

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 (Australian Building and Construction Commission) Rules 2017

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.

Item 6 of Schedule 14 of the *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014* (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.

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 Legislation Amendment (Australian Building and Construction Commission) Rules 2017* (the Rules) amends the *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Rule 2014* (CTP Rule) and the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule) to reflect changes made by the *Building and Construction Industry (Improving Productivity) Act 2016*, in particular to address the re-naming of the Office of the Fair Work Building Industry Inspectorate as the Australian Building and Construction Commission (the ABCC).

The Rules prescribes the ABCC in Schedule 1 to the PGPA Rule as a listed entity, the Australian Building and Construction Commissioner (the Commissioner) as the accountable authority of the ABCC, the persons who are officials of the listed entity, the purposes of the ABCC and the functions of the Commissioner.

The Rules also repeals redundant sections of the CTP Rule relating to the former Office of the Fair Work Building Industry Inspectorate.

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

The Rules are legislative instruments for the purposes of the *Legislative Instruments Act 2003*.

The Rules commence the day after the Rules are registered.

Consultation

The Rules were developed in consultation with the Department of Employment. Advice was also provided by the Australian Government Solicitor.

Details of the *Public Governance, Performance and Accountability Legislation Amendment (Australian Building and Construction Commission) Rules 2017*

Section 1—Name

This section provides that the title of the rule is the *Public Governance, Performance and Accountability Legislation Amendment (Australian Building and Construction Commission) Rules 2017*.

Section 2—Commencement

This section provides that the Rules commence on the day after the instrument is registered.

Section 3—Authority

This section states that the Rules are made under the *Public Governance, Performance and Accountability Act 2013* and the *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014*.

Section 4—Schedules

This section 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 as specified.

Schedule 1—Amendments

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

Item 1—Section 7BE

This item repeals section 7BE – the Office of the Fair Work Building Industry Inspectorate to reflect the replacement of the Fair Work Building Industry Inspectorate by the Australian Building and Construction Commission by the *Building and Construction Industry (Improving Productivity) Act 2016*.

Item 2—Schedule 2

This item repeals Schedule 2 – Modifications of the Fair Work (Building Industry) Act 2012 to reflect the replacement of the Fair Work Building Industry Inspectorate by the Australian Building and Construction Commission by the *Building and Construction Industry (Improving Productivity) Act 2016*.

Public Governance, Performance and Accountability Rule 2014

Item 3— After clause 1 of Schedule 1

This item inserts clause 1A of Schedule 1 – Australian Building and Construction Commission to establish the Australian Building and Construction Commission as a listed entity, and set out the accountable authority and officials for the purposes of *Public Governance, Performance and Accountability Act 2013* to reflect the establishment of the Australian Building and Construction Commission by the *Building and Construction Industry (Improving Productivity) Act 2016*. The clause also states that the purposes of the entity include the functions of the Australian Building and Construction Commissioner as set out in section 16 of the *Building and Construction Industry (Improving Productivity) Act 2016*.

Item 4—Clause 17A of Schedule 1

Repeals clause 17A of Schedule 1 – Office of the Fair Work Building Industry Inspectorate to reflect the replacement of the Fair Work Building Industry Inspectorate by the Australian Building and Construction Commission by way of the *Building and Construction Industry (Improving Productivity) Act 2016*.

Statement of Compatibility with Human Rights

Public Governance, Performance and Accountability Legislation Amendment (Australian Building and Construction Commission) Rules 2017

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

The *Public Governance, Performance and Accountability Legislation Amendment (Australian Building and Construction Commission) Rules 2017* (the 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* consolidated 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.

Item 6 of Schedule 14 of the *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014* (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 Rules are being made to support the commencement of the *Building and Construction Industry (Improving Productivity) Act 2016*. The Rules repeal transitional provisions no longer required following the passage of that 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.