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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**PUBLIC GOVERNANCE, PERFORMANCE AND
ACCOUNTABILITY (CONSEQUENTIAL AND
TRANSITIONAL PROVISIONS) BILL 2014**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Finance,
Senator the Hon Mathias Cormann)

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Table of abbreviations and common terms

Abbreviation or common term	Full term or description
Acts Interpretation Act	<i>Acts Interpretation Act 1901</i>
Auditor-General Act	<i>Auditor-General Act 1997</i>
ANAO	Australian National Audit Office
APS	Australian Public Service
AGS	Australian Government Solicitor
CAC Act	<i>Commonwealth Authorities and Companies Act 1997</i>
CAC Regulations	<i>Commonwealth Authorities and Companies Regulations 1997</i>
CFAR	Commonwealth Financial Accountability Review
Commonwealth entity	An entity as defined in section 10 of the PGPA Act
Corporations Act	<i>Corporations Act 2001</i>
CRF	The Consolidated Revenue Fund established by section 81 of the Constitution
FMA Act	<i>Financial Management and Accountability Act 1997</i>
FMA Regulations	<i>Financial Management and Accountability Regulations 1997</i>
Finance Minister	The Minister with responsibility for administering the PGPA Act
GST	Goods and Services Tax
GBE	Government Business Enterprise
LI Act	<i>Legislative Instruments Act 2003</i>
OPC	Office of Parliamentary Counsel
PGPA Act	<i>Public Governance, Performance and Accountability Act 2013</i>
PS Act	<i>Public Service Act 1999</i>
Rules or PGPA rules	The rules made under Part 4-1 of the PGPA Act

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

General outline

1. The *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Bill 2014* (the Bill) would, if enacted, amend 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.
2. The PGPA Act replaces the *Financial Management and Accountability Act 1997* (FMA Act) and the *Commonwealth Authorities and Companies Act 1997* (CAC Act) as the primary financial legislation of the Commonwealth from 1 July 2014.
3. The enabling legislation of Commonwealth entities and companies include many references to and/or reliance on provisions in the FMA and CAC Acts. As a result of the implementation of the PGPA Act this Bill is being introduced to:
 - replace references to the FMA and CAC Acts with the equivalent provisions in the PGPA Act;
 - simplify enabling legislation where provisions of the PGPA Act cover a matter previously dealt with in enabling legislation; and
 - amend enabling legislation to clarify which matters (and to what extent) are covered by the PGPA Act and which matters (and to what extent) are covered by the enabling legislation, such as in the case of planning and reporting, or disclosure of interest arrangements where an entity may have additional obligations over and above those imposed through the PGPA Act.
4. The variety of entity governance and operational arrangements across the Commonwealth is such that the degree of amendment required to enabling legislation varies from entity to entity, but the overall approach is one of maintaining existing policy approaches, seeking alignment between the PGPA Act and enabling legislation in introducing a more consistent and coherent framework that does not impinge on the ability of an entity to meet its statutory obligations to Parliament and to the community.

Application and transitional provisions

5. The Bill also includes application and transitional provisions to provide clarity in relation to provisions in the PGPA Act that would commence after 1 July 2014, and provisions within the FMA and CAC Acts that would continue to operate until the completion of the actions involved.
6. An example of an application provision relates to corporate planning under section 35 of the PGPA Act. Corporate plans will need to be developed and published for the 2015-16 financial year and do not need to be available on 1 July 2014. Corresponding transitional provisions will be available to confirm that entities with existing requirements to produce a corporate plan will continue to do so for 2014-15 under the requirements of their enabling legislation before those provisions cease to have effect.
7. Conversely, existing provisions in relation to the presentation of audited financial statements and annual reports will continue to apply after 1 July 2014 in relation to matters for the 2013-14 financial year until those reporting obligations have been met.

Amendment to PGPA Act

8. The Bill would also make an amendment to the PGPA Act through the insertion of a new subsection 101(4). The effect of the inclusion is to allow for the accountable authority of an entity to issue instructions in relation to the application of the PGPA Act and its

supporting rules. Further information on this amendment can be found in this document under the Notes to Schedule 1 of the Bill.

Public Service Act 1999 and Parliamentary Service Act 1999

9. The Bill would also amend the *Public Service Act 1999* (PS Act) to address a recommendation of the Parliamentary Joint Committee of Public Accounts and Audit (JCPAA) in Report 441 of May 2014 (Inquiry into *Public Governance, Performance and Accountability Act 2013* Rules Development), that the Department of Finance (Finance) and the Australian Public Service Commission (APSC) work collaboratively to develop amendments to the PGPA Act and the PS Act to reduce potential confusion regarding the duties for public officials and the Australian Public Service (APS) Code of Conduct for APS employees. Similar consideration apply to the *Parliamentary Service Act 1999* (Parliamentary Service Act) and the Bill if enacted would make corresponding amendments to the Parliamentary Service Act that are proposed for the PS Act.

10. Associated amendments to the duties of officials under sections 25-29 of the PGPA Act are contained in an amendment to the *Public Governance, Performance and Accountability Amendment Bill 2014*. These amendments were moved on the floor of the House of Representatives on 4 June 2014 and seek to improve the alignment of the duties of officials under the PGPA Act with the corresponding duties under the PS Act and the Parliamentary Service Act.

Financial Impact Statement

11. The Bill would add to, amend and repeal a number of provisions in the enabling legislation of Commonwealth entities and companies to clarify and ensure the ability of the legislation to operate in concert with the PGPA Act in a way that supports entities fulfilling both their regulatory responsibilities and their obligations to manage and use public resources within the context of a modernised financial regime.

12. While the proposed amendments are typically difficult to quantify in monetary terms, it is expected that simplification of the regulatory requirements will contribute to long-term efficiencies in terms of achieving improved governance, transparency and accountability arrangements for Commonwealth entities (including both non-corporate Commonwealth entities and Commonwealth entities) within the Australian Government.

Statement of compatibility with human rights

13. The Bill, if enacted, will not affect any of the applicable rights or freedoms outlined in the *Human Rights (Parliamentary Scrutiny) Act 2011*, such as those in the *International Covenant on Civil and Political Rights*.

14. The Bill does not propose any new offences or penalties that limit any human rights, although it does maintain equivalent penalty arrangements in place in specific circumstances such as in the case of the *Future Fund Act 2006*.

15. The Bill is therefore compatible with the human rights and freedoms recognised or declared in the international instruments listed in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The Bill in the context of broader reform activities

16. The Commonwealth's financial framework provides rules for the governance of Commonwealth entities and Commonwealth companies and for the proper management and use of public resources. The framework supports the government in meeting its obligations and responsibilities to the public and the Parliament. It is an important feature of an accountable and transparent public sector and guides the daily work of Commonwealth entities and Commonwealth companies, office holders and employees.

17. The PGPA Act is the cornerstone of a broad, integrated package of reforms to the Commonwealth's financial framework. Taken together, the reforms seek to deliver long-lasting benefits, including:

- improved quality of information to Parliament to support its constitutional role in relation to Commonwealth expenditure;
- a more mature approach to risk across the Commonwealth;
- improved productivity and performance of the Commonwealth public sector with accompanying benefits for a broad range of stakeholders; and
- reduced red tape within the Commonwealth and for partners who contribute to delivering Australian Government programs and services, including grant recipients.

18. The aim of the reform agenda, through the PGPA Act, is to create a financial framework where entities have the flexibility and incentives to adopt appropriate systems and processes that help them to achieve diverse policy and statutory objectives efficiently and effectively. The Act is also intended to underpin other aims in reducing red tape, achieving appropriate simplification, and encouraging joint ventures with partners both within and external to Government.

19. It will take several years to implement the reforms and integrate them fully into the practices and processes of Commonwealth entities and Commonwealth companies. Gradual introduction of the reforms will ensure that they are appropriately tested and refined in light of experience.

Related legislative activity

20. The PGPA Act was passed by the previous Parliament and was given Royal Assent on 29 June 2013, with the first five sections coming into effect on 1 July 2013. Sections 6 to 112 of the Act are subject to delayed implementation and are to come into effect 12 months later, on 1 July 2014.

21. The intervening 12 month period has been taken up with the development of supporting rules to give effect to the operation of the Act and an assessment of any consequential amendments that may be required to the legislation of Commonwealth entities arising from the introduction of the PGPA Act and the replacement of the FMA and CAC Acts.

Appropriation Modification Bills

22. Three appropriation modification bills are also being presented to Parliament in these sittings:

- *Public Governance, Performance and Accountability (Consequential Modifications of Appropriation Acts (No. 1), (No. 3) and (No. 5)) Bill 2014,*
- *Public Governance, Performance and Accountability (Consequential Modifications of Appropriation Acts (No. 2), (No. 4) and (No. 6)) Bill 2014;* and
- *Public Governance, Performance and Accountability (Consequential Modifications of Appropriation Acts (Parliamentary Departments)) Bill 2014.*

23. The bills relate to Appropriation Acts passed by the Parliament in relation to the 2012-13 and 2013-14 financial years and, subject to their passage, the 2014-15 Appropriation Bills when they become Acts.

24. The Appropriation Bills presented to Parliament in relation to 2014-15 (and the Acts for 2012-13 and 2013-14) have been prepared on the basis that the FMA and CAC Acts are still in force, and rely on features of those Acts in terms of the operation of appropriation

arrangements. The PGPA Act will become the basis for the operation of these arrangements from 1 July 2014, and without modification of the appropriation legislation to recognise this situation the risk would arise that Commonwealth entities may not have access to the amounts appropriated for those entities by Parliament.

25. Three Bills are proposed to cover appropriations for these financial years, but will be presented on the basis of the nature of the appropriation rather than by financial year. This would involve:

- Appropriation Acts 1, 3 and 5 (for the ordinary services of government);
- Appropriation Acts 2, 4 and 6 (for other amounts); and
- Appropriation Acts relating to the Parliamentary Department.

26. The provisions modifying these Acts are being presented to Parliament in these Bills rather than as part of this Bill on the basis of advice from the Office of Parliamentary Counsel to provide clarity to Parliament about the changes involved and to ensure consistency with Constitutional requirements.

PGPA Amendment Bill

27. The *Public Governance, Performance and Accountability Amendment Bill 2014* (the PGPA Amendment Bill) has been introduced into the Parliament in these same sittings and would, if enacted, amend the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) to:

- make technical amendments to improve the understanding and operation of the Act;
- provide greater certainty over the use and management of public resources and the capacity of an accountable authority to issue instructions on resource management and governance matters within entities;
- the introduction of a new provision to deal with the appropriation authority for the GST-related component of payments made by and to Commonwealth entities;
- include a requirement that Commonwealth entities must provide annual reports to their Minister by the 15th day of the fourth month after the end of the reporting period;
- clarify the nature of various legislative instruments, including the introduction of a new Part to the PGPA Act (Part 4-1A) to deal with other instruments that are not subject to disallowance, but are subject to appropriate scrutiny as they relate to procurement and grant activities and arrangements covering intelligence or security agencies and listed law enforcement agencies.

28. The process of developing the supporting rules and identifying consequential amendments to the enabling legislation of Commonwealth entities has also led to identifying opportunities to further improve the features of the PGPA Act and to ensure the supporting rules can be implemented in a fashion supportive of the overall intent of the PGPA Act and the broader public management reform agenda to which it belongs.

29. The PGPA Amendment Bill reflects the results of these considerations and the consultations within and outside of government on the effective implementation of the PGPA Act.

PGPA rules and other instruments

30. The PGPA rules and other instruments made by the Finance Minister under the PGPA Act will replace a range of instruments under current legislation, including the FMA Regulations, CAC Regulations and Finance Minister's Orders. They will be used to prescribe

the requirements and procedures necessary to give effect to the governance, performance and accountability matters covered by the PGPA Act.

31. Using rules, rather than regulations, as the form of legislative instrument is consistent with current drafting practice. The Office of Parliamentary Counsel reserves the use of regulations to a limited range of matters that are more appropriately dealt with in regulations made by the Governor-General than in an instrument made by some other person. Matters in this category include offence provisions, powers of arrest or detention, entry provisions and search or seizure provisions. The rules will be legislative instruments subject to disallowance by Parliament and will sunset under the provisions of the *Legislative Instruments Act 2003* (LI Act).

32. The majority of rules are to be in place for 1 July 2014, and will be presented to Parliament before that date for the 15 sitting days of the disallowance period for legislative instruments of this type. A number of rules do not need to be in place for 1 July 2014 and would warrant further time for consultation with stakeholders, including the Parliament, before they are released in late 2014. Amongst these proposed rules are the rules in relation to corporate planning, performance statements and annual reports for which time will be taken to provide stakeholders with the opportunity to provide their views on the form and content of the rules.

33. The Bill would also allow the Finance Minister to make other instruments that are not disallowable under the LI Act. This arrangement in relation to procurement and grants is consistent with existing arrangements under the FMA Act. An exemption from the LI Act for modified arrangements in relation to intelligence and security agencies and listed law enforcement agencies is consistent with arrangements operating under the FMA and CAC Acts.

Consultation

34. 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.

35. The Department of Finance has continued to engage in an extensive consultation program with stakeholders within and outside government, including the establishment of a Project Board supported by steering committees considering issues in relation to:

- appropriations and resourcing;
- planning and reporting;
- governance and risk management;
- streamlining and reducing red tape; and
- legislation and rules.

36. All of the steering committees include wide representation from across government, and arrangements have been put in place to consult with other jurisdictions and sectors as part of an ongoing approach to seeking views on how to develop and implement the aims of the broader reform agenda.

37. These consultation efforts have been supplemented through workshops and consultations with entities in Sydney, Melbourne, Adelaide, Alice Springs and Darwin, as well as ongoing conversations with, and feedback from, Commonwealth entities across Australia.

38. Development of this Bill 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.

39. 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.

40. The advice of the Australian Government Solicitor has also been sought as the drafting of the Bill has progressed, to ensure both the efficacy of proposed provisions and the maintenance of existing policy intent.

Structure of the Bill

41. The volume of amendments and provisions needed to support the implementation of the PGPA Act has also required the adoption of a segmented approach to the consolidation and presentation of this Bill, which involves:

- a clause that provides for the short title of the legislation;
- a commencement clause, stating when provisions of the Bill will come into effect;
- a clause that refers to the 14 Schedules containing the substantive amendments to the PGPA Act; and
- the Schedules to the Bill:
 - Schedule 1 – Application provisions for and amendments of the PGPA Act
 - Schedule 2 – Amendment of the *Financial Management and Accountability Act 1997*
 - Schedule 3 – Repeal of the *Commonwealth Authorities and Companies Act 1997*
 - Schedule 4 – Amendments relating to the *Auditor-General Act 1997*
 - Schedule 5 – Amendments relating to the status of Commonwealth entities
 - Schedule 6 – Amendments relating to listed entities
 - Schedule 7 – Amendments of Acts starting with A
 - Schedule 8 – Amendments of Acts starting with B to E
 - Schedule 9 – Amendments of Acts starting with F to L
 - Schedule 10 – Amendments of Acts starting with M or N
 - Schedule 11 – Amendments of Acts starting with O to R
 - Schedule 12 – Amendments of Acts starting with S to W
 - Schedule 13 – Contingent amendments
 - Schedule 14 – Other transitional and application provisions; and

Main features of the Bill

42. The Bill, if enacted, would:

- replace references to the FMA and CAC Acts with the equivalent provisions in the PGPA Act;

- simplify enabling legislation where provisions of the PGPA Act cover a matter previously dealt with in enabling legislation; and
- amend enabling legislation to clarify which matters (and to what extent) are covered by the PGPA Act and which matters (and to what extent) are covered by the enabling legislation, such as in the case of planning and reporting, or disclosure of interest arrangements where an entity may have additional obligations over and above those imposed through the PGPA Act.

43. The highly repetitive nature of many of these amendments across the statute book has resulted in the drafting of this Explanatory Memorandum around three broad categories of description.

44. The first of these relates to matters that are specific to a particular schedule that require description only in relation to that schedule. Schedules 1 to 6 and 14 fall within this group.

45. The second and third categories relate to Schedules 7 to 13, where amendments to enabling legislation have been dealt with in a grouped manner due to the volume of amendments and legislation involved.

46. The second category involves situations in which amendments are proposed that are specific to an entity or represent a departure from the standard approach. Description of these amendments is provided in this Explanatory Memorandum in the Notes to the relevant Schedules.

47. The third category involves what may be described as generic amendments that have been replicated in the Bill across a number of common topics or entity types where any differences between amendments in one or another Act is minimal and largely based on ensuring consistency of language with that used in that piece of enabling legislation.

48. Details of these generic amendment types are provided within the next part of the Explanatory Memorandum. A summary of the affected items within each piece of relevant legislation for Schedules 7 to 12 is provided as an Attachment to this Memorandum.

Summary of generic amendments

49. The major groupings of generic amendments can be summarised as:

- Reference updates from FMA and/or CAC Act to PGPA Act;
- Recognition of the application of the PGPA Act to entities;
- Interaction of PGPA Act provisions with similar or related provisions in enabling legislation:
 - Conflicts of interest
 - Termination clauses for members of accountable authorities and other senior members of entities
 - Corporate planning
 - Annual reporting
 - Investment by entities
 - Borrowing by entities

Updates to FMA and CAC Act references

50. The FMA Act and CAC Act are cross referenced across the statute book, given that they are Acts of broad and general applicability. The Bill would replace these references to the FMA and CAC Acts to reflect the introduction of the PGPA Act in the following manner:

- define the “Finance Minister” as the Minister administering the PGPA Act, rather than the FMA Act.
- replace cross-references to specific provisions in either the FMA or CAC Act with the equivalent provision in the PGPA Act. Common references include:
 - references for person not subject to direction in relation to their FMA Act responsibilities with references to the PGPA Act;
 - references to section 39 of the FMA Act with section 58 of the PGPA Act (for investments by the Commonwealth);
 - notes in the enabling legislation of CAC Act bodies explaining that the CAC Act applies, which would be updated to explain that the PGPA Act applies;
 - section 9 of the CAC Act (relating to annual reports), which would be amended to section 46 of the PGPA Act;
 - section 18 of the CAC Act (relating to investments), which would be amended to section 59 of the PGPA Act;
 - section 28 of the CAC Act (relating to general policies of the Australian Government), which would be amended to section 22 of the PGPA Act;
 - section 27J of the CAC Act (relating to directors’ restrictions on voting), which would be amended to section 29 of the PGPA Act (and associated rules);
- update the language regarding special accounts established in primary legislation by:
 - specifying that a special account is a special account for the purposes of the PGPA Act, rather than the FMA Act;
 - changing reference to section 21 of the FMA Act with reference to section 80 of the PGPA Act; and
 - changing references to “Special Account” (using upper case as per the FMA Act) with “special account” (using lower case as per the PGPA Act).

Conflicts of interest

51. The Bill would rationalise a number of conflict of interest provisions across enabling legislation. In general, the person (or persons) performing the role of an accountable authority is required to disclose their interests to someone else (ordinarily the responsible Minister). This requirement will overlap with the PGPA Act and associated rules once the PGPA Act commences fully.

52. To avoid duplication, the conflict of interest provisions in enabling legislation would be repealed where possible with section 29 of the PGPA Act relied on instead. These amendments would mainly affect the enabling legislation of current FMA Act Agencies. Generic disclosure of interest requirements have been a part of the CAC Act for a number of years. The rationalisation of provisions dealing with conflicts of interest would bring greater consistency across the Commonwealth.

53. In addition to repealing generic disclosure requirements, there are a number of other classes of amendments dealing with disclosures. First, there are Acts where an office-holder is required to disclose interests beyond the types of interests covered by section 29 of the PGPA Act. For example, an individual may already have a duty to disclose any interests in a body corporate. In these situations, both section 29 of the PGPA Act and the enabling legislation would apply. The provision in the enabling legislation would be amended to make this clear.

54. Second, many Acts have disclosure requirements for members of statutory committees and boards relating to their meetings. Where all of the members would be officials of a Commonwealth entity, they would already be subject to section 29 of the PGPA Act. To simplify disclosure regimes across the statute book, these individual regimes would largely be repealed with a new standard regime created under rules made for the purpose of section 29. The new regime would be modelled on the disclosure requirements for a board that is an accountable authority and would require disclosure to the other members during a meeting. This will result in some statutory committees and boards having changed arrangements, but would ensure a consistent standard of disclosure at meetings based on good corporate governance practice.

55. In addition, where the members of such a statutory committee or board are currently required to disclose to someone else other than other members, such as a Minister, this requirement would be kept in the enabling legislation. The proposed provisions would make clear that the member has not complied with section 29 of the PGPA Act unless he or she has disclosed to the other person as well as disclosed under the PGPA Rules.

56. Third, where an individual (who is not an accountable authority or part of a statutory board or committee) currently has a statutory duty to disclose interests to someone else, such as a Minister, and the individual is an official of a Commonwealth entity, the amendments would require the individual to disclose to the other person as well as in accordance with any rules made under section 29 of the PGPA Act.

Termination of appointment provisions

57. The Bill would bring greater consistency to termination of appointment provisions. These provisions generally permit an authority, such as a Minister, to terminate the appointment of an office-holder in certain circumstances or for certain behaviour.

58. First, there is often a power in the case of existing CAC Act bodies to terminate the appointment of a director if the director fails to comply with the disclosure of material personal interests provisions (sections 27F and 27J of the CAC Act). Under the PGPA Act, the appointment of a director, as a member of an accountable authority, can be terminated under section 30 for failing to comply with the disclosure of interest provisions in section 29 and related rules. There is no need for the enabling legislation to permit termination for failure to comply with section 29, because section 30 already provides that power. Therefore, the enabling legislation can be simplified by repealed termination of appointment provisions relating to disclosures of interest. Where these amendments are proposed, notes referring back to section 30 of the PGPA Act would be included for clarification.

59. Second, the head of an existing statutory FMA Act Agency can often have his or her appointment terminated for failing to comply with specific conflict of interest requirements in enabling legislation. As discussed above, these specific disclosure requirements would generally be repealed. As a consequence, the termination provision of the enabling legislation would be amended to allow for termination of the person's appointment for failing to comply with section 29 of the PGPA Act. Existing arrangements that require termination for breaching disclosure requirements would remain mandatory and similarly, where an authority has the discretion to terminate that discretion would also remain. It would also be

considered a breach of section 29 of the PGPA Act if a person has a specific requirement to disclose to someone else not covered by the PGPA Rules and fails to do so.

60. In relation to the members of statutory boards and committees subject to disclosure under section 29 of the PGPA Act, if a member can be terminated for breaching disclosure requirements, the termination provisions would also be amended to refer to section 29.

61. Third, where an office-holder has two separate disclosure requirements which cover different classes of disclosure, their termination provisions would be amended to allow for termination for breaching either the disclosure requirement in the enabling legislation or in section 29 of the PGPA Act.

Corporate planning

62. Section 35 of the PGPA Act introduces an obligation on accountable authorities to prepare and publish a corporate plan. The PGPA Amendment Bill would further clarify these requirements, specifying that a plan is to be produced at least once each year, and that should any variations be made to the plan then the varied plans would need to comply with any requirements in the PGPA rules.

63. More than 40 Commonwealth entities include provisions relating to corporate or strategic planning in some form. A number of different kinds of amendments would be made to planning requirements in enabling legislation depending on the existing provisions:

- Basic requirements that require a plan be prepared would be repealed because section 35 of the PGPA Act would make such provisions duplicative.
- Specific requirements beyond the core obligations in section 35 of the PGPA Act (and associated rules) would be retained. An example of additional requirements would be an entity with a regulatory role which is required to explain its regulatory programme and the basis on which its performance should be assessed. In drafting these amendments, certain assumptions have been made about the likely content requirements for corporate plans, such as that a plan must include information on a Commonwealth entity's strategies and objectives to achieve its purposes. These assumptions permit certain existing planning requirements in enabling legislation to be repealed.
- References to a "strategic plan" would be changed to "corporate plan" to align with the PGPA Act.
- Existing consultation requirements for the preparation of a corporate plan under the PGPA Act would be maintained.
- Existing requirements for a corporate plan to be approved or endorsed by a Minister, or other authority would be maintained. If a plan does not come into force unless it has been approved or endorsed, then this requirement will be maintained.
- Existing variation requirements for plans already in existence, including where a variation only comes into force if approved or endorsed would be maintained.
- Provisions requiring an accountable authority to keep the Minister informed about the achievement of the plan would be repealed. The general requirement under section 19 of the PGPA Act for the accountable authority to keep the Minister informed is sufficient.
- Interjurisdictional Commonwealth entities would be exempted from subsection 35(3) of the PGPA Act, which requires the entity to set out how an entity's activities contribute to the Australian Governments statement on key

priorities and objectives. It would be inappropriate for an interjurisdictional entity to have to comply with subsection 35(3), given the other participating jurisdictions may not support the Government's priorities.

64. Should an entity have been excluded from the requirements of section 35 in some form, this is explicitly addressed in the "Notes to the Schedules".

65. Related to the amendments to corporate planning, there would also be a small number of Acts with separate annual operational plans. An annual operational plan is normally required in addition to a strategic plan. Generally, these planning requirements are not being amended other than to ensure any appropriate references to the corporate plan under section 35 of the PGPA Act are included. However, some annual operational plans have been required to be produced by someone other than the person who would be the accountable authority. In these circumstances the enabling legislation would be adjusted to ensure that the accountable authority is responsible for preparing both the corporate plan and the annual operational plan.

Annual reports

66. The Bill would simplify annual report provisions for Commonwealth entities with annual reporting requirements in their enabling legislation. Section 46 of the PGPA Act (and any rules developed to support its operation) provides a core obligation for all entities to prepare an annual report and this Bill would remove any duplicative provisions in enabling legislation.

67. Where an entity has requirements in addition to the basic requirements for the preparation of an annual report, such as the inclusion of additional matters or the need to additional clearance processes in the preparation of the report, then these obligations would be retained in their enabling legislation.

68. This approach is intended to introduce greater consistency to the preparation of annual reports across Commonwealth entities, with all entities understanding their core obligations, and additional matters being specifically listed in their legislation.

69. A PGPA rule is expected to be developed in relation to core reporting obligations during the second half of 2014 in consultation with key stakeholders, including the Joint Committee of Public Accounts and Audit. This rule will be issued with sufficient advance notice to allow entities to prepare their annual reports in accordance with existing reporting deadlines.

Minister's power to request information

70. A number of enabling Acts have specific powers for the Minister to request information. These requirements would generally be repealed because the power provided to the Minister in section 19 of the PGPA Act is sufficiently broad as to make the enabling legislation duplicative.

Amendments to the PS Act and Parliamentary Service Act

71. The Bill, if enacted, would amend the PS Act to:

- amend section 13(7) to incorporate a requirement to disclose the details of any material personal interest of an employee in connection with the employee's APS employment. This will more closely align the provision with the duty to disclose material personal interests in section 29 of the PGPA Act;
- amend section 13(8) to insert the phrase "and for a proper purpose" to align with the duty in section 26 of the PGPA Act; and

- amend section 13(10) in relation to the improper use of inside information, duties, status, power or authority by an employee, to cause, or seek to cause, detriment the employee’s agency, the Commonwealth or any other person. This amendment will also improve the alignment of the provision to the corresponding duties in relation to use of position in section 27 and use of information in section 28 of the PGPA Act.

72. The Bill, if enacted, would also amend the Parliamentary Service Act to:

- amend section 13(7) to incorporate a requirement to disclose the details of any material personal interest of an employee in connection with the employee’s Parliamentary Service employment. This will more closely align the provision with the duty to disclose material personal interests in section 29 of the PGPA Act;
- amend section 13(8) to insert the phrase “and for a proper purpose” to align with the duty in section 26 of the PGPA Act; and
- amend section 13(10) in relation to the improper use of inside information, duties, status, power or authority by an employee, to cause, or seek to cause, detriment the employee’s department, the Commonwealth or any other person. This amendment will also improve the alignment of the provision to the corresponding duties in relation to use of position in section 27 and use of information in section 28 of the PGPA Act.

73. The Bill, if enacted, would also specify how the amended sections of the PS Act and the Parliamentary Service Act apply to acts occurring before and after commencement time.

NOTES ON CLAUSES

Chapter 1—Introduction

Part 1-1—Introduction

Division 1—Preliminary

Clause 1: Short title

74. This clause provides that, should the *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Bill 2014* be enacted, it may then be cited as the *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014*.

Clause 2: Commencement

75. This clause provides that if the Bill is enacted:

- Sections 1 to 3 will commence on the day that the Bill receives Royal Assent.
- Items in Schedules 1 to 12 and Schedule 14 will commence immediately after the commencement of section 6 of the PGPA Act.
- Items in Schedule 13 are dependent on whether the affected legislation is passed by the Parliament before or after this Bill, with some provisions coming into effect based on which piece of legislation comes into effect the later, and other pieces not coming into effect at all if certain other provisions do not come into effect.

Clause 3: Schedule(s)

76. This clause provides that each Act in a Schedule to this Bill would, if this Bill is enacted, be amended or repealed according to the terms of the applicable items in one or more of the Schedules.

NOTES ON SCHEDULE 1 –APPLICATION PROVISIONS FOR AND AMENDMENTS OF THE PGPA ACT

Introduction

77. This Schedule to the Bill relates to the operation of the PGPA Act and provides for:

- Part 1 to this Schedule - delayed application of certain provisions from Parts 2-3 and 3-2 of the PGPA Act;
- Part 2 to this Schedule - other application provisions relating to other sections of the PGPA Act; and
- Part 3 to this Schedule – amendments to the PGPA Act.

78. The need for application provisions is generally to ensure that certain planning and reporting provisions in the PGPA Act work at the appropriate time. Some provisions would apply to reporting periods commencing after 1 July 2015, while other provisions would apply to events that occur before the commencement time.

Part 1 – Delayed application of certain provisions of Part 2-3 and 3-2 of the PGPA Act

Item 1 – Corporate plans

79. This item would require the first corporate plans under sections 35 and 95 of the PGPA Act to be due for reporting periods commencing on or after 1 July 2015. This delayed application of sections 35 and 95 recognises that the first complete reporting period that occurs immediately after commencement of these sections of the Act is the 2015-16 year. The delayed application also ensures that rules on corporate planning can be prepared in proper consultation with stakeholders, including the Parliament and Commonwealth entities and companies, during the second half of 2014.

80. Any existing requirement in legislation for a Commonwealth entity or company to prepare a corporate plan (however described) will continue for the 2014-15 financial year. This continuing requirement is confirmed by amendments included in Schedule 14 to the Bill.

Item 2 – Budget estimates

81. This item would require the preparation of budget estimates in accordance with section 36 or 96 of the PGPA Act for reporting periods commencing on or after the commencement time. If the Bill commences on 1 July 2014, then estimates will first be prepared under the PGPA Act for the 2015-16 Budget.

Item 3 – Annual performance statements

82. Annual performance statements represent a new approach to reporting by Commonwealth entities. They are to be included in the annual reports of entities and will provide an assessment of performance against the matters covered in the corporate plan at the beginning of the financial year. Section 39 of the PGPA Act provides for this requirement, while section 40 provides for the Finance Minister or Minister responsible for the entity to request the Auditor-General to examine and report on those statements.

83. This item would make the first annual performance statements due for reporting periods commencing on or after 1 July 2015 (as in the case of corporate plans), which results in the first performance statements being included in annual reports presented to Parliament in October 2016. This delayed commencement date is based on: recognition that the corporate plans on which the performance statements will be based will not be available before mid-2015; and the need for consultation with key stakeholders, including the Parliament, on the rules and information requirements to be met in their preparation.

Item 4 – Annual financial statements

84. This item would require the first set of financial statements to be prepared and audited in accordance with sections 42 and 43 of the PGPA Act for reporting periods commencing on or after the commencement time. If this Bill commences on 1 July 2014, then financial statements will need to be prepared for the 2014-15 reporting period under the PGPA Act.

Item 5 – Audit of financial statements of subsidiaries

85. This item would require the financial statements for subsidiaries to be prepared in accordance with sections 44 and 99 of the PGPA Act for reporting periods commencing on or after the commencement time. If this Bill commences on 1 July 2014, then subsidiaries' financial statements will need to be prepared for the 2014-15 reporting period under the PGPA Act. This aligns with requirements for the financial statements of parent entities and companies.

Item 6 – Annual Reports

86. This item would require the first annual report to be prepared in accordance with sections 46 and 97 of the PGPA Act for reporting periods commencing on or after the commencement time. If the Bill commences on 1 July 2014, then annual reports will need to be prepared for the 2014-15 reporting period under the PGPA Act. The rules supporting these obligations will be developed in consultation with key stakeholders, including the Joint Committee of Public Accounts Audit (JCPAA), during the second half of 2014 before the JCPAA is asked to approve the rules formally.

Item 7 – Australian Government financial reporting

87. This item would make requirements for the preparation and auditing of Australian Government financial statements under sections 47 to 49 of the PGPA Act apply from the 2014-15 financial year onwards.

Part 2 – Other application provisions

Item 8 – Duties of officials – use of position

88. This item clarifies that the duty imposed under section 27 of the PGPA Act only applies after the commencement time. This ensures that an official cannot be found to have contravened section 27 by misusing his or her position before the commencement time, even if the effects of that misuse only become apparent after the commencement time. Any misuse of position before the commencement date will be actioned through legislation in place at that time (such as the CAC Act).

Items 9 and 10 – Duties of officials – use of information and disclosures of interests

89. These items clarify that the duties imposed under sections 28 and 29 of the PGPA Act applies before or after the commencement time. In relation to section 28, a person may obtain information before the commencement time but not misuse it until after the commencement time. This should still amount to a contravention of section 28 and should be subject to appropriate administrative action against the official.

90. Similarly, a material personal interest arising before the commencement time should be disclosed as this could still pose a risk to the Commonwealth entity if it is ongoing. Where an interest arises before the commencement time, but is also disposed of before the commencement time, this would not be covered by this item.

Item 11 – Termination of appointment (for the accountable authority or member of an accountable authority for a corporate Commonwealth entity)

91. This item would make section 30 of the PGPA Act apply to all appointments, regardless of when those appointments occur. This would ensure a consistent approach is

taken when dealing with breaches of duties and avoids situation in which only some board members would be subject to section 30 due to their appointment dates, when a decision is made by the board collectively as the accountable authority.

Item 12 - Banking

92. This item would apply section 55 of the PGPA Act to the banking of amounts of relevant money that are received after the commencement time. Amounts received before the commencement time, even if the money has not yet been banked, would continue to apply the requirements in the FMA Act. The details of FMA Act transitional arrangements are described in Schedule 2 to this Bill.

Item 13 – Waiver of amounts and modification of payment terms

93. This item would apply section 63 of the PGPA Act (which deals with waivers) to amounts owing to the Commonwealth, regardless of when such an amount becomes owing. Given it cannot be guaranteed when an amount will become owing to the Commonwealth (which is a separate issue to when the Commonwealth becomes aware that an amount is owing); it is administratively simpler to apply the PGPA Act requirements for all amounts owing.

Item 14 – Set-off

94. This item would apply section 64 of the PGPA Act to amounts that can be set-off against amounts owing to the Commonwealth, regardless of when such an amount becomes available for setting off. Given it cannot be guaranteed when an amount will become available for setting off (which is a separate issue to when the Commonwealth becomes aware that an amount can be set-off), it is administratively simpler to apply the PGPA Act requirements for all amounts. This also ensures consistency with the waiver application provision.

Item 15 – Gifts of relevant property

95. This item would apply section 66 of the PGPA Act (which concerns gifts) to all relevant property, regardless of when it was acquired by a Minister or official. The time that the property (to be used as a gift) is acquired is separate to the rules that govern the gifting. For consistency, all property should be gifted in accordance with PGPA Act requirements.

Item 16 – Losses of relevant money or relevant property

96. This item would apply provisions concerning losses under the PGPA Act (sections 68, 69 and 70) to losses occurring after the commencement time. Given that there are different penalty arrangements attached to the FMA Act (see sections 15 and 42) and the PGPA Act, it is proposed that an official who loses money or property should be subject to the law that applies at the time of the loss. Therefore losses under the FMA Act will be dealt with by that framework and losses under the PGPA Act will be dealt with under the new framework.

Item 17 – Ministers to inform Parliament of certain events

97. This item would apply section 72 of the PGPA Act to relevant events occurring after the commencement time. Where an event occurs before the commencement time but has not been notified to Parliament, that event should be notified under the FMA Act framework. The details of FMA Act transitional arrangements are described in Schedule 2 to the Bill.

Item 18 – Receipt of amounts by non-corporate Commonwealth entities

98. This item would apply section 74 of the PGPA Act to receipts received after the commencement time. Section 31 of the FMA Act and FMA Regulation 15 would apply to amounts received before that date.

Item 19 – Transfers of functions between non-corporate Commonwealth entities

99. This item would apply section 75 of the PGPA Act to transfers of entity functions regardless of when the transfer occurs. For simplicity, the PGPA Act requirements will apply to any transfers of functions that require appropriation adjustments that have not been dealt with under section 32 of the FMA Act before the commencement time.

Item 20 – Payments between non-corporate Commonwealth entities

100. This item would apply section 76 of the PGPA Act to notional payments and receipts made after the commencement time. The FMA Act will apply up to the commencement time. The details of FMA Act transitional arrangements are described in Schedule 2 to the Bill.

Item 21 – Repayments by the Commonwealth

101. This item would apply section 77 of the PGPA Act to repayments the Commonwealth is required or permitted to make after the commencement time. The FMA Act will apply up to the commencement time and in relation to amounts received by the Commonwealth before the commencement time. The details of FMA Act transitional arrangements are described in Schedule 2 to the Bill.

Item 22 – Special accounts

102. This item would apply section 80 of the PGPA Act to existing special accounts established in other Acts regardless of when they were created.

Item 23 – Recovery of debts

103. This item would make rules about the recovery of debt made under the PGPA Act apply to debts incurred after the commencement time but only to debts incurred before the commencement time if the recovery of the debt has not yet been pursued. If action to recover a debt incurred before the commencement time has already commenced, the FMA Act framework would continue to apply. The details of FMA Act transitional arrangements are described in Schedule 2 to the Bill.

Part 3 – Amendments

Item 24 – The rules

104. Section 101 of the PGPA Act is being amended through the insertion of a new subsection 101(4) to clarify that the accountable authority of an entity can provide direction on the application of the rules within the entity through the use of the accountable authority instructions issued under section 20A of the Act (as proposed in the Public Governance, Performance and Accountability Amendment Bill 2014 that is currently being considered by the Parliament).

105. The provision is proposed to support the operation of the PGPA rules that will support the implementation of the PGPA Act in such a way as to allow accountable authorities to take into account the nature of the entities, the level and scope of the risks inherent in the activities they undertake and the controls that need to be maintained.

NOTES ON SCHEDULE 2 – AMENDMENT OF THE FINANCIAL MANAGEMENT AND ACCOUNTABILITY ACT 1997

Introduction

106. This Schedule to the Bill relates to amendments that would be made to the FMA Act, including the repeal of the majority of its provisions and its renaming as *Financial Framework (Supplementary Powers) Act 1997*. The Schedule is arranged in two Parts:

- Part 1 to this Schedule – Amendments; and
- Part 2 to this Schedule – Transitional and application provisions.

Part 1—Amendments

Financial Management and Accountability Act 1997

107. The Bill would, if enacted, retain a few elements of the *Financial Management and Accountability Act 1997* (FMA Act) to ensure the continuation of a number of Government arrangements, programmes and spending activities. The retained provisions from the FMA Act would be renamed to the *Financial Framework (Supplementary Powers) Act 1997* (FFSP Act). This amendment to the title is so as to better reflect and align with the features being preserved.

108. Section 32B of the FMA Act established legislative authority for the Government to make, vary and administer arrangements and grants specified in the FMA Regulations and arrangements and grants for the purposes of programs specified in the FMA Regulations. The FMA Regulations, via Schedules 1AA and 1AB, list arrangements, grants and programmes to which section 32B applies.

109. These provisions in the FMA Act were added in response to the High Court’s decision in *Williams v Commonwealth* (2012) 248 CLR 156. It is considered appropriate and prudent to retain this legislative authority mechanism and the related Regulations, including Schedules 1AA and 1AB, with some minor amendments, for continuity and consistency, noting the second challenge currently before the High Court.

110. Further, the supplementary powers to form companies and other matters found in section 39B of the FMA Act will be retained in the FFSP Act.

111. The minor amendments proposed in the Bill would, if enacted, ensure the retained provisions fit within the broader financial management framework, including definitions, terminology and governance arrangements in the PGPA Act.

112. While the FFSP Act is a standalone Act, it should be noted that Ministers, accountable authorities of non-corporate Commonwealth entities, delegates and officials exercising the powers and functions under the Act continue to be required to comply with the PGPA Act and other relevant legislation in the proper use of Commonwealth resources.

113. **Item 1** would repeal the Reader’s guide as the level of preliminary information required to explain the retained provisions is no longer necessary. A simplified outline of retained provisions within the FFSP Act has been included at **item 4**.

114. **Item 2** would amend the Long Title to clarify that the remaining features of the FMA Act proposed to be retained in the FFSP Act relate to the supplementary powers to make commitments to spend money and powers in relation to companies and related purposes. The amendments to the Long Title would reflect the repeal of governance arrangements around the proper use and management of Commonwealth money, property and resources, which are now found in the PGPA Act.

115. **Item 3** would amend the title of the FMA Act to the *Financial Framework (Supplementary Powers) Act 1997* (FFSP Act) to better reflect the FMA Act features to be retained in the FFSP Act.

116. **Item 4** would include a simplified outline (Section 2A) providing clarity around the purpose for the retained provisions in the FFSA Act. The outline makes clear that, in certain circumstances, the Commonwealth has powers to make arrangements to spend money or grant financial assistance and form or otherwise be involved in companies as specified in the associated regulations.

117. **Item 5** would include updated and relevant definitions found in the PGPA Act, including “accountable authority”, “non-corporate Commonwealth entity”, “relevant money”, “other CRF money” and “official”, as well as defining “Finance Minister” and “Minister” for continued readability, operation and consistency of the retained provisions within the FFSP Act.

118. This item would also include a new section 6 to make it clear that there is a relationship between the FFSP Act and its regulations, and that they are to be read in conjunction with the finance law as provided within the PGPA Act.

119. **Item 6** would repeal Parts 2 and 3 of the FMA Act.

120. **Item 7** would repeal the heading for Part 4 and substitute it with “Part 2-Supplementary powers to make commitments to spend money and be involved in companies etc.” to better describe the nature of the powers to be retained in the FFSP Act. The changed title of Part 2 would reflect the consolidated structure of the Act and the reduced scope of the provisions to be retained in the FFSP Act.

121. **Item 8** would repeal Divisions 1 to 3A that exist in Part 4 of the FMA Act.

122. **Item 9** would repeal the heading for Division 3B of Part 4 of the FMA Act, as there are no longer any Divisions required in the FFSP Act.

123. **Item 10** would amend the heading of section 32B to include “relevant money” and “other CRF money” instead of “public money” consistent with the PGPA Act. The inclusion of the concept of “other CRF money” reflects the scope of the current definition of “public money” in the FMA Act.

124. **Item 11** would replace references to “public money” within section 32B(1)(a)(i) of the FFSP Act to “relevant money and other CRF money” for consistency with the PGPA Act.

125. **Item 12** would omit terminology and references to authorities no longer extant or relevant to the retained provisions of the Act.

126. **Item 13** would include a note at the end of section 32B(1) referring to the PGPA Act, as it now deals with the use and management of public resources including relevant money and other CRF money.

127. **Item 14** would substitute references to “a Chief Executive” to “an accountable authority of a non-corporate Commonwealth entity” consistent with the PGPA Act. This change in terminology continues the clarification that accountable authorities of corporate Commonwealth entities, formerly Commonwealth Authorities and Commonwealth Companies, are unable to exercise the powers conferred on the Commonwealth by section 32B.

128. **Item 15** would replace the two notes in section 32B(2) with one note referring to section 32D for the power of the Minister and accountable authority of a non-corporate Commonwealth entity to delegate.

129. **Item 16** would substitute references to “a Chief Executive” with “an accountable authority of a non-corporate Commonwealth entity”, consistent with the PGPA Act. This change in terminology clarifies that accountable authorities of corporate Commonwealth entities are unable to enter into an agreement on behalf of the Commonwealth under section 32C.

130. **Item 17** would replace the two notes in section 32C(3) with one note referring to section 32D for the power of the Minister and accountable authority of a non-corporate Commonwealth entity to delegate.

131. **Item 18** would repeal section 32D in the FMA Act and replace it with a new provision in which a Minister or accountable authority of a non-corporate Commonwealth entity may delegate powers under section 32B or 32C to an official of any non-corporate Commonwealth entity. This new section consolidates the section 32D delegation powers of a Minister with the delegation powers of the Chief Executive previously found in section 53 of the FMA Act.

132. This item would also continue the sub-delegation of powers under section 32D to an official by an accountable authority of a non-corporate Commonwealth entity through a new section 32DA, which was previously located in section 53 of the FMA Act, for ease of reference.

133. Additionally, this item would include a new section 32DB to clarify that the powers under section 23 of the PGPA Act do not extend to or authorise an accountable authority of a non-corporate Commonwealth entity to exercise a power conferred on the Commonwealth by section 32B of the FFSP Act. This exclusion is consistent with the arrangement under the FMA Act, in which section 32B can only be exercised when, if apart from this section, the Commonwealth does not have power, but for the power provided by section 32B.

134. The effect of this item would be to preserve and continue the delegation and sub-delegation powers in relation to sections 32B and 32C of the FMA Act within the FFSP Act.

135. This item would also repeal section 32E, as the new section 41 provides that the provisions within the Part do not, by implication, limit the executive power of the Commonwealth.

136. **Item 19** would repeal Division 4 of Part 4 of the FMA Act.

137. **Item 20** would repeal the heading of Part 5 of the FMA Act.

138. **Item 21** would repeal sections 37 to 39A of the FMA Act.

139. **Item 22** would substitute the note with “For the power to delegate, see section 40” to be consistent with the changes to provisions and references within the FFSP Act.

140. **Item 23** would repeal subsection 39B(4), as the new section 41 provides that the provisions, including section 39B, within the Part do not, by implication, limit the executive power of the Commonwealth.

141. **Item 24** would replace reference to “*Commonwealth Authorities and Companies Act 1997*” with “*Public Governance, Performance and Accountability Act 2013*”.

142. **Item 25** would preserve, in section 40, the delegation powers and functions of the Finance Minister to an accountable authority of a non-corporate Commonwealth entity under section 39B and require that in exercising such powers or functions, the delegate must comply with any directions of the Finance Minister. The item would relocate these powers from section 62 to section 40 of the FFSP Act.

143. The item would also include a new section 41 on the executive power of the Commonwealth, which brings together two separate provisions found in the FMA Act,

sections 32E and 39B(5). This item would make it clear that nothing in Part 2, by implication, limits the executive power of the Commonwealth.

144. **Item 26** would repeal Parts 6 to 8 in the FMA Act.

145. **Item 27** would repeal the heading of Part 9 and replace it with “Part 3—Miscellaneous” to realign the numbering with the preserved provisions and Parts of the FFSP Act.

146. **Item 28** would repeal sections 58 to 64 of the FMA Act.

147. **Item 29** would omit the subsection reference (1) from section 65 of the FMA Act and continue the operation of section 65 after the commencement time in relation to the Governor-General making regulations prescribing matters required or permitted under the FFSP Act, or otherwise necessary or convenient for carrying out or giving effect to the Act.

148. **Item 30** would repeal subsection 65(2) of the FMA Act, including the note. Subsection 65(2) provides a detailed list of the matters for which the FMA Act may make provision. These matters are, in the main, provided through the PGPA Act and its rules. The continuation of the regulation-making power under the retained section 65 provides adequate power for the making of regulations for the more limited scope of operation of the FFSP Act.

149. For the avoidance of doubt, section 6 would clearly require that any power exercised under the FFSP Act must comply with this Act, its regulations, and the finance law. The finance law, as defined under the PGPA Act, includes the PGPA Act, its rules, related instruments and the Appropriation Acts. The FFSP Act would clearly be placed within the continuing framework of financial management governance provided by the FMA Act, and now the PGPA Act.

Part 2 – Transitional and application provisions

Item 31 – Allocation of certain persons to Departments of State, Departments of the Parliament and prescribed agencies

150. The complexity of contractual arrangements across the Commonwealth is such that existing arrangements may rely in some circumstances to allocating persons as officials who would not otherwise be officials, as in the case of a contractor performing a financial task, such as drawing directly on public funds in the performance of a contract. Where such situations exist it is the intention to list such persons in the future as officials under the PGPA rules. However, for the removal of uncertainty, and to ensure a smooth transition from the FMA Act to the PGPA Act, it is proposed to retain the allocated official arrangements from FMA Regulations 4 and 5 while such arrangements are reviewed and reconsidered by Commonwealth entities within the life of existing arrangements and contracts.

Item 32 – Prescribed agencies

151. Prescribed entities for the purposes of the FMA Act will now be recognised through “listing”. This item provides clarity in relation to changes in terminology and the fact that the entities in question are the same entities under both FMA Act and PGPA Act arrangements.

Item 33 – Notional payments and receipts by Agencies

152. This item would continue the operation of the notional payments and receipts provisions of the FMA Act (section 6) after the commencement time for payments made before that time. This ensures a seamless transition to the equivalent provision of the PGPA Act (section 76), which would apply to payments made after the commencement time.

Item 34 – Agreements with banks about receipts, transmission etc. of public money

153. Sub-item (1) would preserve agreements that Agencies have entered into on behalf of the Commonwealth relating to banking services under section 8 of FMA Act. These

agreements would be taken to have been made under section 53 of the PGPA Act, which is equivalent in purpose to section 8 of the PGPA Act.

154. Sub-item (2) would preserve the Commonwealth's central banking agreement with the Reserve Bank of Australia (RBA) after the commencement time. Under section 53(3) of the PGPA Act, the Finance Minister must, on behalf of the Commonwealth, open and maintain a central bank account with the RBA.

Item 35 – Public money must be promptly banked etc.

155. This item would continue the operation of the banking requirements of the FMA Act (section 10) after the commencement time for payments made before that time. This ensures a seamless transition to the equivalent provision of the PGPA Act (section 55), which would apply to relevant money received after the commencement time.

Item 36 – Establishment of Special Accounts by Finance Minister

156. This item would generally preserve existing determinations made by the Finance Minister to establish special accounts under subsection 20(1) of the FMA Act. Such determinations would be deemed to have been made under the equivalent PGPA Act provision (subsection 78(1)). However, sub-item (2) would exempt nine determinations from preservation, which would have the effect of abolishing the special accounts created by those determinations. These special accounts are no longer needed.

Item 37 – Drawing Rights

157. This item would continue the existing drawing rights arrangements under the FMA Act until 30 June 2015. This will provide continuity for the 2014-15 reporting period until the new administrative arrangements relating to the drawing down of appropriations are finalised. This item would also affect other Acts referring to drawing rights, such as the *Nation-building Funds Act 2008*, which would continue with existing drawing rights arrangements until 1 July 2015.

Item 38 – Repayments by the Commonwealth

158. This item would continue the operation of section 28 of the FMA Act after the commencement time in relation to repayments that the Commonwealth is permitted or required to make, but only in relation to amounts the Commonwealth receives before the commencement time.

Item 39 – Repayments to the Commonwealth

159. This item would continue the operation of section 30 and subsection 32A(2) of the FMA Act after the commencement time in relation to repayments to the Commonwealth but only in relation to amounts the Commonwealth has paid before the commencement time.

Item 40 – Appropriations to take account of recoverable GST

160. Despite the repeal of section 30A and subsection 32A(3) of the FMA Act (which deal with the treatment of appropriations to take account of recoverable GST), those provisions continue to apply after the commencement time in relation to payments that are made before 1 July 2015. This item, together with **item 41**, has been included to ensure a scheme is in place while further consultation and testing occurs on more appropriate and simplified arrangements in relation to payments and receipts relating to GST.

Item 41 – Retaining prescribed receipts

161. This item would make it clear that a Commonwealth entity would be permitted to retain, after 1 July 2014, any permissible receipts it collects under section 31 of the FMA Act before the commencement time, regardless of the status of those receipts under the PGPA Act.

162. Despite the repeal of section 31 and subsection 32A(4) of the FMA Act (which deal with the retention and recording of an approved category of receipts), those provisions will continue to operate as they do now up to 1 July 2015. This item, together with **item 40**, has been included to ensure a scheme is in place while further consideration is given to more appropriate and simplified arrangements in relation to payments and receipts relating to GST.

Item 42 – Regulations made under, or for the purposes of, sections 32B and 39B

163. This item would clarify that the amendments proposed to the FMA Act in renaming it the FFSP Act do not affect the regulations made pursuant to sections 32B and 39B. This provides certainty that the regulations continue unaffected.

Item 43 – Delegations by Minister

164. Sub-item (1) ensures that existing delegations made under subsection 32D(1) of the FMA Act are deemed to have been made under subsection 32D(1) of the FFSP Act. This clarifies the arrangements as there may be uncertainty over whether the delegations continue, given technically to two subsections 32D(1) are distinct.

165. Similarly directions under subsection 32D(2) of the FMA Act are taken to have been made under s32D(2) of the FFSP Act.

Item 44 – Finance Minister may approve act of grace payments

166. This item preserves act of grace authorisations made by the Finance Minister under section 33 of the FMA Act as if they had been made under the equivalent provision of the PGPA Act (section 65). In addition, this implies that a decision not to authorise an act of grace payment that has been dealt with under section 33 of the FMA Act continues to be valid.

Item 45 – Finance Minister may borrow for short periods

167. This item would preserve agreements that Agencies have entered into on behalf of the Commonwealth relating to short-term borrowing (such as for credit cards) under section 38 of the FMA Act. These agreements would be taken to have been made under section 56 of the PGPA Act, which is equivalent in purpose to section 38 of the PGPA Act.

Item 46 – Investment of public money

168. This item would deem investments made under section 39 of the FMA Act to have been made under the equivalent provision of the PGPA Act (section 58).

Item 47 – Minister must inform Parliament of involvement in a company by the Commonwealth or a prescribed body

169. This item would require a Minister to inform Parliament of an event listed in section 39A(1) where the event happens before the commencement time, even after section 39A is repealed.

Item 48 – Gifts of public property

170. This item would deem a Finance Minister's approval under paragraph 43(b) of the FMA Act for a gift to be made to have been made under subparagraph 66(b)(ii) of the PGPA Act. This ensures that there is no question as to the validity of an approval, which is important as a gift made without approval could be considered to be lost property and subject to the consequences in section 67 of the PGPA Act.

Item 49 – Promoting proper use of Commonwealth resources

171. This item would preserve the thousands of agreements made each year by officials on behalf of the Commonwealth that have been made under section 44 of the FMA Act as if they had been made under the equivalent provision of the PGPA Act (section 23). All agreements made under section 44 of the FMA Act are valid under section 23 of the PGPA Act.

Item 50 – Keeping responsible Minister and Finance Minister informed

172. This item would require an FMA Chief Executive to supply any relevant reports, documents or information to the responsible Minister or the Finance Minister in relation to a request from either of the ministers made before the commencement time. That is, the minister would not need to make a new request under section 19 of the PGPA Act – the existing request must still be fulfilled.

Item 51 – Recovery of debts

173. This item would require an FMA Chief Executive to continue pursuing debts owed to the Commonwealth under the FMA Act framework if such action has already commenced. This ensures action already undertaken does not need to be restarted under the recovery of debts rules of the PGPA Act.

Item 52 – Accounts and records

174. This item would continue to apply the accounts and records requirements of section 48 of the FMA Act after the commencement time to accounts and records made before that time. Given that such accounts and records were made for purposes connected to the FMA Act, such as for the production of financial statements under section 49 of the FMA Act, it is sensible that such accounts and records are kept under FMA Act requirements. Over time the ordinary record-keeping requirements of the *Archives Act 1983* will supersede FMA Act requirements.

Item 53 - Continuing application of certain provisions

175. This item would continue to apply certain FMA Act provisions in relation to the last financial year before the commencement time. In effect, this item ensures that Agencies under the FMA Act will continue to produce their financial statements for the 2013-14 financial year and have those statements audited by the Auditor-General under the FMA Act. This finalises the reporting regime under the FMA Act and reflects that 2013-14 was entirely conducted in accordance with FMA Act requirements.

Item 54 – Additional financial statements

176. This item would continue to apply the additional financial statements provisions of the FMA Act (section 50) for financial statements required before the commencement time as if those provisions had not been repealed. Similarly to annual financial statements, this item recognises that additional financial statements were created under the FMA Act framework and so should be completed under that framework.

Item 55 – Chief Executive may delegate powers

177. This item would preserve existing delegations of Chief Executives in relation to sections 32B or 32C and directions in relation to subsection 32D(4) of the FMA Act as if they had been made under the FFSP Act. This removes any ambiguity over these delegations and directions that may have arisen with the renaming of the FMA Act as the FFSP Act. Sub-delegations under the FMA Act are similarly preserved.

Item 56 - Requirement to publish monthly financial statements

178. This item would preserve section 54 of the FMA Act (relating to monthly financial statements) for one month after the provision is repealed. This would ensure that the financial statements for the last month before the FMA Act was repealed can be completed under the FMA Act framework.

Item 57 – Modified operation of Act and relevant regulations

179. This item would preserve modifications of the FMA Act and FMA Regulations for intelligence, security or prescribed law enforcement agencies for the purposes of the last financial year before the commencement time. This would, for example, ensure that the 2013-14 financial statements can be prepared in accordance with the modifications made in Schedule 2 of the FMA Regulations.

Item 58 – Finance Minister may delegate powers

180. This item would preserve the Finance Minister's delegations under section 62 of the FMA Act relating to sections 32B and 32C and take them to be delegations under subsection 32D(1) of the FFSP Act. Similarly delegations under section 62 relating to section 39B would be taken to have been made under proposed section 40 of the FFSP Act. Any directions on the use of delegations relating to sections 32B, 32C and 39B would also be preserved.

Item 59 – Approval of spending proposals

181. This item would preserve an approval in force under section 9 of the FMA regulations as if the approval had been made under section 52 of the PGPA Act.

Item 60 – Continuation of instruments

182. This item would preserve any instruments (whether legislative or not) that are connected to a provision that continues in operation despite its repeal. For example, this ensures that Finance Minister's Orders on the preparation of financial statements for the 2013-14 financial year continue without having to preserve the Orders specifically.

NOTES ON SCHEDULE 3 – REPEAL OF THE COMMONWEALTH AUTHORITIES AND COMPANIES ACT 1997

Introduction

183. This Schedule to the Bill relates to the repeal of the CAC Act as well as providing for transitional and application provisions to deal with matters continuing beyond 30 June 2014.

Part 1 – Repeal

Item 1 – The whole of the Act

184. This Part and Item repeal the whole of the CAC Act at the same time as section 6 of the PGPA Act commences.

Part 2 – Transitional and application provisions

Item 2 – Continuing application of certain provisions

185. Sub-item (1) would continue to apply certain CAC Act provisions in relation to the last financial year before the commencement time of the PGPA Act. In effect, this item ensures that CAC Act bodies will continue to produce their financial statements for the 2013-14 financial year and have those statements audited by the Auditor-General under the CAC Act. This finalises the reporting regime under CAC Act and reflects that 2013-14 was entirely conducted in accordance with CAC Act requirements.

186. Sub-item (2) would ensure that a director can still be penalised for breaching an annual reporting rule for the last financial year under the CAC Act, despite its repeal.

Item 3 – Responsible Minister to be notified of significant events

187. This item would require a CAC Act body's directors to notify the responsible Minister of any significant event if the event occurs before the commencement time of the PGPA Act. This helps ensure that the CAC Act's accountability framework continues for all events that occur before its repeal.

Item 4 – Keeping responsible Minister and Finance Minister informed

188. This item would require a CAC Act body's directors to do the following:

- Advise on the operations of the body that occur before the commencement time.
- Supply any relevant reports, documents or information to the responsible Minister or the Finance Minister in relation to a request from either of the ministers made before the commencement time. That is, the minister would not need to make a new request under section 19 of the PGPA Act – the existing request must still be fulfilled.

189. This helps ensure that the CAC Act's accountability framework continues for all matters that occur before its repeal.

Item 5 – Corporate plan for GBE

190. This item maintains the operation of the Government Business Enterprises' (GBEs) corporate plan requirements for the first reporting period after the commencement time. This means that a GBE's corporate plan will initially continue to be prepared under the CAC Act.

Item 6 – Banking and investment

191. Sub-item (1) would continue the operation of the banking requirements of the CAC Act (subsections 18(2) and 19(2)) after the commencement time for money received before that time. This ensures a seamless transition to the equivalent provisions of the PGPA Act

(sections 54 and 55), which would apply to relevant money received after the commencement time.

192. Sub-item (2) would treat investments of surplus money under sections 18 or 19 of the CAC Act as investments under section 59 of the PGPA Act. This would cover fixed-term investments made before the commencement time that have not matured before the CAC Act is repealed.

193. Sub-item (3) would preserve approvals of the Finance Minister under paragraph 18(3)(d) for other investment types. However, this is expected to be temporary as the Finance Minister is expected to issue new approvals under the PGPA Act.

Item 7 – Accounting records

194. This item would continue to apply the accounting records requirements of section 20 of the CAC Act after the commencement time to accounting records made before that time. Given that such accounting records were made for purposes connected to the CAC Act, such as for the production of financial statements under Schedule 1 of the CAC Act, it is sensible that such accounting are kept under CAC Act requirements. Over time the ordinary record-keeping requirements of the *Archives Act 1983* will supersede CAC Act requirements.

Items 8 and 9 – Use of position and information – civil obligations

195. These items would make sections 24 and 25 of the CAC Act continue to apply to the misuse of position and of information respectively before the commencement time. This ensures that civil penalty proceedings can be taken after commencement time even where it is not apparent that misuse has happened until after sections 24 and 25 are repealed.

Item 10 – Disqualification order for contravention of civil penalty provisions

196. This item would ensure that any existing disqualification orders continue to apply after section 27C of the CAC Act is repealed. The repeal of the CAC Act should not provide the opportunity for individuals to manage bodies where they have previous been disqualified from doing so under section 27C.

Item 11 – Director may give other directors standing notice about an interest

197. This item would preserve any standing notices about material personal interests that have been given under sections 27F or 27G of the CAC Act. This ensures that at the commencement time directors do not have to remake existing standing notices.

Item 12 – Right of access to an authority's books

198. This item would preserve a director's access to a Commonwealth authority's books under section 27L. Given that a director may still be subject to civil penalty proceedings for contraventions despite the repeal of Schedule 2 of the CAC Act, it is only fair that the director should be permitted to access the books of a Commonwealth authority to assist him or her in preparing their defence.

199. In terms of civil penalty proceedings more generally, section 7 of the *Acts Interpretation Act 1901* ensures that action may be taken by the Finance Minister under Schedule 2 of the CAC Act despite the repeal of that schedule.

Items 13 and 14 – Indemnification and exemption of officer and insurance for certain liabilities of officers

200. This item would maintain existing indemnities and contracts of insurance under sections 27M and 27N respectively. This ensures that such indemnities and contracts do not require to be remade at the commencement time.

Item 15 – Cessation of sections 28 and 43 notifications

201. Under this item any notifications made under sections 28 and 43 of General Policy Orders would cease to be in force. In addition any notifications made under sections 28 and 43 of the CAC Act and preserved by the *Commonwealth Authorities and Companies Amendment Act 2008* would cease to have effect.

202. The PGPA Act provides the opportunity to start afresh in relation to the application of Australian Government policies to corporate Commonwealth entities. As such, they can be remade in accordance with the processes in sections 22 and 93 of the PGPA Act.

Item 16 – Continuation of instruments

203. This item would preserve any instruments (whether legislative or not) that are connected to a provision that continues in operation despite its repeal. For example, this ensures that Finance Minister's Orders on the preparation of financial statements for the 2013-14 financial year continue without having to preserve the Orders specifically.

NOTES ON SCHEDULE 4 – AMENDMENTS RELATING TO THE *AUDITOR-GENERAL ACT 1997*

Introduction

204. Schedule 4 contains consequential and transitional amendments to the *Auditor-General Act 1997* (Auditor-General Act). The Auditor-General Act, FMA Act and CAC Act were introduced to Parliament as a package of inter-connected Bills, resulting in the need for amendments to the Auditor-General Act as part of the transition to the PGPA Act to ensure continued coherence in the Commonwealth's financial accountability and assurance frameworks. Given this inter-related nature and the number of changes involved, the Auditor-General Act amendments have been presented in a Schedule separate to those of other Acts. The Schedule also includes amendments to other Acts where the introduction of the PGPA Act needs to be referenced in relation to the Auditor-General's role.

205. Many of the amendments reflect changes from FMA or CAC Act to PGPA Act, but other more substantive changes have also been introduced to reflect the Auditor-General's role in the review of annual performance statements to be prepared in future by entities under section 39 of the PGPA Act.

Part 1 - Amendments

Auditor-General Act 1997

206. **Items 1 and 2** would repeal the "Related legislation" part of the Readers guide, consistent with modern drafting practice.

207. **Item 3** would repeal the "(1)" subsection number from section 5 because there would only be one subsection in section 5 because subsection (2) would be repealed.

208. **Item 4** would insert the definition of "accountable authority", which refers to the PGPA Act definition.

209. **Items 5 to 7** would repeal redundant definitions from the FMA Act and CAC Act.

210. **Item 8** would update the definition of "Commonwealth company" to refer to the PGPA Act, instead of the CAC Act.

211. **Items 9 and 10** would insert definitions of "Commonwealth entity" and "corporate Commonwealth entity", which refer to the PGPA Act definitions.

212. **Item 11** would update the definition of "director" to refer to the PGPA Act, instead of the CAC Act.

213. **Item 12** would update the definition of "Finance Minister" to refer to the PGPA Act, instead of the FMA Act.

214. **Item 13** would repeal a redundant definition from the FMA Act.

215. **Item 14** would update the definition of "GBE or government business enterprise" to refer to the PGPA Act, instead of the CAC Act.

216. **Item 15** would insert the definition of "non-corporate Commonwealth entity", which refers to the PGPA Act definition.

217. **Item 16** would repeal a redundant definition from the CAC Act.

218. **Item 17** would insert the definition of "official", which refers to the PGPA Act definition.

219. **Item 18** would update the definition of "responsible Minister" to refer to the PGPA Act, instead of the FMA Act and CAC Act. In relation to the responsible Minister of a Commonwealth partner, the definition is effectively unchanged.
220. **Item 19** would repeal a redundant definition from the CAC Act.
221. **Item 20** would update the definition of "subsidiary" to refer to the PGPA Act, instead of the CAC Act. The new definition does not refer to the definitions of "entity" and "control" as these definitions flow naturally from the definition of "subsidiary" in the PGPA Act.
222. **Item 21** would update the definition of "wholly-owned Commonwealth company" to refer to the PGPA Act, instead of the CAC Act.
223. **Item 22** would repeal subsection 5(2), which relied on section 7 of the CAC Act. This provision is redundant as the Auditor-General will be empowered to audit all Commonwealth entities.
224. **Item 23** would amend the definition of Division 1 of Part 4 to be "Annual financial statement audits". This new name more accurately reflects the content of the division.
225. **Item 24** would repeal and substitute sections 11 to 14 within this Division. It has been drafted to be easier to read and to update terminology to reflect the introduction of the PGPA Act. Proposed section 11 would state that the Auditor-General's functions include auditing the financial statement of Commonwealth entities, Commonwealth companies and their subsidiaries. This section would replace the existing sections 11, 12 and 13.
226. Proposed section 12 does not currently have an equivalent. This section would make it clear that the Auditor-General's functions include auditing the Commonwealth's consolidated financial statements. While the Auditor-General has had the responsibility under section 56 of the FMA Act for auditing the Commonwealth annual financial statements, specifying the function in the Auditor-General Act recognises the importance of this part of the Commonwealth's accountability framework.
227. Proposed section 14 effectively replicates the existing requirements in section 14 relating to the charging of audit fees, while updating references to the PGPA Act and recognising the amendments to the existing sections 11, 12 and 13.
228. **Item 25** would insert a new Division 1A for "Annual performance statement audits". Proposed section 15 would state that the Auditor-General's functions include auditing annual performance statements of Commonwealth entities under the PGPA Act; a new requirement under that Act. These statements require a Commonwealth entity to report on its performance in achieving its purposes, similarly to how entities currently report on their financial performance. Specifying the Auditor-General's responsibility for auditing performance statements in the Auditor-General Act is consistent with specifying the responsibility for auditing financial statements.
229. Proposed section 16 would permit the Auditor-General to charge fees for auditing a corporate Commonwealth entity's performance statement, consistent with arrangements for auditing financial statements under proposed section 14.
230. **Item 26** would repeal and substitute sections 15 to 17 with one new section 17. The new provisions are drafted in consolidated form to be easier to read. Proposed subsection 17(1) empowers the Auditor-General to conduct a performance audit of a Commonwealth entity, a Commonwealth company or a subsidiary at any time - similar to the Auditor-General's existing powers to audit FMA Act Agencies, Commonwealth authorities, Commonwealth companies and subsidiaries.

231. Consistent with existing arrangements, under subsection 17(2) the Auditor-General could only conduct a performance audit of a GBE on request of the Joint Committee of Public Accounts and Audit (although the Auditor-General could ask for such a request).

232. Proposed subsection 17(4) requires the Auditor-General to:

- table a completed report; and
- give copies of the completed report to certain persons affected by the report, including the responsible Minister.

233. This proposed subsection is generally consistent with the existing requirements in subsections 15(2), 16(4) and 17(4). However, in relation to subsidiaries and Commonwealth partners, the Auditor-General would have to give a copy of a completed report to "a person who is, or is a member of, the governing body" of the subsidiary or partner. This is a change from the terminology currently which refers to "officers", "directors" and "senior managers". The existing terminology could be better expressed. For example, "officer" is a defined term in the Auditor-General Act that relies on the definition in the CAC Act. However, the term in the CAC Act does not apply to subsidiaries, only parent Commonwealth authorities. The proposed terminology in subsection 17(4) is more generic and permits the Auditor-General to consider who is best placed to receive the report as "a person who is, or is a member of, the governing body". For example, this might be a trustee of a trust or director of a company, depending on the circumstances.

234. Proposed subsection 17(6) generally reflects existing subsection 15(3) and excludes *Members of Parliament (Staff) Acts 1994* employees from being the subject of a performance audit, reflecting that they should not be audited given they are part of a Member's or Senator's personal staff.

235. **Items 27 to 30** would update the language in section 18 from terms used in the FMA Act and CAC Act to terms used in the PGPA Act. In relation to subsidiaries and partners, a report under section 18 is required to be given to "a person who is, or is a member of, the governing body". This is consistent with the approach taken with subsidiaries and partners (refer to **item 26** for further explanation about the change).

236. **Item 31** would repeal and substitutes section 18A regarding audits of performance indicators. The proposed section 18A updates the language to use PGPA Act terms and drafting style to align with the approach taken for performance audits under proposed section 17. There is no change in the scope of the Auditor-General's powers or responsibilities under this section.

237. **Items 32 and 34** would amend section 18B to reflect proposed revised numbering of the relevant sections. The proposed section would preclude the Auditor-General from auditing Commonwealth partners as part of a performance statement audit, consistent with not auditing Commonwealth partners as part of a financial statement audit.

238. **Item 33** would update the terminology relating to Commonwealth partners in section 18B(6)(c) to align with the approach taken for performance audits under proposed section 17. That is a completed report must be provided to "a person who is, or is a member of, the governing body" of the partner.

239. **Item 35** would repeal and substitute section 19, regarding the Auditor-General's responsibility to provide a proposed performance audit report or performance indicator audit report to the body being audited for comment. There are no substantive changes from existing provisions. Relevant bodies will still have the same period of time to comment on a proposed audit report, comments must be considered by the Auditor-General in finalising the report and all comments must be included in the final report. Minor changes to proposed section 19:

- update the cross-references to section 15 to refer to paragraph 17(1)(a) (relating to performance audits of Commonwealth entities);
- update the cross-references to sections 16 and 17 to refer to paragraphs 17(1)(b) or (c) (relating to performance audits of Commonwealth companies or subsidiaries of Commonwealth companies and corporate Commonwealth entities respectively);
- update the person to whom the proposed report is to be given to:
 - for a Commonwealth entity – the accountable authority (or a member of the accountable authority);
 - for a Commonwealth company – a director of the company;
 - for a subsidiary – the governing body or a member of the governing body; and
 - for a Commonwealth partner – the governing body or a member of the governing body.

240. **Item 36** would repeal and substitute subsections 19A(1) and (2) relating to assurance reviews. The amendment updates the terminology to use PGPA Act terms, such as that of Commonwealth entity. A GBE could still only be the subject of a review if the JCPAA requests the Auditor-General to conduct a review (and there continues to be nothing to prevent the Auditor-General from seeking such a request).

241. **Items 37 and 38** would amend the terminology of section 21, relating to the Auditor-General being an auditor under the *Corporations Act 2001*. “Commonwealth authority” would be replaced with “corporate Commonwealth entity” and the reference to a Commonwealth-controlled company under paragraph under section 34 of the CAC Act would be updated to refer to subsection 89(2) of the PGPA Act. There is no change in the Auditor-General’s powers.

242. **Items 39 and 40** would update section 24, relating to auditing standards, to include a reference to the new Division 1A (audits of annual performance statements) and to update paragraph 24(c) to refer to section 49 of the PGPA Act, rather than section 56 of the FMA Act. Section 49 of the PGPA Act relates to the audit of the Commonwealth’s consolidated financial statements.

243. **Item 41** would repeal the requirement for the Auditor-General to prepare an annual report. The Auditor-General will be required to prepare an annual report under section 46 of the PGPA Act, making the specific requirement in section 28 unnecessary.

244. **Item 42** would amend subsection 29(1) permit the Auditor-General to delegate his or her powers or functions to “an official of a non-corporate Commonwealth entity”, which is the term most similar to the current class of “FMA official”.

245. **Item 43** would amend the definition of “authorised official” in subsection 32(5) to refer to “an official of a non-corporate Commonwealth entity”, instead of “FMA official”. The replacement term is that most similar to FMA official.

246. **Item 44** would amend paragraph 33(1)(a) to permit the Auditor-General or authorised official to enter and remain on a premises occupied by a corporate Commonwealth entity. This would replace the reference to a “Commonwealth authority” under the CAC Act.

247. **Item 45** would insert a note after subsection 33(1) to clarify that non-corporate Commonwealth entities are not referred to in paragraph 33(1)(a) because they are legally part of the Commonwealth.

248. **Item 46** would amend the definition of “authorised official” in subsection 33(4) to refer to “an official of a non-corporate Commonwealth entity”, instead of “FMA official”. The replacement term is that most similar to FMA official.

249. **Item 47** would repeal and substitute section 44, relating to the audit of the Audit Office's financial statements by the Independent Auditor. The proposed section 44 would not change the effect of the provision; its main differences are to update FMA Act references (section 49 and 57) with the equivalent PGPA Act references (sections 42 and 43). The existing subsection 44(2) has also been split into two subsections to improve readability.

250. **Item 48** would repeal and substitute new wording for section 50 of the Auditor-General Act to ensure that the amounts Parliament appropriates to the Audit Office are provided in full.

251. Under the proposed subsection 50(2) the Finance Minister can issue directions that set the amounts in which and times at which an appropriation will be paid. This is administrative in nature and involves determining a schedule for the release of funds to allow the Auditor-General and his organisation to meet their liabilities as they fall due, with the sum of the amounts to equal the total approved by Parliament.

252. The proposed subsection 50(3) states that the directions issued under subsection 50(2) are not legislative instruments. This is a declaratory provision to aid interpretation and is not an exemption from the *Legislative Instruments Act 2003*.

253. Proposed subsections 50(4) and (5) further emphasise the independence of the Auditor-General and the Audit Office. These provisions would state that a reduction provision in an Appropriation Act does not apply to the Audit Office. This ensures that the Finance Minister cannot legally reduce the amount of an appropriation made by the Parliament for the Auditor-General and is consistent with ensuring that funds cannot be withheld through administrative means.

254. **Items 49, 50 and 51** would amend section 54, which relates to providing information to ministers. Currently, the provision only refers to requests from the Finance Minister for additional financial statements under section 50 of the FMA Act. There is no equivalent to section 50 in the PGPA Act. There is however, a much broader power under paragraph 19(1)(b) of the PGPA Act for the responsible Minister and the Finance Minister to request reports, documents and information relating to the activities of a Commonwealth entity, like the Audit Office.

255. As such, the proposed amendments would require any requests under paragraph 19(1)(b) of the PGPA Act from either minister to be in writing and for a minister to advise the JCPAA of any such requests and the reasons for such a request. This recognises the role of the JCPAA in respect of the Audit Office, reflecting the relationship between the Auditor-General and the Parliament.

256. **Item 52** would amend subsection 54(4) to require any requests under paragraph 19(1)(b) of the PGPA Act to be disclosed in the annual report under section 46 of the PGPA Act. This amendment does not materially affect the requirements for the annual report.

257. **Item 53** would insert a new subsection into clause 6 of Schedule 1 of the Auditor-General Act that clarifies – and removes any doubt - that section 30 of the PGPA Act does not apply to the Auditor-General in relation to termination of appointment.

Norfolk Island Act 1979

258. **Item 54** would update subsection 48D(5) of the *Norfolk Island Act 1979* to require the Auditor-General to include information of the basis on which audit fees are determined in his or her annual report under section 46 of the PGPA Act. This amendment updates the cross-reference from section 28 of the Auditor-General Act (which would be repealed) to section 46 of the PGPA Act. There are no changes in policy.

259. **Item 55** would amend paragraph 48G(2)(f) to replace the reference to “Commonwealth authority” under the CAC Act to “corporate Commonwealth entity” under the PGPA Act, given this is the closest similar term in the PGPA Act.

Public Accounts and Audit Committee Act 1951

260. **Item 56** would amend paragraph 8(1)(k) of the *Public Accounts and Audit Committee Act 1951* to update the cross-reference to the Auditor-General Act by replacing subsection 14(1) with subsection 16(1), consistent with the new numbering of the Auditor-General Act.

NOTES ON SCHEDULE 5 – AMENDMENTS RELATING TO THE STATUS OF COMMONWEALTH ENTITIES

Introduction

261. The PGPA Act recognises two types of entities: non-corporate Commonwealth entities and corporate Commonwealth entities. Schedule 5 includes amendments to a range of enabling legislation for bodies corporate that are currently subject to the FMA Act, as these bodies have features of both types of entities and need legal certainty in relation to the arrangements under which they are required to operate.

262. The classification of these bodies and the resulting proposed legislative changes have been the subject of extensive consultation to ensure understanding of their particular business requirements and governance obligations.

263. Body corporate status is a determining feature of whether a Commonwealth entity should be classified as corporate or non-corporate. As such, following consultation with portfolio Departments and the affected entities, this Bill would make amendments that would either confirm the body corporate status of an entity or remove it entirely.

Reasons for status of entity

264. Two general reasons have been identified as to why an entity should be a body corporate or not. First, where the entity is a regulator and needs to be able to take enforcement action against the Commonwealth itself, there is a clear need for a separate legal identity. Second, where there are arrangements between the Commonwealth and States and Territories about the legal structure of an entity, these arrangements need to be respected by the Commonwealth.

265. In relation to three major regulators: the Australian Securities and Investments Commission (ASIC), the Australian Prudential Regulation Authority (APRA) and the Australian Competition and Consumer Commission (ACCC), temporary arrangements are proposed. These regulators are all the subject of major Government reviews and to avoid pre-empting the findings of those reviews, it has been determined that as far as possible, existing arrangements will continue. As such, despite being bodies corporate, ASIC, APRA and ACCC would be deemed to be non-corporate Commonwealth entities for the purposes of the finance law (i.e. the PGPA Act and related instruments).

Other amendments to legislation of these entities

266. The amendments made by this schedule only relate to the issue of body corporate status. Other consequential amendments may be found in Schedules 7 to 13.

Part 1 - Bodies ceasing to be bodies corporate

267. This part would remove the body corporate status of seven existing FMA Act Agencies to make them non-corporate Commonwealth entities under the PGPA Act. The part would also abolish one statutory corporation that is neither under the FMA Act nor the CAC Act.

Australian Communications and Media Authority Act 2005

268. **Item 1** would repeal Division 3 of Part 2 (sections 12 and 13) and replace it with a new division that gives the Australian Communications and Media Authority (ACMA) the power to do all things necessary for performing its functions. This amendment removes the powers of ACMA to do things that a body corporate can do, such as acquire property, but also repeals section 13 which deems ACMA's liabilities to be Commonwealth liabilities. This is unnecessary as ACMA will be legally part of the Commonwealth and therefore ACMA always incurs liabilities as the Commonwealth.

269. **Items 2 and 3** would rename Part 3 as dealing with ACMA's membership only and would repeal section 18 which establishes ACMA as a body corporate. ACMA does not need to be a body corporate in order to fulfil its statutory functions and therefore should be recast and held accountable as a non-corporate Commonwealth entity under the PGPA Act.

270. **Item 4** would insert two new sections. Proposed section 62A would permit the Commonwealth to bring proceedings in the name of ACMA. Where ACMA is undertaking its enforcement role, it may be beneficial to commence actions in its own name (noting that the Commonwealth will be the effective party to the proceedings). Similarly, another person could bring proceedings against the Commonwealth in ACMA's name to reflect that ACMA's performance of its statutory functions may be in dispute.

271. A note to subsection 62A(1) would clarify that this does not authorise ACMA to bring proceedings against the Commonwealth, which would in effect be the Commonwealth suing the Commonwealth.

272. Proposed section 62B would clarify that despite not having a separate legal personality, ACMA can still make decisions in the performance of its statutory functions that would affect the Commonwealth. The ACMA is responsible for licensing bodies under legislation, such as the *Radiocommunications Act 1992*, which can include licensing other parts of the Commonwealth.

273. Section 62B would help ensure that ACMA can still undertake such functions and that the Commonwealth is not put at an advantage to other persons regulated by ACMA.

Fisheries Administration Act 1991

274. **Items 5 and 6** would state who constitutes the Australian Fisheries Management Authority (AFMA) in order for the provisions that repeal the body corporate status of AFMA to work as intended. AFMA would consist of the CEO, the Commission and AFMA staff members.

275. **Items 7 to 9** would repeal AFMA's powers relating to it being a body corporate, such as acquiring property, but would continue to empower AFMA to perform its statutory functions. A note would also be added that would clarify that the CEO, as AFMA's accountable authority, would enter contracts on behalf of the Commonwealth.

276. **Item 10** would repeal sections 10 and 10A, which make AFMA a body corporate that incurs liabilities on behalf of the Commonwealth. There is no need for AFMA to have a separate legal personality to undertake its functions and therefore its body corporate status would be removed.

277. **Item 11** would remove the reference in subsection 92(1) to the Commission delegating its functions or powers to the CEO under AFMA's seal. AFMA would no longer have a seal,

given it would not be a body corporate. The Commission would still be permitted to delegate its powers and functions.

278. **Item 12** would repeal section 94A, relating to AFMA's exemption from Commonwealth, State and Territory taxes. As a part of the Commonwealth, AFMA is automatically exempt.

279. **Item 13** would insert a new section 94F which would permit the Commonwealth to bring proceedings in the name of AFMA. Where AFMA is undertaking its enforcement role, it may be beneficial to commence actions in its own name (noting that the Commonwealth will be the effective party to the proceedings). Similarly, another person could bring proceedings against the Commonwealth in AFMA's name to reflect that AFMA's performance of its statutory functions may be in dispute.

Great Barrier Reef Marine Park Act 1975

280. **Items 14 and 15** would repeal parts of section 8 relating to the powers of the Great Barrier Reef Marine Park Authority (GBRMPA) being a body corporate, such as the power to acquire property, and would also repeal provisions relating to GBRMPA holding property or receiving money on behalf of the Commonwealth. As a part of the Commonwealth's legal personality these things can be assumed. GBRMPA would still have the powers necessary to perform its functions and to do so in cooperation with Queensland, Queensland's authorities or local governing bodies.

281. **Item 16** would repeal section 8A, which deems liabilities to be incurred on behalf of the Commonwealth. Such a provision is unnecessary as GBRMPA will automatically incur liabilities as the Commonwealth if it is no longer a body corporate.

282. **Item 17** would repeal section 9, which establishes GBRMPA as a body corporate. There is no need for GBRMPA to have a separate legal personality to undertake its functions and therefore its body corporate status can be removed.

283. **Item 18** would remove the reference in subsection 47(1) to GBRMPA delegating its functions or powers to various individuals, including the Chairperson under GBRMPA's seal. GBRMPA would no longer have a seal, given it would not be a body corporate. GBRMPA would still be permitted to delegate its powers and functions. Similarly, subsection 47(2) would be amended to remove the reference to GBRMPA's seal in relation to delegations of the Chairperson.

284. **Item 19** would repeal Division 3 of Part VII, relating to GBRMPA's exemption from Commonwealth, State and Territory taxes. As a part of the Commonwealth, GBRMPA is automatically exempt.

285. **Item 20** would replace the heading to section 61B and remove the reference to "the Authority" incurring expenses as if GBRMPA incurs expenses that by definition the Commonwealth incurs.

286. **Items 21 to 29** would omit references to GBRMPA in section 61B in relation to GBRMPA being able to recover expenses as a result of have to rectify something caused an act or omission by a person (where the act or omission is an offence or civil penalty contravention). There would be no need to refer to GBRMPA once it is part of the Commonwealth as all rectification expenses would be legally incurred by the Commonwealth.

287. **Items 30 to 32** would omit references to GBRMPA in section 61C in relation to GBRMPA seeking to enforce a court ordered payment. There would be no need to refer to GBRMPA once it is part of the Commonwealth as all enforcement action would be legally undertaken by the Commonwealth.

288. **Item 33** would insert a new section 64B which would permit the Commonwealth to bring proceedings in the name of GBRMPA. Where GBRMPA is undertaking its enforcement role, it may be beneficial to commence actions in its own name (noting that the Commonwealth will be the effective party to the proceedings). Similarly, another person could bring proceedings against the Commonwealth in GBRMPA's name to reflect that GBRMPA's performance of its statutory functions may be in dispute.

National Environment Protection Council Act 1994

289. These amendments would abolish the National Environmental Protection Council Service Corporation (the Service Corporation), which currently provides support to the National Environment Protection Council (NEPC), a Ministerial Council created under the *National Environment Protection Council Act 1994* (NEPC Act) responsible for, among other things, making national environment protection measures (NEPMs). The Service Corporation also provides assistance and support for other Ministerial Councils with environmental protection functions, when directed to do so by NEPC.

290. The Service Corporation is unique in that it is a body corporate that holds money on its own account, but is only partially subject to the CAC Act. It is subject to the banking, record keeping and reporting requirements of the CAC Act. From 30 June 2011, the Service Corporation has been co-located with the Commonwealth Department of the Environment (Environment Department), but has maintained the impartial nature of its operations and continues to be funded by the Commonwealth and State and Territory governments.

291. The amendments would establish a special account under the PGPA Act that is available to be drawn down by the Environment Department in order for it to support the delivery of obligations under the Act as currently fulfilled by the Service Corporation. All existing Commonwealth, State and Territory money would be credited to the special account to ensure that it cannot be used by the Commonwealth in any contrary manner.

292. Upon abolition of the Service Corporation, those powers and functions which relate to the maintenance and operation of the Service Corporation itself will also be abolished. Other residual powers and functions are vested in the NEPC Executive Officer or the Commonwealth, by provisions of NEPC Act and by the bringing of the NEPC Act within the PGPA framework. Liabilities and assets of the Service Corporation become liabilities and assets of the Commonwealth.

293. All jurisdictions support this proposal.

294. **Items 34 to 36** would repeal redundant definitions in section 5 for "Finance Minister", "NEPC Service Corporation" and "Service Corporation".

295. **Item 37** would amend paragraph 13(h) to permit NEPC to direct the Executive Officer, rather than the Service Corporation, to support other Ministerial Councils with environmental functions consistent with the Executive Officer assuming Service Corporation functions.

296. **Item 38** would repeal and substitute the heading of Part 5 to refer to the NEPC Executive Officer and staff, rather than the NEPC Service Corporation.

297. **Item 39** would repeal Division 1 of Part 5 (i.e. section 35 to 38), which establishes the Service Corporation, sets its functions and powers and deals with contracts and leases. The Commonwealth is the successor at law to the assets and liabilities of the Service Corporation, and takes over the role of the Service Corporation in any contracts still in force at the time the Service Corporation is abolished.

298. **Item 40** would repeal the heading of Division 2 of Part 5, which establishes the office of the Executive Officer. There would be no divisions in Part 5 making this heading unnecessary.

299. **Item 41** would repeal and substitute section 40. Currently section 40 gives the Executive Officer control over the Service Corporation and things done in the Executive Officer's name are deemed to have been done by the Service Corporation. The proposed section 40 would instead stipulate the functions of the Executive Officer. These functions mirror the existing functions of the Service Corporation and demonstrate how the Executive Officer is effectively taking over from the Service Corporation.

300. **Item 42** would amend subsection 41(1) to permit NEPC to direct the Executive Officer in the performance of his or her functions. This provision means that while particular functions are now performed by the Executive Officer rather than the Service Corporation, NEPC retains the ability to give directions about the performance of those functions.

301. **Items 43 and 44** would repeal subsection 42(3), which currently stipulates that the Executive Officer's remuneration is paid out of the Service Corporation's money. This is not needed as the proposed purposes of the National Environment Protection Council Special Account would include "paying the remuneration and allowances of any person under this Act" (refer proposed paragraph 55(1)(c)). That is, the Executive Officer's remuneration would be debited from the special account. Subsection 42(4) would be updated to remove the reference to subsection 42(3).

302. **Item 45** would repeal Division 3 of Part 5, relating to staff of the Service Corporation. There are currently no staff of the Service Corporation. All administrative support is provided by employees of the Environment Department, utilising funds contributed annually by the Commonwealth, State and Territory governments to the Service Corporation.

303. **Item 46** would repeal and substitute Part 6, which currently relates to the finances of the Service Corporation. The Service Corporation would be replaced with a special account. The proposed Part 6 would set up the special account and how it operates. The new Part 6 would consist of three sections: section 53, which would establish the special account, section 54, which would specify what amounts must be credited to the special account and section 55, which would specify the purposes for which the special account can be debited.

304. Section 53 would establish the National Environment Protection Council Special Account (NEPC Special Account). This would be a special account for the purposes of the PGPA Act. A special account is an appropriation mechanism that sets aside an amount within the Consolidated Revenue Fund to be expended for specific purposes. Any amounts credited to the NEPC Special Account are quarantined from the rest of the Consolidated Revenue Fund and can only be debited from the NEPC Special Account for the purposes set out in section 55.

305. Section 54 would specify six types of amounts that could be credited to the NEPC Special Account. Paragraphs 54(a) and (b) reflect amounts that the Service Corporation used to receive from the Commonwealth and States under the existing sections 53 and 54. In relation to the States and Territories, this is significant because it ensures that the money that they contribute is set aside for the purpose that they intended. There is no possibility of such money being redirected. Also, paragraph 54(a) would cover costs in relation to secretariat services provided to NEPC and other Ministerial Councils (including staff) consistent with the shared funding arrangements currently applying to the Service Corporation. Paragraphs 54(c) to (f) are other types of amounts that the Service Corporation has received in the past that were part of the Service Corporation's monies under existing paragraph 55(c).

306. Section 55 would specify the purposes of the account.

307. Paragraph 55(1)(a) relates to the payment of costs incurred in supporting NEPC, the NEPC Committee or any other committee established under section 33, and is consistent with how the Service Corporation could apply its monies under existing paragraph 56(1)(a). This provision (as supplemented by paragraph 55(1)(f)) authorises the Commonwealth to draw

down on the NEPC Special Account for amounts to pay for all secretariat costs incurred in relation to the administration of the NEPC Act.

308. Paragraph 55(1)(b) reflects that the role of supporting NEPC and other Ministerial Councils in environment protection project work will now lie with the Commonwealth, rather than the Service Corporation. The Councils deal with nationally significant environmental issues and select the best tool to respond, whether this is the statutory approach of making a NEPM, or a non-statutory approach, such as the development of a national policy or education campaign. The Commonwealth may properly draw down on the NEPC Special Account to procure services or otherwise support these kinds of projects, where supported by inter-jurisdictional processes, even if they are not NEPM related, irrespective of section 3 of the NEPC Act. The scope of the power in paragraph 55(1)(b) is determined by reference to the constitutional powers which enable it, which are specified in paragraph 55(2).

309. Paragraph 55(1)(c) relates to remuneration and allowable payable under the NEPC Act and is consistent with existing paragraph 56(1)(b).

310. Paragraphs 55(1)(d) to (f) are general purposes that ensure that expenses incurred in administering the account can be debited, that repayments can be made out of the account if necessary and that any other incidental activities are also covered.

311. **Item 47** is a transitional provision which would require an amount to be credited to the NEPC Special Account equal to the total of all amounts held by the Service Corporation immediately before the NEPC Special Account is established. This would ensure that all money contributed by the Commonwealth and other jurisdictions continues to be available for the purpose that it was intended.

312. **Items 48 and 49** would repeal redundant references to the Service Corporation in sections 60 and 61.

Telecommunications Universal Service Management Agency Act 2012

313. **Item 50** would add an additional note to section 31 to clarify that the Telecommunications Universal Service Management Agency (TUSMA) does not have a separate legal identity to the Commonwealth, given its body corporate status would be removed.

314. **Item 51** would repeal sections 33 and 34 and replace them with a new section 33 that gives TUSMA the power to do all things necessary for performing its functions. This amendment removes the powers of TUSMA to do things that a body corporate can do, such as acquire property, but also repeals section 34 which deems TUSMA's liabilities to be Commonwealth liabilities. This is unnecessary as TUSMA will be legally part of the Commonwealth and therefore TUSMA always incurs liabilities as the Commonwealth.

315. **Items 52 to 54** would rename Division 2 of Part 3 as dealing with TUSMA's membership only and would repeal Subdivision A of Division 2 (i.e. section 36), which establishes TUSMA as a body corporate. TUSMA does not need to be a body corporate in order to fulfil its statutory functions and therefore should migrate to become a non-corporate Commonwealth entity under the PGPA Act.

Part 2 - Transitional provisions for bodies ceasing to be bodies corporate

316. This part would establish generic transitional provisions for the bodies that would cease to be bodies corporate.

317. **Item 55** would include definitions of general applicability. The definitions are largely self-explanatory. The term "decorporatised body" is used to cover the eight bodies affected by amendments in Part 1 of this schedule.

318. **Item 56** would make any assets or liabilities of a decorporatised body become assets or liabilities of the Commonwealth, with all of the attached rights and obligations that go with those assets or liabilities. Where a body has, for example, acquired an asset in the name of the Commonwealth, then of course, this item does not apply.

319. **Item 57** would substitute the Commonwealth in any ongoing court or tribunal proceedings relating to a decorporatised body, reflecting that the Commonwealth is the legal entity after the commencement day.

320. **Item 58** would permit the Finance Minister or a decorporatised body's responsible Minister to issue certificates about land or other assets that become vested in the Commonwealth. A certificate permits a person or authority of a Commonwealth, State or Territory who deals with land or other assets to make changes to any relevant register to recognise the Commonwealth as the land or asset owner. Sub-item T-920(6) would state that such certificates would not be legislative instruments, but this provision is merely declaratory and not an exemption to the LI Act.

321. The ministers' powers can be delegated to the Secretary of their Department or an SES employee of the Department.

322. This item would help ensure that there is no need to go through the regular administrative processes to recognise something that has automatically changed through the amendments made by this Bill.

323. **Item 59** would clarify that a body's decorporatisation in no way affects the continuity of an employee's service to an employer regardless of whom the employer was before decorporatisation. After decorporatisation, all employees would, by definition, be employed by the Commonwealth.

324. **Item 60** would ensure that all contracts entered into by a decorporatised body are deemed to have been entered into by the Commonwealth. Where a body has entered into a contract in the name of the Commonwealth, then of course, this item does not apply.

325. **Item 61** would exempt all operations under Part 2 from State or Territory stamp duty, and in particular exempt transfers of assets or liabilities.

326. **Item 62** would require the Commonwealth to pay a person a reasonable amount of compensation if the operation of Part 2 would result in the Commonwealth acquiring property other than on just terms. A person can commence legal proceedings if the person and the Commonwealth cannot agree on reasonable compensation.

Part 3 - APVMA continuing as a body corporate

327. This part would continue the Australian Pesticides and Veterinary Medicines Authority (APVMA) as a body corporate. The APVMA requires a stand-alone part to accommodate the commencement of the *Agricultural and Veterinary Chemicals Legislation Amendment Act 2013*. The APVMA needs to be a body corporate as complementary legislation in the States and Territories confers powers directly on the body corporate established as the APVMA. Without this body corporate, there is a question over whether the States and Territories legislation would remain effective as the entity to which powers and functions are conferred would no longer exist and it cannot be said with certainty that the powers and functions automatically transfer to the Commonwealth.

328. **Item 63** would repeal the note to subsection 7(3), which explains that the Chief Executive Officer can enter contracts on behalf of the Commonwealth. As the APVMA will be entirely separate from the Commonwealth, this note is redundant.

329. **Item 64** would repeal sections 7AA and 7AB, which state that the APVMA's assets and liabilities are held on behalf of the Commonwealth. These sections are no longer necessary as the APVMA will be a fully corporatised body which holds its own assets and incurs its own liabilities as part of being a corporate Commonwealth entity under the PGPA Act.

330. **Item 65** would repeal and substitute Division 1 of Part 7, which establishes the APVMA Special Account. The proposed Division 1 would insert provisions consistent with other corporate Commonwealth entities when dealing with their money.

331. Proposed subsection 58(1) would state what amounts the Commonwealth must pay to the APVMA as a separate financial entity. These amounts include money appropriated from Parliament; fees from the Act, Agvet Codes or Agvet Regulations; levies and amounts from the States or participating Territories. Generally these amounts mirror amounts that were previously credited to the APVMA Special Account.

332. Proposed subsection 58(2) would permit the Finance Minister to give directions about the amounts and times at which appropriations from Parliament are to be paid to the APVMA. Subsection 58(3) would state that such directions are not legislative instruments. This provision declares the law, rather than provides an exemption to the LI Act. Subsections 58(2) and (3) are common for corporate Commonwealth entities.

333. Proposed subsection 58(4) would ensure that any refunds made by the Commonwealth must be reimbursed by the APVMA. Given the APVMA's money is separate to the Commonwealth, than without this provision, the Commonwealth would have no recourse to recouping money from the APVMA. Similarly, subsection 58(5) would permit set-offs of reimbursements of the APVMA against its appropriation.

334. Proposed subsection 58(6) would establish a special appropriation for amounts in paragraphs 58(1)(b) to (d). These amounts must come to the Commonwealth because they either rely on the Commonwealth's taxing powers or are from other jurisdictions that cannot give money directly to the APVMA. The special appropriation would ensure that the APVMA gets all of the money that it is entitled to.

335. Proposed section 59 would state three purposes for which the APVMA's money can be applied. These purposes are drafted widely to ensure that the APVMA can spend its money on all of its functions, including functions conferred by other jurisdictions.

336. **Item 66** would ensure that the amount standing to the credit of the APVMA Special Account before commencement would transfer to the APVMA. This ensures that no money, and particularly State and Territory money, is appropriated for another purpose.

Part 4 - Other bodies continuing as bodies corporate

337. This part would continue five other bodies as bodies corporate, which will make the corporate Commonwealth entities for the purposes of the PGPA Act.

Australian Human Rights Commission Act 1986

338. The Australian Human Rights Commission (AHRC) would continue as a body corporate in order to ensure its separateness in disputes where the Commonwealth may be a party. Being separate is also consistent with the AHRC's obligations as a human rights body under international agreements.

339. **Item 67** would repeal provisions in section 7 that deem property and money of the AHRC to be held on behalf of the Commonwealth. As a fully corporate entity, the AHRC will hold property and money in its own right.

340. **Item 68** would insert a new subsection 8A(4) to specify the President as the accountable authority for the purposes of the PGPA Act.

341. **Item 69** would insert three new sections dealing with the AHRC's finances.

342. A new section 44A would state that amounts appropriated by the Parliament, consistent with the AHRC being a Budget-funded body, are payable to the AHRC.

343. Proposed subsection 44A(2) would permit the Finance Minister to give directions about the amounts and times at which appropriations from Parliament are to be paid to the AHRC. Subsection 44A(3) would state that such directions are not legislative instruments. This provision declares the law, rather than provides an exemption to the LI Act. Subsections 44A(2) and (3) are common for corporate Commonwealth entities.

344. Proposed section 44B would state two broad purposes for which the AHRC's money can be applied. These purposes are drafted widely to ensure that the AHRC can spend its money on all of its functions. Subsection 44B(2) would clarify that nothing in subsection 44B(1) stops the AHRC investing money in accordance with section 59 of the PGPA Act, consistent with other corporate Commonwealth entities.

345. Proposed section 44C would exempt the AHRC from Commonwealth, State and Territory taxes, consistent with other corporate Commonwealth entities.

National Health Reform Act 2011

346. Amendments to the *National Health Reform Act 2011* would continue the National Health Performance Authority (NHPA) and the Independent Hospitals Pricing Authority (IHPA) as bodies corporate, reflecting the inter-jurisdictional nature of their structures.

347. **Item 70** would repeal provisions in section 67 that deem property and money of the NHPA to be held on behalf of the Commonwealth. As a fully corporate entity, the NHPA will hold property and money in its own right.

348. **Item 71** would repeal section 68, which deems the NHPA's liabilities to be Commonwealth liabilities. As a fully corporate entity, the NHPA will incur liabilities in its own right.

349. **Item 72** would specify that the CEO is the accountable authority for the purposes of the PGPA Act, not the members of the NHPA.

350. **Item 73** would insert a new Part 3.11A to deal with the NHPA's finances.

351. A new section 112A would state that amounts appropriated by the Parliament, consistent with the NHPA being a Budget-funded body, are payable to the NHPA.

352. Proposed subsection 112A(2) would permit the Finance Minister to give directions about the amounts and times at which appropriations from Parliament are to be paid to the NHPA. Subsection 112A(3) would state that such directions are not legislative instruments. This provision declares the law, rather than provides an exemption to the LI Act. Subsections 112A(2) and (3) are common for corporate Commonwealth entities.

353. Proposed section 112B would state two broad purposes for which the NHPA's money can be applied. These purposes are drafted widely to ensure that the NHPA can spend its money on all of its functions. Subsection 112B(2) would clarify that nothing in subsection 112B(1) stops the NHPA investing money in accordance with section 59 of the PGPA Act, consistent with other corporate Commonwealth entities.

354. Proposed section 112C would exempt the NHPA from Commonwealth, State and Territory taxes, consistent with other corporate Commonwealth entities.

355. **Item 74** would repeal provisions in section 135 that deem property and money of the IHPA to be held on behalf of the Commonwealth. As a fully corporate entity, the IHPA will hold property and money in its own right.

356. **Item 75** would repeal section 136, which deems the IHPA's liabilities to be Commonwealth liabilities. As a fully corporate entity, the IHPA will incur liabilities in its own right.

357. **Item 76** would specify that the CEO is the accountable authority for the purposes of the PGPA Act, not the members of the IHPA.

358. **Item 77** would insert a new Part 4.13A to deal with the IHPA's finances.

359. A new section 212A would state that amounts appropriated by the Parliament, consistent with the IHPA being a Budget-funded body, are payable to the IHPA.

360. Proposed subsection 212A(2) would permit the Finance Minister to give directions about the amounts and times at which appropriations from Parliament are to be paid to the IHPA. Subsection 212A(3) would state that such directions are not legislative instruments. This provision declares the law, rather than provides an exemption to the LI Act. Subsections 212A(2) and (3) are common for corporate Commonwealth entities.

361. Proposed section 212B would state two broad purposes for which the IHPA's money can be applied. These purposes are drafted widely to ensure that the IHPA can spend its money on all of its functions. Subsection 212B(2) would clarify that nothing in subsection 212B(1) stops the IHPA investing money in accordance with section 59 of the PGPA Act, consistent with other corporate Commonwealth entities.

362. Proposed section 212C would exempt the IHPA from Commonwealth, State and Territory taxes, consistent with other corporate Commonwealth entities.

Offshore Petroleum and Greenhouse Gas Storage Act 2006

363. The following amendments to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* would continue the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) as a body corporate. NOPSEMA should continue as a body corporate in order to further the potential for a single national regulator.

364. **Items 78 and 79** would amend paragraph (a) of the example to subsection 571(2) to make a debt potentially due to NOPSEMA directly, rather than on behalf of the Commonwealth. This would reflect that NOPSEMA is financial separate from the Commonwealth.

365. **Item 80** would amend subsection 572D(3) to make debts for NOPSEMA's costs or expenses directly due to and recoverable by NOPSEMA, reflecting that NOPSEMA will incur its own debts.
366. **Items 81 and 82** would amend paragraphs 589(4)(a) and (5)(a) to make debts for NOPSEMA's costs or expenses directly due to and recoverable by NOPSEMA, reflecting that NOPSEMA will incur its own debts.
367. **Item 83** would repeal provisions in section 648 that deem property and money of NOPSEMA to be held on behalf of the Commonwealth. As a fully corporate entity, NOPSEMA will hold property and money in its own right.
368. **Item 84** would amend subparagraph 650(2)(c)(ii) to remove the reference to NOPSEMA receiving fees from States and Territories on behalf of the Commonwealth. The fees will be directly received by NOPSEMA.
369. **Item 85** would specify that the CEO is the accountable authority for the purposes of the PGPA Act.
370. **Item 86** would clarify that the CEO cannot be directed by the Board in performing his or her functions or exercising his or her powers under either the PGPA Act or the *Public Service Act 1999*. This type of provision is used where there may be doubt about the respective powers of a CEO and a statutory board.
371. **Item 87** would amend subsection 677(1) to remove the reference to the CEO engaging consultants on behalf of the Commonwealth. The CEO would engage consultants directly for NOPSEMA as a financially separate entity.
372. **Item 88** would repeal and substitute Division 7 of Part 6.9, which establishes the NOPSEMA Special Account. The proposed Division 7 would insert provisions consistent with other corporate Commonwealth entities when dealing with their money.
373. Proposed subsection 682(1) would state what amounts the Commonwealth must pay to NOPSEMA as a separate financial entity. These amounts include money appropriated from Parliament; various levies under the Regulator Levies Act (including late penalties) and amounts from the States or the Northern Territory. Generally these amounts mirror amounts that were previously credited to the NOPSEMA Special Account, except for amounts from contracts under section 650, which were previously paid to NOPSEMA on behalf of the Commonwealth. These amounts from contracts can be directly paid to NOPSEMA as a separate financial entity and therefore there is need continuing need to include them in the proposed section 682.
374. Proposed subsection 682(2) would permit the Finance Minister to give directions about the amounts and times at which appropriations from Parliament are to be paid to NOPSEMA. Subsection 682(3) would state that such directions are not legislative instruments. This provision declares the law, rather than provides an exemption to the LI Act. Subsections 682(2) and (3) are common for corporate Commonwealth entities.
375. Proposed subsection 682(4) would ensure that any refunds made by the Commonwealth must be reimbursed by NOPSEMA. Given NOPSEMA's money is separate to the Commonwealth, the without this provision, the Commonwealth would have no recourse to recouping money from NOPSEMA. Similarly, subsection 682(5) would permit set-offs of reimbursements of NOPSEMA against its appropriation.
376. Proposed subsection 682(6) would establish a special appropriation for amounts in paragraphs 682(1)(b) to (i). These amounts must come to the Commonwealth because they either rely on the Commonwealth's taxing powers or are from other jurisdictions that cannot give money directly to NOPSEMA. The special appropriation would ensure that NOPSEMA gets all of the money that it is entitled to.

377. Proposed section 683 would state two broad purposes for which NOPSEMA's money can be applied. These purposes are drafted widely to ensure that NOPSEMA can spend its money on all of its functions. Subsection 683(2) would clarify that nothing in subsection 683(1) stops NOPSEMA investing money in accordance with section 59 of the PGPA Act, consistent with other corporate Commonwealth entities.

378. **Item 89** would ensure that the amount standing to the credit of the NOPSEMA Special Account before commencement would transfer to NOPSEMA. This ensures that no money, and particularly State and Territory money, is appropriated for another purpose.

379. **Items 90 to 92** would remove redundant references to NOPSEMA doing things on behalf of the Commonwealth because NOPSEMA would do them in its own right.

Water Act 2007

380. The following amendments to the *Water Act 2007* would the Murray-Darling Basin Authority (MDBA) as a body corporate. The MDBA needs to remain legally separate due to its inter-jurisdictional nature and to ensure that it can take legal proceedings against the Commonwealth consistent with proceedings against the Basin States.

381. **Item 93** would insert a definition of the "Murray-Darling Basin Special Account" into section 4.

382. **Item 94** would repeal provisions in section 173 that deem property and money of the MDBA to be held on behalf of the Commonwealth. As a fully corporate entity, the MDBA will hold property and money in its own right.

383. **Item 95** would repeal and substitute section 174, which currently deems liabilities of the MDBA to be Commonwealth liabilities. Under proposed section 174, the Commonwealth would indemnify the MDBA for certain purposes relating to the MDBA discharging any liability of the MDBA arising from its execution of the MDBA's powers under the Murray-Darling Basin Agreement (the Agreement) or for certain transitional matters. Commonwealth payments under this indemnification would be treated as losses or costs for incurred by the Commonwealth for the purposes of the Agreement.

384. In effect this provision is designed to ensure that where the Commonwealth makes an indemnification payment, that clause 145 of the Agreement is engaged so that the Contracting Governments are liable to pay an equal share. This arrangement is consistent with the current position where, because the MDBA's liabilities are Commonwealth liabilities, the Commonwealth already provides an indemnity in effect for the purposes specified in clause 145 of the Agreement.

385. Subsection 174(3) would establish a special appropriation. This special appropriation is necessary because it is not possible to know with certainty when the Commonwealth may be called upon to indemnify the MDBA.

386. **Item 96** would insert a note to subsection 176(1) explaining that the PGPA Act applies to the MDBA.

387. **Item 97** would repeal and substitute Subdivision A of Division 5 of Part 9, which currently establishes the Murray-Darling Basin Special Account (the old Account) - a Special Account for the purposes of the FMA Act. The new Subdivision A would establish a separate statutory fund that would also be known as the Murray-Darling Basin Special Account (the new Account). The name of the fund is necessitated by the Agreement, which requires such a thing to be established and maintained with certain amounts to be credited to the Murray-Darling Basin Special Account. The old Account cannot remain in place as it is not desirable for a PGPA Act or FMA Act special account to be operated by an entity that financially sits outside of the Consolidated Revenue Fund.

388. As made clear in proposed subsection 209(2), the new Account would not be a special account under the PGPA Act. A special account under the PGPA is an appropriation mechanism to set aside certain monies in the Consolidated Revenue Fund to be used for certain purposes. The new Account would be a statutory fund into which certain monies are physically paid (the fund itself can be a bank account operated by the MDBA).

389. The amounts that can be credited to the new Account mirror the amounts that could be credited to the old account with one exception. Paragraph 210(1)(i) would not permit amounts received by the MDBA under Part 8 of the *Water Act 2008* to be credited to the new Account. These amounts consist of monies relating to civil penalty proceedings, such as pecuniary penalties. It is a long-standing policy that regulators do not keep amounts they receive as part of their enforcement activities, which should remain with the Commonwealth.

390. Proposed subsection 210(2) would permit the Finance Minister to give directions about the amounts and times at which appropriations from Parliament are to be paid to the new Account. Subsection 210(3) would state that such directions are not legislative instruments. This provision declares the law, rather than provides an exemption to the LI Act. Subsections 210(2) and (3) are common for corporate Commonwealth entities.

391. Proposed section 211 would state two broad purposes for which money in the new Account can be applied. These purposes are drafted widely to ensure that the MDBA can spend the new Account's money on all of MDBA's functions.

392. Proposed section 211A would clarify that Division 4 of Part 10A does not apply to the new Subdivisions A.

393. **Item 98** would ensure that the amount standing to the credit of the old Account before commencement would transfer to the new Account. This ensures that no money, and particularly the Basin States' money, is appropriated for another purpose.

Part 5 – Transitional provisions for bodies continuing as bodies corporate

394. This part would establish generic transitional provisions for the bodies that would continue as bodies corporate in Parts 3 and 4.

395. **Item 99** would include definitions of general applicability. The definitions are largely self-explanatory.

396. The term “assets” excludes certain assets under the *Water Act 2007* from inclusion in the general definition of “assets”. These assets are the subject of the Intergovernmental Agreements relating to the Living Murray Initiative and the *Water Act 2007*. In substance MDBA holds the legal title to the assets, but the Commonwealth and Basin States are the beneficial owners. If these assets were the subject of the normal transitional arrangements in Part 5, than MDBA would have full ownership rights, which would be inconsistent with the Intergovernmental Agreements. Therefore, to maintain existing arrangements, these assets are not covered by the transitional provisions.

397. The term “corporatised body” is used to cover the six bodies affect by amendments in Parts 3 and 4 of this schedule.

398. **Item 100** would make any assets or liabilities of a corporatised body held for and on behalf of the Commonwealth become assets or liabilities of the Commonwealth respectively, with all of the attached rights and obligations that go with those assets or liabilities.

399. **Item 101** would apply to assets that are not subject to **item 100**. The Minister may make a declaration that such assets vest in the corporatised body at a particular time. Of particular note are assets held by the Commonwealth on trust. If the corporatised body is the most appropriate entity to hold such assets on trust in the future, than those assets would transfer to the corporatised entity.

400. **Item 102** would substitute the corporatised body in any ongoing court or tribunal proceedings relating to assets or liabilities that transfer to the Commonwealth under the transitional arrangements. The Minister may declare that specific proceedings do not transfer.

401. **Item 103** would permit the Finance Minister or a corporatised body’s responsible Minister to issue certificates about land or other assets that become vested in the corporatised body. A certificate permits a person or authority of a Commonwealth, State or Territory who deals with land or other assets to make changes to any relevant register to recognise the corporatised body as the land or asset owner. Sub-item 114(5) would state that such certificates would not be legislative instruments, but this provision is merely declaratory and not an exemption to the LI Act.

402. This item would help ensure that there is no need to go through the regular administrative processes to recognise something that has automatically changed through the amendments made by this Bill.

403. **Item 104** would substitute references to the Commonwealth in instruments with references to the corporatised body. This avoids having to individually amend instruments currently referring to the Commonwealth.

404. The Minister may determine that a specific instrument does not change a reference to the Commonwealth. Such determinations would be declared not to be legislative instruments, but this provision is merely explanatory and not an exemption to the LI Act.

405. **Item 105** would ensure that all contracts entered into by a corporatised body on behalf of the Commonwealth are deemed to have been entered into by the corporatised body. Where a body has entered into a contract in its own name, then of course, this item does not apply.

406. **Item 106** would exempt all operations under Part 5 from State or Territory stamp duty, and in particular exempt transfers of assets or liabilities.

407. **Item 107** would require the Commonwealth to pay a person a reasonable amount of compensation if the operation of Part 2 would result in the Commonwealth acquiring property other than on just terms. A person can commence legal proceedings if the person and the Commonwealth cannot agree on reasonable compensation.

408. **Item 108** would permit a minister to delegate his or her functions under Part 5 to the Secretary of the Department or an SES employee.

Part 6 –Bodies corporate treated as non-corporate for the purposes of the finance law

409. This part would insert provisions into enabling legislation that would treat certain bodies corporate as non-corporate Commonwealth entities for the purposes of the finance law (i.e. the PGPA Act, instruments made under that Act and annual Appropriations Acts). The rationale is that these bodies are part of fundamental reviews in their respective policy areas. ASIC and APRA are both subject to the Financial System Inquiry and the ACCC is subject to the Competition Policy Review.

410. These reviews may make recommendations as to the appropriate governance structure of the bodies. As such, in order to avoid pre-empting the reviews, the Government has decided to, as far as possible, keep the status quo in relation the financial arrangements of the bodies.

411. **Item 109** would insert a new subsection 13(1) into the *Australian Prudential Regulation Authority Act 1998* to treat APRA as a non-corporate Commonwealth entity for the purposes of the finance law. The provision would also clarify, to avoid doubt, that APRA is not a corporate Commonwealth entity, part of the Commonwealth and not a body corporate for the purposes of the finance law. This would ensure that APRA has access to the appropriations provisions of the PGPA Act.

412. **Item 110** would insert a new subsection 8(1A) into the *Australian Securities and Investment Commission Act 2001* to treat ASIC as a non-corporate Commonwealth entity for the purposes of the finance law. The provision would also clarify, to avoid doubt, that ASIC is not a corporate Commonwealth entity, part of the Commonwealth and not a body corporate for the purposes of the finance law. This would ensure that ASIC has access to the appropriations provisions of the PGPA Act.

413. **Item 111** would insert a new subsection 6A(1) into the *Competition and Consumer Commission Act 2010* (C&C Act) to treat the ACCC as a non-corporate Commonwealth entity for the purposes of the finance law. The provision would also clarify, to avoid doubt, that the ACCC is not a corporate Commonwealth entity, part of the Commonwealth and not a body corporate for the purposes of the finance law. This would ensure that the ACCC has access to the appropriations provisions of the PGPA Act.

414. **Item 112** would insert a new subsection 44AE(3) into the C&C Act, relating to the Australian Energy Regulator (AER). The AER is established as a separate body corporate, but is treated for all intents and purposes of the financial framework as part of the ACCC. Its staff are provided by the ACCC and its members are currently officials of the ACCC under the FMA Act.

415. The proposed amendment would deem the AER not to be a corporate Commonwealth entity (which, as a body corporate, it would otherwise be under the PGPA Act) and to be part of the ACCC for the purposes of the finance law. This would maintain the existing arrangements in relation to the AER.

NOTES ON SCHEDULE 6 – AMENDMENTS RELATING TO LISTED ENTITIES

Introduction

416. The PGPA Act allows for entities to be listed in the PGPA rules in a similar manner to the process for prescribing Agencies under the FMA Act. Amendments have been proposed in the PGPA Amendment Bill to also allow for the option of listing to be accomplished through amendments to the enabling legislation of a Commonwealth entity. This option has been proposed as:

- the listing rule should be limited as much as possible to situations in which an entity does not have enabling legislation or there is a need to combine different bodies in a particular way;
- if an entity has enabling legislation then listing within that legislation provides a simplified approach to entities understanding which legislation applies to the administration of their entities;
- for a body that is also a Statutory Agency for the purposes of the *Public Service Act 1999* (PS Act), it is preferable to co-locate confirmation of the relevant employment and financial frameworks in the enabling legislation for ease of reference;
- for an entity proposed for establishment in the future, consideration can be given in the drafting process to the composition of the Commonwealth entity. The use of subsidiary legislation as is currently the case can result in practical difficulties in ensuring that the Commonwealth entity is recognised through the legislative instrument at the same time that the body comes into existence under its enabling legislation.

417. As a result of the proposed changes in the PGPA Amendment Bill it is proposed in this Bill to insert amendments into the enabling legislation of an organisation to identify whether the organisation is a Commonwealth entity for the purposes of the PGPA Act.

418. The amendments would also identify who is the accountable authority for the entity, the members of the entity and where necessary clarify the purposes of the entity in a single location within the legislation.

Format and content of provisions

419. The format and content of the proposed amendments involves stating that for the purposes of the finance law (within the meaning of the PGPA Act):

- the entity (or group of persons if the entity is based on a statutory officer holder together with staff assisting the office holder) is a listed entity;
- the name of the listed entity;
- the accountable authority for the entity;
- the members of the entity; and
- clarify the purposes of the entity, either by description or reference to relevant provisions in the Act or some other authoritative source.

420. The purpose of this approach is to provide in a comprehensive and simple manner an explanation of the key elements of governance arrangements for an entity with enabling legislation.

Affected legislation

421. This Schedule lists the amendments being made to affected legislation based on the above standard format and content. The affected legislation is as follows:

1. *Administrative Appeals Tribunal Act 1975*
2. *Archives Act 1983*
3. *Asbestos Safety and Eradication Agency Act 2013*
4. *Auditor General Act 1997*
5. *Australian Aged Care Quality Agency Act 2013*
6. *Australian Bureau of Statistics Act 1975*
7. *Australian Capital Territory (Planning and Land Management) Act 1988*
8. *Australian Centre for International Agricultural Research Act 1982*
9. *Australian Communications and Media Authority Act 2005*
10. *Australian Crime Commission Act 2002*
11. *Australian Federal Police Act 1979*
12. *Australian Information Commissioner Act 2010*
13. *Australian Law Reform Commission Act 1996*
14. *Australian Organ and Tissue Donation and Transplantation Authority Act 2008*
15. *Australian Prudential Regulation Authority Act 1998*
16. *Australian Radiation Protection and Nuclear Safety Act 1998*
17. *Australian Research Council Act 2001*
18. *Australian Securities and Investments Commission Act 2001*
19. *Australian Sports Anti Doping Authority Act 2006*
20. *Australian Trade Commission Act 1985*
21. *Bankruptcy Act 1966*
22. *Cancer Australia Act 2006*
23. *Commonwealth Electoral Act 1918*
24. *Commonwealth Grants Commission Act 1973*
25. *Competition and Consumer Act 2010*
26. *ComSuper Act 2011*
27. *Criminology Research Act 1971*
28. *Customs Administration Act 1985*
29. *Director of Public Prosecutions Act 1983*
30. *Fair Work Act 2009*
31. *Family Law Act 1975*
32. *Federal Court of Australia Act 1976*
33. *Fisheries Administration Act 1991*
34. *Future Fund Act 2006*
35. *Governor General Act 1974*
36. *Great Barrier Reef Marine Park Act 1975*
37. *Health Insurance Act 1973*
38. *Inspector General of Intelligence and Security Act 1986*
39. *Inspector General of Taxation Act 2003*
40. *Intelligence Services Act 2001*
41. *Law Enforcement Integrity Commissioner Act 2006*
42. *Meteorology Act 1955*
43. *National Blood Authority Act 2003*
44. *National Health and Medical Research Council Act 1992*
45. *National Health Reform Act 2011*
46. *National Vocational Education and Training Regulator Act 2011*
47. *National Water Commission Act 2004*
48. *Office of National Assessments Act 1977*

49. *Ombudsman Act 1976*
50. *Parliamentary Counsel Act 1970*
51. *Private Health Insurance Act 2007*
52. *Productivity Commission Act 1998*
53. *Safe Work Australia Act 2008*
54. *Telecommunications Universal Service Management Agency Act 2012*
55. *Tertiary Education Quality and Standards Agency Act 2011*
56. *Transport Safety Investigation Act 2003*
57. *Workplace Gender Equality Act 2012*

NOTES ON SCHEDULE 7 - AMENDMENTS OF ACTS STARTING WITH A

Introduction

422. This Schedule to the Bill relates to the amendments to Acts beginning with “A”. The schedule is written on an “exceptions” basis. It explains amendments that have not been categorised as being of a recurring type. These categorised amendments are explained elsewhere in the Explanatory Memorandum.

423. The following Acts also have amendments in this schedule. However, there is no explanation for them in this section because the amendments are of a general categorised nature (Attachment A provides a summary of generic amendments to enabling legislation included in this Schedule):

- *Aged Care (Bond Security) Act 2006;*
- *Aircraft Noise Levy Collection Act 1995;*
- *Airports (Transitional) Act 1996;*
- *A New Tax System (Luxury Car Tax) Act 1999;*
- *A New Tax System (Wine Equalisation Tax) Act 1999;*
- *Archives Act 1983;*
- *Asbestos-related Claims (Management of Commonwealth Liabilities) Act 2005;*
- *Australian Bureau of Statistics Act 1975;*
- *Australian Capital Territory (Planning and Land Management) Act 1988;*
- *Australian Capital Territory (Self-Government) Act 1988;*
- *Australian Centre for International Agricultural Research Act 1982;*
- *Australian Federal Police Act 1979;*
- *Australian Law Reform Commission Act 1996;*
- *Australian Organ and Tissue Donation and Transplantation Authority Act 2008;* and
- *Australian Radiation Protection and Nuclear Safety Act 1998.*

Aboriginal and Torres Strait Islander Act 2005

424. **Item 4** would repeal subsection 143U(3) to clarify that members of TSRA and TSRA Administrators are no longer liable to an action or other proceeding for damages as the CAC Act provisions are redundant and will cease to apply. The PGPA Act does not enforce a penalties regime.

425. **Item 18** would clarify that if a TSRA Administrator is appointed, he or she would become the accountable authority of TSRA.

426. **Item 34** would update subsection 191L to change a reference to the CAC Act to refer to the PGPA Act.

Aboriginal Land Grant (Jervis Bay Territory) Act 1986

427. **Item 47** would repeal and substitute section 4A to make the executive committee the accountable authority for PGPA Act purposes.

428. **Item 49** would make an editorial amendment.

429. **Item 50** would insert a new subsection 33(2) that would deem the Minister to be the appointer of an executive member. Executive members are elected, meaning that there is no “appointer” for the purposes of section 30 of the PGPA Act. The deeming provision addresses this issue.

Aboriginal Land Rights (Northern Territory) Act 1976

430. **Item 55** would repeal section 22A, which specifies which members of a Land Council are the CAC Act directors. In order to ensure that the most appropriate individuals are the accountable authority for PGPA Act purposes, the rules under the PGPA Act will be used to define the accountable authority. This will be done in consultation with the affected Land Councils.

431. **Item 58** would amend subsection 34(3A) to clarify that a Land Council is also required to produce estimates under section 36 of the PGPA Act, consistent with their requirement to produce estimates under the CAC Act.

432. **Item 62** would update a reference to the CAC Act in paragraph 39(2)(b) to refer to the PGPA Act.

433. **Item 63** would insert a new section to clarify that a Commissioner appointed to a position within the provisions of this Act is not an official of a Commonwealth entity for purposes of the PGPA Act. This reflects that Commissioners are appointed in a judicial capacity, but may cease to be a judge during their term of office. Judicial officers are not subject to the PGPA Act.

434. **Item 66** would update paragraph 64(1)(c) to refer to the financial statements prepared under the PGPA Act, rather than the CAC Act.

435. **Items 67 to 69** would amend section 64B to align the language with PGPA Act concepts. The Secretary of the Department would be made responsible for preparing the report on the Land Account, consistent with the Secretary being the accountable authority. The Land Account would be treated as though it were a Commonwealth entity for the purposes of the preparation of financial statements and auditing under sections 42 and 43 (other than subsection 43(3)) of the PGPA Act.

Administrative Appeals Tribunal Act 1975

436. **Item 70** would insert a new subsection 24D(4) that would not make the Registrar subject to the direction of the President in relation to the performance of his or her functions, or exercise of his or her powers under the PGPA Act and the *Public Service Act 1999*. This would be an exception to the President's general power to direct the Registrar under subsection 24D(3).

437. The proposed provision would align the arrangements for the Administrative Affairs Tribunal (AAT) with those applying to the Fair Work Commission, another quasi-judicial tribunal. This amendment clarifies the roles of the President and Registrar in relation to the Registrar's principal administrative roles under the financial and employment frameworks.

438. **Items 71 and 72** would require the Registrar to disclose material personal interests to the President as well as the existing disclosure of interest requirements under section 24L. The two categories of interest, while overlapping, can have different boundaries. The Registrar would also be exempt from section 29 of the PGPA Act. This ensures that the Registrar would not have to disclose interests to the Attorney-General, which would be the position under the PGPA Rules if section 29 did apply.

439. **Items 73 to 75** would amend the annual report requirements for the AAT in section 24R. In summary, there will be two annual report requirements relating to the AAT: the President's report under section 24R and the Registrar's report under section 46 of the PGPA Act. The effect of the amendments is to align the reporting deadlines in the AAT Act with the deadline in section 46 of the PGPA Act, to ensure that both reports can be provided as one. As such, the deadline for the president's report would be moved from the end of the

year to 15 October. However, this is not a change in practice as the AAT already submits its report by this date.

440. Finally, the requirement for the President's report to include the financial statements and audit report prepared under the FMA Act would be repealed because the Registrar must do so as part of complying with the annual report requirements in the PGPA Act.

Administrative Decisions (Judicial Review) Act 1977

441. **Item 77** would update Schedule 1 to the *Administrative Decisions (Judicial Review) Act 1977* (ADJR Act) to exempt certain decisions under the *Financial Framework (Supplementary Powers) Act 1997* (FFSP Act), which is discussed in Schedule 2, and the PGPA Act from judicial review. Importantly, these amendments do not extend the exemptions for decisions under the FMA Act currently.

442. First, proposed paragraph (he) would exempt decisions under Part 2 of the FFSP Act. This replicates the exemptions under existing paragraphs (he) and (hea). There are three types of decisions covered by proposed paragraph (he): those under sections 32B, 32C and 39B of the FFSP Act.

443. Commonwealth spending decisions that rely on the powers in sections 32B and 32C of the FFSP Act should not be reviewable under the ADJR Act because they are, in effect, a legislated form of the use of executive power. Up until June 2012, the Commonwealth operated on the assumption that decisions regarding spending were an exercise of executive power, and not subject to judicial review under the ADJR Act. The fact that the High Court in *Williams v Commonwealth* (2012) 248 CLR 156 (*Williams*) required legislative authority for some Commonwealth spending does not lead to the conclusion that certain types of spending should be subject to review under the ADJR Act. The new legislative requirement established by the High Court ensured that the Parliament has the power to check certain spending proposals before the spending occurs. Government spending decisions that then rely on the powers in section 32B and 32C are subject to other transparency and accountability requirements and should continue to be exempt from review under the ADJR Act.

444. In maintaining this position it is important to note that Commonwealth spending decisions that rely on the power in section 32B and 32C will be subject to the requirements in the PGPA Act and associated rules. This legislative framework governs how the Commonwealth uses and manages public resources. Amongst other things the framework requires the accountable authority of each Commonwealth entity to ensure the proper use of the public resources for which he or she is responsible. The rules under the PGPA Act will continue the spending frameworks currently established by the Commonwealth Procurement Rules and the Commonwealth Grants Guidelines. These rules not only ensure the proper use of Commonwealth resources, but also that there is appropriate transparency around decisions to make, vary or administer arrangements to spend. Further, the Auditor-General has the power to review Commonwealth spending decisions as part of his or her auditing responsibilities. The Auditor-General performs an important assurance role in relation to spending that may not be applicable to other legislative decisions.

445. Section 39B of the FFSP Act establishes the power for the Commonwealth to form, or participate in forming of, companies. Following *Williams* it was considered to be prudent to include this power, to provide the legislature with the power to check proposal by the executive to establish companies. The exercise of this power involves policy decisions regarding how the Commonwealth organises its bodies and governance arrangements. These decisions are not administrative in nature and would not impact upon the interests of an individual. Accordingly, it is appropriate that decisions relying on the power in section 39B should continue to be exempt from review under the ADJR Act.

446. Second, proposed paragraph (hf) would exempt decisions under sections 15, 23 and 85 of the PGPA Act. This replicates existing decisions under the existing (hea) and (hf).

447. Section 15, which broadly replicates subsection 44(1) of FMA Act, is at such a high level as to make judicial review difficult. This provision relates to the general management of a Commonwealth entity by its accountable authority and requires the accountable authority to establish policies and procedures to ensure that the entity is properly governed. The exemption from the ADJR Act would maintain the current exemption for similar high-level responsibilities of Chief Executives under the FMA Act.

448. Decisions under section 23, which broadly mirrors subsection 44(1A) of the FMA Act should not be reviewable under the ADJR Act because they are, in effect, a legislated form of the use of executive power. The rationale for exempting decisions under sections 32B and 32C of the FFSP Act applies to these decisions as well.

449. Decisions under section 85 to form or participate in forming companies are policy decisions regarding how the Commonwealth organises its bodies and governance arrangements. These decisions would not be administrative in nature and would not impact upon the interests of an individual. Accordingly, it is appropriate to exempt decisions from review under the ADJR Act.

450. **Item 78** would update paragraph (h) of Schedule 2 to the ADJR Act to exempt decisions under section 51 of the PGPA Act from section 13 of the ADJR Act. Currently, decisions by the Finance Minister to issue drawing rights are not subject to section 13 of the ADJR Act. The reasons for the Finance Minister to issue drawing rights may be confidential and their disclosure may undermine Government operations. There are no drawing rights under the PGPA Act. However, a similar administrative mechanism is performed by section 51 of the PGPA Act, which permits the Finance Minister to decide when and how appropriated amounts are to be made available to a Commonwealth entity. Such decisions may similarly involve confidential Government considerations. As such, it is not appropriate for reasons to be made available.

Agricultural and Veterinary Chemicals (Administration) Act 1992

451. **Item 83** would amend subsection 26(8) and (9) to align the disclosure of interest by a Board member provisions with the substantive disclosure requirements under section 29 of the PGPA Act.

452. **Item 84** would repeal the subsections 27(5) and (6) relating to disclosure of interest by a Board member. The intention to remove these provisions would be to ensure that the disclosure requirements in section 29 of the PGPA Act would apply.

Air Services Act 1995

453. **Item 109** would make an amendment to repeal and substitute paragraph 32(5)(b) to remove the references to the CAC Act which are no longer applicable. These provisions will be replaced by section 19 of the PGPA Act, which relate to the duty to keep the responsible Minister and Finance Minister informed.

454. **Item 110** would amend the existing section 40 by inserting a paragraph number “(1)” at the start of the existing text to take into account the proposed insertion of a new subsection.

Albury-Wodonga Development Act 1973

455. **Item 111** would insert a new section 20BA to exempt the Albury-Wodonga Development Corporation from preparing a corporate plan under section 35 of the PGPA Act. The Corporation is in wind-up phase and must have a winding-up plan. This is more suitable to an entity that is not expected to be an ongoing concern than preparing a corporate plan, which assumes the continuation of business operations.

A New Tax System (Australian Business Number) Act 1999

456. **Item 112** would amend subparagraphs 30(3)(c)(ii) and (d)(ii) to make it not an offence to record or disclose confidential information to the accountable authority of a prescribed non-Commonwealth entity. This amendment replaces FMA Act terminology with PGPA Act terminology.

457.

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

458. **Item 127** would update subsection 219(3) to require the Minister to make a determination of whether an interest disclosed under section 29 of the PGPA poses a significant risk of a conflict. This amendment reflects that section 218 relating to disclosures of interests by the AUSTRAC CEO would be repealed because of section 29 of the PGPA Act.

Asbestos Safety and Eradication Agency Act 2013

459. **Items 132 and 135** would insert a new subsection 5A(2) to state that the National Strategic Plan is to be taken to be a corporate plan for purposes of the PGPA Act. This would mean that the Asbestos Safety and Eradication Agency (ASEA) would not have to comply with the requirements in section 35 of the PGPA Act. Given the significance of the National Strategic Plan to ASEA's operations, it is considered more important to maintain this planning requirement, rather than impose the general corporate planning requirements under section 35 of the PGPA Act.

460. **Item 134** would ensure that the guidelines issued by the Asbestos Safety Eradication Council cannot supersede and functions or powers the CEO has under the PGPA Act.

Australia Council Act 2013

461. **Item 149** would amend section 3, the simplified outline, reflecting that Part 6 would deal with corporate plans, rather than require the Board to prepare a corporate plan, will be required under section 35 of the PGPA Act.

462. **Item 152** would make a minor amendment to paragraph 11(a) to omit "Commonwealth Government" and replace this with "Australian Government" consistent with the PGPA Act.

463. **Item 153** would update subsection 12(4), which refers to section 16 of the CAC Act to instead refer to equivalent provision of the PGPA Act, section 19.

464. **Item 156** would amend section 29 to refer to the PGPA Act, rather than the CAC Act.

465. **Item 162** would in effect, repeal paragraph 48(2)(b). Paragraph (2)(b) is an exemption to the spending limit provisions in 48(1) for investing surplus money under the CAC Act. Under subsection 59(2) of the PGPA Act, there is a general exemption to spending limit provisions for investments by corporate Commonwealth entities under section 59(1). This makes paragraph (2)(b) unnecessary.

466. **Item 163** would update subsection 48(4) to make the general prohibition on borrowing by the Australia Council not apply to borrowing permitted under section 57 of the PGPA Act. It is expected that the Finance Minister will permit borrowing via credit cards and credit vouchers under section 57, consistent with borrowing under section 28A of the CAC Act.

467. **Item 164** would repeal and substitute section 49. In effect the amendment updates the CAC Act reference to the equivalent PGPA Act reference. The proposed section 49 would not include the prohibition on investing otherwise than in accordance with section 59 as it is clear on its face that this is an exhaustive investment provision.

Australian Aged Care Quality Agency Act 2013

468. **Item 166** would update the note to section 13 to require the expenditure of relevant money by the CEO to comply with the PGPA Act.

Australian Broadcasting Corporation Act 1983

469. **Item 174** would update the note to subsection 13A(1) to clarify that the staff-elected Director is a member of the Australian Broadcasting Corporation's (ABC's) accountable authority, and is therefore subject to the duties on accountable authorities.

470. It should be noted that the staff-elected Director is not subject to section 30 of the PGPA Act because he or she is not "appointed". However, he or she may be subject to administrative proceedings for contravening sections 25 to 29 of the PGPA Act as an official, which may result in the termination of employment, and by corollary removal from the Board.

471. **Item 176** would update the note to subsection 25A(2) to remove a reference to the CAC Act and instead refer to the equivalent provision of the PGPA Act.

472. **Item 179**, while generally consistent with other amendments to planning requirements, does use a modified definition of subsidiary in relation to the ABC from the definition in the PGPA Act. The modified definition is however, consistent with the current arrangements.

473. **Item 185** would amend subsection 78(7) to ensure that the ABC remains exempt from complying with general policies of the Australian Government, consistent with the policy position under the CAC Act.

Australian Civilian Corps Act 2011

474. **Item 206** would update the definition of "wholly-owned Commonwealth company" in subparagraph 27(1)(c)(i) to refer to the PGPA Act, rather than the CAC Act.

Australian Communications and Media Authority Act 2005

475. **Item 207**, while generally repealing and substituting sections 29 and 30 and relying on rules made under the PGPA Act for disclosures of interests by ACMA members among themselves, would however, maintain the requirement for the Chair to inform the Minister where the members agree to a member or associate member doing something that the PGPA Rules would normally prohibit (such as participating in a matter in which a member has an interest).

476. **Items 209 to 214** would update references to section 30 to refer to rules made under section 29 of the PGPA Act for various meeting provisions because section 30 would be repealed.

477. **Item 215** would update the definition of “authority of the Commonwealth” in subsection 55(2) to refer to the terms in the PGPA Act, rather than the FMA Act and CAC Act.

Australian Crime Commission Act 2002

478. **Item 219** would update the heading of section 61 to clarify that this annual report is of the Chair of the Board and is separate from the CEO’s annual report required under section 46 of the PGPA Act.

Australian Curriculum, Assessment and Reporting Authority Act 2008

479. **Item 223** would repeal and substitute paragraph 7(2)(b) regarding directions that the entity must comply with in the exercise of its performance of functions and how these directions must not be inconsistent with the provisions under the CAC Act regime. This amendment would make it explicit that the provisions under the PGPA Act are to be complied with.

480. **Item 227** would update subsection 21(10) to refer to the PGPA Act, rather than the CAC Act in relation to how the Board regulates its conduct.

Australian Film, Television and Radio School Act 1973

481. **Item 237** is an editorial amendment to section 18 as a result of the proposed subsection (2).

482. **Item 240** would deem Council members elected under paragraphs 8(1)(b) (staff-elected member) and (1)(c) (student-elected member) to have been appointed by the Council for the purposes of section 30 of the PGPA Act. As elected members, there is no "appointer" for the purposes of section 30, which would mean it would not apply. The deeming provision will ensure that section 30 can be used for breaches of the duties in sections 25 to 29 of the PGPA Act by any Council member.

Australian Hearing Services Act 1991

483. **Item 250** would repeal and substitute the corporate plan requirements to make them consistent with section 35 of the PGPA Act. The proposed section 36 would set a deadline for when the plan must be given to the Minister and Finance Minister. The language is slightly different to the existing subsection 37(2) because there will be a new corporate plan each year under the PGPA Act, rather than a revised corporate plan.

484. **Item 254** would omit “(1)” as the numbering is redundant as there is only one provision in section 60.

Australian Human Rights Commission Act 1986

485. **Item 257** would omit “(1)” as the numbering is redundant as there will only one provision in section 13 when subsection (2) is repealed.

Australian Information Commissioner Act 2010

486. **Item 263** would make a minor amendment to paragraph 8(j) to clarify that the reference to the annual reports is to the annual reports mentioned in section 30 of the Act.

487. **Item 266** would amend the note to subsection 27A(8) to ensure that the words used to describe disclosures of interests are consistent with the revised wording in the PGPA Act.

Australian Institute of Aboriginal and Torres Strait Islander Studies Act 1989

488. **Item 270** would amend section 21 to deem member of the Council elected under paragraph 12(1)(a) to have been appointed by the Minister for the purposes of section 30 of the PGPA Act. As elected members, there is no “appointer” for the purposes of section 30, which would mean it would not apply. The deeming provision will ensure that section 30 can be used for breaches of the duties in sections 25 to 29 of the PGPA Act by any Council member.

489. **Item 271** would remove the reference to “section 19” in the Act and replace this with “rules made for the purposes of section 29 of the PGPA Act” to ensure that the entity complies with the disclosure requirements in the PGPA Act. The reference to section 19 appears to be erroneous as there is no section 19.

Australian Institute of Health and Welfare Act 1987

490. **Item 279** would remove the reference to “section 20” in paragraph 22(1)(a) which relates to money to be appropriated by Parliament and substitutes this with “an appropriation”. This would reflect modern drafting practice but has no change in legal effect.

491. **Item 282** would omit “(1)” from section 25 as the numbering is redundant because there is only one provision.

Australian Institute of Marine Science Act 1972

492. **Item 292** would insert sections 50B and 50C to enable the Institute and the Council to delegate its powers or functions under its Act to a Council member or the Chief Executive Officer (CEO) as the case may be. This provision would also require the delegate to comply with any directions of the Institute or the Council.

493. A new section 50D would also permit the CEO to sub-delegate his or her powers or functions to an officer or employee. This power would be broad to ensure that the CEO’s powers and functions can be sub-delegated to the most appropriate level for the business needs of the Institute to operate efficiently and effectively.

494. Currently, the *Australian Institute of Marine Science Act 1972* does not provide powers of delegation and as such, the Institute is required to use authorisations to support the operation of the organisation. The PGPA Act was drafted on the assumption that all corporate Commonwealth entities had powers of delegation. However, the AIMS Act’s lack of delegation powers would make operating under the PGPA Act significantly harder.

Australian Maritime Safety Authority Act 1990

495. **Items 299 and 300** would repeal provisions relating to information required to be included in the annual report in sections 8, 9A and 9B and co-locate them in a new section 9C. The information required would remain the same.

496. **Item 301** would repeal and substitute the note to subsection 10(2) to clarify the investment provisions of the PGPA Act, rather than the CAC Act.

497. **Item 304** would update paragraph 21(3A)(b) to permit the Minister to terminate the members’ appointments if they fail to comply with section 19 of the PGPA Act, which is equivalent to sections 15 and 16 of the CAC Act.

Australian National Maritime Museum Act 1990

498. **Item 328** would repeal subsection 47(3). Subsection (3) is an exemption to the spending limit provisions in 47(1) for investing surplus money under the CAC Act. Under

subsection 59(2) of the PGPA Act, there is a general exemption to spending limit provisions for investments by corporate Commonwealth entities under section 59(1). This makes subsection (3) unnecessary.

499.

Australian National University Act 1991

500. **Item 332** would repeal and substitute sections 4A and 4B. Proposed section 4A would generally continue the exemptions the Australian National University (ANU) as currently under the CAC Act. The ANU would not be subject to general policies of the Australian Government, would not prepare estimates and would not be subject to the investment provisions in the PGPA Act. However, unlike under the CAC Act, ANU subsidiaries would not be able to do anything ANU itself does not have the power to do. There is no need to maintain this exemption.

501. Proposed section 4B would recognise the reporting period for ANU to be the calendar year, commencing from 1 January each year to 31 December, consistent with current arrangements.

502. **Item 333** would update a reference in subsection 6(3) from the CAC Act to the PGPA Act.

503. **Items 334 and 335** would amend subsections 13(4), 13(5) and 15(1) to remove references to sections 18A to 18F, which are proposed to be repealed, and replace them with references to the duties in sections 25 to 29 of the PGPA Act. In effect, the Council can remove a member for breaching the general duties in the PGPA Act if the Council passes a resolution.

504. **Item 336** would repeal sections 18A to 18G. These provisions are unnecessary as the general duties that would apply to Council members under sections 25 to 29 of the PGPA Act are broadly consistent with the duties in sections 18A to 18G. By repealing these sections, Council members would be subject to the same single set of duties as the accountable authorities of other corporate Commonwealth entities.

505. **Item 339** would amend subsection 50(1) to ensure that any future Statutes made by the Council are not inconsistent with the PGPA Act.

Australian Nuclear Science and Technology Organisation Act 1987

506. **Item 342 and 343** would amend section 7 to ensure that future disclosures about the interests of the entity in companies omit the amounts invested in “shares”. Notices about shares will be required under section 72 of the PGPA Act.

Australian Passports Act 2005

507. **Items 362 and 363** would amend the definitions of “competent authority” in subsections 13(3) and 14(3) to refer to non-corporate Commonwealth entity, rather than FMA Act Agency.

Australian Postal Corporation Act 1989

508. **Item 372** would repeal paragraphs 43(1)(a), (b) and (c) as reporting requirements are expected to be included in the general annual reporting rules relating the section 46 of the PGPA Act.

509. **Item 383** would amend the note to subsection 56A(8) to remove references to a “prescribed agency” in the FMA Act and substitute this with “Commonwealth entity”. This

will ensure that the description for the ACCC reflects the definitions and the terminology used in the PGPA Act.

510. **Item 386** would amend section 71 by replacing the references to sections 27F and 27J of the CAC Act with references to section 29 of the PGPA Act.

511. **Item 390** would amend paragraph 79(5)(a) to require the Governor-General to terminate the appointments of the directors if the Minister is of the opinion that the Board has failed to comply with section 19 of the PGPA Act, relating to keeping the Minister informed. Section 19 would cover the CAC Act provisions currently listed (i.e. sections 15 and 16 and subsection 17(5)).

Australian Prudential Regulation Authority Act 1998

512. **Item 395** would update the note in subsection 11(3) to explain that the Chair can enter contracts on behalf of Commonwealth under the PGPA Act, rather than the FMA Act.

513. **Item 397** would insert a new section 48E that would exempt APRA members, APRA staff and anyone else subject to APRA's disclosure of interest regime from section 29 of the PGPA Act. APRA is already required to have rigorous disclosure requirements that apply to the whole entity, unlike other entities which only apply disclosure requirements to senior officers. As such, the imposition of the disclosure requirements in section 29 would add no value to what APRA already does. As such, an exemption to section 29 of the PGPA Act would ensure APRA's existing arrangements are not affected.

514. **Item 398** would update the note to 50(3) to refer to annual financial statements prepared under the PGPA Act requirements, rather than the FMA Act requirements.

Australian Research Council Act 2001

515. **Item 418** would repeal the definition of interest in section 4 as the definition is redundant.

516. **Items 420 and 421** would amend subsection 33C(3) to remove reference to "financial year" in relation to ARC's annual report. This helps ensure that there is no confusion given the PGPA Act uses "reporting period" rather than "financial year".

517. **Item 422** would amend the note to subsection 33C(3) by referencing "this" Act to clarify that section 46 is pertaining to the *Australian Research Council Act 2001*, not the PGPA Act.

518. **Items 423 to 426** would amend section 39 to restrict its operation to interests the CEO has before the CEO starts to hold office. Once in office the disclosure requirements in PGPA Act apply.

Australian Security Intelligence Organisation Act 1979

519. **Item 438** would make a minor amendment to the wording to subsection 34ZJ(3) in reference to the annual report of the Inspector-General of Intelligence and Security.

Australian Sports Anti-Doping Authority Act 2006

520. **Item 440** would repeal a redundant note in section 22 relating to the FMA Act.

521. **Item 445** would repeal and substitute sections 31 and 32. Proposed section 31 is a standard disclosure provision which requires Advisory Group members to disclose interests under section 29 of the PGPA Act to the Minister as well as in accordance with the PGPA Rules.

522. Proposed section 32 would clarify the CEO's obligations if he or she attends a meeting of the Advisory Group. In effect, the CEO would have the same obligations as an ordinary member. He or she would disclose to other members in accordance with the PGPA Rules and would also disclose to the Minister.

Australian Sports Commission Act 1989

523. **Item 455** would amend subsection 22(7) to require a committee established by the Commission to be subject to the same disclosure requirements under the PGPA Act as the accountable authority of the Commission. This updates the existing arrangements which reference the disclosure provisions of the CAC Act.

524. **Items 466 and 467** would repeal subsection 47(2) and update the numbering of the section. Subsection (2) is an exemption to the spending limit provisions in 47(1) for investing surplus money under the CAC Act. Under subsection 59(2) of the PGPA Act, there is a general exemption to spending limit provisions for investments by corporate Commonwealth entities under section 59(1). This makes subsection (2) unnecessary.

Australian Trade Commission Act 1985

525. **Item 470** would update the definition of corporate plan in subsection 3(1) to refer to the plan under section 35 of the PGPA Act.

Australian War Memorial Act 1980

526. **Items 480 and 481** would repeal subsection 35(2) and update the numbering of the section. Subsection (2) is an exemption to the spending limit provisions in 35(1) for investing surplus money under the CAC Act. Under subsection 59(2) of the PGPA Act, there is a general exemption to spending limit provisions for investments by corporate Commonwealth entities under section 59(1). This makes subsection (2) unnecessary.

Autonomous Sanctions Act 2011

527. **Item 482** would update the definition of Commonwealth entity in section 4 to refer to the PGPA Act definition, rather than a combination of the FMA Act and CAC Act.

NOTES ON SCHEDULE 8 - AMENDMENTS OF ACTS STARTING WITH B TO E

528. This Schedule to the Bill relates to the amendments to Acts beginning with B, C, D or E. The schedule is written on an “exceptions” basis. It explains amendments that have not been categorised as being of a recurring type. These categorised amendments are explained elsewhere in the Explanatory Memorandum.

529. The following Acts also have amendments in this schedule. However, there is no explanation for them in this section because the amendments are of a general categorised nature (Attachment A provides a summary of generic amendments to enabling legislation included in this Schedule):

- *Charter of Budget Honesty Act 1998*
- *COAG Reform Fund Act 2008*
- *Coal Mining Industry (Long Service Leave) Payroll Levy Collection Act 1992*
- *Commonwealth Inscribed Stock Act 1911*
- *Crimes (Superannuation Benefits) Act 1989*
- *Criminology Research Act 1971*
- *CSL Sale Act 1993*
- *Customs Act 1901*
- *Defence Force Discipline Appeals Act 1955*
- *Defence Force Retirement and Death Benefits Act 1973*
- *Defence Forces Retirement Benefits Act 1948*
- *Defence Forces Retirement Benefits (Pension Increases) Act 1967*
- *Defence Reserve Service (Protection) Act 2001*
- *Defence Service Homes Act 1918*
- *Early Years Quality Fund Special Account Act 2013*
- *Education Services for Overseas Students Act 2000*
- *Environment Protection and Biodiversity Conservation Act 1999*
- *Excise Act 1901*
- *Export Finance and Insurance Corporation Act 1991*

Banking Act 1959

530. **Item 2** would update terminology for the PGPA Act framework. The item substitutes the CAC Act terminology of “Commonwealth authority” and “authority” with PGPA Act terminology of “corporate Commonwealth entity” and “entity”. (See sections 10 and 11 PGPA Act for the definitions of Commonwealth entities and the types of Commonwealth entities.)

531. **Item 3** would insert new definitions that provide that these terms, which are relevant to the operation of this Act, have the same meaning as in the PGPA Act.

Bankruptcy Act 1966

532. **Item 11** would make clear that the Official Trustee is not a Commonwealth entity for the purposes of the PGPA Act. This essentially continues the current arrangement in relation to the CAC Act where the official Trustee is declared to be not a Commonwealth authority for the purposes of the CAC Act.

Cancer Australia Act 2006

533. **Item 13** would repeal an existing note at subsection 13(1) which clarifies that other powers of delegation (in addition to any powers contained in this Act) for the CEO lie at section 53 of the FMA Act and substitutes an updated note that clarifies that section 110 contains powers of delegation for the accountable authority under the PGPA Act. The CEO will be the accountable authority for the purposes of the PGPA Act.

534.

535. **Item 20** would update a reference to the FMA Act which is used to identify the relevant Minister by substituting a reference to the PGPA Act to identify the relevant Minister as the Minister administering the Act.

Charter of the United Nations Act 1945

536. **Item 20** would repeal the existing definition of “Commonwealth entity” which relies upon the FMA Act and CAC Act definitions for its meaning and substitutes a definition of Commonwealth entity that has the same meaning as the PGPA Act (see section 10 PGPA Act). The PGPA Act definition of Commonwealth entity essentially covers what were both agencies under the FMA Act and authorities under the CAC Act.

Child Support (Registration and Collection) Act 1988

537. **Item 22** would update a reference to section 30 of the FMA Act (which dealt with repayments by the Commonwealth) by substituting its PGPA Act equivalent being a reference to section 74 of the PGPA Act, which deals with the receipt of amounts by non-corporate Commonwealth entities. The PGPA rules made for the purposes of section 74 will accommodate the process that section 30 of the FMA Act covered.

Civil Aviation Act 1988

538. **Item 23** would repeal the definition of “corporate plan” by reference to this Act, as **item 29** of these amendments repeals the corporate plan requirement in this Act and substitutes an amended corporate plan provision that refers to the PGPA Act requirement for a corporate plan.

539. **Item 30** would repeal a note which referred to the CAC Act and its terms and application in relation to a “Director”. The item substitutes an updated note for the purposes of the PGPA Act which refers to terms (such as “accountable authority”) which have a defined meaning in the PGPA Act. With the repeal of the CAC Act the revised note essentially replicates the note in the PGPA Act context.

540. The note clarifies that a Director is a member of the accountable authority of a Commonwealth entity for the purposes of the PGPA Act and therefore is subject to the duties and obligations applicable to members of an accountable authority under the PGPA Act.

541. **Item 31** would make a minor grammatical amendment as a result of the amendment (the repeal of the subsequent subsection) made at **item 34**.

542. **Item 34** would repeal requirements under the CAC Act which related to the board members keeping the entities” responsible Minister informed (for example in respect the operations of the entity) and substitutes the requirements under section 19 of the PGPA Act. Section 19 of the PGPA Act is the equivalent to the repealed CAC Act provisions. Section 19 is a broad power that places a duty on the accountable authority (which the board members are) of an entity to keep the responsible Minister and Finance Minister informed about the activities of the entity. This includes providing the responsible Minister or Finance Minister any reports, documents and information in relation to entity activities as that Minister

requires. This amendment ensures that an appropriate accountability framework to Ministers is continued.

543. **Item 37** would make a minor grammatical amendment to insert a full stop at the end of this paragraph as a result of the amendments at **item 40** which repeal paragraph (f) of this section, making the amendments at this item the end of the section.

Classification (Publications, Films and Computer Games) Act 1995

544. **Item 41** would amend these subsections and the note to substitute the CAC Act and FMA Act concepts of Commonwealth authority and agency, respectively, with the PGPA terminology of Commonwealth entity. Commonwealth entity is defined at section 10 of the PGPA Act (See also amendments at **item 46**). Under the PGPA Act the term Commonwealth entity will cover what were Commonwealth authorities and FMA Act agencies.

545. **Item 42** would substitute the CAC Act concept of Commonwealth authority with the PGPA Act concept of Commonwealth entity. Commonwealth entity is defined at section 10 of the PGPA Act (See also amendments at **item 46**).

546. **Item 43** would substitute the CAC Act and FMA Act concepts of Commonwealth authority and agency, respectively, with the PGPA terminology of Commonwealth entity. Commonwealth entity is defined at section 10 of the PGPA Act. (See also amendments at **item 46**.)

547. **Item 44** would repeal the definition of an Agency within the meaning of the FMA Act and Commonwealth authority, within the meaning of the CAC Act and substitutes the term Commonwealth entity within the meaning of the PGPA Act – see section 10 PGPA Act. These terminology updates are necessary as the FMA and CAC Acts will be repealed and the definitions within their meaning will be repealed also. The PGPA Act term Commonwealth entity will essentially encompass what were agencies and authorities under the FMA and CAC Acts.

Coal Mining Industry (Long Service Leave) Administration Act 1992

548. **Item 53** would repeal the existing section which deals with the application of the CAC Act and substitutes an amended section to address the application of the PGPA Act. The item would update references from the CAC Act to the PGPA Act and continues requirements in the context of the PGPA Act. Subsection 18(3) of the CAC Act dealt with the investment of surplus money by authorities under the CAC Act. Section 59 is the equivalent to this subsection in the PGPA Act which has been inserted by the amendment – therefore the amendment essentially retains the status quo for this entity.

549. The note to this item would also make clear that money standing to the credit of the Fund (established under section 40 of this Act) is relevant money for the purposes of section 8 of the PGPA Act and therefore should be treated in accordance with PGPA Act requirements in respect of relevant money. This note essentially replicates and updates for the PGPA Act context what is currently contained in subsection 39(4) of this Act.

550. **Item 54** would substitute terminology within the meaning of the CAC Act (“officer”) that is not applicable under the PGPA Act with terminology within the meaning of the PGPA Act (“official” – see section 13 PGPA Act).

Coastal Trading (Revitalising Australian Shipping) Act 2012

551. **Item 56** would repeal a definition of “Agency” within the meaning of the FMA Act and substitutes a definition of “non-corporate Commonwealth entity” within the meaning of the

PGPA Act (see section 11 PGPA Act). Under the PGPA Act a non-corporate Commonwealth entity is essentially the equivalent of an FMA Act agency.

552. **Item 57** would repeal terms within the meaning of the FMA Act (“Agency”) and CAC Act (“Commonwealth authority”) which have no application under the PGPA Act and substitutes PGPA Act terms (such as “accountable authority” and “Commonwealth entity”). This recognises that the PGPA Act concept of accountable authority (see section 12 PGPA Act) applies to the person or body that governs the Commonwealth entity (see PGPA Act section 10) for the purposes of the PGPA Act.

Commonwealth Electoral Act 1918

553. **Item 60** would repeal subsection 17(1) of the Act because rather than prepare a report of operations after 30 June in each year the Commissioner will prepare an annual report under section 46 of the PGPA Act as made clear by the amendments at **item 68**.

554. **Item 62** would make a minor wording change to recognise that the report by the Electoral Commissioner in respect of the annual operations of the entity is no longer made under this section but is made under section 46 of the PGPA Act, as referred to in this section – see further the amendments at **items 67** and **68**.

555. **Item 63** would omit the reference to subsection “(1)” due to the amendments made at item 67.

556. **Item 64** would make a minor wording change to recognise that the report by the Electoral Commissioner in respect of the annual operations of the entity is no longer made under this section but is made under section 46 of the PGPA Act, as referred to in this section – see further the amendments at **items 67** and **68**.

557. **Item 65** would make a minor wording change to recognise that the report by the Electoral Commissioner in respect of the annual operations of the entity is no longer made under this section but is made under section 46 of the PGPA Act, as referred to in this section – see further the amendments at **items 67** and **68**.

Commonwealth Places (Application of Laws) Act 1970

558. **Item 68** would repeal the existing section and substitutes an amended section addressing PGPA Act concepts to declare that the amounts received by an authority of a State are not other CRF money for the purposes of the PGPA Act.

559. This section declares and clarifies the application of the PGPA Act in respect of these amounts. Section 105 of the PGPA Act defines other CRF money. The amounts received by the authority of a State under this Act could be classed as other CRF money under the PGPA Act were it not for this provision. This provision essentially continues, in the PGPA Act context, arrangements in respect of these amounts which were declared, by the repealed section, to be not subject to the FMA Act and therefore not public money for the purposes of that Act and not subject to the FMA requirements for handling public money. The management of the amounts are handled in accordance with the provisions in this Act, these provisions are not amended (see also **item 76**).

Commonwealth Places (Mirror Taxes) Act 1970

560. **Item 69** would repeal the subsection of the Act that declares the FMA Act does not apply to amounts received under an applied law and proposes to insert a declaration that, despite section 105 of the PGPA Act these amounts are not other CRF money for the purposes of the PGPA Act. The amounts received under an applied law in this Act could be classed as other CRF money under the PGPA Act were it not for this amendment. This amendment essentially continues, in the PGPA Act context, arrangements in respect of these amounts which were declared, by the repealed section, to be not subject to the FMA Act and therefore not public money for the purposes of that Act and not subject to the FMA requirements for handling public money. The management of the amounts are handled in accordance with the provisions in this Act, these provisions are not amended.

ComSuper Act 2011

561. **Item 70** would make a minor amendment to remove the “(1)” from subsection 7(1) of this Act, this is due to the amendments at item 94 which repeal subsection 7(2).

562. **Item 71** would add a note which is for clarification that the CEO is not on the Board of CSC and is not a member of the accountable authority of CSC for the purposes of the PGPA Act. This note essentially updates to PGPA Act concepts and replicates the current subsection 7(2) of this Act which clarifies the status of the CEO under the CAC Act.

563. **Item 72** would repeal subsection 7(2) as it is redundant with the repeal of the CAC Act and the status of the CEO under the PGPA Act is addressed by the amendment at **item 71**.

Corporations (Aboriginal and Torres Strait Islander) Act 2006

564. **Item 82** would update terminology from terms (such as “Chief Executive”) within the meaning of the FMA Act to substitute terms (such as “accountable authority”) within the meaning of the PGPA Act. The scope of the existing provision, which is limited to officials of an FMA Act agency, is retained by restricting the persons to persons of a non-corporate Commonwealth entity within the meaning of the PGPA Act. A non-corporate Commonwealth entity is the term used in the PGPA Act essentially to describe what were prescribed agencies within the meaning of the FMA Act.

565. **Item 83** would update terminology from FMA Act terms, such as “Chief Executive”, to PGPA Act terms, such as “accountable authority”. The amendment only updates terminology for the purposes of the transition from the FMA Act and its terminology to the PGPA Act and its terminology, the operation of the provision is not otherwise materially affected.

Customs Administration Act 1985

566. **Item 94** would make a minor amendment to insert “(1)” as the amendment at **item 126** adds an additional subsection to this section.

Dairy Produce Act 1986

567. **Item 97** would amend the existing section to update the existing exemption from the application of the FMA Act for a levy collected by a collection agent, a collection sub-agent or a collecting organisation.

568. Currently, without the exemption, a levy could be subject to the concept of public money contained in the FMA Act and requirements in relation to it as the money would be held by an agent of the Commonwealth. To retain this exemption, updated to the PGPA Act context, this amendment proposes to insert a declaration that the levy is not other CRF money for the purposes of the PGPA Act which otherwise it could be taken to be. By declaring the

levy amounts are not other CRF money the amounts will not be subject to the requirements related to other CRF money at section 105 of the PGPA Act and the rules pertaining to section 105 under the PGPA Rule. The existing arrangements for the management of the levy amounts that are contained in the *Dairy Produce Act 1986* are not amended and will continue to apply.

569. **Item 98** would amend subclause 131(5) of Schedule 2 of the Act by repealing the existing clause which relies upon the FMA Act and CAC Act meanings of “Agency” and “Commonwealth authority” combined to mean “Commonwealth entity”. The amendment substitutes a new definition of Commonwealth entity that is within the meaning of the PGPA Act (see section 10 PGPA Act). The item also updates the definition of Minister for Finance by reference to the PGPA Act rather than the FMA Act.

Defence Act 1903

570. **Items 99 and 100** would update existing references to the FMA Act (relating to act of grace payments by the Commonwealth) and substitute the equivalent reference in the PGPA Act (section 65 of that Act) which essentially continues the arrangements that existed under the FMA Act.

Defence Home Ownership Assistance Scheme Act 2008

571. **Item 107** would repeal a definition of “Agency” within the meaning of the FMA Act (which is to be repealed) and substitutes a definition of “non-corporate Commonwealth entity” within the meaning of the PGPA Act. The PGPA Act concept of non-corporate Commonwealth entity is the equivalent of the FMA Act definition in the context of the PGPA Act’s concepts and operation.

572. **Item 108** would repeal a reference to section 12 of the FMA Act (which relates to the receipt and spending of public money by outsiders) which is redundant as the FMA Act will be repealed.

Defence Housing Australia Act 1987

573. **Item 100** would repeal subsections 6(1) and (2) which contain definitions within the meaning of the FMA Act, which will be repealed, such as “Agency” and substitutes definitions within the meaning of the PGPA Act such as the PGPA Act equivalent of FMA Act Agency – “non-corporate Commonwealth entity” (see sections 10 and 11 PGPA Act). The PGPA Act definition is the equivalent of the FMA Act definition in the context of the PGPA Act’s concepts and operation.

574. **Item 113** would repeal paragraph 21(2)(b) as due to the amendments at **item 112** (which removed references to CAC Act disclosure requirements on Directors) it is redundant.

575. **Item 115** would repeal references to sections 27F to 27L of the CAC Act (which is to be repealed) which primarily deal with the disclosure of, and voting on matters involving, material personal interests by directors of authorities under the CAC Act. The current section applies these CAC Act sections to committee members (of committees established by the Board of DHA) as if the committee was a Commonwealth authority and the members were directors of a Commonwealth authority.

576. To retain an appropriate framework around these matters the amendment at proposed subsection (6) substitutes that the rules made for the purposes of section 29 of the PGPA Act apply to members of a committee. Section 29, and the PGPA rules made under it, will replace the CAC Act requirements for the purposes of the disclosure of material personal interests by identified persons such as in this instance. The proposed amendment at subsection (7)

essentially replicates the relevant existing provision (at paragraph 26(6)(c)) to provide clarity when disclosing interests.

Defence Trade Controls Act 2012

577. **Item 120** would repeal the definition of “Commonwealth entity” that is within the meaning of the FMA and CAC Acts (as both Acts will be repealed) and substitutes a definition that has the same meaning as the PGPA Act.

Director of Public Prosecutions Act 1983

578. **Item 131** would amend the language in paragraph 11(3)(b) to recognise that the annual report is not longer prepared under subsection 33(1) of this Act but is given to the Minister under section 46 of the PGPA Act (which deals with annual reports by Commonwealth entities). See further at **item 126** which repeals section 33 of this Act.

579. **Item 122** would make a minor wording amendment to subparagraph 11(3)(b)(i) as with the amendments to annual report requirements made the words after the word “period” are redundant due to the use of this term in the PGPA Act.

580. **Item 123** would make a minor wording change related to reporting by substituting “that period” with “the period” which is consistent with PGPA Act terminology.

DisabilityCare Australia Fund Act 2013

581. **Item 128** would repeal the definition of the “DisabilityCare Australia Special Account” as it is redundant (see also **item 167**).

582. **Item 135** would repeal a reference to section 40 of the FMA Act (which related to custody of securities) as with the repeal of the FMA Act it is redundant.

583. **Item 136** would repeal Part 5 of the Act as it is redundant as it is wholly concerned with the DisabilityCare Australia Transitional Special Account which is repealed along with the part.

584. **Item 137** would amend subsection 53(1) of the Act to omit references to sections 49 and 51 of the Act due to the amendments made to the Act by **item 151** (which repeals Part 5 of the Act which contains sections 49 and 51).

Education Services for Overseas Students Act 2000

585. **Item 143** would update a reference that identifies the Department of Finance by substituting FMA Act (which will be repealed) with PGPA Act to identify the relevant Minister (who administers the PGPA Act) that administers the Department.

Environment Protection and Biodiversity Conservation Act 1999

586. **Item 146** would make a minor grammatical amendment to insert a full stop at the end of paragraph 514P(2)(c) as **item 147** repeals the next part of this paragraph.

587. **Item 147** would repeal a reference to section 514L in this Act as the amendment at **item 145** has repealed section 514L.

588. **Item 149** would substitute a reference to the CAC Act (because it will be repealed) with a reference to the PGPA Act to identify the relevant Minister who administers the PGPA Act.

589. **Item 151** would repeal section 514U which deals with the modified application of the CAC Act to the Director of National Parks. The item substitutes an updated section for the PGPA Act context.

590. The Act currently provides that the Director of National Parks is a corporation. The current section applies, with some exemptions, the CAC Act in relation to the Corporation as if the person holding, or performing the duties of the office of Director were a director of the corporation for the purposes of the CAC Act. The amendment, at subsection (1), updates the section to the PGPA Act context by recognising that the PGPA Act applies in relation to the corporation as if the person holding or performing the duties of the office of the Director is an accountable authority of the corporation for the purposes of the PGPA Act (see section 12 PGPA Act). As an accountable authority the person will be subject to the duties and obligations upon an accountable authority contained in the PGPA Act (for example at Division 2 of Part 2-2 of the PGPA Act). The current exemptions to the CAC Act (that related to matters in relation to disclosure and voting in multi-member boards) are not retained by the amendment as under the PGPA Act they are not applicable. Subsection (2) of the amendment is an avoidance of doubt provision which essentially updates the current provision (at subsection 514U(3)) by substituting PGPA Act for CAC Act.

591. **Items 155 and 156** contain minor numbering amendments made as a consequence of the amendment at **item 154**.

Excise Act 1901

592. **Item 157** would amend this subsection to update references by removing reference to section 34 of the FMA Act (related to the waving of debts) and inserting reference to section 63 of the PGPA Act (and the rules , if any made for the purposes of that section). Section 63 of the PGPA Act is the equivalent provision in the PGPA Act to section 34 of the FMA Act.

593. **Item 158** would insert a note, at the end of subsection 165A(11), which serves to remind that the CEO also has powers to collect and recover the duty under the *Taxation Administration Act 1953*.

Export Finance and Insurance Corporation Act 1941

594. **Item 162** would make a minor grammatical amendment to insert a full stop to recognise that the paragraph ends with this provision due to the amendment at **item 178** repealing the next paragraph.

595. **Item 168** would insert a “(1)” in section 74 to recognise that the amendment at **item 169** adds a new, second subsection to this section.

596. **Item 170** would amend the language of the subsection to recognise that EFIC prepares annual reports under section 46 of the PGPA Act – see also the amendment at **item 182**.

597. **Item 171** would make minor language adjustments to omit words relating to the annual report, which due to the amendments related to the annual report at **items 167 and 170** are unnecessary and better reflect PGPA Act terminology in relation to the “period” and its application to annual reports.

598. **Item 172** would make minor language adjustments to omit words relating to the annual report, which due to the amendments related to the annual report at **items 167 and 170** are unnecessary and better reflect PGPA Act terminology in relation to the “period” and its application to annual reports.

NOTES ON SCHEDULE 9 - AMENDMENTS OF ACTS STARTING WITH F TO L

Introduction

599. This Schedule to the Bill relates to the amendments to Acts beginning with F, G H, I, J or L. The schedule is written on an “exceptions” basis. It explains amendments that have not been categorised as being of a recurring type. These categorised amendments are explained elsewhere in the Explanatory Memorandum.

600. The following Acts also have amendments in this schedule. However, there is no explanation for them in this section because the amendments are of a general categorised nature (Attachment A provides a summary of generic amendments to enabling legislation included in this Schedule):

- *Financial Agreement Act 1994*
- *Fisheries Administration Act 1991*
- *Gene Technology Act 2000*
- *Governor-General Act 1974*
- *Grape and Wine Legislation Amendment (Australian Grape and Wine Authority) Act 2013*
- *Health Insurance Act 1973*
- *High Court of Australia Act 1979*
- *Immigration (Education) Charge Act 1992*
- *Indigenous Education (Targeted Assistance) Act 2000*
- *Insurance Act 1973*
- *Intelligence Services Act 2001*
- *Interstate Road Transport Act 1985*
- *Lands Acquisition Act 1989*
- *Life Insurance Act 1995*
- *Loans Securities Act 1919*

Fair Entitlements Guarantee Act 2012

601. **Item 2** would repeal a note that refers to section 47 (related to recovery of debts) of the FMA Act which is redundant with the repeal of the FMA Act.

Fair Work Act 2009

602. **Item 3** would amend the language in subsection 652(1) of the Act regarding giving the report to the Minister as a consequence of the amendments at **item 4**. The amendments at **item 4** address when the report must be given to the Minister instead.

603. **Item 4** would insert a new subsection which stipulates when a report prepared under this section must be provided to the Minister. The amendment requires the report to be provided to the Minister by 15 October of the following financial year to which the report relates to align requirements with section 46 of the PGPA Act (which is about the preparation of annual reports by Commonwealth entities).

604. **Item 5** would insert a “1” after the existing “Note” to recognise the addition of a second Note through the amendment at **item 6**.

605. **Item 8** would amend section 664 by narrowing the disclosure obligation on the General Manager to align with PGPA Act concepts, but retaining the existing obligation on the General Manager to disclose in writing to the President. The proposed subsection (2) declares that section 29 of the PGPA Act (which is about disclosure of interests) does not apply to the

General Manager. This is because the amendments at subsection (1) make the disclosure requirements upon the General Manager self-contained to this amended section.

Family Law Act 1975

606. **Items 12 and 13** would amend section 38L by inserting an additional requirement (at proposed subsection (2)) upon the Chief Executive Officer (CEO) to provide written notice to the Chief Judge of the Family Court and the Chief Judge of the Federal Circuit Court of all material personal interests that relate to the affairs of the Family Court of the Federal Circuit Court. This additional requirement has been added to better align the existing disclosure obligations on the Chief Executive, as an official under the PGPA Act, with the requirements of the PGPA Act on officials. The proposed subsection (3) declares that section 29 of the PGPA Act (which is about disclosure of interests) does not apply to the Chief Executive Officer. This is because the amendments at subsection (2) make the disclosure requirements upon the CEO self contained to this amended section.

607. **Item 14** amends the language in subsection 38S(1) of the Act regarding giving the report to the Attorney-General as a consequence of the amendment at **item 16**. The amendment at **item 16** addresses when the report must be given to the Attorney-General instead.

608. **Item 16** would insert a new subsection which stipulates when a report prepared under this section must be provided to the Attorney-General. The amendment requires the report to be provided to the Attorney-General by 15 October of the following financial year to which the report relates to align requirements with section 46 of the PGPA Act (which is about the preparation of annual reports by Commonwealth entities).

609. **Item 20** would update the language in a note by substituting the reference to section 53 of the FMA Act (which is about the Chief Executive of an FMA Act agency's power to delegate) with reference to section 110 of the PGPA Act (which is about the accountable authority of a non-corporate Commonwealth entity's power to delegate). Section 110 is the equivalent to section 53 in the PGPA Act context. Under the PGPA Act an accountable authority (see section 12 PGPA Act) is the equivalent to a Chief executive of an FMA Act agency. The note is only to remind readers that powers of delegation for an accountable authority exist in relation to the PGPA Act in addition to any powers there may be in enabling legislation.

Federal Circuit Court of Australia Act 1999

610. **Item 21** would amend the language in subsection 117(1) of the Act regarding giving the report to the Minister as a consequence of the amendment at **item 23**. The amendment at **item 23** addresses when the report must be given to the Minister instead.

611. **Item 23** would insert a new subsection which stipulates when a report prepared under this section must be provided to the Minister. The amendment requires the report to be provided to the Minister by 15 October of the following financial year to which the report relates to align requirements with section 46 of the PGPA Act (which is about the preparation of annual reports by Commonwealth entities).

Federal Court of Australia Act 1976

612. **Item 24** would insert a “1” at the start of this section to recognise the section will now contain multiple subsections as a result of the amendments at **item 25**.

613. **Item 25** would amend section 18L by inserting an additional requirement (at proposed subsection (2)) upon the Registrar to provide written notice to the Chief Justice of all material personal interests that relate to the affairs of the Federal Court. This requirement is in addition to the existing requirements and has been added to better align disclosure obligations on the Registrar, as an official under the PGPA Act, with the requirements of the PGPA Act on officials. The proposed subsection (3) declares that section 29 of the PGPA Act (which is about disclosure of interests) does not apply to the Registrar. This is because the amendments at subsection (2), together with the existing requirements, make the disclosure requirements upon the Registrar self contained to this amended section.

614. **Item 26** would amend the language in subsection 18S(1) of the Act regarding giving the report to the Attorney-General as a consequence of the amendment at **item 28**. The amendment at **item 28** addresses when the report must be given to the Attorney-General instead.

615. **Item 28** would repeal the existing subsection 18S(2) and insert a new subsection which stipulates when a report prepared under this section must be provided to the Attorney-General. The amendment requires the report to be provided to the Attorney-General by 15 October of the following financial year to which the report relates to align requirements with section 46 of the PGPA Act (which is about the preparation of annual reports by Commonwealth entities).

Federal Financial Relations Act 2009

616. **Item 29** would repeal as redundant the definition of “drawing right” which is an FMA Act mechanism that assists in managing appropriations and controls the spending of “public money” (as defined by the Act)(see sections 26 and 27 FMA Act) which has no equivalent under the PGPA Act.

617. **Item 30** would update subsection 9(3) and 9(4) of this Act principally because of the references contained in the subsections to “drawing rights” and “general drawing rights limit”. These subsections operated by reference to the mechanism of drawing rights (which were contained at sections 26 and 27 of the FMA Act prior to that Acts repeal) which with the repeal of the FMA Act are redundant references. There is no equivalent to drawing rights in the PGPA Act. Instead the proposed amendments substitute the term “debit limit”. The amendment at proposed subsection 9(3) makes clear that if an appropriation Act relating to a financial year declares an amount is the debit limit for the financial year amounts credited or debited from the COAG Reform Fund cannot exceed the amount declared as the debit limit for the financial year by the appropriation Act. The new concept of debit limit essentially performs the same role as the general drawing rights limit did by controlling the amounts that can be debited/credited from/to the COAG Reform Fund.

618. Proposed new subsection 9(3) does not replicate the existing paragraph 9(3)(a) as this is, with the passage of time since the commencement of the *Federal Financial Relations Act 2009*, redundant.

619. Proposed subsection (4) essentially updates the existing subsection (4) to recognise the new term debit limit in place of the term general drawing rights limit. The substantive operation of the existing subsection is not otherwise materially affected.

620. **Item 31** would update subsection 9(3) and 9(4) of this Act principally because of the references contained in the subsections to “drawing rights” and “general drawing rights

limit”. These subsections operated by reference to the mechanism of drawing rights (which were contained at sections 26 and 27 of the FMA prior to that Acts repeal) which with the repeal of the FMA Act are redundant. There is no equivalent to drawing rights in the PGPA Act. Instead the proposed amendments substitute the term “debit limit”. The amendment at proposed subsection 9(3) makes clear that if an appropriation Act relating to a financial year declares an amount is the debit limit for the financial year amounts credited or debited from the COAG Reform Fund cannot exceed the amount declared as the debit limit for the financial year by the appropriation Act. The new concept of debit limit essentially performs the same role as the general drawing rights limit did by controlling the amounts that can be debited/credited from/to the COAG Reform Fund.

621. Proposed new subsection 9(3) does not replicate the existing paragraph 9(3)(a) as this is, with the passage of time since the commencement of the *Federal Financial Relations Act 2009*, redundant.

622. Proposed subsection (4) essentially updates the existing subsection (4) to recognise the new term debit limit in place of the term general drawing rights limit. The substantive operation of the existing subsection is not otherwise materially affected.

623. **Item 32** would be an application provision. It makes clear that the proposed amendments at items 29, 30 and 31 of this Schedule would not commence operation until 1 July 2015. This delayed commencement is to allow a transition from the current FMA Act based drawing rights arrangements, which the current sections of this Act rely upon for their operation, to the arrangements made by the proposed amendments - at items 30 and 31 in particular. Despite the repeal of the FMA Act Schedule 2, item 37 of this C&T Bill provides that the drawing rights mechanism under the FMA Act (see sections 26 and 27 of that Act) continue in operation until 30 June 2015 to enable this transition period.

Food Standards Australia New Zealand Act 1991[review some codes]

624. **Item 75** would remove the “(1)” from the existing section 141 as it is not required.

Foreign Passports (Law Enforcement and Security) Act 2005

625. **Item 88** would make a terminology update for the transition to the PGPA Act by omitting the term “agency” within the meaning of the FMA Act and substituting “non-corporate Commonwealth entity” within the meaning of the PGPA Act (see section 11 PGPA Act). A non-corporate Commonwealth entity under the PGPA Act is essentially the equivalent of an agency under the FMA Act in the PGPA framework.

626. **Item 88** would make a terminology update for the transition to the PGPA Act by omitting the term “agency” within the meaning of the FMA Act and substituting “non-corporate Commonwealth entity” within the meaning of the PGPA Act (see section 11 PGPA Act). A non-corporate Commonwealth entity under the PGPA Act is essentially the equivalent of an agency under the FMA Act in the PGPA framework.

Freedom of Information Act 1982

627. **Item 90** would make a minor wording amendment to recognise the amendment made at **item 274** of the amendments to the *Australian Information Commissioner Act 2010*. Those amendments no longer require that that report be prepared under section 30 (the words removed by the amendment) of that Act but under section 46 of the PGPA Act which is mentioned in section 30.

Fringe Benefits Tax (Application to the Commonwealth) Act 1986

628. **Item 91** would make a minor amendment to the definition of Finance Department to remove the reference to the FMA Act which will be redundant. The definition can stand without this reference.

Future Fund Act 2006

629. **Item 92** would insert the definition of “accountable authority” which has the same meaning as the PGPA Act (see section 12 PGPA Act).

630. **Item 94** would update the definition of Commonwealth company by repealing the reference to the CAC Act as providing its meaning (the CAC Act reference will be redundant after the CAC Act’s repeal) and substituting the PGPA Act as providing the meaning of the term (see section 89 PGPA Act).

631. **Item 99** would repeal a reference to section 40 of the FMA Act (which related to the custody of securities) which will be redundant when the FMA Act is repealed.

632. **Item 100** would insert a note, the purpose of this note is only to clarify that the Board is not a Commonwealth entity for the purposes of the PGPA Act as provided by subsection 10(2) of the PGPA Act.

633. **Item 101** would update terminology to repeal references to the FMA Act and the regulations or orders made under that Act, as, with the repeal of the FMA Act these references will be redundant, and substitutes references to the PGPA Act and the rules or other legislative instruments made under the PGPA Act.

634. **Item 103** would repeal the existing section 80 which deals with the application of the FMA Act to the Board and the Agency treating the Board and Agency as a single agency for the purposes of certain parts of the FMA Act, primarily dealing with accounts and records and financial statements. The item proposes to substitute a similar arrangement dealing with the application of the PGPA Act.

635. The proposed new section essentially replicates the treatment of the Board and Agency as a single Agency for the application of specified parts of the PGPA Act but updated with PGPA Act terminology (such as “accountable authority” and “Commonwealth entity”). The proposed amendment at subsection (2) lists the relevant Divisions of the PGPA Act of the PGPA Act that apply. The relevant Divisions, of the PGPA Act, like the current application of the FMA Act, essentially deal with accounts and records and annual financial statements. The Note inserted under proposed subsection (2) is intended to assist readers by clarifying what the application provision means in practice.

636. **Item 113** would make a minor wording amendment to recognise the amendments made at item 103 as the annual report is not prepared “under this section” (of this Act) but prepared under section 46 of the PGPA Act (although the annual report must still address matters contained in this section of this Act).

637. **Item 114** would repeal the subsection (and heading) related to the tabling of the annual report as these matters are addressed by section 46 of the PGPA Act, which deal with annual reporting. The amendments at item 103 make clear that the annual report is prepared under section 46.

638. **Item 115** would insert a new heading for the existing subsection 81(4) of the Act to clarify that this subsection relates to the provision of the report to the Ministers listed in subsection(4).

639. **Item 116** would make a minor wording amendment to recognise the amendments made at item 103 as the annual report is not prepared “under this section” (of this Act) but prepared

under section 46 of the PGPA Act (although the annual report must still address matters contained in this section of this Act).

Governance of Australian Government Superannuation Schemes Act 2011

640. **Item 125** would repeal the existing section 6 of this Act which deals with the modified application of the CAC Act to the Commonwealth Superannuation Corporation's (CSC's) management and investment of money that forms part of a superannuation fund administered by CSC. As the CAC Act will be repealed the item will substitute an amended section 6 which declares the parts of the PGPA Act that do not apply in relation to CSC's management and investment of money that forms part of a superannuation fund administered by CSC. It is appropriate to exempt CSC's management and investment of money that forms part of a superannuation fund administered by CSC from the PGPA Act because the Governance of Australian Government Superannuation Schemes Act already provides a comprehensive framework for these specialised issues which is preferable to retain instead of applying the overarching requirements of the PGPA Act.

641. **Item 128** would update a reference to the CAC Act requirement on Directors in relation to keeping the responsible Minister informed which will be repealed with the CAC Act, to the equivalent provision in the PGPA Act to retain an appropriate accountability framework to responsible Ministers.

642. **Item 130** would make a minor grammatical amendment.

Governor-General Act 1974

643. **Item 136** would repeal a series of notes referring to section 47 of the FMA Act (which is about the recovery of debts) which with the repeal of the FMA Act are redundant.

644. **Item 137** would update a reference by substituting a reference to the FMA Act with a reference to the PGPA Act for the purposes of identifying an official.

Great Barrier Reef Marine Park Act 1975

645. **Item 140** would insert new terms, relevant to the legislation, related to the PGPA Act. The meanings of the terms are as given in the PGPA Act; see section 11 and 13 of that Act, respectively.

646. **Item 144** would repeal the existing Division and substitutes an amended Division updated for the PGPA Act context. The existing Division declares that for the purposes of the FMA Act collected money is not public money until it is received by the Authority on behalf of the Commonwealth. This clarifies that prior to receipt of the money by the Authority the collected money is not subject to the FMA Act requirements in relation to public money.

647. The proposed amendment updates the provision to maintain this arrangement in the context of the concept of the PGPA Act by declaring that the collected money is not other CRF money for the purposes of the PGPA Act (which otherwise it may be taken to be). Therefore the money will not be subject to the PGPA Act requirements in relation to other CRF money at section 105 of the PGPA Act and the PGPA rules made for the purposes of that section. The accountability framework for the management of collected amounts is contained in the *Great Barrier Reef Marine Park Act 1975*, these current arrangements are not amended.

648. **Item 145** would update terminology within the meaning of the CAC Act (such as "Commonwealth authority") which will be repealed, and substitutes the equivalent terminology within the meaning of the PGPA Act (such as "corporate Commonwealth entity" – see section 11 PGPA Act).

649. **Item 146** would update terminology within the meaning of the CAC Act (such as “officer”) which will be repealed and substitutes the equivalent terminology within the meaning of the PGPA Act (such as “official” – see section 13 of the PGPA Act).
650. **Item 147** would update terminology within the meaning of the CAC Act (“Commonwealth authorities”) to terminology within the meaning of the PGPA Act (“Commonwealth entities” – see section 10 of the PGPA Act).
651. **Item 148** would update terminology within the meaning of the CAC Act (such as “Commonwealth authority”) to terminology within the meaning of the PGPA Act (such as “corporate Commonwealth entity” – see section 11 of the PGPA Act).
652. **Item 149** would update terminology within the meaning of the CAC Act (such as “officer”) and substitutes the equivalent terminology within the meaning of the PGPA Act (“official” – see section 13 of the PGPA Act).
653. **Item 150** would update terminology within the meaning of the CAC Act (such as “Commonwealth authority”) to terminology within the meaning of the PGPA Act (such as “corporate Commonwealth entity” – see section 11 of the PGPA Act).
654. **Item 151** would update terminology within the meaning of the CAC Act (such as “Commonwealth authority”) to terminology within the meaning of the PGPA Act (such as “corporate Commonwealth entity” – see section 11 of the PGPA Act).
655. **Item 155** would update terminology such as “authority of the Commonwealth” and “authority” to PGPA Act terminology such as “corporate Commonwealth entity” – see section 11 of the PGPA Act – and “entity”.
656. **Item 156** would repeal a note that refers to section 28 of the FMA Act (which is about Repayments by the Commonwealth) which due to the repeal of the FMA Act will be redundant and substitutes a new Note referring to the equivalent provision at section 77 of the PGPA Act.

Health Insurance Commission (Reform and Separation of Functions) Act 1997

657. **Item 158** would update the reference to section 29 of the CAC Act (which deals with the activities of subsidiaries) to the equivalent provision at section 86 of the PGPA Act.

Industrial Chemicals (Notification and Assessment) Act 1989

658. **Item 164** would remove a “(1)” from section 110B of the Act as it is not required.

Inspector-General of Intelligence and Security Act 1986

659. **Item 171** would make minor wording amendments to recognise the amendments made at **items 168 and 169**. **Item 168** repealed subsection 35(1) (as section 46 of the PGPA Act covers these matters) and **item 169** amended subsection 35(2) to recognise the repeal of subsection (1) and that the annual report is to be prepared under section 46 of the PGPA Act. Therefore this item provides that the report is “referred to” (rather than prepared) in subsection (2). The amendment also substitutes the reference to “year” with “period” to bring the language into line with PGPA Act terminology.
660. **Item 172** would make minor wording amendments to recognise the annual report is “referred to” in subsection (2) of the Act.
661. **Item 173** would make minor wording amendments to recognise the annual report is “referred to” in subsection (2) of the Act.
662. **Item 177** would make minor wording amendments to recognise the annual report is “referred to” in subsection (2) of the Act.

Inspector-General of Taxation Act 2003

663. **Item 178** would make wording amendments to recognise the amendments made at **item 188**. **Item 188** repeals the current annual report provision (at section 41 of the Act) and substitutes a revised provision that makes clear that the annual report for the entity is prepared under section 46 of the PGPA Act (which deals with annual reporting by Commonwealth entities). Therefore this item amends the language here to recognise that the annual report is no longer prepared “under” section 41 of this Act but is prepared under section 46 of the PGPA Act and “referred to” in section 41 of this Act.

664. **Items 179 to 187** would amend wording to recognise the change to annual reporting requirements.

Judges’ Pensions Act 1968

665. **Item 196** would repeal a note that refers to section 47 of the FMA Act (which concerns the recovery of debts) as with the repeal of the FMA Act this will be a redundant reference.

666. **Item 197** would substitute a reference to the FMA Act, which due to its repeal will be a redundant reference, for a reference to the PGPA Act to enable the identification of relevant persons.

Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Act 2012

667. **Item 199** would update a reference which refers to the FMA Act to a reference to the PGPA Act as the FMA Act will be repealed. It clarifies that for the purposes of managing resources that a Commission established under this Act would be part of either the Department of the House of Representatives or the Department of the Senate.

Judiciary Act 1903

668. **Item 202** would amend language to bring it into line with PGPA Act terminology. The current section provides that the CEO of the Australian Government Solicitor (AGS) is the director of the AGS for the purposes of the CAC Act. As the CAC Act will be repealed this reference is redundant. The amendment therefore updates the subsection to make the CEO the accountable authority (see section 12 PGPA Act) of AGS for the purposes of the PGPA Act, which is essentially the equivalent position to director under the CAC Act.

669. **Item 203** would insert a “(1)” to this section as a result of the addition of the second subsection made by **item 204**.

Law Enforcement Integrity Commissioner Act 2006

670. **Item 211** would make minor wording amendments to recognise the due to the amendments at **item 213** the annual report is no longer prepared “under” section 201 of this Act but under section 46 of the PGPA Act – which is now “referred” to in section 210 of this Act due to the amendments at **item 210**.

671. **Item 212** would make minor wording amendments related to the changed arrangements for annual reports.

672. **Item 213** would make minor wording amendments related to the changed arrangements for annual reports.

Legislative Instruments Act 2003

673. **Item 214** would update a reference to the meaning of Commonwealth company by substituting PGPA Act for CAC Act. The CAC Act will be repealed therefore reference to it

is redundant. The meaning of Commonwealth company under the PGPA Act (see section 89 PGPA Act) is the equivalent to the meaning under the CAC Act.

674. **Item 215** would update a reference to Commonwealth authority within the meaning of the CAC Act, which will be repealed, by substituting corporate Commonwealth entity (see section 11 PGPA Act) which under the PGPA Act is the equivalent of a Commonwealth authority under the CAC Act.

Local Government (Financial Assistance) Act 1995

675. **Item 222** would update the definition of official which in the current subsection relies on the meaning of official in the FMA Act, as the FMA Act will be repealed this reference is redundant. The item substitutes the PGPA Act to provide the reference for the meaning of official (see section 13 PGPA Act).

NOTES ON SCHEDULE 10 - AMENDMENTS OF ACTS STARTING WITH M OR N

Introduction

676. Schedule 10 contains consequential amendments to Acts beginning with letter M or N. The schedule is written on an “exceptions” basis. It explains amendments that have not been categorised as being of a recurring type. These categorised amendments are explained elsewhere in the Explanatory Memorandum.

677. The following Acts also have amendments in this schedule. However, there is no explanation for them in this section because the amendments are of a general categorised nature (Attachment A provides a summary of generic amendments to enabling legislation included in this Schedule):

- *Members of Parliament (Staff) Act 1984*
- *Moomba-Sydney Pipeline System Sale Act 1994*
- *National Health Act 1953*
- *National Radioactive Waste Management Act 2012*
- *National Residue Survey Administration Act 1992*
- *National Water Commission Act 2004*
- *Natural Heritage Trust of Australia Act 1997*
- *Natural Resources Management (Financial Assistance) Act 1992*
- *Northern Territory (Self-Government) Act 1978*

Marine Safety (Domestic Commercial Vessel) National Law Act 2012

678. **Item 1** would update terminology to replace the definition of “agency” as defined in the FMA Act with the definition of “non-corporate Commonwealth entity” as defined in the PGPA Act.

Medibank Private Sale Act 2006

679. **Item 4** would substitute a reference to the CAC Act with a reference to the PGPA Act.

680. **Item 5** would update terminology. A reference to section 37 of the FMA Act is replaced with a reference to subsection 56(1) of the PGPA Act.

Medical Indemnity Act 2002

681. **Item 6** would update terminology by repealing a reference to section 33 of the FMA Act in subsection 67(1) and substituting a reference to section 65 (which deals with act of grace payments by the Commonwealth) of the PGPA Act.

Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010

682. **Item 8** would update terminology by repealing a reference to section 33 of the FMA Act in subsection 78(1) and substituting a reference to section 65 (which deals with act of grace payments by the Commonwealth) of the PGPA Act.

Military Rehabilitation and Compensation Act 2004

683. **Item 9** would add a note at the end of section 363 to provide that the Military Rehabilitation and Compensation Commission is not a Commonwealth entity for the purposes of the PGPA Act, but a part of the Department administered by the Minister administering Chapter 9 of the Act. The Commission members are also recognised as officials of that Department under the PGPA Act.

Military Superannuation and Benefits Act 1991

684. **Item 12** would repeal the notes in subsections 16B(2) and (3) to remove the redundant reference to section 47 of the FMA Act (duty to pursue recovery of a debt).

685. **Item 13** would repeal the note in subsections 16C(3) to remove the redundant reference to section 47 of the FMA Act (duty to pursue recovery of a debt).

686. **Item 14** would update terminology in the definition of “Departmental official” in subsection 16D(10) to substitute a reference to the FMA Act to a reference to the PGPA Act.

687. **Item 15** would repeal the notes in subsection 51B(2) and (3) to remove the redundant reference to section 47 of the FMA Act (duty to pursue recovery of a debt).

688. **Item 16** would update terminology in the definition of “Departmental official” in subsection 51C(8) to substitute a reference to the FMA Act to a reference to the PGPA Act.

National Blood Authority Act 2003

689. **Item 24** would provide greater clarity in specifying the report mentioned in subsection (2) being the report also described in subsection (3).

National Broadband Network Companies Act 2011

690. **Item 25** would substitute a reference to the FMA Act with a reference to the PGPA Act.

691. **Item 28** would substitute a reference to the CAC Act with a reference to the PGPA Act.

692. **Item 29** would update terminology. A reference to section 37 of the FMA Act would be replaced with a reference to subsection 56(1) of the PGPA Act.

693. **Item 30** would substitute a reference to the CAC Act with a reference to the PGPA Act.

National Cattle Disease Eradication Account Act 1991

694. **Item 33** would make a minor amendment to omit paragraph number “(1)” as it is not required.

National Consumer Credit Protection Act 2009

695. **Item 35** would substitute a reference to the FMA Act with a reference to the PGPA Act.

National Disability Insurance Scheme Act 2013

696. **Item 36** would repeal the definition for CAC Act as it would be redundant.

697. **Item 39** would amend subparagraph 121(2)(b)(ii) to replace a reference to the CAC Act and CAC Regulations with a reference to the PGPA Act or any instrument made under the PGPA Act.

698. **Item 40** would amend subparagraph 125(2)(c)(ii) to replace a reference to the CAC Act and CAC Regulations with a reference to the PGPA Act or any instrument made under the PGPA Act.

699. **Item 41** would amend subparagraph 125(2)(c)(ii) to omit a reference to section 32 of the CAC Act.

700. **Item 42** would add a note to the end of section 125A to clarify the PGPA Act provision in relation to audit committees.

701. **Item 45** would add a new subsection to provide that the Minister must also take the steps set out in subsections (3) and (4) if he or she is seeking to terminate the appointment of the Chair under section 30 of the PGPA Act.

702. **Item 50** would update subsection 173(1) regarding when information must be provided to the Ministerial Council to reflect the information that the Board members will be providing to the Minister or the Finance Minister under the PGPA Act.

703. **Item 53** would update a reference to section 9 of the CAC Act with a reference to an annual report prepared under section 46 of the PGPA Act.

National Film and Sound Archive of Australia Act 2008

704. **Item 58** would substitute a reference to the CAC Act with a reference to the PGPA Act.

705. **Item 62** would make a minor amendment to clarify that the plan under review is the corporate plan.

706. **Item 63** would make a minor amendment to clarify that the plan under review is the corporate plan which was the subject of sections 33 to 35.

707. **Item 64** would substitute a reference to the FMA Act with a reference to the PGPA Act.

708. **Item 66** would repeal a reference to section 18 of the CAC Act as it would be redundant.

709. **Item 67** would update a reference to section 9 of the CAC Act with a reference to an annual report prepared under section 46 of the PGPA Act.

710. **Item 68** would amend subsection 42(4) to ensure that the reference to section 16 of the CAC Act is replaced by a reference to section 19 of the PGPA Act (which deals with the duty to keep the responsible Minister and Finance Minister informed).

National Gallery Act 1975

711. **Item 72** would make a minor amendment to add “or” to explain the relation of this paragraph with the following paragraphs.

712. **Item 73** would make a minor amendment to omit “or” to take into account a consequential amendment to repeal the paragraph following.

713. **Item 76** would make a minor amendment to add “or” to explain the relation of this paragraph with the following paragraphs.

714. **Item 78** would make a minor amendment to add “or” to explain the relation of this paragraph with the following paragraphs.

715. **Item 82** would make a minor amendment to amend the paragraph numbering by removing “(1)” as it is no longer required in view of the consequential amendment.

716. **Item 83** would repeal a reference to section 18 of the CAC Act as it would be redundant.

National Health and Medical Research Council Act 1992

717. **Item 86** would repeal the heading in Division 3 of Part 3 to replace a reference to “strategic plans” with “corporate plans”.

718. **Item 92** would add a note referencing the CEO’s duty to disclose interests under section 29 of the PGPA Act.

719. **Item 94** would add a note referencing the member’s duty to disclose interests under section 29 of the PGPA Act.

720. **Item 96** would omit the words “or (4)” because **item 95** repeals subsection 42A(4).

721. **Item 97** would repeal subsections relating to the recording of disclosures of interest as the PGPA Act and rules made under it would apply.

National Health Reform Act 2011

722. **Item 104** would make a minor amendment to omit “or” in view of the consequential amendment in **item 105** to repeal the paragraph regarding termination provisions.

723. **Item 107** would substitute a reference to the CAC Act with a reference to the PGPA Act.

724. **Item 110** would update section 52 to provide that reports or documents about the performance of the Commission’s functions are provided to the Minister in accordance with section 19 of the PGPA Act.

725. **Item 113** would repeal the note to remove a reference to the FMA Act which will no longer apply.

726. **Item 115** would repeal a reference to termination being made under section 98 of the Act as section 30 of the PGPA Act now provides an option for termination of the appointment of the Performance Authority CEO.

727. **Item 120** would repeal the reference to annual reports in the heading because of the amendment of **item 121** and substitutes the heading to clarify that it relates to the compilation of reports.

728. **Item 121** would repeal the subsection in relation to annual reporting requirements due to the consequential amendments in Part 3.11.

729. **Item 122** would update the heading to “Planning”.

730. **Item 123** is categorised as AA. In addition, this item would specify that a strategic plan prepared under section 112 of the Act is not a corporate plan for the purposes of section 35 of the PGPA Act.

731. **Item 124** would substitute a reference to the FMA Act with a reference to the PGPA Act.

732. **Item 125** would repeal the note to remove an FMA Act reference that would no longer apply.

733. **Item 127** would repeal section 149 to remove redundant FMA Act references that are no longer required regarding disclosure of interests.

734. **Item 129** would repeal a reference to termination being made under section 169 of the Act as section 30 of the PGPA Act now provides an option for termination of the appointment of the Performance Authority CEO.

735. **Item 133** would make an amendment to clarify the role of the CEO in reporting.

736. **Item 136** would make an amendment to remove redundant FMA Act reference and replace this with the revised PGPA Act.

737. **Item 141** would make an amendment to repeal redundant CAC Act references.

National Library Act 1960

738. **Item 145** would make a minor amendment to add “or” in view of the consequential amendment to repeal the paragraph regarding termination provisions

739. **Item 146** would make a minor amendment to omit “or” to take into account a consequential amendment to repeal the paragraph regarding termination provisions.

National Museum of Australia Act 1980

740. **Item 156** adds a note to remove the CAC Act reference and replace this with the PGPA Act reference.

741. **Item 157** would make a minor amendment to add “or” in view of the consequential amendment to repeal the paragraph regarding termination provisions.

742. **Item 158** would make a minor amendment to omit “or” to take into account a consequential amendment to repeal the paragraph regarding termination provisions.

743. **Item 167** would make a minor amendment to add “or” in view of the consequential amendment to repeal the paragraph regarding termination provisions.

744. **Item 162** would make a minor amendment to omit “or” to take into account a consequential amendment to repeal the paragraph regarding termination provisions.

745. **Item 167** would make a minor amendment to amend the paragraph numbering by removing “(1)” as it is no longer required in view of the consequential amendment.

National Portrait Gallery of Australia Act 2012

746. **Item 170** would amend the note in subsection 6(2) to replace the redundant CAC Act reference regarding the establishment of the National Portrait Gallery with the relevant PGPA Act reference.

747. **Item 171** would make a minor amendment to amend the paragraph numbering by removing “or” as it is no longer required in view of the consequential amendment.

748. **Item 175** would amend section 28 by removing the CAC Act reference with regard to the conduct of meetings and replacing this with the PGPA Act.

National Transport Commission Act 2003

749. **Item 198** would make a minor amendment to ensure that it is the members who must comply with the directions. This amendment would therefore omit “Commission” and replace this with “members”.

National Vocational Education and Training Regulator Act 2011

750. **Item 208** repeals section 175 regarding disclosure of interests as it is no longer relevant due to the application of the PGPA Act provisions.

751. **Item 223** would amend subsection 220(1) by updating the terminology to be consistent with the provisions in the PGPA Act.

752. **Item 225** would amend subsection 220(2)(b) by updating the terminology to be consistent with the provisions in the PGPA Act.

Nation-building Funds Act 2008

753. **Item 273** update a reference to the FMA Act to the PGPA Act in relation to the definition of “bank”.

754. **Item 238** repeals the definition for drawing right due to the definition being redundant.

755. **Item 240** would clarify in note 2 of section 11 that the FMA Act would be repealed.

756. **Item 243** makes an amendment to indicate the special account is now continuing to operate under the repealed FMA Act (the FFSP Act)

757. **Item 248** repeals the section as the FMA Act provision is redundant and no longer applies.

758. **Item 249** amends section 50 to ensure that the Finance Minister must comply with the requirements under the PGPA Act regarding drawing rights complies with any debit limits that may be imposed by an Appropriation Act.

759. **Item 258** repeals the sections relating to drawing rights and replaces these with the relevant provisions under the Appropriation Acts that specify debit limits.

760. **Item 259** would substitute subsection 112(2) to simplify the language of the subsection. There is no substantive change to the principle that the Finance Minister should have regard to.

761. **Item 267** would repeal section 165 regarding custody of securities as the FMA Act reference is no longer valid.

762. **Item 268** would omit section 169 regarding general drawing rights limits and replaces these with the requirements under the PGPA Act.

763. **Item 273** would repeal the sections relating to drawing rights and replaces these with the relevant provisions under the Appropriation Acts that specify debit limits.

764. **Item 274** would substitute subsection 202(2) to simplify the language of the subsection. There is no substantive change to the principle that the Finance Minister should have regard to.

765. **Item 281** would repeal section 240 to remove references to the FMA Act which are no longer relevant.

766. **Item 282** would update the outline at section 244 to replace the reference to drawing rights, which would not exist under the PGPA Act, and replace it with a reference to any debit limits that may be imposed by an Appropriation Act.

767. **Item 285** would repeal the sections relating to drawing rights and replaces these with the relevant provisions under the Appropriation Acts that specify debit limits.

768. **Item 286** would substitute subsection 270(2) to simplify the language of the subsection. There is no substantive change to the principle that the Finance Minister should have regard to.

Native Title Act 1993

769. **Item 289** would make a minor amendment to amend the paragraph numbering by inserting “(1)” to take into account a consequential amendment.

770. **Item 289** would operate so that the Schedule 12 amendments to certain provisions relating to drawing rights in the *Nation Building Funds Act 2008* will not apply until on and after 1 July 2015. This would allow for entities to transition to the new authorisation approach under the PGPA Act during the course of 2014-15.

771. **Item 290** would insert a new subsection to specify that section 29 of the PGPA Act does not apply to the Registrar.

772. **Item 291** would substitute a reference to the FMA Act with a reference to the PGPA Act.

773. **Item 292** would clarify the application of the PGPA Act to the National Native Title Tribunal.

774. **Item 293** would update a reference to section 53 of the FMA Act, which relates to delegations, with a reference to section 110 which is the equivalent provision in the PGPA Act.

775. **Item 294** would substitute a reference to the FMA Act with a reference to the PGPA Act.

776. **Item 295** would repeal note in section 133(3) as it is no longer required.

777. **Item 296** would insert a definition for an officer to clarify that an officer in relation to a representative body that is registered under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 has the same meaning as it does under the PGPA Act.

778. **Item 297** would repeal subsection 203CB(2) regarding investment and substitute it to reflect the amended provisions under the PGPA Act.

779. **Item 298** would remove the reference to the redundant FMA Act regarding delegations to an official and substitute this to reflect the provisions under the PGPA Act.

780. **Item 300** would repeal subsection 203EA(2) as these relate to CAC Act disclosure provisions that are redundant.

781. **Item 301** would repeal subsection 203EA(3) regarding disclosure provisions and substitute this to reflect the revised disclosure provisions under the PGPA Act.

782. **Item 302** would repeal subsection 203EB(2) regarding civil penalties and substitute this to reflect the provisions under other pieces of legislation. There is no penalties regime under the PGPA Act.

783. **Item 303** would repeal section 203EC as these refer to CAC Act provisions that are now redundant.

Natural Heritage Trust of Australia Act 1997

784. **Item 305** would substitute a reference to the FMA Act with a reference to the PGPA Act.

785. **Item 306** would repeal the definition of “Finance Minister” that refers to the FMA Act

Navigation Act 2012

786. **Item 311** repeals subsection 14(1) subparagraph (a)(i) and substitutes this to reflect the revised definition for an agency within the meaning under the PGPA Act.

Norfolk Island Act 1979

787. **Item 313** would omit the FMA Act reference regarding delegation by Commonwealth Finance Minister and replace this to reflect the provisions under the PGPA Act.

Northern Territory (Lessees' Loans Guarantee) Act 1954

788. **Item 314** would omit the FMA Act reference regarding delegation by the Finance Minister regarding the guarantee of loans and replace this to reflect the provisions under the PGPA Act.

NOTES ON SCHEDULE 11 - AMENDMENTS OF ACTS STARTING WITH O TO R

789. Schedule 11 contains consequential amendments to Acts beginning with letter O, P Q and R. The schedule is written on an “exceptions” basis. It explains amendments that have not been categorised as being of a recurring type. These categorised amendments are explained elsewhere in the Explanatory Memorandum.

790. The following Acts also have amendments in this schedule. However, there is no explanation for them in this section because the amendments are of a general categorised nature (Attachment A provides a summary of generic amendments to enabling legislation included in this Schedule):

- *Postal and Telecommunications Commissions (Transitional Provisions) Act 1975*
- *Proceeds of Crime Act 1987*
- *Proceeds of Crime Act 2002*
- *Protection of Moveable Cultural Heritage Act 1986*
- *Royal Commissions Act 1902*

Office of National Assessments Act 1997

791. **Item 1** would repeal and substitute section 19 to permit the Director-General to give the Minister reports from time-to-time. This amendment reflects that the ordinary annual report requirement has been repealed because of section 46 of the PGPA Act.

Offshore Petroleum and Greenhouse Gas Storage Act 2006

792. **Item 2** would update a reference to the FMA Act with a reference to the PGPA in paragraph 75(5)(b) in relation to Royalty Act amounts.

793. **Item 3** would insert a new subsection 650(6A) that would clarify that NOPSEMA’s annual report under section 46 of the PGPA Act does not be to include information about contracts for service with a State or the Northern Territory or about functions conferred by a State and Northern Territory. This is consistent with NOPSEMA’s existing annual report requirements under section 690.

794. **Item 10** would amend subsection 690(2) to reference the annual report in subsection 690(1), i.e. the annual report under section 46 of the PGPA Act.

Ombudsman Act 1976

795. **Item 16** would repeal and substitute section 19 to permit the Ombudsman to give the Minister reports from time-to-time. This amendment reflects that the ordinary annual report requirement has been repealed because of section 46 of the PGPA Act.

796. As part of removing the annual report requirements, the proposed section 19 would also repeal requirements relating to extension of time in providing reports (existing subsections 19(6) to (7B)). These provisions are unnecessary because they effectively replicate section 34C of the *Acts Interpretation Act 1901*.

797. In relation to reports other than annual reports, the obligations on the Ombudsman remain consistent with existing provisions. In addition, the requirements on the Ombudsman in relation to ensuring compliance with subsection 8(5) before expressing a critical opinion of a Department, prescribed authority or person remain the same for reports under proposed section 19 and the annual report under section 46 of the PGPA Act.

798. **Items 17 and 18** would amend section 19F and insert a new section 19 relating to the Defence Force Ombudsman (DFO). In effect, the amendments maintain the existing

arrangements for the DFO. He or she must produce an annual report and may produce other reports, any of which may be included in an Ombudsman's report, (including the annual report under section 46 of the PGPA Act). The amendments reflect that section 19F relied on provisions in section 19 that would be repealed, such as complying with subsection 8(5). Sections 19F and 19FA would now be self-contained.

799. **Item 19** would cease applying the whole of proposed section 19 to the Postal Industry Ombudsman (PIO), rather than just subsection 19(8), which deals with ensuring compliance with the subsection 8(5) process. This amendment is made because proposed section 19X would be self-contained and there is no need to rely on provisions in section 19.

800. **Item 23** would amend section 19X relating to the PIO. In effect, the amendments maintain the existing arrangements for the PIO. He or she must produce an annual report and may produce other reports, any of which may be included in an Ombudsman's report, (including the annual report under section 46 of the PGPA Act). The amendments reflect that section 19X relied on provisions in section 19 that would be repealed, such as tabling requirements under current subsection 19(4). Section 19X would now be self-contained.

801. **Items 21 and 22** would cease applying proposed section 19 to the Overseas Student Ombudsman (OSO), rather than applying it with specific amendments. These amendment are made because proposed section 19ZS would be self-contained and there is no need to rely on provisions in section 19.

802. **Item 20** would amend section 19ZS relating to the OSO. In effect, the amendments maintain the existing arrangements for the OSO. He or she must produce an annual report and may produce other reports, any of which may be included in an Ombudsman's report, (including the annual report under section 46 of the PGPA Act). The amendments reflect that section 19ZS relied on provisions in section 19 that would be repealed, such as tabling requirements under current subsection 19(4). Section 19ZS would now be self-contained.

803. **Item 24** would update the cross-reference in subsection 34(2), relating to the DFO's powers of delegation. The DFO could not delegate his or her reporting functions under proposed section 19FA, consistent with not being permitted to delegate the reporting functions under subsection 19F(3).

804. **Item 25** would add an annual report under section 46 of the PGPA Act to the definition of "listed disclosure method" in section 35B. This is consistent with existing arrangements, whereby the Ombudsman's annual report under section 19 is part of the definition of "listed disclosure method".

Paid Parental Leave Act 2010

805. **Item 26** would update the reference to "Agency" under the FMA Act in the definition of "Commonwealth agency" in section 6 to refer to "non-corporate Commonwealth entity" – the effectively equivalent term under the PGPA Act.

806. **Item 27** would repeal section 78, which is no longer needed as there is no concept of "public money" in the PGPA Act. Once a PPL funding amount is paid by the Secretary to an employer (other than a Commonwealth entity), it automatically ceases to be "relevant money" under the PGPA Act. There is no need to clarify the amount's status.

Papua New Guinea (Staffing Assistance) Act 1973

807. **Item 28** would repeal a redundant note to the FMA Act.

808. **Item 29** would update the FMA Act reference to refer to the PGPA Act in relation to ComSuper officials.

Parliamentary Contributory Superannuation Act 1948

809. **Items 31 and 32** would repeal redundant notes to the FMA Act.

810. **Item 33** would update the FMA Act reference to refer to the PGPA Act in relation to officials of the Department.

Parliamentary Counsel Act 1970

811. **Item 35** would update a reference to the FMA Act to refer to the PGPA Act.

Parliamentary Service Act 1999

812. **Item 36** would update the definition of “Commonwealth body” to refer to a Commonwealth entity, Commonwealth company within the meanings of the PGPA Act and the High Court. the coverage of this new definition is unchanged.

813. **Item 37** would insert a new subsection 9(3) to clarify the relationship between section 21 of the PGPA Act and the Australian Parliamentary Service. Section 21 of the PGPA Act requires the accountable authority to act in a way not inconsistent with the policies of the Australian Government. Given that the Parliamentary Service’s duty is to support the Parliament independently of the Executive, there may be occasions where this duty conflicts with Government policy. In such situations, subsection 9(3) makes it clear that the duty to the Parliament is paramount.

814. **Item 38** would repeal subsection 13(7) and substitute a new subsection to align more closely with the corresponding duty contained in section 29 of the PGPA Act by including a requirement for employees to disclose details of any material personal interest in connection with their Parliamentary Service employment.

815. **Item 39** would amend subsection 13(8) to insert the words “and for a proper purpose” after the word “manner”.

816. **Item 40** would repeal subsection 13(10) and substitute a new subsection to align more closely with the corresponding duties contained in sections 27 and 28 of the PGPA Act by including a requirement for Parliamentary Service employees not to cause, or seek to cause detriment to the employee’s agency, the Commonwealth or any other person.

817. **Item 41** applies in relation to the Parliamentary Service Code of Conduct to ensure that:

- the duties to disclose material personal interests and to take reasonable steps to avoid real or apparent conflicts of interest in subsection 13(7) would apply to matters commencing before or after this provision comes into effect;
- the amendments that incorporate the phrase “and for a proper purpose” into subsection 13(8) would apply prospectively; and
- the amendment relating to the use of information and the use of duties, status and power in subsection 13(10) would apply prospectively.

818. **Item 42** would update a reference to the FMA Act to refer to the PGPA Act.

819. **Item 43** would insert a new section 64AA regarding appropriations to Parliamentary Departments. That would require the payment of money appropriated by the Parliament for the purposes of a Department. This guarantees that Parliamentary Departments will have access to their appropriations over the course of the financial year. This reflects the independence of the Parliamentary Departments and is consistent with other independent bodies, such as the High Court of Australia (refer subsection 35(1) of the *High Court of Australia Act 1979*).

Primary Industries Levies and Charges Collection Act 1991

820. **Item 45** would repeal and substitute section 13. This section currently clarifies that certain collected amounts are not subject to the FMA Act. The new section 13 would specify that amounts collected by collecting authority or collecting organisation are not “other CRF money” under the PGPA Act. This maintains consistency with the current approach. However, where a collecting authority or collecting organisation does not forward amounts it collects to the Commonwealth, these would be considered amounts owing and be subject to the Commonwealth’s normal debt recovery requirements.

Primary Industries Research and Development Act 1989

821. **Item 48** would insert a new section 27A to exempt R&D Corporations from preparing corporate plans under section 35 of the PGPA Act. R&D Corporations are subject to comprehensive planning arrangements involving multiple industry stakeholders. These existing arrangements mean that transitioning to the PGPA Act framework would need to be worked towards over a number of years and such as an exemption at this point in time provides certainty and continuity for R&D Corporations.

822. **Item 49** removes an unnecessary “(1)”, given there is only one provision in section 28.

823. **Item 51** would insert a new subsection 30(4A), which would permit the Finance Minister to give directions about the timing and amounts of payments of appropriations referred to in subsection 30(4). This power would be consistent with the enabling legislation for other corporation Commonwealth entities, such as the Australian Broadcasting Corporation and helps ensure that the Finance Minister maintains whole-of-government cash management control.

824. The proposed provision would only apply to amounts appropriated to an R&D Corporation by Parliament, i.e. in annual Appropriation Acts. It would not apply to levies appropriated under subsection 30(3).

825. **Items 56 to 60** would amend section 138 to continue to ensure that the appointment of a member of a Selection Committee would be subject to termination for failing to disclose interests. Section 138 can be simplified because there would no longer be a reference in paragraph 73(1)(g) to the CAC Act.

Private Health Insurance Act 2007

826. **Item 66** would update a reference to the CAC Act to refer to the PGPA Act.

827. **Item 67** would exempt the Private Health insurance Administration Council (PHIAC) from preparing budget estimates under the PGPA Act, consistent with its exemption from the CAC Act.

828. **Item 71** would repeal section 270-45 regarding disclosures of interests. This provision directly overlaps with requirements in section 29 of the PGPA Act (and associated rules) and can be repealed with no material effect on PHIAC’s operations.

Productivity Commission Act 1998

829. **Item 78** would amend section 43. Part of the amendment relates to the categorical amendment of additional disclosures (i.e. disclosures under subsection 43(1) apply in addition to disclosures under section 29 of the PGPA Act). However, the amendments would also require the Chair to note interests in any relevant reports and would also require to Chair to ensure other members similarly disclose interests in relevant report (if those members have

not be directed not to perform a function to which the interest relates). These arrangements are consistent with existing practice.

Public Accounts and Audit Committee Act 1951

830. **Item 83** would amend section 8, relating to the Joint Committee of Public Accounts and Audit's duties, to update references to financial statements required under the FMA Act with equivalent references under the PGPA Act.

Public Interest Disclosure Act 2013

831. **Item 84** would update a reference to the definition of "Commonwealth company" to refer to the PGPA Act rather than the CAC Act.

832. **Item 85** would update table item 7 of subsection 29(1) to replace the FMA Act terms of "public money" and "public property" with the equivalent PGPA Act terms of "relevant money" and "relevant property".

833. **Items 86 to 89** would amend subsection 53(4), relating to fraud investigations. The amendments would remove the requirement for a principal officer to act in accordance with the Fraud Control Guidelines (FCGs) and replace it with a requirement to act in accordance with rules made for the purposes of fraud under the PGPA Act. There will be no legislative instrument called the "FCGs" under the PGPA Act, making references to them inappropriate. Rules on fraud would constitute the new framework.

834. **Item 87** would, however, preserve any ongoing investigations by requiring them to continue complying with the FCGs.

835. **Item 90** would update the definition of "prescribed authority" to refer to a corporate Commonwealth entity under the PGPA Act, rather than a Commonwealth authority under the CAC Act.

836. **Item 91** would update subsection 76(5) to permit the Ombudsman to include his or her report on the *Public Interest Disclosure Act 2013* in the report required under section 46 of the PGPA Act.

Public Service Act 1999

837. **Item 92** would amend the definition of "Statutory Agency" to include a body or group of persons prescribed under a law of the Commonwealth as a Statutory Agency. This will permit, if necessary, for a corporate Commonwealth entity created by a rule under section 87 of the PGPA Act to also be prescribed as a Statutory Agency under the PS Act.

838. **Item 93** would repeal section 13(7) and substitute a new subsection to align more closely with the corresponding duty contained in section 29 of the PGPA Act by including a requirement for employees to disclose details of any material personal interest in connection with their APS employment.

839. **Item 94** would amend subsection 13(8) to insert the words "and for a proper purpose" after "manner".

840. **Item 95** would repeal subsection 13(10) and substitute a new subsection to align more closely with the duties contained in sections 27 and 28 of the PGPA Act by including a requirement for APS employees not to cause, or seek to cause detriment to the employee's agency, the Commonwealth or any other person.

841. **Item 96** applies in relation to the APS Code of Conduct to ensure that:

- the duties to disclose material personal interests and take reasonable steps to avoid real or apparent conflicts of interest in subsection 13(7) would apply to matters commencing before or after this provision comes into effect;
- the amendments that incorporate the phrase “and for a proper purpose” into subsection 13(8) would apply prospectively; and
- the amendment relating to the use of information and the use of duties, status and power in subsection 13(10) will apply prospectively.

842. **Item 97** would update a reference to the FMA Act to refer to the PGPA Act.

Quarantine Act 1908

843. **Item 98** would amend the definition of “Commonwealth” in subsection 86EA(5) to use PGPA Act terminology, rather than FMA and CAC Act terminology.

Quarantine Charges (Collection) Act 2014

844. **Item 101** would amend the note to subsection 11(1) to update the reference to notional payments under section 76 of the PGPA Act.

Remuneration Tribunal Act 1973

845. **Item 102** would remove the Chief Executive of the Australian Industry Development Corporation, the Chief Executive Officer of Employment National Limited and the Chief Executive Officer of Sydney Airports Corporation Limited from the definition of “principal executive officer”. These positions no longer exist.

846. **Item 103** would update paragraph 16A(2)(b) to require an accountable authority to recover a debt, rather than a FMA Act Chief Executive.

847. **Item 104** would repeal a redundant note.

848. **Item 105** would update paragraph 16A(3)(d) to require an accountable authority to recover a debt, rather than a FMA Act Chief Executive.

849. **Item 106** would update subsection 16A(3) to refer to accountable authority, rather a Chief Executive.

850. **Item 107** would repeal a redundant note.

851. **Item 108** would repeal and substitute subsections 16A(6) and (7) to include definitions that refer to the PGPA Act.

852. **Item 109** would update subsection 16A(8) to permit the Minister to prescribe a different non-corporate Commonwealth entity under the PGPA Act to recover a debt, rather than a different Agency under the FMA Act.

853. **Item 110** would update paragraphs 16B(1)(d) and (3)(b) to require an accountable authority to recover a debt, rather than a FMA Act Chief Executive.

854. **Item 111** would repeal a redundant note.

855. **Item 112** would repeal and substitute subsections 16B(6) and (7) to include definitions that refer to the PGPA Act.

856. **Item 113** would update subsection 16B(8) to permit the Minister to prescribe a different non-corporate Commonwealth entity under the PGPA Act to recover a debt, rather than a different Agency under the FMA Act.

857. **Item 114** would update subsection 16C(1) to require an accountable authority to recover a debt, rather than a FMA Act Chief Executive.

858. **Items 115 and 116** would update subsections 16C(3) and (4) and paragraph 16C(5)(c) to refer to an official of a relevant Commonwealth entity rather than a relevant FMA Act Agency.

859. **Item 117 and 118** would update subsection 16C(6) to require the accountable authority of the relevant Commonwealth entity to complete a deferred report in relation to section 16A, rather than the Chief Executive of the relevant FMA Act Agency.

860. **Item 119 and 120** would update subsection 16C(7) to require the accountable authority of the relevant Commonwealth entity to complete a deferred report in relation to section 16B, rather than the Chief Executive of the relevant FMA Act Agency.

861. **Item 121** would repeal and substitute subsections 16C(12) and (13) to include definitions that refer to the PGPA Act.

Research Involving Human Embryos Act 2002

862. **Item 122** would repeal and substitute subsection 13(5) to make disclosure of interest provisions in the PGPA Act not apply in addition to the disclosure of interest provisions in the *National Health and Medical Research Act 1992* (NHMRC Act) if the Embryo Research Licensing Committee (ERLC) has its own disclosure requirements in regulations. The PGPA Act should not supersede the ERLC's disclosure requirements when a clear decision has already been made that its own disclosure requirements should take precedence over NHMRC Act requirements.

863. **Item 123** would continue to require the CEO of the NHMRC to include details on the ERLC's operations in his or her annual report under section 46 of the PGPA Act.

Reserve Bank Act 1959

864. **Item 124** would remove a redundant "(1)" from section 7 as there is only one provision in this section.

865. **Item 126** would repeal and substitute section 7A, which would modify the operation of the PGPA Act to preserve the Reserve Bank of Australia's (RBA) existing exemptions under the CAC Act and also clarify the roles of the Governor and Reserve Bank Board in relation to the PGPA Act.

866. Proposed subsection 7A(1) would make the Governor the accountable authority for the purposes of the PGPA Act. This would be a departure from the standard arrangements where the Reserve Bank Board would be considered a governing board and therefore the RBA's accountable authority. The Governor is best placed to fulfil the duties of an accountable authority, given his or her day-to-day oversight of the RBA's internal operations. The Reserve Bank Board will remain responsible for monetary policy.

867. Proposed subsection 7A(2) would specify that sections 36, 54, 55 and 59 do not apply to the RBA. These exemptions are consistent with its exemptions under the CAC Act.

868. Proposed subsections 7A(3), (4) and (5) would clarify that other than the Governor, Deputy Governor and staff of the Reserve Bank Service, members of the Reserve Bank Board and Payments System Board are not officials for PGPA Act purposes, other than for the general duties in sections 25 to 29 of the PGPA Act. It is not necessary for part-time members of the RBA's boards to be subject to the full PGPA Act. The most important requirements relating to conduct are in sections 25 to 29 of the PGPA Act. Applying the general duties is also consistent with existing arrangements under the CAC Act.

869. Subsection 7A(6) would provide an exclusion to Board members from disclosure requirements under section 29 of the PGPA Act in relation to the making of decisions on monetary and banking policy. An exclusion of this type would continue the current situation which permits the issuing of class orders under subsection 27K(3) of the CAC Act for Board members to be present and vote on matters relating to monetary and banking policy, notwithstanding their material personal interests in such matters.

870. Proposed subsection 7A(7) would apply section 30 of the PGPA Act to part-time members of the Reserve Bank Board and Payments System Board as if they were members of an accountable authority. Given that the duties under sections 25 to 29 of the PGPA Act applies, also applying section 30 ensures a robust accountability framework.

871. Proposed subsections 7A(8) and (9) would maintain certain roles for the Reserve Bank Board, despite it not being the accountable authority. The Board must approve the RBA's financial statements and the RBA audit committee's charter. These provisions recognise the broad experience Board members bring to these fundamental governance aspects.

872. **Items 127 and 128** would repeal subsection 8A(5) and replace it with a note. Subsection 8A(5) is drafted as explanatory material and does not need to be a substantive provision.

873. **Items 131 and 132** would insert a new subsection 25(2) that exempts the Governor from the application of section 30 of the PGPA Act. This will help maintain the current approach to the Governor's independence and remove the potential for any perceptions of a subjective decision of the Treasurer being able to result in the Governor's dismissal. The only ways the Governor can be dismissed will remain with objective factual situations, such as bankruptcy.

Road Safety Remuneration Act 2012

874. **Item 136** would update a reference to the FMA Act to refer to the PGPA Act.

Royal Australian Air Force Veterans' Residences Act 1953

875. **Item 138** would repeal section 5A, which is redundant. The exemption from the investment provision of the CAC Act would be moved to the more appropriate place in section 9.

876. **Items 140 and 141** would insert a new subsection 9(2) to exempt the Trust from section 59 of the PGPA Act. This is consistent with the Trust's existing exemption under subsection 5A(2). Moving the exemption to section 9 would co-locate all investment related provisions.

NOTES ON SCHEDULE 12 - AMENDMENTS OF ACTS STARTING WITH S TO W

Introduction

877. Schedule 12 contains consequential amendments to Acts beginning with letters S, T, U, V and W. The schedule is written on an “exceptions” basis. It explains amendments that have not been categorised as being of a recurring type. The categorised amendments are explained elsewhere in the Explanatory Memorandum unless there is entity specific information helpful to note here.

878. The following Acts also have amendments in this schedule. However, there is no explanation for them in this section because the amendments are of a general categorised nature (Attachment A provides a summary of generic amendments to enabling legislation included in this Schedule):

- *Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Act 2004*
- *Seafarers Rehabilitation and Compensation Act 1992*
- *Snowy Hydro Corporatisation Act 1997*
- *Snowy Mountains Engineering Corporation Limited Sale Act 1993*
- *Superannuation (Pension Increases) Act 1971*
- *Telecommunications Universal Service Management Agency Act 2012*
- *Therapeutic Goods Act 1989*
- *Transport Safety Investigation Act 2003*

Safety, Rehabilitation and Compensation Act 1988

879. **Item 2** would repeal an FMA Act definition.

880. **Item 3** would insert a PGPA Act definition

881. **Item 4** would substitute a reference to an FMA Act concept with the appropriate PGPA Act concept.

882. **Item 5** would substitute the reference to section 30 of the FMA Act (Repayments to the Commonwealth) with the equivalent PGPA Act provision (section 74 -Receipts of amounts by non-corporate Commonwealth entities).

883. **Item 6** would repeal subsection 23A(7) as it relates to public money which is not a term used in the PGPA Act.

884. **Item 7** would substitute the reference to section 29 of the CAC Act (Activities of subsidiaries) with the equivalent PGPA Act provision (section 86 – Subsidiaries of corporate Commonwealth entities).

885. **Item 10** would insert a note to subsection 76(1) to clarify that the Chief Executive Officer is the accountable authority of Comcare for the purposes of the PGPA Act.

886. **Item 11** would remove subsection 76(4) to reflect the status of the Chief Executive Officer of Comcare under the PGPA Act. Subsection 76(5) is also repealed because of reliance on section 29 of the PGPA Act in relation to the duty to disclose interests.

887. **Items 15 and 16** would repeal subsection 89E(2A) and insert a note at the end of section 89E because Commissioners are no longer considered directors of Comcare for the purposes of the CAC Act. Under the PGPA Act, the Chief Executive Officer, not the Commissioners is the accountable authority of Comcare.

888. **Item 17** would repeal section 90 as it relates to the application of the CAC Act to Comcare.
889. **Items 18 and 19** would update references to the Minister responsible for administration of the CAC Act with references to the “Finance Minister”.
890. **Item 20** would remove a reference to section 18 of the CAC Act.
891. **Item 22** would repeal a reference to the FMA Act.
892. **Item 23** would substitute the reference to section 14 of the CAC Act (Estimates) with the equivalent PGPA Act provision (section 36 – Budget estimates for Commonwealth entities).
893. **Item 24** would update a reference to a provision in the FMA Act to its equivalent provision in the PGPA Act to identify to whom the Finance Minister may delegate his or her powers.
894. **Item 25** would repeal a reference to the FMA Act.
895. **Items 26 and 27** would substitute references to an FMA Act concept with the appropriate PGPA Act concept.
896. **Item 28** would substitute the reference to section 30 of the FMA Act (Repayments to the Commonwealth) with the equivalent PGPA Act provision (section 74 -Receipts of amounts by non-corporate Commonwealth entities).
897. **Item 29** would repeal a reference to the FMA Act concept of public money.
898. **Items 30 and 31** would substitute references to an FMA Act concept with the appropriate PGPA Act concept.

Safe Work Australia Act 2008

899. **Items 36 to 60** relate to planning and reporting under the PGPA Act generally. In particular, the strategic plan has been replaced by the corporate plan and responsibility for the corporate plan and operational plan has been given to the Chief Executive Officer, when previously the responsibility for the strategic plan and annual operational plan had rested with Safe Work Australia.
900. **Item 35** would update the explanation to Part 4 to reflect planning and reporting requirements under the PGPA Act.
901. **Item 64** would update the explanation to Division 2 of Part 6 to reflect the replacement of strategic plans with corporate plans.
902. **Item 65** would substitute a reference to “strategic plan” with “corporate plan”.
903. **Item 66** would substitute a reference to the FMA Act with a reference to the PGPA Act.
904. **Item 67** would repeal section 47 which requires the CEO to keep the Minister informed of the performance of Safe Work Australia. This is no longer required because section 19 of the PGPA Act would operate to require the accountable authority to keep the responsible Minister and Finance Minister informed.
905. **Item 68** would substitute a reference to “strategic plan” with “corporate plan”.
906. **Item 69** would substitute a reference to the FMA Act with a reference to the PGPA Act.

Science and Industry Research Act 1949

907. **Item 81** would insert the word “or” at the end of paragraph 10E(2)(a) to indicate the relationship between this paragraph and the next paragraph.

908. **Item 83** would insert the word “or” at the end of paragraphs 10E(2)(b) and (c) to indicate the relationship between each of these paragraphs and the next paragraph.

909. **Item 85** would insert a “(1)” to the provision in section 10F as another subsection would be added by item 86.

910. **Item 87** would insert the word “or” at the end of paragraph 22(2)(a) to indicate the relationship between this paragraph and the next paragraph.

911. **Item 88** would omit the word “or” at the end of paragraph 22(2)(b) as it would be the last paragraph in subsection 22(2).

912. **Item 97** would replace references to “year” with “period” consistent with language used in section 46 of the PGPA Act.

Screen Australia Act 2008

913. **Item 102** would substitute a reference to the FMA Act with a reference to the PGPA Act.

914. **Item 109** would remove a reference to section 18 of the CAC Act.

915. **Item 111** would omit the words “to which the report relates” after the word “period” as section 46 of the PGPA Act refers to “reporting period” which is a defined term under section 8 of the PGPA Act.

916. **Item 112** would substitute the reference to section 16 of the CAC Act with section 19 of the PGPA Act provision which is the equivalent provision relation to the duty to keep the responsible Minister and Finance Minister informed.

Services Trust Funds Act 1947

917. **Item 118** would repeal provisions dealing with the application of the CAC Act and the Auditor-General Act and replaces it with a provision dealing with the application of section 59 of the PGPA Act.

Skilling Australia’s Workforce Act 2005

918. **Items 120 to 123** would update terminology to replace the definition of “agency” as defined in the FMA Act with the definition of “non-corporate Commonwealth entity” as defined in the PGPA Act and updates references to these terms.

919. **Item 124** would substitute a reference to the FMA Act with a reference to the PGPA Act.

Small Superannuation Accounts Act 1995

920. **Item 125** would repeal the reference to employers making deposits to the notional accounts within the Special Account. Employers have been unable to legally do this for a number of years. The amendment would clarify the existing law.

921. **Item 128** would repeal a reference to section 39 of the FMA Act.

922. **Items 129 and 130** would repeal references to section 16 of the FMA Act.

Social and Community Services Pay Equity Special Account Act 2012

923. **Items 135 and 136** would update terminology to replace a reference to the “Financial Management and Accountability Regulations” with “Financial Framework (Supplementary Powers) Regulations 1997”.

Special Broadcasting Service Act 1991

924. **Item 139** would update terminology. References to sections 28 and 48A of the CAC Act is replaced with a reference to section 22 of the PGPA Act.

925. **Item 142** would insert a “(1)” to the provision in section 36 as another subsection would be added by **item 143**.

926. **Item 147** would replace references to “financial year” with “period” consistent with language used in section 46 of the PGPA Act.

927. **Item 151** would add two new subsections to section 48. Subsection (4) provides that the meaning of “subsidiary” given in subsection(3) is to be used in the application of section 35 of the PGPA Act, which relates to the corporate plan of Commonwealth entities. Subsection (5) provides that the Board may review and revise the corporate plan.

928. **Item 152** would repeal sections 49 (Corporate plans to be given to Minister) and 51 (Board to notify Minister of certain matters) as the PGPA Act will apply in relation to these matters.

929. **Item 153** would update terminology. A reference to section 15 of the CAC Act is replaced with a reference to paragraph 19(1)(c) of the PGPA Act.

930. **Item 155** would update terminology with reference to an official from the FMA Act to the PGPA Act.

931. **Item 157** would replace references to “year” with “period” consistent with language used in section 46 of the PGPA Act.

Superannuation Act 1976

932. **Items 158 and 159** would update terminology so that the definition of “Bank” has the same meaning as in the PGPA Act.

933. **Items 160 and 161** would repeal notes that refer to section 47 of the FMA Act.

934. **Item 162** would update terminology to replace a reference to the FMA Act to the PGPA Act with respect to the meaning of “official”.

Superannuation Act 1990

935. **Item 164** would repeal notes that refer to section 47 of the FMA Act.

936. **Item 165** would update terminology to replace a reference to the FMA Act to the PGPA Act with respect to the meaning of “official”.

937. **Item 167** would update terminology so that the definition of “bank” has the same meaning as in the PGPA Act.

Superannuation Guarantee (Administration) Act 1992

938. **Item 168** would update terminology so that the definition of “Commonwealth entity” has the same meaning as in the PGPA Act.

Superannuation Industry (Supervision) Act 1993

939. **Items 168 and 169** would update references to Division 4 of Part 3 of the CAC Act to Subdivision A of Division 3 of Part 2-2 of the PGPA Act.

Superannuation (Productivity Benefit) Act 1988

940. **Item 171** would update terminology to replace a reference to the FMA Act to the PGPA Act with respect to the definition of “Finance Department”.

Superannuation (Unclaimed Money and Lost Members) Act 1999

941. **Item 172** would remove a reference to “special public money” under section 16 of the FMA Act.

Sydney Harbour Federation Trust Act 2001

942. **Item 175** would omit the word “or” at the end of paragraph 20(2)(c) at it would be the last paragraph in subsection 20(2).

943. **Item 183** would remove an unnecessary “(1)”, as there will be only one provision in section 64.

944. **Item 184** would remove a reference to section 18 of the CAC Act.

945. **Item 186** would omit the words “to which the report relates” after the word “period” as section 46 of the PGPA Act refers to “reporting period” which is a defined term under section 8 of the PGPA Act.

Taxation Administration Act 1953

947. **Item 197** would update references to sections 33 and 34 of the FMA Act to the equivalent provisions in the PGPA Act (sections 63 and 65).

Telecommunications Act 1997

948. **Item 189** would replace a reference to “section 57 of the *Australian Communications and Media Authority Act 2005*” with a reference to an annual report prepared under section 46 of the PGPA Act.

Telecommunications (Consumer Protection and Service Standards) Act 1999

949. **Item 191** would repeal a definition of FMA Act.

Telstra Corporation Act 1991

950. **Item 203** would update the definition of “Finance Department” so that a reference to the “Minister administering the Financial Management and Accountability Act 1997” is replaced with “Minister for Finance”.

951. **Item 205** would update terminology to replace a reference to the FMA Act to the PGPA Act.

952. **Item 206** would update terminology. A reference to section 37 of the FMA Act is replaced with a reference to subsection 56(1) of the PGPA Act.

953. **Item 207** would repeal Part 9 entirely. The only operative provisions of this part relate to the Regional Telecommunications Infrastructure Account. This special account has been exhausted and can be abolished, which permits the whole of Part 9 to be repealed.

Terrorism Insurance Act 2003

954. **Item 210** would repeal a note to Subdivision B of Division 4 of Part 3 of the CAC Act.

Tertiary Education Quality and Standards Agency Act 2011

955. **Item 212** would repeal the definition of “strategic plan” to be consistent with reporting requirements under the PGPA Act.

956. **Item 213** would update a heading by replacing a reference to “strategic plans” with “corporate plans”.

957. **Items 214 to 227** relate to planning and reporting under the PGPA Act generally. In particular, the strategic plan has been replaced by the corporate plan and responsibility for the corporate plan and annual operational plan has been given to the Chief Executive Officer, when previously the responsibility for the strategic plan and annual operational plan had rested with the Tertiary Education Quality and Standards Agency.

Tourism Australia Act 2004

958. **Item 232** would omit the word “or” at the end of paragraph 20(3)(b) at it would be the last paragraph in subsection 20(3).

959. **Item 236** would repeal a note to Subdivision B of Division 4 of Part 3 of the CAC Act.

960. **Item 241** would update terminology. A reference to section 28 of the CAC Act is replaced with a reference to section 22 of the PGPA Act.

961. **Item 243** would insert a “(1)” to the provision in section 53 as another subsection would be added to section 53 by **item 244**.

962. **Item 247** would remove an unnecessary “(1)”, as there would be only one provision in section 59.

963. **Item 248** would remove a reference to section 18 of the CAC Act.

Uranium Royalty (Northern Territory) Act 2009

964. **Item 253** would repeal a subsection relating to outsider arrangements under the FMA Act. These arrangements no longer exist under the PGPA Act.

Veterans’ Entitlements Act 1986

965. **Item 254** would insert a section to explain the application of the PGPA Act to the Repatriation Commission.

966. **Item 257** would insert a section to explain the application of the PGPA Act to the Repatriation Medical Authority.

967. **Item 258** would insert a section to explain the application of the PGPA Act to the Review Council.

Water Act 2007

968. **Item 264** would substitute a reference to the FMA Act with a reference to the PGPA Act.

969. **Item 265** would repeal a note to subsection 173(2) explaining that the Chief Executive of the Murray Darling Basin Authority can enter contracts on behalf of the Commonwealth. The note would be erroneous as the Authority would become a corporate Commonwealth entity under Schedule 5 and could not enter contracts on behalf of the Commonwealth.

970. **Item 270** would repeal a note referencing section 44 of the FMA Act. The note would be erroneous as the Authority would become a corporate Commonwealth entity under Schedule 5 and the Chief Executive of the Murray Darling Basin Authority could not engage consultants on behalf of the Commonwealth.

971. **Item 273** would update terminology to reflect that responsibility for the corporate plan has been given to the Chief Executive, when previously it had rested with the Authority.

972. **Item 274** would insert a note to explain that any amendment of the corporate plan approved by the Murray-Darling Basin Authority under the Agreement must also be prepared by the Authority and approved by the Ministerial Council.

973. **Item 275** would substitute references to “Authority” with “Chief Executive”.

974. **Item 277** would update a reference to section 213A because as a result of the amendment at **item 272**, section 213A would only have two subsections.

Water Efficiency Labelling and Standards Act 2005

975. **Item 278** would update terminology to replace the definition of “agency” as defined in the FMA Act with the definition of “non-corporate Commonwealth entity” as defined in the PGPA Act.

Work Health and Safety Act 2011

976. **Item 282** would update terminology in the definition of “Commonwealth” so that the reference to “an agency within the meaning of the *Financial Management and Accountability Act 1997*” is substituted by a reference to a non-corporate Commonwealth entity as defined by the PGPA Act.

977. **Item 283** would substitute a reference to the CAC Act with a reference to the PGPA Act.

978. **Items 285 and 286** would replace references to “year” with “period” consistent with language used in section 46 of the PGPA Act.

979. **Item 287** would amend a cross-reference to the *Safety, Rehabilitation and Compensation Act 1988*, reflecting that the specific requirements for the Comcare annual report would be relocated from section 90 to section 85.

980. **Item 288** would update terminology so that the reference to “a person or a body that is an agency within the meaning of the *Financial Management and Accountability Act 1997*” is substituted by a reference to a non-corporate Commonwealth entity as defined by the PGPA Act.

Workplace Gender Equality Act 2012

981. **Item 297** would insert a “(1)” to the provision in section 27 as another subsection would be added to section 27 by **item 298**.

NOTES ON SCHEDULE 13 – CONTINGENT AMENDMENTS

Introduction

982. Schedule 13 contains consequential amendments that are also contingent in nature. The schedule contains amendments to:

- Acts that have not commenced before the *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Bill 2014* (the PGPA C&T Bill) was introduced, but may commence before the PGPA C&T Bill is passed; or
- Bills currently before the Parliament that may pass and commence before the PGPA C&T Bill passes and commences

983. As the circumstances for each Bill or Act are quite different from one another, they have each been put into separate parts of Schedule 13 so that tailored commencement arrangements can be made.

984. Some amendments are of a similar type to those in Schedules 7 to 12 and have not been specifically referred to in this part of the explanatory memorandum. The following parts are not discussed here because all of the amendments are of a common type and are summarised in Attachment A to this Explanatory Memorandum:

- Part 2 - *Antarctic Treaty (Environment Protection) Act 1980*
- Part 10 - *Wheat Export Marketing Act 2008*

Part 1 - Agricultural and Veterinary Chemicals legislation

985. These amendments relate to the *Agricultural and Veterinary Chemicals Legislation Amendment Act 2013* (Agvet Amendment Act 2013).

Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994

986. **Item 1** would amend the definition of "Agency" in section 3 to make it equivalent to "Commonwealth entity" in the PGPA Act. This avoids having to update the word Agency approximately 25 times.

987. **Item 2** would repeal and substitute section 38D, which permits an Agency to debit the APVMA Special Account for costs of collecting levies and other amounts. Instead, the APVMA would be required to pay the Agency's costs. This reflects that the APVMA Special Account would be abolished under the Schedule 5 of the PGPA C&TP Bill as part of the APVMA becoming a corporate Commonwealth entity.

Agricultural and Veterinary Chemicals (Administration) Act 1992

988. **Item 3** would repeal and substitute section 61 reflecting the APVMA's additional reporting responsibilities under the Agvet Amendment Act 2013.

989. **Item 4** would update subparagraph 69EGB(2)(b)(i) to reflect that a thing seized by the APVMA would be forfeited to the APVMA as a corporate Commonwealth entity, rather than to the Commonwealth.

Agricultural and Veterinary Chemicals Code Act 1994

990. **Item 5** would update subparagraph 140(1A)(b)(i) to reflect that a thing seized by the APVMA would be forfeited to the APVMA as a corporate Commonwealth entity, rather than to the Commonwealth.

991. **Items 6 to 8** would remove references to the APVMA doing things on behalf of the Commonwealth, such as incurring costs to fulfil the APVMA's directions to a third party itself, as the APVMA would become a corporate Commonwealth entity under Schedule 5 and would therefore incur such costs on its own behalf.

Part 3- Australian Grape and Wine Authority Act 2013

992. These amendments relate to the *Grape and Wine Legislation Amendment (Australian Grape and Wine Authority) Act 2013*, which among other things would rename the *Wine Australia Corporation Act 1980* the *Australian Grape and Wine Authority Act 2013* (AGWA Act).

993. **Item 13** would amend section 19 of the AGWA Act to replace the reference to sections 27F and 27J of the CAC Act with a reference to the equivalent PGPA Act provision section 29 (relating to disclosures of interests).

994. **Items 17 to 19** would insert a new subsection 31(13) to exempt the AGWA from preparing corporate plans under section 35 of the PGPA Act. The AGWA, which combines a former R&D Corporation under the *Primary Industries Research and Development Act 1989* with Wine Australia, is subject to comprehensive planning arrangements involving multiple industry stakeholders. These existing arrangements mean that transitioning to the PGPA Act framework would need to be worked towards over a number of years and such an exemption at this point in time provides certainty and continuity for the AGWA.

995. **Item 20** would amend subsection 31K(1) to update a reference to the CAC Act with a reference to the PGPA Act.

Part 4 - Offshore Petroleum and Greenhouse Gas Storage Act 2006

996. These amendments relate to the *Offshore Petroleum and Greenhouse Gas Storage Amendment (Compliance Measures) Act 2013* (Compliance Measures No. 1 Act) and the *Offshore Petroleum and Greenhouse Gas Storage Amendment (Compliance Measures No. 2) Act 2013* (Compliance Measures No. 2 Act).

997. The part is divided into three divisions depending on potential commencement alternatives for the two Acts. Division 1 contains amendments where the Compliance Measures No. 1 Act has not commenced before the PGPA C&T Bill is passed and has commenced. Division 2 contains amendments where the Compliance Measures No. 1 Act has commenced. Division 3 contains amendments where the Compliance Measures No. 2 Act has commenced.

Offshore Petroleum and Greenhouse Gas Storage Act 2006

998. **Item 25** would amend subsection 600(7) to remove the reference to the crediting of the NOPSEMA Special Account, which would be abolished as part of NOPSEMA becoming a corporate Commonwealth entity under Schedule 5. Instead, the Commonwealth would have to pay NOPSEMA an amount that is debited from the National Offshore Petroleum Titles Administrator Special Account. However, if the Compliance Measures No. 1 Act has commenced, section 600 would be repealed and substituted entirely, making the amendment in this item inoperative.

999. **Items 26 and 27** would insert a new paragraph 682(1)(aa), which would require debits from the National Offshore Petroleum Titles Administrator Special Account to be paid to NOPSEMA as a corporate Commonwealth entity and would also:

- require NOPSEMA to pay an amount to the Commonwealth if the Commonwealth makes a refund of an amount relating to paragraph (aa); and

- would appropriate the Consolidated Revenues Fund if an amount under paragraph (aa) is being paid to NOPSEMA.

1000. However, if the Compliance Measures No. 1 Act has commenced, section 600 would be repealed and substituted entirely, making the amendments in these items inoperative.

1001. **Item 28** would amend subsection 60B(2) to remove the reference to the crediting of the NOPSEMA Special Account, which would be abolished as part of NOPSEMA becoming a corporate Commonwealth entity under Schedule 5. Instead, the Commonwealth would have to pay NOPSEMA an amount that is debited from the National Offshore Petroleum Titles Administrator Special Account. This amendment would be made if the Compliance Measures No. 1 Act has commenced.

1002. **Item 29** would repeal and substitute section 682 which establishes the NOPSEMA Special Account. The proposed section would insert provisions relating to amounts the Commonwealth must pay to NOPSEMA.

1003. Proposed subsection 682(1) would state what amounts the Commonwealth must pay to NOPSEMA as a separate financial entity. These amounts include money appropriated from Parliament; various levies under the Regulator Levies Act (including late penalties) and amounts from the States or the Northern Territory. Generally these amounts mirror amounts that were previously credited to the NOPSEMA Special Account, except for amounts from contracts under section 650, which were previously paid to NOPSEMA on behalf of the Commonwealth. These amounts from contracts can be directly paid to NOPSEMA as a separate financial entity and therefore there is continuing need to include them in the proposed section 682. The amounts from the National Offshore Petroleum Titles Administrator Special Account would also have to be paid to NOPSEMA.

1004. Proposed subsection 682(2) would permit the Finance Minister to give directions about the amounts and times at which appropriations from Parliament are to be paid to NOPSEMA. Subsection 682(3) would state that such directions are not legislative instruments. This provision declares the law, rather than provides an exemption to the *Legislative Instruments Act 2003*. Subsections 682(2) and (3) are common for corporate Commonwealth entities.

1005. Proposed subsection 682(4) would ensure that any refunds made by the Commonwealth must be reimbursed by NOPSEMA. Given NOPSEMA's money is separate to the Commonwealth, than without this provision, the Commonwealth would have no recourse to recouping money from NOPSEMA. Similarly, subsection 682(5) would permit set-offs of reimbursements of NOPSEMA against its appropriation.

1006. Proposed subsection 682(6) would establish a special appropriation for amounts in paragraphs 682(1)(b) to (j). These amounts must come to the Commonwealth because they either rely on the Commonwealth's taxing powers or are from other jurisdictions that cannot give money directly to NOPSEMA. The special appropriation would ensure that NOPSEMA gets all of the money that it is entitled to.

1007. **Item 30** would repeal and substitute subsection 611L(6) as that provision appears in the Compliance Measures No. 2 Act. It would separate out the debts due to NOPSEMA and debts due to the Commonwealth as potential applicants under section 611L. If NOPSEMA seeks its expenses once it becomes a corporate Commonwealth entity, NOPSEMA would receive those expenses because it will be incurring the expenses on its own behalf. In contrast, the Titles Administrator would seek expenses incurred on behalf of the Commonwealth. This item would only take effect once the Compliance Measures No. 2 Act commences if the PGPA C&T Bill is passed and has commenced.

NOTES ON SCHEDULE 14 – OTHER TRANSITIONAL AND APPLICATION PROVISIONS

Introduction

1008. Schedule 14 deals with transitional arrangements other than those relating to the FMA Act and CAC Act (which are dealt with in Schedules 2 and 3 respectively). Schedule 14 is important in that it relates to planning, reporting and disclosure requirements that are commonly found in enabling legislation, but which now overlap with various requirements in the PGPA Act.

Other transitional and application provisions

Item 1 – Corporate and strategic plans

1009. Given the variety of titles and scope of planning requirements this item refers to corporate and strategic plans “however described”. The intent of this wording is to cover any kind of planning document required by enabling legislation that relates to a Commonwealth entity.

1010. This item would preserve existing planning requirements in enabling legislation for reporting periods commencing before 1 July 2015, which means that any entity with an existing planning requirement will continue to meet this obligation in relation to the 2014-15 financial year.

1011. The item complements **item 1** in Schedule 1 to the Bill, which provides that the first corporate plan to be prepared by an entity under the PGPA Act will be for the 2015-16 financial year.

Item 2 – Annual reports

1012. This item would preserve existing requirements relating to annual reports for reporting periods commencing before 1 July 2014. The effect of this provision is that for most Commonwealth entities their annual reports due for the year ending 30 June 2014 are to be prepared in accordance with annual report requirements in existing legislation. This is necessary as the first annual report required under the PGPA Act will be for the 2014-15 reporting period.

1013. The effect of this requirement is that existing FMA Act Agencies will prepare their annual reports in a manner subject to the annual reporting guidelines approved by the Joint Committee of Public Accounts and Audit (supplemented by any additional requirements in enabling legislation), with CAC Act bodies’ annual reports being prepared in accordance with the Schedule 1 of the CAC Act and any requirements in enabling legislation.

Item 3 – Disclosing interests

1014. This item would preserve a person’s previous disclosures where they have been made under a provision in enabling legislation and deem them to have been disclosed in accordance with section 29 of the PGPA Act (and any rules made under that section). This ensures that people do not have to disclose again any continuing interests that exist at the commencement time of this Bill.

1015. This provision will generally affect Chief Executives of existing FMA Act Agencies that have not previously had a central disclosure requirement, but instead have had specific requirements in their enabling legislation. Directors of CAC Act bodies have had a centralised disclosure regime under the CAC Act for some time and those disclosures have also been deemed to have been made in accordance with the PGPA Act (refer Schedule 3).

1016. A limited number of Acts relating to courts or quasi-judicial tribunals are not subject to this item. This exception reflects that while the disclosure of interest provisions in the enabling legislation have been repealed, section 29 of the PGPA Act is also not applied to certain office-holders that will also be accountable authorities, such as the Registrar of the Administrative Appeals Tribunal. The Explanatory Memorandum explains why in Schedules 7, 9 and 10. It is therefore not logical to deem disclosures under the relevant Acts to be made in accordance with section 29 of the PGPA Act.

Item 4 – Saving instruments in force at commencement time

1017. This item preserves instruments (including non-legislative instruments) that have been made under provisions that are amended in Schedules 7 to 13. This is designed to ensure that existing instruments are not unnecessarily affected by the consequential amendments. For a provision that is amended, the instruments under that provision continue (sub-item (2)). For a provision that is repealed and substituted, the instruments are taken to have been made under the substituted provision, as long as the substituted provision is in similar terms.

1018. An example of this item's effect would be directions by a minister about the content of a corporate plan. The directions will continue in force even if the provision permitting directions is repealed and substituted in recognition that in the future section 35 of the PGPA Act would need to operate in parallel with the ability of a Minister to continue to issue directions.

Item 5 – Amendments to legislative instruments

1019. This item would deem an amending legislative instrument made after the commencement of the consequential and transitional amendments which relates to the consequential amendments to have been made at the time the amendments to the primary legislation were made.

1020. This is a technical application provisions which reflects that there are not the resources to comprehensively amend every single instrument that was made under the provision that is being amended. The instruments are only affected to the extent that they relate to a consequential amendment and primary legislation.

1021. As an example, regulations may define the scope of the regulations applicability. This may not get updated for the definition of Agency is repealed, but **item 5** would ensure that when the regulation is changed that it was deemed to change when the consequential amendments were made.

Item 6 – Transitional rules

1022. This item permits rules to be made of a transitional nature relating to amendments or repeals made by the Bill or the enactment of the Bill or the PGPA Act, but only in relation to the first reporting period after 1 July 2014.

1023. The transition from the FMA and CAC acts to the PGPA Act is a major undertaking and this item is designed to provide an ability during the transition period for the Finance Minister to address any issues that are not apparent at this time or may emerge and need to be addressed before provisions of the PGPA Act or its supporting rules come into force.

1024. While every effort has been taken to ensure the accuracy and completeness of this Bill and to plan for the details of the transition, it is considered that the size and scope of the legislative changes dictates that it is prudent to provide a means for a rule to be issued quickly should relevant circumstances arise.

1025. The rule-making power is not designed to undermine Parliament's legislative responsibility. This is demonstrated by the focus of sub-item (2), which specifies that the power is for matters of a transitional nature while the Commonwealth's financial framework transitions from the FMA Act and CAC Act to the PGPA Act. Sub-item (3) is also limited in scope by only permitting the rules to modify the Bill and PGPA Act for the first reporting period. Again this emphasises the transitional nature of the rules that may be made under this item.

ATTACHMENT A: NOTES ON ITEMS SUBJECT TO GENERAL CODING

Introduction

1026. This note addresses matters within Schedules 7 to 13 of the Bill.

1027. Schedules 7 to 12 contain consequential amendments to Acts beginning with the letter A through to Acts beginning with the letter W. The schedules are written on an “exceptions” basis, as many of the amendments are recurring in nature and if included in those Schedules would be highly repetitive in nature. Details of these recurring items are summarised in this Note to the Explanatory Memorandum.

1028. Schedule 13, which covers consequential amendments that are contingent in nature, also includes a number of amendments that are of a general and repetitive character. These general amendments have also been included in this Note.

Categories of general amendments

1029. A review of proposed amendments has resulted in the development of the following table of standard items of changes to provisions in enabling legislation. Given the general nature of these amendments it is proposed to limit explanation of the changes to the following table.

Table 1 – Summary form

Explanation
Reference updates
Amend references to defining the Finance Minister to refer to Minister responsible for the PGPA Act.
Notes in enabling legislation – replace reference to CAC Act with PGPA Act.
Amend references to section 18 of the CAC Act with reference to section 59 of the PGPA Act (in relation to investments and use of surplus funds).
“Bank” definition in provisions to now refer to the PGPA Act definition.
Replace references to “financial year” with “reporting period”.
Special accounts – reflect PGPA Act naming convention and relevant sections (78 or 80).
Amend references to section 39 of the FMA Act with section 58 of the PGPA Act (for investments by the Commonwealth).
Replacement of references to official under FMA Act with references to officials of non-corporate Commonwealth entities.
Replace references for person not subject to direction in relation to their FMA Act responsibilities with references to the PGPA Act.
Replace references to section 28 of the CAC Act with section 22 of the PGPA Act in relation to compliance with general policy orders).
Replace references to section 28A of the CAC Act with section 57 of the PGPA Act – the use of credit cards and vouchers is a form of borrowing and will be covered by rules issued under this section of the PGPA Act.
Termination – amend wording in termination provisions relating to bankruptcy circumstances (as grounds for termination of appointment) to align with the Statute Update Bill 2014.
Trust money – remove reference to subsection 18(2) of the CAC Act in provisions relating to trust money as the reference is no longer necessary. Bank accounts will no longer be kept in accordance with this subsection of the CAC Act.
Minister’s power to request information – provision to be repealed as section 19 of the

PGPA Act provides this authority.

Disclosure of interests

Disclosure of interests – CEO etc to Minister – provision(s) to be repealed as section 29 of the PGPA Act and its supporting rules provide these ongoing core requirements.

Disclosure of interests – amend enabling legislation to clarify remaining provisions are in addition to obligations under section 29 of the PGPA Act and its supporting rules.

Disclosure of interests – the requirement for a group of persons to disclose to each other to be repealed as section 29 of the PGPA Act and its supporting rules cover such situations, but retain any provisions relating to additional disclosure requirements (e.g. to a Minister).

Disclosure of interests – to person other than Minister is kept but updated to refer to section 29 of the PGPA Act.

Termination of appointment for an accountable authority

Termination – update the provision to reflect that a person can have their appointment terminated for failing to comply with either the disclosure requirements in enabling legislation or in section 29 of the PGPA Act. An amendment of this type is usually proposed together with a category P type amendment.

Termination – remove references to sections 27F and 27J of the CAC Act as requirements are to now be dealt with through the use of section 29 of the PGPA Act and its supporting rules.

Termination – this involves the inclusion of a note stating that a person may also be subject to termination of appointment under section 30 of the PGPA Act.

Termination – update provisions referring to disclosure of interests to refer to a breach of section 29 of the PGPA Act as grounds for termination rather than a provision within enabling legislation. An amendment of this type is usually proposed in concert together with a category O type amendment.

Termination – disapply subsection 30(6) of the PGPA Act for persons covered by “termination at will” provisions within their legislation (e.g. *Governor-General Act 1974* in relation to the Official Secretary).

Quorum requirements for Boards

CAC quorum requirements – update to refer to disclosure requirements under section 29 of the PGPA Act.

Other quorum requirements – update to refer to disclosure requirements under section 29 of the PGPA Act.

Planning and Reporting

Corporate plans – provisions updated to refer to section 35 of the PGPA Act, with general requirements being repealed as they are expected to be covered by a PGPA rule. Ministerial approval/ endorsement provisions are to remain, and responsibilities for the corporate plan reflect to clarify accountable authority responsibilities.

Corporate plans – disapply subsection 35(3) of the PGPA Act for inter-jurisdictional bodies.

Corporate plans – repeal provisions about keeping Minister informed (as the PGPA Act already includes this requirement at section 19 of that Act).

Annual operational plans – if an entity is required to prepare an operational plan as well as a corporate plan then amendments are proposed to ensure that accountable authorities are responsible for the preparation of both.

Annual report – replace references to section 9 of the CAC Act with references to section 46 of the PGPA Act.

Annual reports – repeal requirements for annual report under enabling legislation (as section 46 of the PGPA Act achieves this purpose), but retain specific requirements for

additional reporting.

Reference updates to PGPA Act and repeals of provisions.

Minor editorial amendments.

Acts containing standard amendments

1030. The Acts which contain standard amendments within Schedules 7 to 13 are as follows:

Schedule 7: Standard Amendments

- *Aged Care (Bond Security) Act 2006*
- *Aircraft Noise Levy Collection Act 1995*
- *Airports (Transitional) Act 1996*
- *A New Tax System (Luxury Car Tax) Act 1999*
- *A New Tax System (Wine Equalisation Tax) Act 1999*
- *Archives Act 1983*
- *Asbestos-related Claims (Management of Commonwealth Liabilities) Act 2005*
- *Australian Bureau of Statistics Act 1975*
- *Australian Capital Territory (Planning and Land Management) Act 1988*
- *Australian Capital Territory (Self-Government) Act 1988*
- *Australian Centre for International Agricultural Research Act 1982*
- *Australian Federal Police Act 1979*
- *Australian Law Reform Commission Act 1996*
- *Australian Organ and Tissue Donation and Transplantation Authority Act 2008*
- *Australian Radiation Protection and Nuclear Safety Act 1998.*

Schedule 8 Amendments

- *Charter of Budget Honesty Act 1998*
- *Clean Energy Regulator Act 2011*
- *COAG Reform Fund Act 2008*
- *Coal Mining Industry (Long Service Leave) Payroll Levy Collection Act 1992*
- *Commonwealth Inscribed Stock Act 1911*
- *Crimes (Superannuation Benefits) Act 1989*
- *Criminology Research Act 1971*
- *CSL Sale Act 1993*
- *Customs Act 1901*
- *Defence Force Discipline Appeals Act 1955*
- *Defence Force Retirement and Death Benefits Act 1973*
- *Defence Forces Retirement Benefits Act 1948*
- *Defence Forces Retirement Benefits (Pension Increases) Act 1967*
- *Defence Reserve Service (Protection) Act 2001*
- *Defence Service Homes Act 1918*
- *Early Years Quality Fund Special Account Act 2013*
- *Education Services for Overseas Students Act 2000*
- *Environment Protection and Biodiversity Conservation Act 1999*
- *Excise Act 1901*
- *Export Finance and Insurance Corporation Act 1991*

Schedule 9

- *Financial Agreement Act 1994*
- *Fisheries Administration Act 1991*
- *Gene Technology Act 2000*
- *Governor-General Act 1974*
- *Grape and Wine Legislation Amendment (Australian Grape and Wine Authority) Act 2013*
- *Health Insurance Act 1973*
- *High Court of Australia Act 1979*

- *Immigration (Education) Charge Act 1992*
- *Income Tax Assessment Act 1997*
- *Indigenous Education (Targeted Assistance) Act 2000*
- *Insurance Act 1973*
- *Intelligence Services Act 2001*
- *Interstate Road Transport Act 1985*
- *Lands Acquisition Act 1989*
- *Life Insurance Act 1995*
- *Loans Securities Act 1919*

Schedule 10

- *Members of Parliament (Staff) Act 1984*
- *Moomba-Sydney Pipeline System Sale Act 1994*
- *National Health Act 1953*
- *National Radioactive Waste Management Act 2012*
- *National Residue Survey Administration Act 1992*
- *National Water Commission Act 2004*
- *Natural Heritage Trust of Australia Act 1997*
- *Natural Resources Management (Financial Assistance) Act 1992*
- *Northern Territory (Self-Government) Act 1978*

Schedule 11

- *Postal and Telecommunications Commissions (Transitional Provisions) Act 1975*
- *Proceeds of Crime Act 1987*
- *Proceeds of Crime Act 2002*
- *Protection of Moveable Cultural Heritage Act 1986*
- *Royal Commissions Act 1902*

Schedule 12

- *Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Act 2004*
- *Seafarers Rehabilitation and Compensation Act 1992*
- *Snowy Hydro Corporatisation Act 1997*
- *Snowy Mountains Engineering Corporation Limited Sale Act 1993*
- *Superannuation (Pension Increases) Act 1971*
- *Telecommunications Universal Service Management Agency Act 2012*
- *Therapeutic Goods Act 1989*
- *Transport Safety Investigation Act 2003*

Schedule 13

- *Part 2 - Antarctic Treaty (Environment Protection) Act 1980*
- *Part 5 - Wheat Export Marketing Act 2008*