

## EXPLANATORY STATEMENT

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

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

#### *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Rule 2014*

The *Public Governance, Performance and Accountability Act 2013* (PGPA Act) consolidates into a single piece of legislation the governance, performance and accountability requirements of the Commonwealth, setting out a framework for regulating resource management by the Commonwealth and relevant entities. The PGPA Act will replace the *Financial Management and Accountability Act 1997* (FMA Act) and the *Commonwealth Authorities and Companies Act 1997* (CAC Act). The substantive provisions of the PGPA Act will commence on 1 July 2014.

Item 6 of Schedule 14 the *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014* (PGPA (C&T) Act) provides that the Finance Minister may make transitional rules by legislative instrument. The Finance Minister may, by legislative instrument, make transitional rules prescribing matters required or permitted by the PGPA (C&T) Act to be prescribed by the rules, or necessary or convenient to be prescribed for carrying out or giving effect to the PGPA (C&T) Act.

The *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Rule 2014* (the PGPA (C&T) Rule) is being made to support the implementation of the PGPA Act. The PGPA (C&T) Rule contains provisions that relate to:

- Persons performing financial tasks,
- Continuation of delegation powers, and
- Legal Services Directions.

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

The PGPA (C&T) Rule is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

### **Consultation**

The PGPA Act was presented to Parliament following two years of consultation and consideration of issues. The period since its passage has provided an opportunity for reflection and consultation on the provisions of the Act and whether they could be further improved.

Development of the PGPA (C&T) Rule has been closely connected with the process of the development of the PGPA (C&T) Act, which has required consultation with all Commonwealth entities and companies subject to enabling legislation to ensure understanding of the operation of the legislation and how it impacts on the operation of their organisation.

Following these conversations draft legislative amendments have been developed by the Office of Parliamentary Counsel, and distributed on a progressive basis to Commonwealth entities and companies (and their portfolio departments) to review and provide comment. The advice of the Australian Government Solicitor has also been sought as the drafting has progressed, to ensure both the efficacy of proposed provisions and the maintenance of existing policy intent.

**Details of the *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Rule 2014***

**Part 1—Preliminary**

**Section 1—Name of rule**

This section provides that the title of the rule is the *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Rule 2014*.

**Section 2—Commencement**

This section provides that the rule commences at the same time as item 6 of Schedule 14 to the *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014*.

**Section 3—Authority**

This section states that the rule is made under the *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014*.

**Section 4—Definitions**

This section defines certain terms that are used in this rule.

This section includes a definition of a ***deemed entity***. There are three entities that are of a body corporate nature that are deemed to operate as non-corporate Commonwealth entities for the purposes of the *Public Governance, Performance and Accountability Act 2013*. This mechanism is established through Part 6 Schedule 5 of the *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014*.

This section also provides that a reference to a non-corporate Commonwealth entity is taken to include a reference to a deemed entity, and a reference a corporate Commonwealth entity is taken not to include a reference to a deemed entity.

**Part 2 —Transitional rules**

**Section 5—Purpose of this Part**

This Part is made for item 6 of Schedule 14 to the *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014* (which provides for the Finance Minister to make transitional rules).

**Section 6—Persons performing financial tasks**

Subsection 6(1) provides that a person is an official of a non-corporate Commonwealth entity if the person, as the result of an agreement or arrangement entered into on or after 1 July 2014 and before 1 July 2015, performs a financial task for a non-corporate Commonwealth entity, and is not otherwise an official of the entity.

Subsection 6(2) provides that the person ceases to be an official under subsection 6(1) at the end of 30 June 2015.

This section continues for a transitional period, the effect of paragraph 4(1)(a), subregulation 4(2) and paragraph 5(1)(b) in the *Financial Management and Accountability Regulations 1997*.

### **Section 7—Continuation of delegation powers**

The effect of this section is that a power or function under a provision of the FMA Act that continues to apply after the commencement time may be delegated, after that time, under section 53 or 62 of the FMA Act

### **Section 8—Legal Services Directions**

This section provides that section 55ZF of the *Judiciary Act 1903* is to apply as if it included certain subsections. The purpose of these subsections is to provide that for a transitional period, references to FMA Act and CAC Act terminology in the legal services directions issued by the Attorney-General are to be read as references to PGPA Act terminology.

## **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 (Consequential and Transitional Provisions) Rule 2014***

The *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Rule 2014* (PGPA (C&T) 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 *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014* amends approximately 250 Acts across the Commonwealth to support the implementation of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and its related rules and instruments.

The *Public Governance, Performance and Accountability Act 2013* (PGPA Act) consolidates into a single piece of legislation the governance, performance and accountability requirements of the Commonwealth, setting out a framework for regulating resource management by the Commonwealth and relevant entities. The *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014*

The PGPA Act will replace the *Financial Management and Accountability Act 1997* and the *Commonwealth Authorities and Companies Act 1997*. The substantive provisions of the PGPA Act will commence on 1 July 2014.

Item 6 of Schedule 14 of Section the *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014* provides that the Finance Minister may make rules by legislative instrument. The Finance Minister may, by legislative instrument, make rules prescribing matters required or permitted by this Act to be prescribed by the rules, or necessary or convenient to be prescribed for carrying out or giving effect to this Act and the PGPA Act.

The PGPA (C&T) Rule is being made to support the implementation of the PGPA Act. The PGPA (C&T) Rule contains provisions that relate to:

- Persons performing financial tasks, and
- Continuation of delegation powers.

### **Human rights implications**

The legislative instrument does not engage any of the applicable rights or freedoms.

### **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**