

## **EXPLANATORY STATEMENT**

### **Issued by the Authority of the Minister for Finance**

#### *Public Governance, Performance and Accountability Act 2013*

#### *Public Governance, Performance and Accountability (Establishing Old Parliament House) Rule 2016*

The *Public Governance, Performance and Accountability Act 2013* (PGPA Act) sets out a framework for regulating resource management by the Commonwealth and relevant entities. Section 101 of the PGPA Act provides that the Finance Minister may make rules by legislative instrument to prescribe matters giving effect to the Act.

Section 87 of the *Public Governance, Performance and Accountability Act 2013* (the Act) provides for rules to establish a new body corporate.

The purpose of the *Public Governance, Performance and Accountability (Establishing Old Parliament House) Rule 2016* (the Rule) is to establish the Old Parliament House (OPH). OPH will be a corporate Commonwealth entity which will be legally separate from the Commonwealth.

The Rule provides for the Agency's purpose, functions, powers, the establishment of its Board, staffing and financial arrangements.

The Rule also includes transitional provisions dealing with the transition from Old Parliament House's status as a non-corporate Commonwealth entity to a Commonwealth corporate entity.

Establishing the OPH as a corporate Commonwealth entity will 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.

It will place OPH on an equivalent footing as the other national collecting institutions. It will also have an added benefit of simplifying its complex funding structure, with five department and administered appropriations reduced down to three department appropriations.

Details of the Rule are set out at [Attachment A](#). A statement of compatibility with human rights is at [Attachment B](#).

The Rule is a legislative instrument for the purposes of the *Legislative Act 2003*.

### **Consultation**

In accordance with section 17 of the *Legislation Act 2003*, consultation has taken place with the Department of Communications and the Arts. The Rule was drafted by the Office of Parliamentary Counsel.

**Attachment A****Details of the *Public Governance, Performance and Accountability (Establishing Old Parliament House) Rule 2016***

For the convenience of readers, this explanatory statement will refer to Old Parliament House and the *Public Governance, Performance and Accountability Act 2013* as the ‘OPH’ and the ‘Act’ respectively.

**PART 1—PRELIMINARY****Item 1           Name**

This item provides that the instrument will be named the *Public Governance, Performance and Accountability (Establishing Old Parliament House) Rule 2016*.

**Item 2           Commencement**

This item specifies that the whole of the instrument will commence on 1 July 2016.

**Item 3           Authority**

This item specifies that the instrument is made under the Act. This Rule is a legislative instrument for the purposes of the *Legislation Act 2003*.

**Item 4           Schedules**

This item provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

**Item 5           Purpose**

This item specifies that the instrument prescribes matters relating to the establishment of OPH for section 87 of the Act.

**Item 6           Definitions**

This item sets out definitions used in the instrument.

**Item 7           Responsible Minister**

This item provides that the Minister for the Arts (the Minister) is responsible for the OPH in relation to paragraph 87(n) of the Act.

## **PART 2—OLD PARLIAMENT HOUSE**

### **Item 8 Establishment of Old Parliament House**

This item establishes OPH. Subsection 8(2) provides that OPH is a body corporate, which must have a seal, and may sue or be sued. Subsection 8(3) deals with the safe-keeping and use of OPH's seal.

### **Item 9 OPH's Functions**

Section 9 provides that OPH's functions are to:

- (a) to conserve, develop and present the OPH building and collections;
- (b) to provide public programs and research activities related to Australia's social and parliamentary history;
- (c) to provide a range of other services for visitors to OPH;
- (d) to undertake other relevant tasks as the Arts Minister may require from time to time;
- (e) such other functions as are conferred on OPH by this instrument or by any other law of the Commonwealth;
- (f) to do anything incidental to or conducive to the performance of any of the above functions.

The first of these functions provides a description of OPH's role in relation to the OPH building and its collection and recognises the key role the OPH building plays in interpreting and promoting Australia's democracy.

The second function provides a description of OPH's public programs and research activities, which includes, but is not limited to, education, exhibitions, events and research.

The third function provides a description of OPH's services for visitors, which may include but may not be limited to providing services to engage a captive audience and improve visitors' experience, including catering, gift shop and specific activities.

The fourth, fifth and sixth functions provides flexibility for OPH to provide a range of activities and services to promote to role of democracy and Australia's social and parliamentary history in line with Government and other priorities, and required by law.

### **Item 10 OPH's Powers**

This item empowers OPH to do all things necessary or convenient to perform its functions conferred under section 9.

Subsection 10(2) outlines a non-exhaustive list of specific powers that may be exercised by the OPH.

### **Item 11 Arts Minister may give directions to the OPH**

This item enables the Minister to give written directions to OPH in relation to the performance of its functions or the exercise of its powers, which OPH must comply with

(subsection 11(3)). Such directions must not relate to a particular individual and must be consistent with the Act and any instrument made under the Act (subsection 11(2)).

Subsection 11(4) provides that this section does not affect the application of section 22 of the Act, which deals with the application of government policy to corporate Commonwealth entities, in relation to the Agency.

**Item 12 OPH does not have privileges and immunities of the Crown**

This item provides that OPH does not have the privileges and immunities of the Crown in right of the Commonwealth, because it is a body corporate which is legally separate from the Commonwealth.

**PART 3—THE BOARD**

**Item 13 Establishment of the Board**

This item establishes the Board of the OPH. The Board is the accountable authority and governing body of the OPH for the purposes of subsection 12(2) of the Act.

**Item 14 Functions of the Board**

This item specifies the functions of the Board, which are to decide the objectives, strategies and policies to be followed by the OPH; and to ensure the proper and efficient performance of the OPH's functions conferred under section 9.

**Item 15 Minister may give the Board a statement setting out strategic guidance for OPH**

This item provides that the Minister may give the Board a written statement setting out strategic guidance for the OPH, which the OPH must have regard to in the performance of its functions or the exercise of its powers (subsection 15(1)). Such a statement must be of a general nature, must not relate to a particular individual, and must be consistent with the Act, the Rule, or any other instrument made under the Act (subsection 15(2)).

The purpose of this provision is to allow the Minister to communicate their expectations of the Board and the broad strategic direction they expect it to take as it performs its functions.

**Item 16 Powers of the Board**

This item empowers the Board to do all things necessary or convenient to be done for, or in connection with, the performance of its functions prescribed under section 14. Subsection 16(2) provides that anything done in the name of, or on behalf of, the OPH by the Board or with the Board's authority is taken to have been done by the OPH.

**Item 17 Delegation by the Board**

This item empowers the Board to delegate any or all of its powers or functions in writing to a Board member, including the Director. The delegate is required to comply with any

directions of the Board in exercising any of the powers or performing any functions under the delegation (subsection 17(2)).

#### **PART 4—THE BOARD MEMBERS**

##### **Item 18 Membership of the Board**

This item provides for the Board to consist of the Board Chair, Deputy Board Chair, Director, and not more than four other members. The membership of the Board reflects the intention to establish an independent skills-based Board to support the activities of the OPH.

##### **Item 19 Appointment of Board members**

This item provides for the Minister to appoint a Board member by written instrument. A Board member other than the Director may be appointed on a part-time basis (subsection 19(1)). Subsection 19(2) provides that a person must not be appointed as a Board member unless the Minister is satisfied that the person has knowledge or experience relevant to OPH's affairs. Subsection 19(3) provides that a person may not be appointed for a period if the sum exceeds 9 years. Subsection 19(4) provides the Minister must appoint one Board member to be the Board Chair, and one Board member to be the Deputy Board Chair.

##### **Item 20 Term of appointment**

This item provides that a Board member is appointed for a period specified in the instrument of appointment, which must not exceed three years.

##### **Item 21 Acting Board Chair**

This item provides for the Minister to appoint, by written instrument, a Board member to act as the Board Chair. This can be done during a vacancy in the office of the Board Chair due to the Board Chair being absent from duty or is unable to perform the duties of the office.

The note to this section assists the reader by providing a reference to the acting appointment provisions in the *Acts Interpretation Act 1901*.

##### **Item 22 Acting Board members**

This item provides for the Minister to appoint, by written instrument, a person to act as a Board member apart from the Board Chair. This can be done during a vacancy in the office of a Board member; or during any period when a Board member is acting as the Board Chair, is absent from duty, or is unable to perform the duties of the office of Board member.

The note to this section assists the reader by providing a reference to the acting appointment provisions in the *Acts Interpretation Act 1901*.

A person must not be appointed to act for a period of more than 6 months and is not eligible to act as a Board member unless he or she meets the requirements of subsection 19(2).

### **Item 23      Remuneration of Board members**

This item provides that the remuneration of Board members is to be determined by the Remuneration Tribunal, or by remuneration that is determined by the Minister by written instrument if there is no determination by the Remuneration Tribunal (subsection 23(1)). Subsection 23(2) provides that members are to be paid allowances that are determined by the Minister by written instrument, and subsection 23(3) makes clear that this section is subject to the *Remuneration Tribunal Act 1973*.

The prescribing of remuneration and allowances, to the extent that it is not covered by the *Remuneration Tribunal Act*, is done by way of a legislative instrument (subsection 23(4)).

### **Item 24      Leave for Board members**

A person appointed as the Board Chair may be granted leave of absence by the Minister on terms and conditions determined by the Minister (subsection 24(1)).

The Board Chair may grant leave of absence to another Board member and determine the terms and conditions of the leave (subsection 24(2)).

### **Item 25      Restrictions on outside employment**

This item provides for restrictions on the Board Chair and other Board members' employment outside of the Agency.

The Board Chair (subsection 25(1)) and Board members (subsection 25(2)) must not engage in any paid employment that the Minister considers to conflict (or could conflict) with the proper performance of their duties.

### **Item 26      Resignation of Board members**

This item provides for the resignation of Board members, other than the Director, through written resignation to the Minister (subsection 26(1)). Any such resignation is effective from either the day the Minister receives the written notice or a later date if specified in the resignation (subsection 26(4)).

### **Item 27      Termination of appointments of Board members**

This item provides for the Minister to terminate the appointment of a Board member, other than the Director. Subsection 27(1) specifies the circumstances in which the Minister may terminate an appointment. Subsection 27(2) specifies the circumstances in which the Minister must terminate an appointment, including bankruptcy and unexplained absenteeism.

### **Item 28      Other terms and conditions of Board members**

This item provides for the Minister to determine other terms and conditions of appointment in relation to matters not covered by the instrument.

## **DIVISION 3—PROCEDURES OF THE BOARD**

### **Item 29 Convening of meetings**

This item sets out the requirements for the Board Chair to convene meetings of the Board. A minimum of two Board meetings must be convened by the Board Chair each calendar year (subsection 29(2)). The Board Chair must convene Board meetings that are necessary for the efficient conduct of its affairs (subsection 29(1)), and must convene a Board meeting if requested to do so by the Minister (subsection 29(3)), or on receipt of a written request signed by a majority of the Board members (subsection 29(4)).

### **Item 30 Quorum**

This item provides that a quorum is established at a Board meeting if a majority of Board members, for the time being holding office, are present. This ensures that the Board can continue to function where some members are not able to attend meetings.

If a Board member is required not to be present while a matter is being considered (refer section 29 of the *Public Governance, Performance and Accountability Act 2013*), or not to vote on a matter that is being considered which results in a quorum no longer being present, then the Board members remaining at the meeting constitute the quorum for that matter (subsection 30(2)).

### **Item 31 Presiding at meetings**

This item provides that the Board Chair is to preside at all Board meetings at which he or she is present (subsection 31(1)). Where the Chair is not present, the Deputy Chair is to preside if present (subsection 31(2)), otherwise a Board member elected by the Board members present is to preside (subsection 31(3)).

### **Item 32 Voting at meetings**

This item provides for Board decisions to be made on a majority basis (subsection 32(1)), with the Board member presiding at the meeting having a deliberative vote, and the casting vote in the event that votes are equal (subsection 32(2)).

### **Item 33 Minutes**

This item specifies that the Board is to keep records of its meetings.

### **Item 34 Conduct of meetings**

This item provides that subject to the Act, the Board may regulate conduct of its meetings as it thinks fit.

The note to this section assists the reader by providing a reference to the *Acts Interpretation Act 1901* in relation to participating in meetings.

### **Item 35      Decisions without meetings**

This item provides for decisions of the Board to be made without a formal meeting in the specified circumstances (subsection 35(1)). A decision cannot be made without a meeting unless the Board has determined a method by which such a decision is to be made (subsection 35(2)). A Board member is not entitled to vote in a decision without a meeting if that Board member would not have been entitled to vote on that proposal in a meeting of the Board (subsection 35(3)). The Board must keep a record of all decisions made in accordance with this section (subsection 35(4)).

## **PART 4—THE DIRECTOR**

### **Item 36      Director**

This item specifies that there is to be a Director of OPH.

### **Item 37      Role**

This item sets out the role of the Director, being the day-to-day administration of OPH (subsection 37(1)), and empowering the Director to do all things necessary or convenient in performing the role (subsection 37(2)).

### **Item 38      Director to act in accordance with policies and directions of the Board**

This item provides that the Director must comply with any written directions given to the Director by the Board in relation to the performance of the Director's role (subsection 38(1)). The Director is to act in accordance with any policies determined by the Board (subsection 38(2)). However, the Director is not required to comply with a direction from the Board to the extent that it relates to the Director's performance of functions or exercise of powers under the *Public Service Act 1999* (subsection 38(3)).

### **Item 39      Appointment of the Director**

This item provides that the Director is to be appointed by the Board with the written agreement of the Minister (subsections 39(1) and 39(2)).

The appointment is to be made by written instrument (subsection 39(3)) and will be on a full-time or part-time basis (subsection 39(4)). Subsection 39(5) specifies that the Director is not to be appointed for a period exceeding five years (subsection 39(5)).

The note to this section makes reference to section 33AA of the *Acts Interpretation Act 1901* in order to clarify arrangements for the re-appointment of the Director.

### **Item 40      Acting Director**

This item provides for the Board to appoint an acting Director (subsection 40(1)), during vacancies or absences in the office of the Director, or where the Director cannot fulfil her or his duties for a period of time.



The note to this section assists the reader by providing a reference to the appointment provisions in the *Acts Interpretation Act 1901*.

#### **Item 41      Outside employment**

This item specifies that if the Director is appointed on a full-time basis, the Director must not engage in paid employment outside the Director role without the Board Chair's approval (subsection 41(1)) and that the Board Chair must notify the Minister of any such approval (subsection 41(2)). If the Director is appointed on a part-time basis, the Director must not engage in any paid employment that, in the Board Chair's opinion, conflicts or may conflict with the proper performance of his or her duties (subsection 41(3)).

#### **Item 42      Disclosure of interests**

This item specifies that a disclosure made under section 29 of the Act by the Director regarding disclosure of interests must be made to the Minister and the Board. Subsections 42(2) and 42(3) stipulate that if the Director fails to disclose interests, he or she is taken not to have complied with section 29 of the Act, rules made under this section, as well as subsection 42(1).

#### **Item 43      Remuneration**

This item provides that the remuneration of the Director is to be determined by the Remuneration Tribunal. If no determination by the Tribunal is in operation, the Director is to be paid remuneration and allowances which are determined by the Minister by legislative instrument made under subsection 43(4).

Subsection 43(3) makes clear that this provision is subject to the *Remuneration Tribunal Act 1973*.

#### **Item 44      Leave**

This item provides for the Director's recreation leave entitlements to be determined by the Remuneration Tribunal (subsection 44(1)). It also provides that the Board Chair may grant, and determine the conditions of other leave of absence (subsection 44(2)).

#### **Item 45      Resignation**

This item provides for the Director to resign by giving a written resignation to the Board Chair (subsection 45(1)). If the Director resigns, the Director also resigns his or her position as Board member, and the Board Chair is required to notify the Minister if the Director (subsection 45(2)). Such resignation is effective from either the day the Board Chair receives the written notice or a later date specified in the resignation (subsection 45(3)).

#### **Item 46      Termination of appointment of the Director**

This item provides for the Board to terminate the appointment of the the Director. Subsection 46(1) specifies the circumstances in which the Board may terminate the appointment. Subsection 46(2) specifies the circumstances in which the Board must terminate the appointment, including bankruptcy and unexplained absenteeism.

**Item 47 Other terms and conditions of the Director**

This item provides for the Board to determine other terms and conditions of the Director's employment that are not covered in the instrument.

**PART 8—STAFF AND CONSULTANTS****Item 48 Staff of OPH etc.**

This item provides that staff must be engaged as public servants under the *Public Service Act 1999*.

Subsection 48(2) specifies that the Director and OPH staff engaged as public servants under the *Public Service Act 1999* constitute a Statutory Agency, and the Director is the Head of that Statutory Agency for the purposes of the *Public Service Act 1999*.

**Item 49 Consultants**

This item provides that the OPH may engage consultants to assist in the performance of its functions and the exercise of its powers. Subsection 49(2) provides that the terms and conditions of the consultant's engagement are to be determined in writing by the Director.

**PART 6—FINANCE****Item 50 Taxation**

This item provides that the OPH is not subject to taxation under a law of the Commonwealth or of a State or Territory.

The note to this section states that OPH may be subject to taxation under certain laws.

**PART 7—TRANSITIONAL****Item 51 Definitions**

This item sets out definitions of terms that are relied upon in Part 11.

**Item 52 Old Parliament House assets and liabilities**

This item provides that the assets and liabilities of Old Parliament House, a non-corporate Commonwealth entity, will cease to be assets and liabilities of Old Parliament House and will become the assets and liabilities of OPH, a corporate Commonwealth entity, on the transfer day (subsection 52(1)).

The note to subsection 52(1) states that any liability, including any actual, contingent or prospective liability to pay a Commonwealth tax that arises at the time with the transfer of assets and liabilities from Old Parliament House to the OPH on transfer day, is, in addition to liabilities that arose before transfer day, transferred to OPH.

Subsection 52(2) provides that the assets and liabilities of Old Parliament House held on behalf of the Commonwealth will cease to be assets and liabilities of the Commonwealth and will become the assets and liabilities of OPH on the transfer day.

**Item 53      Transfer of custody of records or documents of Old Parliament House**

This item applies to a record or document that was in the custody of Old Parliament House immediately before the transfer day.

Subsection 53(2) provides that if the record or document relates to an asset or liability that becomes an asset or liability of the OPH then the record or document is to be transferred into the custody of the OPH on or after the transfer day.

**Item 54      Certificates relating to vesting of land**

This item applies to any land that would vest in the OPH under Part 7 and there is a certificate lodged with a land registration official that is signed by the Minister, identifies the land and states that the land has become vested in the OPH.

Subsection 54(2) provides that the land registration official may register the matter in a way in which dealings of that kind are registered and give effect to the certificate.

**Item 55      Certificates for vesting of assets other than land**

This item applies to an asset other than land that vests in the OPH under Part 7 and there is a certificate lodged with an assets official that is signed by the Minister, identifies the asset and states that the asset has become vested in the OPH.

Subsection 55(2) provides that the assets official may deal with the certificate as if it were a proper and appropriate instrument for transactions in relation to assets of that kind, that is, as if it was registered, and make such entries in the register in relation to assets of that kind.

**Item 56      Acts of Old Parliament House to be attributed to the OPH**

This item provides that anything done by Old Parliament House before the transfer day has the effect, at and after that day, as if it has been done by, or in relation to, the OPH.

**Item 57      Legal proceedings of Old Parliament House**

This item relates to any proceedings that were pending in a court or tribunal immediately before the transfer day and to which Old Parliament House was a party.

Subsection 57(2) provides that on and after the transfer day, the OPH is substituted for Old Parliament House as a party to the proceedings.

Subsection 57(3) provides that, without limiting subsections 57(1) and 57(2), the OPH is substituted for Old Parliament House as an opponent in opposition proceedings before the Commissioner of Patents, despite regulation 5.15 of the *Patents Regulations 1991*.

Regulation 5.15 deals with the circumstances in which an opponent in opposition proceedings may be transferred to a new opponent.

**Item 58      References in instruments to Old Parliament House**

This item relates to instruments that are in force immediately before the transfer day and contain a reference to Old Parliament House.

Subsection 58(2) provides that an instrument relating to an asset or liability containing a reference to Old Parliament House has effect, at and after the transfer day, as if it were a reference to the OPH.

Subsection 58(3) provides that this section does not prevent the instrument from being varied or terminated on or after the transfer day.

**Item 59      Director of Old Parliament House**

This item provides that the existing Director of Old Parliament House continues as the Director of Old Parliament House from the transfer day for a period up to 1 April 2018 or the day a person is appointed as the Director in accordance with an appointment process carried out after the transfer day under section 39.

**Item 60      Advisory Council members of Old Parliament House**

This item provides that a member of Old Parliament House Advisory Council immediately before the transfer day is taken to have been appointed as a Board member of OPH under section 19 for a period of up to six months, or until the day the same or a different person is appointed as a Board member, including Chair and Deputy Chair, in accordance with an appointment process carried out after the transfer day.

**Item 61      Staff of Old Parliament House**

This item provides that a person who was engaged by Old Parliament House as an APS employee immediately before the transfer day, continues to be an APS employee engaged by OPH, as a corporate Commonwealth entity, on and after the transfer day.

**Item 62      Exemption from stamp duty and other State or Territory taxes**

This item specifies that the OPH is not subject to taxation under any State or Territory law in respect of an exempt matter, or anything connected with an exempt matter.

An exempt matter is the vesting of an asset or liability under Part 7, or the operation of the Rule in any other respect (subsection 62(2)). The Minister may certify that a matter is exempt or that a specified thing was connected with a specified exempt matter (subsection 62(3)).

**Item 63      Certificates taken to be authentic**

This item provides that a certificate provided in sections 54, 55 or 62 is authentic unless the contrary view is established.

**Item 64 Compensation for acquisition of property**

This item specifies that the Commonwealth is liable to pay a reasonable amount of compensation if the operation of Part 7 results in an acquisition of property (subsection 64(1)). If the Commonwealth and the person do not agree on the amount of compensation, the person may institute proceedings for the recovery of reasonable compensation as the court determines (subsection 64(2)).

**Schedule 1 – Amendments**

*Public Governance, Performance and Accountability Rule 2014*

**1 Section 30 (after table item 17)**

This item inserts OPH into the section in the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule) which lists the corporate Commonwealth entities that are subject to the *Commonwealth Procurement Rules*.

**2 Clause 19 of Schedule 1**

This item repeals clause 19 of Schedule 1 of the PGPA Rule which lists Old Parliament House as a non-corporate Commonwealth entity.

**Statement of Compatibility with Human Rights**

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

***Public Governance, Performance and Accountability (Establishing Old Parliament House) Rule 2016***

The *Public Governance, Performance and Accountability (Establishing Old Parliament House) 2016* (the Rule) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the Legislative Instrument**

The Rule will establish the Old Parliament House (OPH) as a body corporate which will be legally separate from the Commonwealth.

The Rule is made by the Commonwealth Minister for Finance under section 87 of the *Public Governance, Performance and Accountability Act 2013* (the Act). This section provides for rules to be created to establish a new corporate Commonwealth entity.

The Rule provides for the Agency's purpose, functions, powers, the establishment of its Board, staffing and financial arrangements.

The Rule outlines the OPH's functions, which include:

- (a) to conserve, develop and present Old Parliament House building and collections;
- (b) to provide public programs and research activities related to Australia's social and parliamentary history;
- (c) to provide a range of other services for visitors to Old Parliament House;
- (d) to undertake other relevant tasks as the Arts Minister may require from time to time;
- (e) such other functions as are conferred on OPH by this instrument or by any other law of the Commonwealth; and
- (f) to do anything incidental to or conducive to the performance of any of the above functions.

**Human Rights Implications**

The governance arrangements of OPH are consistent with those of other National Cultural Institutions. The Rule is likely not to have impact on individuals' rights as it does not impose restrictions on individuals. Rather, it will likely provide positive human rights implications with OPH better supported in providing access to the public to participate in programs that seek to engage the public as active citizens of democracy and increase awareness of their human rights.

**Conclusion**

The legislative instrument is compatible with human rights as it does not raise any human rights issues.

**Senator the Hon Mathias Cormann  
Minister for Finance**