

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Public Governance, Performance and Accountability Act 2013

Public Governance, Performance and Accountability Rule 2014

Public Governance, Performance and Accountability Amendment (Office of the Special Investigator) Rules 2021

The *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule) set out a framework for regulating resource management by Commonwealth entities and companies. Section 101 of the PGPA Act provides that the Finance Minister may make rules by legislative instrument to prescribe matters necessary or convenient to be prescribed for carrying out or giving effect to the 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 Amendment (Office of the Special Investigator) Rules 2021* (Amendment Rules) amends Schedule 1 to the PGPA Rule by repealing subparagraph 18(a)(iv), which prescribes the person ‘Special Counsel for the Office of the Special Investigator’ as part of the listed entity, the Office of the Special Investigator (OSI). The effect of this amendment is that the person is no longer part of the listed entity and that this person is removed as an official of the OSI, for the purposes of the finance law.

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 this instrument is registered.

Consultation

The Amendment Rules were developed by the Office of Parliamentary Counsel in consultation with the Office of the Special Investigator in accordance with section 17 of the *Legislation Act 2003*.

Details of the *Public Governance, Performance and Accountability Amendment (Office of the Special Investigator) Rules 2021*

Section 1 – Name

This section provides that the title of this instrument is the *Public Governance, Performance and Accountability Amendment (Office of the Special Investigator) Rules 2021*.

Section 2 – Commencement

This section provides that this instrument commences on the day after this instrument is registered.

Section 3 – Authority

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

Section 4 – Schedules

This section provides that the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule) is amended as set out in Schedule 1 to this instrument.

Schedule 1 – Amendments

Public Governance, Performance and Accountability Rule 2014

Item 1 – Subparagraph 18(a)(iv) of Schedule 1

This item repeals subparagraph 18(a)(iv) of Schedule 1 to the PGPA Rule.

This will remove the person ‘Special Counsel for the Office of the Special Investigator’ as part of the listed entity, the Office of the Special Investigator (OSI). The effect of this amendment is that the person is removed as an official of the OSI for the purposes of the finance law.

This change reflects the preferred arrangement to have the function of the Special Counsel performed independently and at arm’s length from the OSI.

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 Amendment (Office of the Special Investigator) Rules 2021

The ***Public Governance, Performance and Accountability Amendment (Office of the Special Investigator) Rules 2021*** (Amendment Rules) 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) establishes a framework for regulating resource management by Commonwealth entities and companies. Section 101 of the PGPA Act provides that the Minister for Finance may make rules by legislative instrument to prescribe matters giving effect to the Act.

The Amendment Rules amend Schedule 1 to the *Public Governance, Performance and Accountability Rule 2014* made under the PGPA Act by repealing subparagraph 18(a)(iv), which prescribes the person ‘Special Counsel for the Office of the Special Investigator’ as part of the listed entity, the Office of the Special Investigator (OSI). The effect of this amendment is that the person is no longer part of the listed entity and that this person is removed as an official of the OSI, for the purposes of the finance law.

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 Simon Birmingham
Minister for Finance**