

## **EXPLANATORY STATEMENT**

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

*Public Governance, Performance and Accountability Act 2013*

*Public Governance, Performance and Accountability (Relevant Company) Rule 2016*

*Public Governance, Performance and Accountability (Relevant Company) Amendment  
(2023 Measures No. 1) Rules 2023*

Section 85 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) provides the Finance Minister with the authority to form, or participate in forming, a relevant company on behalf of the Commonwealth, or to acquire shares or become a member of a relevant company in circumstances that would result in the relevant company becoming a Commonwealth company.

Subsection 85(2) of the PGPA Act provides that a relevant company is a company of a kind prescribed by the rules whose objects or proposed activities are of a kind prescribed by the rules. 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.

Relevant companies are prescribed in the *Public Governance, Performance and Accountability (Relevant Company) Rule 2016* (the PGPA Relevant Company Rule).

The *Public Governance, Performance and Accountability (Relevant Company) Amendment (2023 Measures No. 1) Rules 2023* (the Amendment Rules) makes two amendments to the PGPA Relevant Company Rule.

The first amendment is to remove the relevant company prescribed in item 2 of the table of relevant companies in section 5 of the PGPA Relevant Company Rule. This reflects the conclusion of the Commonwealth's involvement in this relevant company.

The second amendment adds a new item at the end of the table at section 5 of the PGPA Relevant Company Rule. The new item prescribes a relevant company of a kind that is limited by shares and whose objects or proposed activities are to:

- undertake research on, design, manufacture, assemble, develop, support, maintain and provide other services in relation to radar and communications systems and products:
  - for Australia's defence and national security; or
  - to be exportedand to undertake related activities; or
- acquire and hold shares in a company with these objects.

This amendment provides the legislative authority for the Commonwealth's involvement in relevant companies of this kind with the objects and proposed activities prescribed.

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 will commence on the day after registration on the Federal Register of Legislation.

### **Consultation**

In accordance with section 17 of the *Legislation Act 2003*, consultation has taken place with the Department of Defence and the Attorney-General's Department.

**Details of the *Public Governance, Performance and Accountability (Relevant Company) Amendment (2023 Measures No. 1) Rules 2023***

**Section 1 – Name**

This section provides that the title of the instrument is the *Public Governance, Performance and Accountability (Relevant Company) Amendment (2023 Measures No. 1) Rules 2023* (the Amendment Rules).

**Section 2 – Commencement**

This section provides that the Amendment Rules commence on the day after they are registered on the Federal Register of Legislation.

**Section 3 – Authority**

This section provides that the Amendment Rules are 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 (Relevant Company) Rule 2016* (the PGPA Relevant Company Rule) is amended as set out in the Schedule to the Amendment Rules.

**Schedule 1 – Amendments**

***Public Governance, Performance and Accountability (Relevant Company) Rule 2016***

**Item 1 – Section 5 (table item 2)**

This item amends the table of relevant companies in section 5 of the PGPA Relevant Company Rule by removing the relevant company prescribed in item 2 of the table.

Removing this relevant company reflects the decision of government to wind up the Financial Adviser Standards and Ethics Authority Ltd (FASEA) and divide the company's functions between the Department of the Treasury and the Financial Services and Credit Panel (FSCP) within the Australian Securities and Investments Commission (ASIC). The standard-making functions of FASEA moved to the Department of the Treasury. The remaining elements of FASEA's role including administering the adviser examination, were incorporated into the FSCP. The expansion of the role of the FSCP gave effect to Recommendation 2.10 from the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry to establish a new single disciplinary body for financial advisers. On 10 September 2022, ASIC deregistered FASEA meaning the company also ceased to be a Commonwealth company for section 89 of the PGPA Act.

**Item 2 – Section 5 (at the end of the table)**

This item amends the table of relevant companies in section 5 of the PGPA Relevant Company Rule by adding a new kind of relevant company. The new kind of relevant company that is prescribed is a company of a kind that is limited by shares whose objects or proposed activities are to:

- undertake research on, design, manufacture, assemble, develop, support, maintain and provide other services in relation to radar and communications systems and products:
  - for Australia’s defence and national security or
  - be exportedand to undertake related activities; or
- acquire and hold shares in a company with these objects.

This amendment will provide the Finance Minister with authority under paragraph 85(1)(b) of the PGPA Act to, on behalf of the Commonwealth, acquire shares in, or become a member of existing companies in circumstances that would result in the relevant companies becoming Commonwealth companies. This legislative authority will facilitate the acquisition of shares in an Australian company that undertakes the activities as prescribed, which are in relation to radar and communications systems and products and services used in Australia’s defence and national security. Such a company’s activities may include exporting products overseas. The item also provides legislative authority for the acquisition of shares in any company incorporated for the purpose of acquiring and holding shares in the former company. Such acquisitions will enable the Commonwealth to expand its sovereign defence capability through ownership interests in these companies.

The acquired companies will become Commonwealth companies for the purposes of section 89 of the PGPA Act.

## **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 (Relevant Company) Amendment (2023 Measures No. 1) Rules 2023* (the 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 the use and management of public resources 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 Amendment Rules makes two amendments to the *Public Governance, Performance and Accountability (Relevant Company) Rule 2016* (PGPA Relevant Company Rule).

The first amendment is to remove the relevant company prescribed in item 2 of the table of relevant companies in section 5 of the PGPA Relevant Company Rule. This reflects the conclusion of the Commonwealth's involvement in this relevant company.

The second amendment adds a new item at the end of the table at section 5 of the PGPA Relevant Company Rule. The new item prescribes a relevant company of a kind that is limited by shares and whose objects or proposed activities are to:

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  - for Australia's defence and national security or
  - be exportedand to undertake related activities; or
- to acquire and hold shares in a company with these objects.

This amendment provides the Finance Minister, on behalf of the Commonwealth, the legislative authority, under paragraph 85(1)(b) of the PGPA Act to acquire shares in circumstances that would result in the relevant companies becoming Commonwealth companies.

### **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 Katy Gallagher  
Minister for Finance**