

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) Act 2014

Public Governance, Performance and Accountability Legislation Amendment (Office of the Fair Work Building Industry Inspectorate) Rule 2015

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.

The *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014* (CTP Act) amended 242 Acts across the Commonwealth to support the implementation of the PGPA Act and its related rules and instruments. Item 6 of Schedule 14 of the CTP Act provides that the Finance Minister may, by legislative instrument, make rules prescribing matters required or permitted by the CTP Act to be prescribed by the rules, or necessary or convenient to be prescribed for carrying out or giving effect to the CTP Act and the PGPA Act.

Public Governance, Performance and Accountability Legislation Amendment (Office of the Fair Work Building Industry Inspectorate) Rule 2015 (OFWBII Rule) is being made to amend the rules instruments made under the PGPA Act and the CTP Act. These rules instruments are the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule) and the *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Rule 2014* (CTP Rule).

The OFWBII Rule contains provisions that:

- list the Office of the Fair Work Building Industry Inspectorate (OFWBII), its accountable authority, officials and statutory purposes for the purposes of the finance law; and
- harmonise certain provisions of the *Fair Work (Building Industry) Act 2012* with the PGPA Act.

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

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

Consultation

The Department of Finance (Finance) consulted stakeholders from the Department of Employment in the development of the PGPA Rule.

The Rule was drafted by the Office of Parliamentary Counsel. The advice of the Australian Government Solicitor has also been sought to ensure both the efficacy of proposed provisions and the maintenance of existing policy intent.

Details of the *Public Governance, Performance and Accountability Legislation Amendment (Office of the Fair Work Building Industry Inspectorate) Rule 2015*

Section 1—Name of instrument

This section provides that the title of the instrument is the *Public Governance, Performance and Accountability Legislation Amendment (Office of the Fair Work Building Industry Inspectorate) Rule 2015* (OFWBII Rule).

Section 2—Commencement

This section provides that each provision of the instrument specified in column 1 of the table commences in accordance with column 2 of the table.

Sections 1 to 4 commence on the day after the instrument is registered.

Schedule 1 commences on 1 February 2015.

Section 3—Authority

This section states that the instrument is made under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and the *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014* (CTP Act).

Section 4—Schedules

This section provides that each legislative instrument that is specified in a Schedule to this Rule is amended or repealed as set out.

Schedule 1—Amendments

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

Item 1 – after 7BD

This inserts a new section 7BE into the CTP Rule for the Office of the Fair Work Building Inspectorate (OFWBII), which provides that the *Fair Work (Building Industry) Act 2012* has effect for the first reporting period that commences on or after 1 July 2014, as if it were modified as is provided in Schedule 2 to the OFWBII Rule.

Item 2 – at the end of the rule

Item 2 adds a new “Schedule 1 – Modifications of the *Fair Work (Building Industry) Act 2012*” at the end of the CTP Rule, which references section 7BE discussed above.

Fair Work (Building Industry) Act 2012

Item 1 – section 14

Item 2 repeals section 14 and substitutes a new section dealing with annual report requirements that align with section 46 of the PGPA Act, which relates to annual reports.

Item 2 –section 20

This repeals the section because disclosure of interests is now provided for by section 29 of the PGPA Act.

Item 3 – paragraph 22(2)(d)

Paragraph 22(2)(d) is repealed and substituted with a new paragraph that references section 29 of the PGPA Act.

Item 4 – subsection 35(1)

This item updates a reference to a “Commonwealth authority” with “corporate Commonwealth entity” to reflect PGPA Act terminology.

Item 5 – paragraph 35(4)

This item updates a references to “Commonwealth authority”, wherever occurring, with “corporate Commonwealth entity” to reflect PGPA Act terminology.

Item 6 – subsections 35(5) and (7)

This item updates a reference to a “Commonwealth authority” with “corporate Commonwealth entity” to reflect PGPA Act terminology.

Item 7 – subsection 35(8) (definition of Commonwealth authority)

This item repeals the definition as it is no longer relevant.

Item 8 – subsection 35(8)

In connection with item 8, this item inserts a definition for “corporate Commonwealth entity” consistent with the definition provided in the PGPA Act.

Item 9 – subsection 65(6)(a)

This item omits “or 14” and substitutes “or referred to in section 14” in subsection 65(6)(a) to clarify drafting and reflect current drafting style.

Item 10 – subsection 66(1)

This item omits “or 14” and substitutes “or referred to in section 14” in subsection 65(6)(a) to clarify drafting and reflect current drafting style.

Public Governance, Performance and Accountability Rule 2014**Item 3 – after clause 17 of Schedule 1**

This item would insert a new section 17A “Office of the Fair Work Building Industry Inspectorate” to list the entity for PGPA Act purposes, as well as the accountable authority, officials of the entity and the purposes of the entity as outlined in section 10 of the *Fair Work (Building Industry) Act 2012*.

This item would reduce administrative complexity, and reflect the policy intention that the OFWBII would operate as a non-corporate Commonwealth entity with the OFWBII Director being the accountable authority for the purposes of the finance law.

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 Legislation Amendment (Office of the Fair Work Building Industry Inspectorate) Rule 2015

The *Public Governance, Performance and Accountability Legislation Amendment (Office of the Fair Work Building Industry Inspectorate) Rule 2015* (OFWBII 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 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.

The *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014* (CTP Act) amended 242 Acts across the Commonwealth to support the implementation of PGPA Act, its related rules and instruments. Item 6 of Schedule 14 of the CTP Act provides that the Finance Minister may, by legislative instrument, make rules prescribing matters required or permitted by the CTP Act to be prescribed by the rules, or necessary or convenient to be prescribed for carrying out or giving effect to the CTP Act and the PGPA Act.

The OFWBII Rule is intended to amend the rule instrument made the PGPA Act and the CTP Act. These instruments are the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule) and the *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Rule 2014* (CTP Rule), to support the implementation of the PGPA legislative framework.

The OFWBII Rule contains provisions that:

- list the Office of the Fair Work Building Industry Inspectorate, its accountable authority and officials for the purposes of the PGPA Act; and
- harmonise certain provisions of the *Fair Work (Building Industry) Act 2012* with the PGPA Act.

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**