board through standing agenda items and a standard format for presenting papers that has evolved over time. In March 2018, OPH changed how management reports were organised, moving from separate business area reports to one report directly aligned with Corporate Plan strategic objectives.⁵⁸ There is evidence that the Director has sought feedback from the board on reporting. The board's self-assessment questionnaire, further discussed in paragraph 2.41, included whether management reporting met board expectations, and OPH advised the ANAO that informal feedback is provided from the board Chair.

57 As noted at page 20 of this audit report, the Hayne Royal Commission concluded that 'culture, governance and remuneration march together.' The Australian Prudential Regulation Authority identified that 'remuneration frameworks and the outcomes they produce are important barometers and influencers of an organisation's risk culture, ...and misaligned incentives and ineffective accountability [can create] poor risk cultures and undermine risk management, leading to unbalanced and ill-considered decision-making.' Australian Prudential Regulation Authority, *Information Paper: Remuneration practices at large financial institutions* [Internet], Australian Prudential Regulation Authority, April 2018, p. 4, available from <https://www.apra.gov.au/sites/default/files/180328-Information-Paper-Remuneration-Practices.pdf> [accessed March 2019].

58 The previous reporting structure did indicate when section report content pertained to specific Corporate Plan strategic priorities. The new reporting structure is more clearly aligned with the strategic priorities.

Opportunities for improvement

2.40 The corporate governance reviews discussed in chapter 1 of this audit report have consistently highlighted the importance of holding management to account. There is an opportunity for the OPH board to formally set expectations for reporting to it by management through its board charter. This could assist in ensuring that the board and management have a shared understanding of the board's requirements and could assist the board in meeting its obligations as an accountable authority.

Is board performance collectively and individually assessed?

2.41 The board charter, approved in November 2016, and the revised board charter, approved in September 2018, state that each year the board will review its performance under the direction of the Chair. Board papers indicate there had been a performance assessment of the Director (who is also a board member) in 2017 and 2018.⁵⁹ The board commenced its first formal self-assessment exercise in September 2018 and discussed the results in the November 2018 board meeting. OPH advised the ANAO that the assessment took place at this time because for the majority of 2017 the OPH board consisted of only four of its possible seven board members. Three previous members' terms expired on 31 December 2016 and new members were not appointed until 21 November 2017. OPH further advised that when the board had less than the optimum number of members, the assessment of board performance was undertaken informally between the board Chair and individual members.

Does the board establish arrangements and expectations in relation to the board secretariat?

2.42 The OPH Rule and board charter do not provide requirements relating to secretariat arrangements. The board secretariat is provided by the OPH Director's Executive Officer and OPH has advised that there is no documentation formalising this role. OPH maintains a checklist to support the secretariat role, which includes organising papers and arranging board member travel. ANAO interviews with board members indicate satisfaction with secretariat arrangements, with staff able to access information required and no dissatisfaction raised regarding timeliness of papers or accuracy of minutes.

Are all meetings minuted and do minutes record all decisions made and action to be taken?

2.43 The OPH Board Charter provides a requirement for the board to keep minutes of meetings. The ANAO reviewed minutes of board meetings held from July 2016 until December 2018. The minutes clearly indicate when items have been noted and when resolutions have been made by the board.

Do board meeting papers include draft minutes of previous meetings for board approval?

2.44 Consideration and approval of draft meeting minutes for the previous board meeting is a standing agenda item for board meetings. The board notes any changes and agrees to adopt the

59 The performance of the Director was done on the basis of her role as Director, not her role as a board member.

minutes as a true and accurate record of the previous meeting. This agreement is noted in the minutes. Board members advised that ANAO that they were satisfied with the minutes.

Has the board established procedures to handle decisions without meetings?

2.45 Sometimes it is necessary for boards to approve and action issues outside of scheduled meeting times. To effectively manage these instances it is useful to have established a process to support the making and recording of board decisions. As discussed in paragraph 2.13, OPH's enabling legislation contains provisions for decisions without meetings.

2.46 OPH advised that board members communicate on board business through a variety of channels including private email. Board members and the entity should be cognisant of the need to ensure that information relating to the entity is handled and maintained in accordance with applicable Commonwealth information security and record keeping requirements. These requirements apply to communication channels such as emails, which are official records.

Is reporting of performance results listed as an agenda item at each meeting?

2.47 As discussed in Table 3.1, since March 2018 at each meeting the board is provided with a report from OPH business areas that is directly aligned with OPH's Corporate Plan strategic priorities. Progress against most performance targets outlined in the Corporate Plan is included within individual section updates in board papers.

Opportunities for improvement

2.48 Providing board members with consolidated progress results against all performance targets outlined in the Corporate Plan would better support board members gaining an understanding of entity performance and aid decision-making. It would also support board member assurance over annual performance statement reporting.

Is the board provided with information to assist members to gain a good understanding of the entity's strategic environment and risks?

2.49 OPH has established a risk management framework, first approved by the board in March 2017.⁶⁰ The framework states that the executive management group is responsible for defining risk appetite, and that risk appetite and tolerance levels will be reviewed annually. It also states that the board is responsible for oversight of risk management, including setting strategic risks and providing expert advice and direction to senior management; and that the Director is responsible for establishing and maintaining the framework and ensuring governance mechanisms are in place that effectively identify, monitor and manage risks. The risk register, which includes information on risk appetite, was first reviewed by the board in May 2018 and subsequently approved in September 2018.⁶¹

60 Prior to this OPH had a Risk Management Policy and Framework 2014–16. This had been approved by the Director in June 2015 prior to OPH becoming a Corporate Commonwealth Entity. Under this policy, the Director had overall responsibility for managing the entity including establishing and maintaining the risk management framework and policy.

61 OPH advised the ANAO that it prepares individual risk assessments on events, projects and capital works as required, which are discussed at board meetings, and these feed into the risk register which is updated annually.

2.50 The board receives information, including through management reports, on business areas and systems of risk management. For example, risk is discussed as part of the Director's Report, in audit committee updates, in reporting on facilities, and as part of reporting on HR, Governance and Strategy.

2.51 The board approves and regularly reviews progress on OPH's three year capital plan and capital works budget, which includes consideration of business cases for capital projects and their associated risk assessments. Overall the information provided is sufficient to enable members to have a good understanding of OPH's strategic environment and risks. Board oversight in relation to risk management is discussed further in Tables 3.1 and 3.2.

2.52 The audit committee also considers risk through regular agenda items such as Security, Fraud and WHS. Additionally, it examines the system of oversight risk and management as part of its regular review of activities. The audit committee considered the risk management framework and policy in March 2017 and the risk register in May 2018.

2.53 The board demonstrates engagement in strategic planning through its approval of the Corporate Plan and Strategic Plan. Board members are also involved in the development of content for the museum and are shown exhibits. As discussed in paragraph 2.23 and footnote 61 the board advised the ANAO that consideration of content is interconnected with consideration of risk. OPH has advised that the board participated in a strategic planning day in March 2018.

2.54 Board members are drawn from a range of backgrounds, including former politicians, parliamentary staff, journalists and academics. This can be expected to support an understanding of OPH's particular operating environment. The board advised the ANAO that it is comfortable with the level of attention and information provided to the audit committee regarding risk oversight.

Opportunity for improvement

2.55 There is an opportunity for the OPH board directly or through its audit committee to annually review the risk register. This process could be supplemented by a rolling review through the year.

In establishing the audit committee has the board considered structure, composition, size, skills and independence of mind of members to enable the committee to be effective and has the board established an audit charter outlining key requirements?

2.56 The OPH audit committee charter demonstrates the board's consideration of these issues. The charter was approved by the board in August 2016 and reviewed by the board in September 2017 and November 2018, consistent with the charter requirement for annual review. The audit committee initially comprised three members, including an external Chair, who was not a board member or employee of OPH⁶², a Deputy Chair, who is a part of OPH management, and another member who is also a board member. From March 2017 an additional independent member joined the audit committee. This met the requirements of the charter, which requires a minimum of three members, appointed by the board, the majority of whom are not employees of OPH. The Chair of the board, Director of OPH, or CFO cannot be committee members. The charter provides guidance on collective and individual skill requirements, including financial literacy. At

62 The Chair of the audit committee is a First Assistant Secretary from a non-corporate Commonwealth entity.

least one member is to have accounting or related experience, and a comprehensive understanding of accounting and auditing standards.

2.57 The charter outlines the committee's responsibilities relating to financial reporting, performance reporting, systems of risk oversight and management, and systems of internal control. The charter allows for the Chair or Deputy Chair to determine who should be invited to attend meetings, and provides for access to information and personnel. The charter states that a representative of OPH's internal audit service and the ANAO will be invited to attend all meetings as observers.

2.58 Relevant staff and internal and external auditors attend audit committee meetings. While there have been occasions where either OPH's internal or external auditors have not been represented, this has been due to staff member availability, and appropriate apologies have been noted in the minutes.

Is there an internal audit function that provides assurance to the board and does the board have oversight of internal audit and the entity's response to internal audit findings and recommendations?

2.59 OPH has an outsourced internal audit function.⁶³ There were three internal audits undertaken during the period reviewed by the ANAO covering topics related to finance (payroll), work health and safety and information and communications technology. All internal audit reports are provided to the audit committee. The audit committee monitors the status of recommendations through an annual internal audit status report. From 2018, the status report has detailed what the recommendations are and management's action, although it is not always clear from the response whether or not each recommendation has been agreed. Management responses to recommendations are also provided within the individual audit reports, and the ANAO notes that there is a low volume of recommendations to track.⁶⁴

2.60 At board meetings the board receives a verbal report from the audit committee member who is also Deputy Chair of the board (as a standing agenda item) and minutes from the audit committee are tabled at board meetings. Internal audit is a standing agenda item at audit committee meetings, and the audit committee minutes provided to the board include updates on internal audit. The minutes provide general information on internal audit findings and management's response, although details of recommendations are not always included. There is no record that internal audit reports have been provided to the board and internal audit has not directly reported to the board.

2.61 The internal audit program is reviewed and approved by the audit committee. There is no evidence that the board has been provided with the internal audit plan. OPH management advised the ANAO that the board has received verbal updates on the internal audit program.

63 OPH's internal audit provider was contracted prior to the board's establishment. A tender process was conducted with the National Museum of Australia. OPH has advised that this arrangement expires on 31 August 2019 with the option of two one year extensions.

64 During the period reviewed there have been a total of six recommendations, with four categorised as low risk, and two uncategorised.

2.62 Overall the board, through the audit committee, has oversight of the internal audit function and management's response to internal audit findings and recommendations.

3. OPH board arrangements to oversight compliance with key legislative and other requirements

Areas examined

This chapter examines whether the board established fit-for-purpose arrangements to oversight compliance with key legislative and other requirements.

Conclusion

The board has established fit-for-purpose arrangements to oversight compliance with key legislative and other requirements.

Recommendation

The ANAO made one recommendation aimed at improving Old Parliament House (OPH's) compliance with the Public Governance, Performance and Accountability Rule 2014.

Areas for improvement

The ANAO also made a number of suggestions for improvement including in relation to:

- including a reference to the Statement of Expectations and Statement of Intent in future corporate plans and annual reports;
- expanding the existing Certificate of Compliance process to include compliance with enabling legislation and other legislative requirements, and including details of the basis for compliance;
- updating materials in the board induction pack;
- referencing OPH's Corporate Plan in OPH strategy documents;
- reviewing the scheduling of audit committee meetings;
- systematically capturing instances of non-compliance;
- reviewing the board charter to better reflect the specific requirements of the PGPA Act; and
- considering the application of the entertainment and hospitality policy to board members.

Has the board established fit-for-purpose arrangements to oversight compliance with key legislative and other requirements?

The board has established fit-for-purpose arrangements to oversight compliance with key legislation and other requirements.

3.1 The ANAO examined whether the Old Parliament House (OPH) board had established fit-for-purpose arrangements to ensure oversight of and compliance with:

- Ministerial Statements of Expectations and entity Statements of Intent (if applicable);
- selected parts of the entity's enabling legislation; and
- selected parts of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and Public Governance, Performance and Accountability Rule 2014 (PGPA Rule)

relating to: duties of accountable authorities; duties of officials; the corporate plan; financial statements; annual report and audit committees.

3.2 The results of the ANAO's assessment against each of these requirements and any suggestions for improvement are outlined below.

Oversight of, and compliance with, Statement of Expectations and Statement of Intent

3.3 Sometimes entities are provided with a Statement of Expectations from their Minister. These statements generally outline the Minister's key priorities and set out the Government's expectations for the entity, including the priorities it is expected to observe in conducting its operations. Entities then respond to their Minister as to how they intend to deliver the identified priorities through a Statement of Intent.⁶⁵

3.4 On 17 September 2018 the Minister for Communications and the Arts provided the Museum of Australian Democracy at OPH with a Statement of Expectations, outlining the Minister's priorities. The board approved a Statement of Intent on 29 November 2018 to send to the Minister in response. The Statement of Expectations and Statement of Intent are on OPH's website. OPH was previously issued with a Statement of Expectations in June 2017 and responded with a Statement of Intent.

3.5 Board papers and minutes reflect consideration and approval of Statements of Intent in September 2017 and November 2018. OPH does not refer to either the Statement of Expectations or Statement of Intent in its 2017–18 and 2018–19 corporate plans or annual report for 2017–18. Board papers reviewed for the period July 2016 to December 2018 demonstrate that the board was provided with information in relation to matters outlined in the Statements. Based on this high-level review, the OPH board has demonstrated that it has a process in place to have regard to the Statement of Expectations.

Opportunities for improvement

3.6 There is an opportunity for OPH to include a reference to its Statement of Expectations and Statement of Intent (and related progress against it) in future corporate plans and annual reports.

Oversight of, and compliance with, elements of enabling legislation

3.7 OPH is required to comply with its enabling legislation, the OPH Rule. Under the OPH Rule, the Director is responsible for the day-to-day administration of OPH, in accordance with any policies determined, and any directions given, by the board. Neither the OPH board nor OPH management have defined what day-to-day administration includes. The ANAO's assessment of the OPH's board oversight of, and compliance with, selected key requirements of the OPH Rule is outlined below.

3.8 The ANAO has seen no formal mechanism for monitoring and reporting compliance with the OPH Rule. Matters addressed within the OPH Rule, such as board member appointment, remuneration, reappointment of the Director, and contact with the Arts Minister are reported via the Director's Report, and on occasion through the Human Resources and Governance report. The

65 While there is no legislative requirement in relation to Statements of Expectations and Statements of Intent the ANAO reviewed whether the OPH board had oversight and regard to any Statements of Expectations by the Minister and whether the OPH board had responded to the Minister with any Statements of Intent.

Certificate of Compliance, presented to the audit committee annually and discussed with the board, focuses on the PGPA Act rather than the enabling legislation. Compliance processes in relation to the PGPA Act are discussed in Tables 3.1 and 3.2 of this audit report.

3.9 OPH has documentation relating to other legislative and policy compliance, including for the Australian Government Protective Security Policy Framework (PSPF). PSPF compliance information was provided to the audit committee, and reported to the board in September 2018. Discussions at the audit committee indicate that the committee has considered the requirements of updates to the PSPF.⁶⁶ There is no central register of compliance breaches.

3.10 Board members advised the ANAO that they gain assurance on compliance with the enabling legislation from their individual and collective experience in reviewing management reports, questioning entity management and their knowledge of the policies, procedures and processes in place that support compliance.

Opportunities for improvement

3.11 There is an opportunity for OPH to expand its existing Certificate of Compliance process to include its enabling legislation and other legislative requirements to assist in ensuring the board has oversight of compliance with legislation. Including details of the basis for compliance—for example, what controls are in place and how they are tested—would assist board members gain a greater understanding of the robustness of internal controls supporting legal compliance. Without such information the potential exists for board members to have a gap in their understanding of OPH's compliance processes.

Oversight of, and compliance with, selected PGPA Act requirements

3.12 The PGPA Act sets out requirements for the governance, reporting and accountability of Commonwealth entities. The PGPA Act is principles based and the accountable authority has the flexibility to establish the systems and processes that are appropriate for their entity. The Department of Finance (Finance) provides entities with guidance on how to meet the various requirements of the PGPA Act and Rule including providing examples of how entities can demonstrate compliance.

3.13 The ANAO examined whether the OPH board established fit-for-purpose arrangements for oversight of, and compliance with, the following parts of the PGPA Act and PGPA Rule relating to corporate governance:

- general duties of an accountable authority;
- duties as an official; and
- specific requirements relating to corporate plans, annual reports and the audit committee.

General duties as an accountable authority

3.14 The general duties imposed on an accountable authority, which are considered in the following section, are to:

- (a) govern the Commonwealth entity (section 15);

66 On 1 October 2018, changes to the PSPF came into effect.

- (b) establish and maintain appropriate systems relating to risk management and oversight and internal controls (section 16);
- (c) encourage officials to cooperate with others to achieve common objectives (section 17);
- (d) take into account the effects of imposing requirements on others (section 18); and
- (e) keep their Minister and the Finance Minister informed (section 19).⁶⁷

(a) Duty to govern the Commonwealth entity (section 15)

3.15 Finance guidance states that governing an entity includes:

- promoting the proper (efficient, effective, economical and ethical) use and management of public resources;
- promoting the achievement of the purposes of the entity;
- promoting the financial sustainability of the entity;
- taking account of the effect of decisions on public resources generally; and
- establishing appropriate systems of risk management and internal control, including measures directed at ensuring officials comply with the finance law (such as accountable authority instructions and delegations).⁶⁸

3.16 The ANAO's assessment in relation to the OPH's board requirement to govern is outlined in Table 3.1.

Table 3.1: Duty to govern the entity (PGPA Act section 15)

Finance guidance	ANAO observations and opportunities for improvement where applicable
<p>To address requirements relating to promote the proper (efficient, effective, economical and ethical) use and management of public resources. This can include establishing:</p> <ul style="list-style-type: none"> • robust decision-making and control processes for the expenditure of relevant (public) money; and • appropriate oversight and reporting to address inappropriate use of resources by officials. <p>Promote the achievement of the entity's purposes. This includes:</p>	<p>Observations</p> <p>Upon induction, OPH board members are provided with information outlining the role of the board and its principal functions and responsibilities including governance.</p> <p>OPH maintains an instrument of Financial Delegations, last approved by the board in July 2016. The instrument provides delegation of powers in relation to approving expenditure and entering into contracts, and other powers, including banking and borrowing.</p> <p>OPH has established practices that support governance, the proper use of resources and appropriate behaviours including accountable authority instructions, a board charter and conflict of interest declaration as a standing agenda item at board meetings.</p> <p>OPH has established an Audit, Finance and Risk Committee (audit committee) which reviews the appropriateness of OPH's financial reporting, performance reporting, system of risk oversight and management and systems of internal control.</p>

67 Department of Finance, *Guide to the PGPA Act for Secretaries, Chief Executives or governing boards (accountable authorities)* - RMG 200, Summary: Governing your entity [Internet], Department of Finance, December 2016, available from <https://www.finance.gov.au/resource-management/accountability/accountable-authorities/> [accessed March 2019]. For full details of the general duties as an accountable authority, refer to Appendix 2 of this audit report.

68 Ibid.

Finance guidance	ANAO observations and opportunities for improvement where applicable
<ul style="list-style-type: none"> ensuring the entity's corporate plan sets out the purposes of the entity and the activities the entity will engage in to achieve those purposes; and considered all sources that contribute to defining the objectives of the entity, e.g. key government priorities and objectives; and establishing appropriate oversight and reporting arrangements for programs and activities in the entity. <p>Promote financial sustainability by managing the risks, obligations and opportunities relevant to their entity.</p> <p>Take account of the effect of decisions on public resources generally.</p> <p>Establish appropriate systems of risk management and internal control (discussed in more detail in Table 3.2).</p>	<p>The board discussed and approved OPH's 2018–19 Corporate Plan and the plan sets out OPH's purpose and the activities it undertakes to achieve its purpose. As referred to in paragraph 3.5, the plan does not include reference to either the Statement of Expectations or Statement of Intent. In addition, while reporting in board papers since the beginning of 2018 has directly aligned with the strategic objectives of the corporate plan, reports do not provide updates on progress against all corporate plan performance targets. OPH also has a Strategic Framework 2018–23 which aligns with the strategic priorities in the corporate plan.</p> <p>Board meeting papers and minutes provide evidence of oversight of OPH's various activities through standing agenda items that include a Director's report, workplace health and safety report, audit committee update, finance report, and section reports from business areas including Exhibitions, Digital, Museum Experience, Museum Engagement, Learning; Heritage and Collections; Content; Facilities and Information Technology; People and Strategy; Digital; and Communications and Partnerships.</p> <p>The board has established systems for, and receives reports on, risk management and internal control (discussed in more detail in Table 3.2).</p> <p>Financial risks are included in OPH's risk register, and the Director's Report regularly provides an update on emerging financial issues.</p> <p>Board members have advised that they gain assurance on compliance from their individual and collective experience in reviewing management reports, questioning entity management and their knowledge of the policies, procedures and processes in place that support compliance.</p>

Opportunities for improvement

There is an opportunity to update the material in the board induction pack and reference OPH's Corporate Plan in OPH strategy documents.

The board member briefing pack refers to new board members being provided with 'company policies' and also being briefed on policies. It also refers to the 'company's' personnel. OPH is not a Commonwealth company and the language should be updated to better reflect the requirements of a corporate Commonwealth entity. It is not clear from documents provided what information in relation to policies is provided to new board members. OPH advised the ANAO that the briefing pack will continue to be updated as new board members join, and that in the future key policies will be included in the pack.

OPH's 2018–19 Corporate Plan refers to OPH's Strategic Framework 2018–23 but the framework document does not directly reference OPH's corporate plan. Under the Commonwealth performance framework the corporate plan is intended to be an entity's primary planning document, and there is an opportunity for OPH to more directly reflect the relationship between these two key documents in future OPH strategy documents.

In addition, OPH's 2018–19 Corporate Plan did not meet all minimum requirements of the PGPA Rule 2014. Specifically the plan did not address each of the four reporting periods covered by the plan in each of the capability and risk oversight and management systems section of the corporate plan. Entities were first required to publish corporate plans by 31 August 2015. After four cycles OPH should ensure its next corporate plan meets the minimum requirements outlined in the PGPA Rule.

Source: Department of Finance, *Guide to the PGPA Act for Secretaries, Chief Executives or governing boards (accountable authorities)* - RMG 200, Summary: Governing your entity [Internet], Department of Finance, December 2016, available from <https://www.finance.gov.au/resource-management/accountability/accountable-authorities/> [accessed March 2019] and ANAO analysis.

Recommendation no. 2

3.17 Old Parliament House ensure its corporate plan meets all the minimum requirements of the Public Governance, Performance and Accountability Rule 2014.

Old Parliament House response: Agree.

3.18 OPH agrees with this recommendation. Future OPH Corporate Plans will be updated to include more dialogue around risk and capabilities across the four year period covered by the plan to ensure they meet the minimum requirements of the Public Governance, Performance and Accountability Rule 2014.

(b) Duty to establish and maintain appropriate systems relating to risk management and oversight and internal controls (section 16)

3.19 The ANAO's assessment in relation to the OPH board requirement to establish appropriate systems of risk management and internal control is outlined in Table 3.2.

Table 3.2: Duty to establish and maintain appropriate systems relating to risk management and oversight and internal controls (PGPA Act section 16)

Finance guidance	ANAO observations and opportunities for improvement where applicable
<p>To address requirements relating to risk management and oversight entities can:</p> <ul style="list-style-type: none"> establish an appropriate risk management framework to identify and manage risk; delegate or authorise officials to exercise functions and powers; establish an audit committee; and develop a fraud control framework. 	<p>Observations</p> <p>As discussed in paragraph 2.49, OPH has established a risk management framework, first approved by the board in March 2017.^a The framework states that the executive management group, rather than the board, is responsible for defining risk appetite and that risk appetite and tolerance levels will be reviewed annually. It also states that the board is responsible for oversight of risk management, including setting strategic risks and providing expert advice and direction to senior management and that the Director is responsible for establishing and maintaining the framework and ensuring governance mechanisms are in place that effectively identify, monitor and manage risks. The risk register, which includes information on risk appetite, was first reviewed by the board in May 2018 and subsequently approved in September 2018.</p> <p>Board meetings include risk management as a standing agenda item within the Director's report and information on risk is included throughout board papers, as discussed in paragraph 2.50. Since March 2017 the Director's report has included a section on finance and risk and since June 2017 human resources and work health & safety has been included. Reporting does not include any form of systematic reporting against risks in the risk register. Board meetings include a verbal update on the activities of the audit committee. It is not clear from meeting minutes the extent to which risk is discussed. However, the Deputy Chair of the board is a member of the audit committee. Board members have advised that this gives comfort, and that they rely on the audit committee for assurance, as well as their knowledge of internal risk management systems.</p> <p>OPH has established financial delegations, last approved by the board in July 2016. These relate to banking, borrowing, indemnities, spending approval, entering into contracts, and other items. The board charter describes the general powers delegated to the Director.</p>

Finance guidance	ANAO observations and opportunities for improvement where applicable
	<p>OPH has developed Accountable Authority Instructions (AAIs) which were reviewed and endorsed by the board in December 2017. The AAIs outline requirements for OPH officials in relation to the use of public resources, provide details of applicable legislative requirements, and contain guidance, including for risk management. The Director approved AAIs in December 2016 as an interim measure after the board was established.^b Prior to this, OPH had Chief Executive Instructions, which were developed before the board was established as the Accountable Authority.</p> <p>The OPH board established the audit committee from OPH's existing audit committee at its inaugural meeting in 2016 and approved its charter at the same meeting. The charter was reviewed and approved by the board in 2017 and 2018. The audit committee's role is to review the appropriateness of the OPH's systems of risk oversight and management and internal controls and provide assurance to the board.</p> <p>The audit committee receives reporting on OPH's compliance mechanisms through the annual Certificate of Compliance process, which documents compliance against the PGPA Act and PGPA Rule. There is no evidence that the board is provided with the compliance summary (although the compliance summary is briefly referenced in the audit committee minutes that OPH has advised are tabled at board meetings). The audit committee has also reviewed a Systems of Internal Control Checklist in 2017 and 2018.</p> <p>OPH's AAIs include an instruction relating to fraud control. Fraud is a standing agenda item at audit committee meetings. The audit committee's role includes to review and provide advice on the appropriateness of OPH's legislative and policy compliance, including determining whether management has adequately considered legal and compliance risks as part of the OPH's enterprise risk management framework, fraud control framework and planning.</p>

Opportunities for improvement

As discussed in paragraph 2.35 there is benefit in the OPH board considering the type and frequency of policies it reviews and endorses with a view to ensuring the board periodically and systematically reviews and approves all key policies, particularly those that relate to the duties of an accountable authority. For example, this could include delegations and policies related to work health and safety. It is noted that OPH maintains a schedule of policies that identifies the policy owner, its last review date, its scheduled review date and current status, but this could be enhanced by indicating which policies require board review.

There is an opportunity for OPH to review the scheduling of audit committee meetings to better enable the board to receive and consider audit committee issues prior to board meetings.

There is also an opportunity for OPH to consider how instances of non-compliance could be systematically identified throughout the year as distinct from identification through the annual compliance process, such as through a central register of reported breaches of compliance obligations.

As discussed in paragraph 2.55 there is an opportunity for the board to actively and frequently review the risk register and use it to drive the management of risk and the controls framework.

Note a: While the OPH board resolved that the audit committee's minutes should be included in the board papers, they are not. The minutes are tabled at board meetings and a verbal report is provided by the Deputy Chair of the board who is also a member of the audit committee. The ANAO was advised this was due to the close proximity of audit committee meetings to board meetings and there being insufficient time for minutes of the audit committee to be included in the board papers.

Note b: OPH was established as a corporate-Commonwealth entity from 1 July 2016. The board's first board meeting was in August 2016. From July to December 2016 the Director and members of OPH's former advisory council were interim board members pending appointments being made to the board. In December 2016, three

previous members of OPH's advisory committee were appointed to the board. Further new members to the board were not appointed until 21 November 2017. For the majority of 2017 the OPH board consisted of four of its possible seven board members.

Source: Department of Finance, *Guide to the PGPA Act for Secretaries, Chief Executives or governing boards (accountable authorities)* - RMG 200, engaging with risk and establishing controls section [Internet], Department of Finance, December 2016, available from <https://www.finance.gov.au/resource-management/accountability/accountable-authorities/> [accessed March 2019] and ANAO analysis.

(c)–(e) Duty to encourage officials to cooperate with others to achieve common objectives (section 17); take into account the effects of imposing requirements on others (section 18); and keep the Minister and the Finance Minister informed (section 19).⁶⁹

3.20 The ANAO undertook a high-level review of the board's oversight of, and compliance with, these requirements. The ANAO's assessment is outlined in Table 3.3.

Table 3.3: Duty to cooperate, consider requirements on others and keep Ministers informed (PGPA Act sections 17–19)

Finance guidance	ANAO observations and opportunities for improvement where applicable
<p>To encourage cooperation, consider requirements on others and keep Ministers informed entities can:</p> <ul style="list-style-type: none"> encourage officials to identify opportunities to cooperate with others, within or external to government to achieve common objectives where practicable; take a proportional, risk-based approach to imposing administrative burdens on other parties that work with government; and keep relevant ministers informed of the activities of the entity and provide your Minister and the Finance Minister with any reports, documents and information they require about those activities. 	<p>Observations</p> <p>Reporting to the OPH board includes information relating to working/collaborating with government and non-government entities. It also demonstrates consideration of various risks associated with performing its functions.</p> <p>OPH has established Accountable Authority Instructions (AAs) that provide instructions to officials on working with others to achieve OPH's purposes, as well as regarding inter-entity cooperation and agreements.</p> <p>The Minister is provided with the OPH corporate plan and annual reports as required. The Minister is also kept informed of significant financial issues, invited to some events and correspondence with the Minister is included in board papers.</p> <p>Board members advised that the OPH board has actively engaged in developing and maintaining relationships with the Minister. Observers from the portfolio Department attend board meetings.</p>

Source: Department of Finance, *Guide to the PGPA Act for Secretaries, Chief Executives or governing boards (accountable authorities)* - RMG 200, working with others and supporting ministers sections [Internet], Department of Finance, December 2016, available from <https://www.finance.gov.au/resource-management/accountability/accountable-authorities/> [accessed March 2019] and ANAO analysis.

69 Department of Finance, *Guide to the PGPA Act for Secretaries, Chief Executives or governing boards (accountable authorities)* - RMG 200, Governing your entity, General duties as an accountable authority, [Internet], Department of Finance, December 2016, available from <https://www.finance.gov.au/resource-management/accountability/accountable-authorities/> [accessed March 2019].

General duties as an official

3.21 In addition to the general duties for an accountable authority, the PGPA Act outlines duties applicable to all officials (which include the accountable authority). Officials are required to exercise a duty:

- of care and diligence (section 25);
- to act honestly, in good faith and for a proper purpose (section 26);
- not to misuse position (section 27);
- not to misuse information (section 28); and
- to disclose material personal interests (section 29).⁷⁰

3.22 Officials also have a responsibility to:

- comply with the finance law;
- comply with the governance arrangements in the entity, for example, internal controls on the proper use and management of public resources; and
- meet high standards of governance, performance and accountability.⁷¹

3.23 Officials who breach their duties or responsibilities under the PGPA Act can be subject to employment sanctions (including termination of appointment for board members) or criminal sanctions for intentional or serious misuse of public resources. For more details of the duties that apply to all officials under the PGPA Act, refer to Appendix 3 of this audit report.

The ANAO's assessment in relation to the OPH board's oversight of, and compliance with, the requirements of officials is outlined in Table 3.4.

70 Department of Finance *Commonwealth Resource Management eLearning Program* PGPA Act Module 2 Officials' Responsibilities General duties of officials [Internet], Department of Finance, available from <https://www.finance.gov.au/sites/all/themes/finance/commonwealth-resource-management/> [accessed March 2019].

71 Ibid.

Table 3.4: General duties as an official (PGPA Act sections 25–29)

Duty and Finance guidance	ANAO observations and opportunities for improvement where applicable
Duty to act with the degree of care and diligence that a reasonable person would exercise if the person had the same responsibilities as you (Section 25).	
<p>Establish guidance that sets out the need for officials to comply with the requirement. This can include establishing guidance that outlines that officials have to act with care and diligence and that there are sanctions if they do not. For example officials spending relevant (public) money will need to ensure that they have at least had due regard to guidance and their entity's internal procedures.</p>	<p>Observations</p> <p>OPH does not have its own code of conduct, but its employees are bound by the APS Code of Conduct which requires employees to behave honestly and with integrity in the course of their employment, act with care and diligence and operate in a way that upholds the APS Values at all times. The APS Code of Conduct does not apply to OPH board members^a, and the board do not have their own code of conduct.^b</p> <p>The OPH board charter refers to the general duties of board members being similar to fiduciary duties of company directors and lists fiduciary duties that are very similar to the general duties of an official under the PGPA Act. It also notes that legal action can be taken against a person for both breach of a statutory duty and breach of the corresponding fiduciary duty.</p> <p>OPH has Accountable Authority Instructions (AAIs) that require all officials of OPH to act in accordance with their general duties under the PGPA Act. OPH's financial delegations, discussed in Table 3.1, refer to relevant sections of the PGPA Act. Board members are provided with the board charter upon induction.</p> <p>OPH's Fraud Control Policy referred to the need to comply with sections 25– 29 of the PGPA Act. The Fraud Control Policy and Framework was updated in November 2018 and has maintained this requirement.</p>
<p>Opportunities for improvement</p> <p>There is an opportunity for the OPH board to review its charter with a view to better reflect the specific requirements under the PGPA Act (such as the general duties) and sanctions that could apply when the required standards are not met. As discussed in paragraph 2.32, there is an opportunity for the OPH board to address in its charter key behavioural and cultural expectations for board members.</p>	
Duty to act honestly, in good faith and for a proper purpose (Section 26)	
<p>Establish guidance that sets out the need for officials to comply with the requirement. This can include the requirement for an official to manage or use public resources in a proper (efficient, effective, economical and ethical) manner.</p>	<p>Observations</p> <p>OPH's AAI's require all officials of OPH to act in accordance with their general duties under the PGPA Act, which includes guidance to act honestly, in good faith and for a proper purpose.</p> <p>OPH's AAIs contain directions on procurement and direct officers to the Commonwealth Procurement Rules and relevant OPH Policy and Procedure documents, as well as guidance issued by the Department of Finance. The documents outline requirements relating to the efficient, effective, economical and ethical use of public resources.</p> <p>OPH's previous and current fraud control policy and framework notes the obligations of staff and the board under Section 26 of the PGPA Act.</p> <p>Financial delegations, approved by the board, refer to the need to use public resources in a proper (efficient, effective, economical and ethical) manner.</p>

Duty and Finance guidance		ANAO observations and opportunities for improvement where applicable	
Duty not to misuse position to gain, or seek to gain, a benefit or an advantage for yourself or any other person (Section 27)			
Establish guidance that sets out the need for officials to comply with the requirement. This can include providing guidance that misusing a position can include using the entity's property or information or taking advantage of opportunities that arise by virtue of the official's employment with the entity.	Observations OPH's AAI relating to fraud control refers to Resource Management Guide No. 203: General duties of officials. Both the previous and current fraud control policy and frameworks, discussed in Table 3.2, refer to obligations under sections 27 of the PGPA Act. The Board Charter requires board members to ensure the organisation operates with an appropriate corporate governance structure, in particular ensuring it acts legally and responsibly on all matters, and that the highest ethical standards are maintained.		
Duty not to misuse information to cause or seek to cause, detriment to your entity, the Commonwealth or any other person (Section 28)			
Establish guidance that sets out the need for officials to comply with the requirement. This can include guidance that people do not cause, or seek to cause, detriment to the Commonwealth entity that employs or employed them, to the Commonwealth more broadly or any other person.	Observations OPH's AAls require all officials of OPH to act in accordance with their general duties under the PGPA Act. The Board Charter requires board members to maintain confidentiality. OPH's previous and current fraud control policy and framework notes the obligations of staff and the board under Section 28 of the PGPA Act. Conflict of interest declaration is a standing agenda item at board and audit committee meetings.		
Duty to disclose material personal interests (Section 29)			
Establish guidance that sets out the need for officials to comply with the requirement. This can include guidance that people do not cause, or seek to cause, detriment to the Commonwealth entity that employs or employed them, to the Commonwealth more broadly or any other person.	Observations OPH's board charter and audit committee charter describe the process for declaring conflicts of interest and define personal interest. Conflict of interest declaration is a standing agenda item at board meetings and audit committee meetings. OPH has an AAI relating to disclosure of interests, hospitality and acquiring relevant property including gifts. In relation to gifts, the policy applies to officials and requires that generally officials cannot accept gifts or benefits in the course of their work. ^c Board members are not specifically captured in this policy and advised the ANAO that they do not consider it likely that they will be offered any gifts.		
Opportunities for improvement There is an opportunity for the board consider the application of the entertainment and hospitality policy to board members.			

Note a: This is consistent with finance guidance (RMG 202) which states that non-executive board members are not considered employees.

Note b: Noting that the charter does contain behavioural guidance on conflict of interest and confidentiality.

Note c: There are exceptions, for example, where refusal could cause cultural offence, where an item of token value is offered by way of public thanks, or where attendance at an event is an important means of developing and maintaining relationships with key stakeholders.

Source: Department of Finance, *General duties of officials-RMG 203* [Internet], Department of Finance, January 2018, available from <https://www.finance.gov.au/resource-management/accountability/officials/> [accessed March 2019] and ANAO analysis.

Specific requirements relating to corporate plans, annual reports and audit committee

3.24 The PGPA Act and PGPA Rule set out a number of specific requirements relating to an entity's corporate plan, annual report, performance and financial statements and audit committee. For more details, refer to appendices 4 to 6 of this audit report.

3.25 The ANAO's assessment of the OPH board's oversight of, and compliance with, selected key requirements is outlined in Table 3.5. For the purpose of this report, the most recent applicable document is discussed.

Table 3.5: Oversight of, and compliance with, selected PGPA Act requirements

PGPA Act or PGPA Rule requirement	ANAO observations and opportunities for improvement where applicable
Corporate plan (section 35 PGPA Act and Section 16 E PGPA Rule)	
Prepare a corporate plan for the entity, provide the plan to the responsible Minister and Finance Minister and the plan must meet the requirements prescribed in the PGPA Rule.	<p>Observations</p> <p>There is evidence of board discussion and approval of OPH's 2018–19 corporate plan. The plan does not meet the minimum requirements of the PGPA Rule. Specifically the plan did not address each of the four reporting periods covered by the plan in the risk oversight and management systems section. In addition, the plan did not clearly identify the entity's purpose.</p> <p>OPH provided its 2018–19 corporate plan to the responsible Minister and the Finance Minister.</p>
<p>Opportunities for improvement</p> <p>As discussed in Table 3.1, entities were first required to publish corporate plans by 31 August 2015. After four cycles OPH should ensure its next corporate plan meets the minimum requirements outlined in the PGPA Rule.</p>	
Annual report (sections 39, 42 and 46 PGPA Act)	
<p>After the end of each reporting year, you must prepare an annual report for your entity that includes:</p> <ul style="list-style-type: none"> • annual performance statements (section 39 of the PGPA Act); and • audited annual financial statements (section 42 of the PGPA Act). <p>Unless otherwise provided by legislation, you must provide your entity's annual report to your Minister by the 15th day of the fourth month after the end of the reporting period for your entity for tabling in parliament by your Minister (section 46 of the PGPA Act).</p>	<p>Observations</p> <p>OPH prepared an annual report for 2017–18 and the board approved it.</p> <p>The annual report included annual performance statements with an introductory statement from the board that states that the 'Annual Performance Statements are based on properly maintained records, accurately reflect the performance of the entity, and comply with subsection 39(2) of the PGPA Act'.</p> <p>The Chair and Director of the OPH board sign OPH's financial statements and a copy of the financial statements is included in the 2017–18 annual report.</p> <p>The OPH annual report for 2017–18 was provided to OPH's Minister by the required date.</p>

PGPA Act or PGPA Rule requirement	ANAO observations and opportunities for improvement where applicable
Audit committee (section 45 of PGPA Act and section 17 of the PGPA Rule)	
<p>Audit committee must be established and perform functions prescribed by the PGPA Rule.</p>	<p>Observations</p> <p>OPH has established an audit committee and audit committee matters is a standing agenda item at board meetings. Minutes of audit committee meetings are tabled at board meetings and the board receives verbal updates from a member of the audit committee who is also a board member.</p> <p>The audit committee has a charter that describes its functions. During the period under review, the charter has been reviewed twice after its initial approval. Outlined functions in all versions of the charter have been consistent with the requirement of the PGPA Rule.</p> <p>The audit committee comprises a minimum of three members, appointed by the board, the majority of who are not employees of OPH. For the majority of the period examined by this audit the audit committee had four members and for all of the period covered by the audit the Chair of the committee was independent of both the board and OPH management.</p> <p>The audit committee charter states that the Chair of the Committee will at least once every two years initiate a self-assessment review of the performance of the committee. The review will involve input from the board, each committee member, senior management, internal audit, the ANAO, any other relevant stakeholders, as determined by the committee. This had not taken place during the audit testing period.</p>

Note: ANAO did not examine the quality of the corporate plan, annual report performance statement or financial statement.

Source: Department of Finance, *Guide to the PGPA Act for Secretaries, Chief Executives or governing boards (accountable authorities)-RMG 200*, Improving performance and accountability; and Governing your entity [Internet], Department of Finance, December 2016, available from <https://www.finance.gov.au/resource-management/accountability/accountable-authorities/> [accessed March 2019], and ANAO analysis.



Grant Hehir
Auditor-General

Canberra ACT
18 April 2019

Appendices

Appendix 1 Entity responses



Museum of
Australian Democracy
Old Parliament House

8 April 2019

Dr Tom Ioannou
Group Executive Director, Performance Audit
Australian National Audit Office

Dear Dr Ioannou,

Comments on Old Parliament House (OPH) audit report under section 19 of the *Auditor-General Act 1997*

Thank you for your letter of 8 March 2019 providing the proposed audit report (the **Report**) on the Effectiveness of Board Governance at Old Parliament House (**OPH**), prepared by the Australian National Audit Office (**ANAO**) pursuant to section 19 of the *Auditor-General Act 1997*.

The OPH Board is pleased that the Report finds that:

- governance and oversight arrangements adopted by the OPH board are effective;
- OPH board governance and administrative arrangements are consistent with relevant legislative requirements and the board has structured its own operations in a manner that supports effective governance; and
- OPH has fit-for-purpose arrangements to oversight compliance and alignment with key legislative and policy requirements.

These findings reflect OPH's strong organisational culture and the high level of engagement from the OPH Board, executive and staff to deliver on OPH's legislative and compliance obligations.

Response to recommendations

The Report sets out two recommendations, the second which is applicable to OPH:

2. OPH ensure its corporate plan meets all the minimum requirement of the *Public, Governance, Performance and Accountability Rule 2014*.

Future OPH Corporate Plans will be updated to include more dialogue around risk and capabilities across the four year period covered by the plan to ensure they meet the minimum requirements of the *Public Governance, Performance and Accountability Rule 2014*.

02 6270 8222
info@moadoph.gov.au
moadoph.gov.au • @ f t

Old Parliament House
18 King George Terrace, Parkes ACT Australia 2600
PO Box 3934, Manuka ACT 2603


Response to other observations

OPH will also carefully consider other observations in the Report and explore opportunities for process improvement, including in relation to:

- Review of OPH Board Charter to include detail on roles, obligations, processes and reporting;
- Review of risk register and compliance processes; and
- Review of induction processes of new Board members;

I would like to thank the officers of the ANAO who conducted this audit in a very professional manner under a clearly defined legislative framework.

Yours sincerely,



The Hon. Dr. David Kemp AC
Chair
Old Parliament House Board

02 6270 8222
info@moadoph.gov.au
moadoph.gov.au • @ f t

Old Parliament House
18 King George Terrace, Parkes ACT Australia 2600
PO Box 3934, Manuka ACT 2603



Australian Government
Department of Finance

Rosemary Huxtable PSM
Secretary

Our Ref: EC19-000303

Mr Grant Hehir
Auditor-General
Australian National Audit Office
GPO Box 707
CANBERRA ACT 2601

Grant

Dear Mr Hehir

I refer to the Australian National Audit Office's (ANAO's) correspondence dated 8 March 2019 providing extracts of the proposed audit report, *Effectiveness of Board Governance at Old Parliament House* pursuant to section 19 of the *Auditor-General Act 1997* and seeking the Department of Finance's (Finance's) response.

Thank you for the opportunity to respond to the matters raised in the proposed report. Finance's summary response to the report is:

The Department of Finance agrees with the findings of the report.

Finance's response to Recommendation 1 is:

The Department of Finance (Finance) agrees the recommendation, which reflects the work already undertaken by Finance, both prior to this audit, and subsequently.

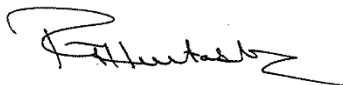
Finance undertakes, on a continuous basis as part of our core business, the review and refinement of guidance material to support entities and accountable authorities under the *Public Governance, Performance and Accountability Act 2013* to meet their duties under the Act. We actively consider the outcomes of inquiries and reviews and apply these to guidance, tools and materials as appropriate.

Further, following the completion of the PGPA Act and Rule Independent Review, Finance has commenced reviewing guidance material to support a maturing framework through enhanced and strengthened guidance, including Resource Management Guide 200 referenced in the proposed report, with a strong focus on self-service and stewardship.

One Canberra Avenue, Forrest ACT 2603 • Telephone 02 6215 3445
Internet www.finance.gov.au

Finance will continue to work with the ANAO to enhance its guidance to support Secretaries, Chief Executives and boards in governing their entities.

Yours sincerely

A handwritten signature in black ink, appearing to read 'R. Huxtable', with a stylized flourish at the end.

Rosemary Huxtable
Secretary

15 April 2019

Appendix 2 General duties as an accountable authority

General duties as an accountable authority		Section of PGPA Act
Duty to govern the entity	<p>1. The accountable authority of a Commonwealth entity must govern the entity in a way that:</p> <p>(a) promotes the proper (efficient, effective, economical and ethical) use and management of public resources for which the authority is responsible; and</p> <p>(b) promotes the achievement of the purposes of the entity; and</p> <p>(c) promotes the financial sustainability of the entity.</p> <p>2. In making decisions for the purposes of subsection (1), the accountable authority must take into account the effect of those decisions on public resources generally.</p>	15
Duty to establish and maintain appropriate systems relating to risk management and oversight and internal controls	<p>The accountable authority of a Commonwealth entity must establish and maintain:</p> <p>(a) an appropriate system of risk oversight and management for the entity; and</p> <p>(b) an appropriate system of internal control for the entity;</p> <p>including by implementing measures directed at ensuring officials of the entity comply with the finance law.</p>	16
Duty to encourage cooperation with others to achieve common objectives	<p>The accountable authority of a Commonwealth entity must encourage officials of the entity to cooperate with others to achieve common objectives, where practicable.</p>	17
Duty to take into account the effects of imposing requirements on others	<p>When imposing requirements on others in relation to the use or management of public resources for which the accountable authority of a Commonwealth entity is responsible, the accountable authority must take into account:</p> <p>(a) the risks associated with that use or management; and</p> <p>(b) the effects of imposing those requirements.</p>	18
Duty to keep responsible Minister and Finance Minister informed	<p>This includes keeping the responsible Minister informed of the activities of the entity and providing any reports, documents and information in relation to those activities as that Minister requires.</p>	19

Source: Department of Finance, *Guide to the PGPA Act for Secretaries, Chief Executives or governing boards (accountable authorities)-RMG 200*, Summary: Your general duties as an accountable authority [Internet], Department of Finance, December 2016, available from <https://www.finance.gov.au/resource-management/accountability/accountable-authorities/> [accessed March 2019].

Appendix 3 General duties as an official

General duties of an official		Section of the PGPA Act
You must exercise your powers, perform your functions and discharge your duties	with the degree of care and diligence that a reasonable person would exercise if the person had the same responsibilities as you	25
	honestly, in good faith and for a proper purpose	26
You must not improperly use your position, or information you obtain in that position, to	gain, or seek to gain, a benefit or an advantage for yourself or any other person	27
	cause, or seek to cause, detriment to your entity, the Commonwealth or any other person	28
You must disclose material personal interests that relate to the affairs of your entity and you must meet the requirements of the finance law. ^a		29

Note a: Finance law includes the PGPA Act and rules and instruments made under the PGPA Act, as well as Appropriation Acts, and the systems of risk management and internal control in their entity established by their accountable authority (including any delegations or authorisations).

Source: Department of Finance, *General duties of officials-RMG 203* [Internet], Department of Finance, January 2018, available from <https://www.finance.gov.au/resource-management/accountability/officials/> [accessed March 2019].

Appendix 4 Selected PGPA Act requirements

PGPA Act or Rule Requirement	Section
<p>Corporate plan for Commonwealth entities</p> <p>Commonwealth entities</p> <p>(1) The accountable authority of a Commonwealth entity must:</p> <p>(a) prepare a corporate plan for the entity, at least once each reporting period for the entity; and</p> <p>(b) give the corporate plan to the responsible Minister and the Finance Minister in accordance with any requirements prescribed by the rules.</p> <p>(2) The corporate plan must comply with, and be published in accordance with, any requirements prescribed by the rules.</p> <p>(3) If:</p> <p>(a) a statement of the Australian Government's key priorities and objectives is published under section 34; and</p> <p>(b) the purposes of the Commonwealth entity relate to those priorities and objectives;</p> <p>then the corporate plan must set out how the activities of the entity will contribute to achieving those priorities and objectives.</p>	35
<p>Annual performance statements for Commonwealth entities</p> <p>(1) The accountable authority of a Commonwealth entity must:</p> <p>(a) prepare annual performance statements for the entity as soon as practicable after the end of each reporting period for the entity; and</p> <p>(b) include a copy of the annual performance statements in the entity's annual report that is tabled in the Parliament.</p> <p>(2) The annual performance statements must:</p> <p>(a) provide information about the entity's performance in achieving its purposes; and</p> <p>(b) comply with any requirements prescribed by the rules.</p>	39
<p>Annual financial statements for Commonwealth entities</p> <p>(1) The accountable authority of a Commonwealth entity must:</p> <p>(a) prepare annual financial statements for the entity as soon as practicable after the end of each reporting period for the entity; and</p> <p>(b) give the statements to the Auditor-General as soon as practicable after they are prepared.</p> <p>(2) The annual financial statements must:</p> <p>(a) comply with the accounting standards and any other requirements prescribed by the rules; and</p> <p>(b) present fairly the entity's financial position, financial performance and cash flows.</p>	42
<p>Audit committee for Commonwealth entities</p> <p>(1) The accountable authority of a Commonwealth entity must ensure that the entity has an audit committee.</p> <p>(2) The committee must be constituted, and perform functions, in accordance with any requirements prescribed by the rules.</p>	45

PGPA Act or Rule Requirement	Section
<p>Annual report</p> <p>(1) After the end of each reporting period for a Commonwealth entity, the accountable authority of the entity must prepare and give an annual report to the entity's responsible Minister, for presentation to the Parliament, on the entity's activities during the period.</p> <p>Note: A Commonwealth entity's annual report must include the entity's annual performance statements and annual financial statements (see paragraph 39(1)(b) and subsection 43(4)).</p> <p>(2) The annual report must be given to the responsible Minister by:</p> <p>(a) the 15th day of the fourth month after the end of the reporting period for the entity; or</p> <p>(b) the end of any further period granted under subsection 34C(5) of the <i>Acts Interpretation Act 1901</i>.</p> <p>(3) The annual report must comply with any requirements prescribed by the rules.</p> <p>(4) Before rules are made for the purposes of subsection (3), the rules must be approved on behalf of the Parliament by the Joint Committee of Public Accounts and Audit.</p>	46

Source: *Public Governance, Performance and Accountability Act 2013*.

Appendix 5 Extract of PGPA Rule 2014

Commonwealth entities and the Commonwealth **Chapter 2**
Planning, performance and accountability **Part 2-3**
Planning and budgeting **Division 1**

Section 16E

Part 2-3—Planning, performance and accountability

Division 1—Planning and budgeting

16E Corporate plan for Commonwealth entities

Guide to this section

The purpose of this section is to set out matters that the accountable authority of a Commonwealth entity must include in the entity's corporate plan.

The corporate plan may also include other matters and, for some Commonwealth entities, the Act (see subsections 35(3) and (5)) or the entity's enabling legislation may require that other matters be included in the plan.

A corporate plan is prepared for a single reporting period for a Commonwealth entity. However, each plan must cover at least 4 reporting periods: the reporting period for which the plan is prepared and at least the following 3 reporting periods.

This section is made for subsections 35(1) and (2) of the Act.

Period corporate plan must cover

- (1) The corporate plan for a Commonwealth entity must cover a period of at least 4 reporting periods for the entity, starting on the first day of the reporting period for which the plan is prepared under paragraph 35(1)(a) of the Act.

Matters that must be included in corporate plan

- (2) The following table sets out the matters that must be included in the corporate plan:

Matters to be included in a Commonwealth entity's corporate plan		
Item	Topic	Matters to be included
1	Introduction	The following: (a) a statement that the plan is prepared for paragraph 35(1)(b) of the Act; (b) the reporting period for which the plan is prepared; (c) the reporting periods covered by the plan.
2	Purposes	The purposes of the entity.
3	Environment	The environment in which the entity will operate for each reporting period covered by the plan.

Public Governance, Performance and Accountability Rule 2014

19

Compilation No. 26

Compilation date: 29/3/19

Registered: 8/4/19

Authorised Version F2019C00293 registered 08/04/2019

Chapter 2 Commonwealth entities and the Commonwealth**Part 2-3** Planning, performance and accountability**Division 1** Planning and budgeting

Section 16E

Matters to be included in a Commonwealth entity's corporate plan

Item	Topic	Matters to be included
4	Performance	For each reporting period covered by the plan, a summary of: (a) how the entity will achieve the entity's purposes; and (b) how any subsidiary of the entity will contribute to achieving the entity's purposes; and (c) how the entity's performance will be measured and assessed in achieving the entity's purposes, including any measures, targets and assessments that will be used to measure and assess the entity's performance for the purposes of preparing the entity's annual performance statements under section 16F.
5	Capability	The key strategies and plans that the entity will implement in each reporting period covered by the plan to achieve the entity's purposes.
6	Risk oversight and management	A summary of the risk oversight and management systems of the entity for each reporting period covered by the plan (including any measures that will be implemented to ensure compliance with the finance law).

Corporate plan must be published

- (3) The corporate plan must be published on the entity's website by the last day of the second month of the reporting period for which the plan is prepared.
- (4) However, if the accountable authority considers that the corporate plan contains information that:
- (a) is confidential or commercially sensitive; or
 - (b) could prejudice national security;
- then only so much of the corporate plan that does not contain that information must be published under subsection (3).

Corporate plan must be given to Ministers

- (5) The corporate plan, and any version of the plan referred to in subsection (4), must be given to the responsible Minister and the Finance Minister:
- (a) as soon as practicable after the plan is prepared; and
 - (b) before the plan, or the version, is published under subsection (3).

Variation of corporate plan

- (6) If the corporate plan is varied during the reporting period for which the plan is prepared and the accountable authority of the entity considers that the variation is significant, then:
- (a) this section applies to the plan as varied; and
 - (b) subsection (3) applies as if it requires the plan to be published as soon as practicable after the plan is prepared (instead of it requiring the plan to be published by the last day of the second month of the reporting period for which the plan is prepared).

Corporate plan for new entity

- (7) If the entity is established at the start of, or during, the reporting period for which the plan is prepared, then subsection (3) applies as if it requires the plan to be published as soon as practicable after the plan is prepared (instead of it requiring the plan to be published by the last day of the second month of the reporting period for which the plan is prepared).

Source: Public Governance and Accountability Rule 2014.

Auditor-General Report No.34 2018–19
Effectiveness of Board Governance at Old Parliament House

Appendix 6 Extract of PGPA Rule 2014 section 17

Chapter 2 Commonwealth entities and the Commonwealth

Part 2-3 Planning, performance and accountability

Division 3 Audit Committee for Commonwealth entities

Section 17

Division 3—Audit Committee for Commonwealth entities

17 Audit committee for Commonwealth entities

Guide to this section

The purpose of this section is to set out minimum requirements relating to the audit committee for a Commonwealth entity to help ensure that the committee provides independent advice and assurance to the entity's accountable authority. It is also to require the accountable authority to determine the functions the audit committee is to perform for the entity.

This section does not prevent the same audit committee performing functions for multiple Commonwealth entities.

This section is made for subsection 45(2) of the Act.

Functions of the audit committee

- (1) The accountable authority of a Commonwealth entity must, by written charter, determine the functions of the audit committee for the entity.
- (2) The functions must include reviewing the appropriateness of the accountable authority's:
 - (a) financial reporting; and
 - (b) performance reporting; and
 - (c) system of risk oversight and management; and
 - (d) system of internal control;for the entity.

Membership of the audit committee

- (3) The audit committee must consist of at least 3 persons who have appropriate qualifications, knowledge, skills or experience to assist the committee to perform its functions.
- (4) On and after 1 July 2015, the majority of the members of the audit committee must:
 - (a) for a non-corporate Commonwealth entity—be persons who are not officials of the entity; or
 - (b) for a corporate Commonwealth entity—be persons who are not employees of the entity.
- (4A) However, a person employed or engaged primarily for the purpose of being a member of the audit committee is to be treated, for the purpose of subsection (4), as not being an official or employee of the entity.

- (5) Despite subsections (3) (4) and (4A), the following persons must not be a member of the audit committee:
- (a) the accountable authority or, if the accountable authority has more than one member, the head (however described) of the accountable authority;
 - (b) the Chief Financial Officer (however described) of the entity;
 - (c) the Chief Executive Officer (however described) of the entity.

Source: Public Governance and Accountability Rule 2014.

Auditor-General Report No.34 2018–19
Effectiveness of Board Governance at Old Parliament House