

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance and the Public Service

Public Governance, Performance and Accountability Act 2013

Public Governance, Performance and Accountability Rule 2014

*Public Governance, Performance and Accountability Amendment (2018 Measures No. 1)
Rules 2018*

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 104 of the PGPA Act provides that the Finance Minister may make rules that modify, in relation to the Commonwealth Superannuation Corporation, the operation of rules and instruments made under the Act. Section 54 of the PGPA Act allows the rules to set banking requirements for corporate Commonwealth entities.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

The *Public Governance, Performance and Accountability Amendment (2018 Measures No. 1) Rules 2018* (Amendment Rules) make technical amendments to the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule) relating to:

- the renaming of the Immigration and Border Protection Department to the Department of Home Affairs;
- the requirements for disclosure of certain types of material personal interest by Commonwealth officials;
- clarifying the application of the Finance Minister's banking delegation directions to the Commonwealth Superannuation Corporation's bank accounts;
- updating references to the *Commonwealth Procurement Rules*;
- removing the Corporations and Markets Advisory Committee as a listed entity; and
- amending the purposes of the listed entity National Mental Health Commission.

Details of the Amendment Rules are set out at [Attachment A](#). A Statement of Compatibility with Human Rights is at [Attachment B](#).

The Amendment Rules are a legislative instrument for the purposes of the *Legislation Act 2003*. The Amendment Rules commence on the day after they are registered on the Federal Register of Legislation.

Consultation

In accordance with section 17 of the *Legislation Act 2003*, consultation has taken place with the Commonwealth Superannuation Corporation, the Department of Health and the Department of the Prime Minister and Cabinet.

Details of the *Public Governance, Performance and Accountability Amendment (2018 Measures No. 1) Rules 2018*

Section 1 – Name

This section provides that the title of this instrument is the *Public Governance, Performance and Accountability Amendment (2018 Measures No. 1) Rules 2018* (Amendment Rules).

Section 2 – Commencement

This section provides that each of the provisions in this instrument commences on the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that this instrument is made under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

Section 4 – Schedules

This section provides that the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule) is amended as set out in the Schedule to this instrument.

Schedule 1 – Amendments

Public Governance, Performance and Accountability Rule 2014

Item 1 – Section 4 (definition of *banking delegation direction*)

This item repeals the definition of “banking delegation direction” from section 4 of the PGPA Rule.

Item 2 – Section 4

This item inserts the definition of the “Department of Home Affairs” to section 4 of the PGPA Rule. The amendment reflects the renaming of the Immigration and Border Protection Department to the Department of Home Affairs made by the amendment to the *Administrative Arrangements Order* on 20 December 2017.

Item 3 – Section 4 (definition of *Immigration and Border Protection Department*)

This item repeals the definition of the “Immigration and Border Protection Department” from section 4 of the PGPA Rule.

Item 4 – Paragraph 7(d)

This item replaces the reference to “Immigration and Border Protection Department” with the reference to “Department of Home Affairs” as a listed law enforcement agency for the purposes of the PGPA Act.

Item 5 – Subsection 12(1) (cell at table item 3, column headed “Circumstances”)

This item repeals and substitutes the circumstances provision in item 3 of the table at subsection 12(1) of the PGPA Rule to align its construction with the construction of section 61 of the PGPA Act. Section 61 of the PGPA Act provides that the rules may prescribe

requirements relating to the granting of indemnities, guarantees or warranties by corporate Commonwealth entities.

Item 6 – At the end of paragraph 13(1)(b)

This item clarifies that section 13 of the PGPA Rule only applies to circumstances where officials who are the accountable authority of an entity have not been exempted from disclosing a material personal interest that relates to the affairs of the entity under section 12 of the PGPA Rule.

Where section 12 of the PGPA Rule does not apply, officials who are the accountable authority of an entity must disclose their material personal interests in accordance with section 13 of the PGPA Rule.

Item 7 – At the end of paragraph 14(1)(b)

This item clarifies that section 14 of the PGPA Rule only applies to circumstances where officials who are members of the accountable authority of an entity have not been exempted from disclosing a material personal interest that relates to the affairs of the entity under section 12 of the PGPA Rule.

Where section 12 of the PGPA Rule does not apply, officials who are members of the accountable authority of an entity must disclose their material personal interests in accordance with section 14 of the PGPA Rule.

Item 8 – Section 15 (heading)

This item omits “having” and substitutes “disclosing” in the heading of section 15 of the PGPA Rule to align its construction with paragraph 29(2)(c) of the PGPA Act. Paragraph 29(2)(c) of the PGPA Act provides that the rules may prescribe the consequences of disclosing a material personal interest that relates to the affairs of the entity.

Item 9 – Section 15

This item omits and substitutes the guide to section 15 of the PGPA Rule to align its construction with paragraph 29(2)(c) of the PGPA Act. Paragraph 29(2)(c) of the PGPA Act provides that the rules may prescribe the consequences of disclosing a material personal interest that relates to the affairs of the entity.

Item 10 – Paragraph 15(1)(b)

This item amends section 15 of the PGPA Rule to align its construction with paragraph 29(2)(c) of the PGPA Act. Paragraph 29(2)(c) of the PGPA Act provides that the rules may prescribe the consequences of disclosing a material personal interest that relates to the affairs of the entity.

The effect of this amendment is to limit the application of section 15 of the PGPA Rule to an official of a Commonwealth entity who is a member of the accountable authority of the entity and has disclosed a material personal interest that related to the affairs of the entity.

Item 11 – Subsection 15(2) (heading)

This item repeals the heading of the subsection “Consequences of having interest” and substitutes “Consequences of disclosure” to align its construction with paragraph 29(2)(c) of

the PGPA Act. Paragraph 29(2)(c) of the PGPA Act provides that the rules may prescribe the consequences of disclosing a material personal interest that relates to the affairs of the entity.

Item 12 – Subsection 15(2)

This item amends subsection 15(2) of the PGPA Rule to align its construction with paragraph 29(2)(c) of the PGPA Act. Paragraph 29(2)(c) of the PGPA Act provides that the rules may prescribe the consequences of disclosing a material personal interest that relates to the affairs of the entity.

The effect of this amendment is to clarify that subsection 15(2) of the PGPA Rule only applies to a matter in which the official has disclosed a material personal interest and the matter is being considered at a meeting of the members of the accountable authority.

Item 13 – Paragraph 15(3)(b)

This item amends paragraph 15(3)(b) of the PGPA Rule to align its construction with paragraph 29(2)(c) of the PGPA Act. Paragraph 29(2)(c) of the PGPA Act provides that the rules may prescribe the consequences of disclosing a material personal interest that relates to the affairs of the entity.

The effect of this amendment is to clarify that paragraph 15(3)(b) of the PGPA Rule refers to members of the accountable authority who have not disclosed a material personal interest in the matter being considered at a meeting of the members of the accountable authority.

Item 14 – At the end of paragraph 16A(1)(c)

This item clarifies that section 16A of the PGPA Rule only applies to circumstances where certain officials who are appointed to bodies under a law have not been exempted from disclosing a material personal interest that relates to the affairs of the entity under section 12 of the PGPA Rule.

Where section 12 of the PGPA Rule does not apply, certain officials of Commonwealth entities who are appointed to bodies under a law must disclose their material personal interests in accordance with section 16A of the PGPA Rule.

Item 15 – Section 16B (heading)

This item omits “having” and substitutes “disclosing” in the heading of section 16B of the PGPA Rule to align its construction with paragraph 29(2)(c) of the PGPA Act. Paragraph 29(2)(c) of the PGPA Act provides that the rules may prescribe the consequences of disclosing a material personal interest that relates to the affairs of the entity.

Item 16 – Section 16B

This item omits and substitutes the guide to section 16B of the PGPA Rule to align its construction with paragraph 29(2)(c) of the PGPA Act. Paragraph 29(2)(c) of the PGPA Act provides that the rules may prescribe the consequences of disclosing a material personal interest that relates to the affairs of the entity.

Items 17 and 18

Items 17 and 18 amend paragraphs 16B(1)(c) and 16B(1)(d) of the PGPA Rule respectively to align their construction with paragraph 29(2)(c) of the PGPA Act. Paragraph 29(2)(c) of

the PGPA Act provides that the rules may prescribe the consequences of disclosing a material personal interest that relates to the affairs of the entity.

The effect of these amendments is to limit the application of section 16B of the PGPA Rule to certain officials of Commonwealth entities who are appointed to bodies under a law and have disclosed a material personal interest in a matter, and the matter is being considered at a meeting of the appointed members of the body.

Item 19 – Section 18A

This item omits and substitutes the guide to section 18A of the PGPA Rule. The purpose of this section is to require the Commonwealth Superannuation Corporation (CSC), in relation to amounts received by CSC on behalf of the Commonwealth or others, to comply with certain requirements relating to banking in Australia.

Item 20 – Before subsection 18A(1)

This item amends the section to apply to CSC bank accounts opened and maintained in Australia. This is consistent with the Finance Minister’s banking delegation directions.

Item 21 – Subsection 18A(1)

This item omits the requirement for CSC to comply with “all banking delegation directions” and substitutes with the requirement to comply with “subsections (2) to (4)” of section 18A of the PGPA Rule. Item 22 relates to subsections (2) to (4).

The effect of this amendment is to require CSC to comply with subsections (2) to (4) in relation to certain amounts listed under subsection 18A(1) of the PGPA Rule.

Item 22 – Subsection 18A(2)

This item repeals subsection 18A(2) and substitutes new subsections (2) to (4). These are requirements of the Finance Minister’s banking delegation directions that are applicable to CSC as they stand at the time the Amendment Rules commenced. The Finance Minister’s banking delegation directions are set out in Part 1 of Schedule 1 to the *Public Governance, Performance and Accountability (Finance Minister to Accountable Authorities of Non-Corporate Commonwealth Entities) Delegation 2014*.

Items 23, 24, 25 and 26

The *Commonwealth Procurement Rules—July 2014* have been renamed the *Commonwealth Procurement Rules*. Items 23 to 26 amend the name of those rules referred to in section 29AA of the PGPA Rule to reflect the renaming.

Item 27 – Clause 8 of Schedule 1

This item removes the Corporations and Markets Advisory Committee (CAMAC) as a listed entity for the purposes of the PGPA Act. As a result of the *Statute Update (Smaller Government) Act 2018*, CAMAC was abolished on 20 February 2018.

Item 28 – Subparagraphs 15(e)(i) to (vi) of Schedule 1

This item repeals and substitutes the purposes of the National Mental Health Commission (NMHC) for the purposes of the finance law in clause 15 of Schedule 1 of the PGPA Rule. The amendment reflects the functions of the NMHC as specified in the Order to Specify Functions of the National Mental Health Commission made on 27 September 2018.

Statement of Compatibility with Human Rights

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

The *Public Governance, Performance and Accountability Amendment (2018 Measures No. 1) Rules 2018* (Amendment Rules) are 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 *Public Governance, Performance and Accountability Act 2013* (PGPA Act) establishes 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 104 of the PGPA Act provides that the Finance Minister may make rules that modify, in relation to the Commonwealth Superannuation Corporation, the operation of rules and instruments made under the Act. Section 54 of the PGPA Act allows the rules to set banking requirements for corporate Commonwealth entities.

The Amendment Rules make technical amendments to the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule) relating to:

- the renaming of the Immigration and Border Protection Department to the Department of Home Affairs;
- the requirements for disclosure of certain types of material personal interest by Commonwealth officials;
- clarifying the application of the Finance Minister's banking delegation directions to the Commonwealth Superannuation Corporation's bank accounts;
- updating references to the *Commonwealth Procurement Rules*;
- removing the Corporations and Markets Advisory Committee as a listed entity; and
- amending the purposes of the listed entity National Mental Health Commission.

Human rights implications

The Amendment Rules do not engage any of the applicable rights or freedoms.

Conclusion

The Amendment Rules are compatible with human rights as they do not raise any human rights issues.

**Senator the Hon Mathias Cormann
Minister for Finance and the Public Service**