



Public Governance, Performance and Accountability Amendment Act 2014

No. 58, 2014

**An Act to amend the *Public Governance,
Performance and Accountability Act 2013*, and for
related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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Public Governance, Performance and Accountability Amendment Act 2014

No. 58, 2014

**An Act to amend the *Public Governance,
Performance and Accountability Act 2013*, and for
related purposes**

[Assented to 26 June 2014]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Public Governance, Performance and
Accountability Amendment Act 2014*.

No. 58, 2014 *Public Governance, Performance and Accountability Amendment Act* 1
2014

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
|---|--|--------------|
| Column 1 | Column 2 | Column 3 |
| Provision(s) | Commencement | Date/Details |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent. | 26 June 2014 |
| 2. Schedule 1 | Immediately after the commencement of section 6 of the <i>Public Governance, Performance and Accountability Act 2013</i> . | 1 July 2014 |

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Public Governance, Performance and Accountability Act 2013

1 Section 8

Insert:

bankable money: see subsection 55(2).

controls: see subsection 89(2).

2 Section 8 (definition of *Department of State*)

Repeal the definition, substitute:

Department of State:

- (a) includes any body (except a body corporate), person, group of persons or organisation that is prescribed by an Act or the rules in relation to a specified Department of State; and
- (b) excludes any part of a Department of State that is a listed entity.

3 Section 8 (definition of *listed entity*)

Repeal the definition, substitute:

listed entity means:

- (a) any body (except a body corporate), person, group of persons or organisation (whether or not part of a Department of State); or
- (b) any combination of bodies (except bodies corporate), persons, groups of persons or organisations (whether or not part of a Department of State);

that is prescribed by an Act or the rules to be a listed entity.

4 Section 8 (definition of *official*)

Omit “and (3)”, substitute “, (3), (4) and (5)”.

5 Section 8 (at the end of the definition of *Parliamentary Department*)

Add “and includes any body (except a body corporate), person, group of persons or organisation that is prescribed by an Act or the rules in relation to a specified Parliamentary Department”.

6 Section 8 (definition of *reporting period*)

Omit “subsidiary of a Commonwealth entity”, substitute “subsidiary of a corporate Commonwealth entity”.

7 Section 8 (paragraph (b) of the definition of *special account*)

Omit “any other Act”, substitute “an Act (including this Act)”.

8 Section 9

After “about Commonwealth entities.”, insert “(For Commonwealth companies, see Chapter 3.)”.

9 Paragraph 10(1)(d)

Repeal the paragraph, substitute:

(d) a body corporate that is established by a law of the Commonwealth; or

(e) a body corporate that:

(i) is established under a law of the Commonwealth (other than a Commonwealth company); and

(ii) is prescribed by an Act or the rules to be a Commonwealth entity.

10 Subsection 10(1) (note)

Repeal the note, substitute:

Note: Commonwealth companies are not Commonwealth entities because they are not covered by this subsection. Chapter 3 deals with Commonwealth companies.

11 Subsection 12(2) (table item 3)

Omit “the rules as”, substitute “an Act or the rules to be”.

12 Subsection 12(2) (table item 4)

Omit “established by a law of the Commonwealth”.

13 Subsection 12(2) (table item 4)

After “prescribed by”, insert “an Act or”.

14 Subsections 13(2) and (3)

Repeal the subsections, substitute:

Officials of Commonwealth entities (other than listed entities)

- (2) An **official** of a Commonwealth entity (other than a listed entity) is a person who is in, or forms part of, the entity.
- (3) Without limiting subsection (2), an **official** of a Commonwealth entity (other than a listed entity) includes:
 - (a) a person who is, or is a member of, the accountable authority of the entity; or
 - (b) a person who is an officer, employee or member of the entity; or
 - (c) a person, or a person in a class, prescribed by an Act or the rules to be an official of the entity.
- (4) Despite subsections (2) and (3), each of the following is not an **official** of a Commonwealth entity (other than a listed entity):
 - (a) a Minister;
 - (b) a judge;
 - (c) a consultant or independent contractor of the entity (other than a consultant or independent contractor of a kind prescribed by an Act or the rules for the purposes of paragraph (3)(c));
 - (d) a person, or a person in a class, prescribed by an Act or the rules not to be an official of the entity.

Officials of listed entities

- (5) An **official** of a Commonwealth entity that is a listed entity is a person who is prescribed by an Act or the rules to be an official of the entity.

15 Section 14

Repeal the section, substitute:

14 Guide to this Part

This Part is about the accountable authorities and officials of Commonwealth entities.

Accountable authorities

There are general duties that apply to all accountable authorities. Those duties are set out in sections 15 to 19.

Accountable authorities may give instructions to officials under section 20A. Those instructions are part of the finance law.

In relation to whether accountable authorities must apply government policy, different requirements apply depending on whether the entity is a non-corporate Commonwealth entity (see section 21) or a corporate Commonwealth entity (see section 22).

The accountable authorities of non-corporate Commonwealth entities have power to enter into arrangements, and approve commitments of relevant money, on behalf of the Commonwealth (see section 23).

Officials

There are general duties that apply to all officials. Those duties are set out in sections 25 to 29.

If an official who is the accountable authority, or a member of the accountable authority, of a corporate Commonwealth entity contravenes those duties, the official's appointment may be terminated (see section 30).

16 Subsection 19(2)

After "that is", insert "related to".

17 After Subdivision B of Division 2 of Part 2-2

Insert:

Subdivision BA—Accountable authority instructions

20A Accountable authority instructions

- (1) The accountable authority of a Commonwealth entity may, by written instrument, give instructions to an official of the entity about any matter relating to the finance law.
- (2) The accountable authority of a Commonwealth entity may, by written instrument, give instructions to an official of another Commonwealth entity in relation to:
 - (a) the official approving the commitment of relevant money for which the accountable authority is responsible; and
 - (b) the official banking, or otherwise dealing with, relevant money for which the accountable authority is responsible; and
 - (c) the official debiting or crediting an appropriation for which the accountable authority is responsible; and
 - (d) any matter prescribed by the rules that relates to the official dealing with public resources for which the accountable authority is responsible.
- (3) An instruction under subsection (1) or (2) is not a legislative instrument.

18 Section 23 (heading)

Repeal the heading, substitute:

23 Power in relation to arrangements and commitments

19 At the end of section 23

Add:

- (3) The accountable authority of a non-corporate Commonwealth entity may, on behalf of the Commonwealth, approve a commitment of relevant money for which the accountable authority is responsible.

19A Section 26 (heading)

Repeal the heading, substitute:

26 Duty to act honestly, in good faith and for a proper purpose

19B Section 26

After “duties”, insert “honestly”.

19C Section 27

Omit “position to”, substitute “position”.

19D Paragraph 27(a)

Omit “gain”, substitute “to gain, or seek to gain, a benefit or”.

19E Paragraph 27(b)

Omit “cause”, substitute “to cause, or seek to cause,”.

19F Section 28

Omit “information to”, substitute “information”.

19G Paragraph 28(a)

Omit “gain”, substitute “to gain, or seek to gain, a benefit or”.

19H Paragraph 28(b)

Omit “cause”, substitute “to cause, or seek to cause,”.

20 Section 30 (heading)

Repeal the heading, substitute:

30 Termination—accountable authority, or member of accountable authority, contravening general duties of officials

21 Subsection 30(1)

Omit “in relation to a corporate Commonwealth entity”, substitute “to a position in a corporate Commonwealth entity”.

22 Paragraph 30(1)(a)

Repeal the paragraph, substitute:

- (a) the appointer is responsible for appointing the appointee to the position; and

23 Paragraph 30(1)(c)

After “Subdivision A”, insert “, or rules made for the purposes of that Subdivision,”.

24 After subsection 30(1)

Insert:

Ex officio positions

(1A) A person’s appointment may be terminated under subsection (1):

- (a) even if the person was not appointed as the accountable authority, or a member of the accountable authority, of the entity but is the accountable authority, or a member of the accountable authority, as a result of holding the position in the entity to which the person was appointed; and
- (b) whether or not the contravention referred to in paragraph (1)(c) relates to the person’s duties as the accountable authority.

Note: This section does not apply to a person who is appointed to a position in a Commonwealth entity and, as a result of holding that position, is or is a member of the accountable authority of a different Commonwealth entity.

25 Before subsection 30(2)

Insert:

Procedure for terminating appointments

26 Before subsection 30(5)

Insert:

Rules may prescribe positions whose appointments must not be terminated

27 Subsection 30(6)

Repeal the subsection, substitute:

Relationship with other termination of appointment provisions

- (6) This section applies in addition to, and does not limit, any provision in any enabling legislation for a corporate Commonwealth entity that provides for the termination of the appointment of a person in relation to the entity.

28 Section 31

Omit “Subdivision A does not”, substitute “Subdivision A, and rules made for the purposes of that Subdivision, do not”.

29 Section 33 (paragraph relating to Division 7)

Omit “whole-of-government”, substitute “Australian Government financial”.

30 Paragraph 35(1)(a)

After “entity”, insert “at least once each reporting period for the entity”.

31 At the end of section 35

Add:

Variation of corporate plan

- (6) If the accountable authority varies the plan, the authority must comply with any requirements relating to variations of corporate plans that are prescribed by the rules.

32 At the end of subsection 40(1)

Add:

Note: The Auditor-General may at any time conduct a performance audit of a Commonwealth entity: see Division 2 of Part 4 of the *Auditor-General Act 1997*.

33 Subsection 44(1)

Omit “Commonwealth entity”, substitute “corporate Commonwealth entity”.

34 Subsection 46(1)

After “must”, insert “prepare and”.

35 Paragraph 46(2)(a)

Omit “last”, substitute “15th”.

36 Division 7 of Part 2-3 (heading)

Repeal the heading, substitute:

Division 7—Australian Government financial reporting

37 Section 50 (paragraph relating to Division 3)

Omit “requires Ministers and officials to bank”, substitute “has requirements about how Ministers and officials are to deal with”.

38 Section 52 (heading)

Repeal the heading, substitute:

52 Commitment or expenditure of relevant money

39 Section 55

Repeal the section, substitute:

55 Banking or dealing with relevant money

Ministers

- (1) A Minister who receives relevant money (other than relevant money that is to be held for the purposes of making payments in relation to the Minister’s official duties) must give the money to an official of a non-corporate Commonwealth entity as soon as is practicable.

Officials receiving bankable money

- (2) An official of a Commonwealth entity who receives relevant money that can be deposited in a bank (**bankable money**) must:
- (a) deposit the bankable money in a bank:
 - (i) within the period prescribed by the rules or, if the rules do not prescribe a period, as soon as is practicable; and
 - (ii) in accordance with any requirements prescribed by the rules; or
 - (b) otherwise deal with the bankable money in accordance with any requirements prescribed by the rules.

Officials receiving unbankable money

- (3) The rules may prescribe matters relating to relevant money that:
- (a) is received by an official of a Commonwealth entity; and
 - (b) is not bankable money.

Application of section

- (4) To avoid doubt, this section applies to money that becomes relevant money on receipt by a Minister or an official of a Commonwealth entity.

40 Subsection 56(1)

After “authorised by”, insert “or under”.

41 Section 57

Before “An”, insert “(1)”.

42 Paragraph 57(1)(a)

After “authorised by”, insert “or under”.

43 At the end of section 57

Add:

- (2) An authorisation under paragraph (1)(b) is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to it.

44 At the end of section 58

Add:

- (9) An authorisation under subsection (6) is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to it.

45 Subparagraphs 59(1)(b)(iii) and (iv)

Repeal the subparagraphs, substitute:

- (iii) in any other form of investment authorised by the Finance Minister in writing; or
- (iv) in any other form of investment prescribed by the rules; or
- (v) for a government business enterprise—in any other form of investment that is consistent with sound commercial practice.

46 At the end of section 59

Add:

- (4) An authorisation under subparagraph (1)(b)(iii) is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to it.

47 Division 7 of Part 2-4 (heading)

Repeal the heading, substitute:

Division 7—Waivers, modifications of payment terms, set-offs and act of grace payments

48 Section 63

Repeal the section, substitute:

63 Waiver of amounts or modification of payment terms

- (1) The Finance Minister may, on behalf of the Commonwealth, authorise:
- (a) the waiver of an amount owing to the Commonwealth; or

- (b) the modification of the terms and conditions on which an amount owing to the Commonwealth is to be paid to the Commonwealth.
- (2) An authorisation of a waiver or modification must be in accordance with any requirements prescribed by the rules.
- (3) An authorisation of a waiver may be made either unconditionally or on the condition that a person agrees to pay an amount to the Commonwealth in specified circumstances.
- (4) To avoid doubt, an amount may be owing to the Commonwealth even if it is not yet due for payment.
- (5) An authorisation of a waiver or modification is not a legislative instrument.

49 Subsection 64(1)

Omit “set off”, substitute “authorise the set-off of”.

50 After subsection 64(1)

Insert:

- (1A) An authorisation of a set-off must be in accordance with any requirements prescribed by the rules.

51 At the end of section 64

Add:

- (4) An authorisation of a set-off is not a legislative instrument.

52 Subsection 65(2)

Repeal the subsection, substitute:

- (2) An authorisation of a payment must be in accordance with any requirements prescribed by the rules.
- (3) Conditions may be attached to a payment. If a condition is contravened, the payment is recoverable by the Commonwealth as a debt in a court of competent jurisdiction.
- (4) An authorisation of a payment is not a legislative instrument.

53 Section 66

Before “A Minister”, insert “(1)”.

54 Subparagraph 66(b)(ii)

Repeal the subparagraph, substitute:

- (ii) is authorised by the Finance Minister in writing; or
- (iii) is made in accordance with any requirements prescribed by the rules.

55 At the end of section 66

Add:

- (2) An authorisation under subparagraph (1)(b)(ii) is not a legislative instrument.

56 Subsections 71(2) and (3)

Repeal the subsections, substitute:

- (2) If a Minister approves a proposed expenditure of relevant money, the Minister must:
 - (a) record the terms of the approval in writing as soon as practicable after giving the approval; and
 - (b) comply with any other requirements prescribed by the rules in relation to approvals of proposed expenditure.
- (3) For a Parliamentary Department, the references in subsection (1) or (2) to a Minister are references to:
 - (a) a Presiding Officer, for expenditure for which he or she alone is responsible; and
 - (b) the Presiding Officers jointly, for expenditure for which they are jointly responsible.

57 Section 73 (paragraph relating to Division 3)

Omit “another”, substitute “an”.

58 Subsection 75(5)

Repeal the subsection, substitute:

Transfer of function involving a Parliamentary Department

- (5) If the transfer of function involves a Parliamentary Department, then the Finance Minister must not make a determination under subsection (2) unless it is in accordance with a written recommendation of the relevant Presiding Officer.

Note: If the transfer is between Parliamentary Departments, then the recommendation of both Presiding Officers would be needed before the Finance Minister could make the determination.

59 Paragraphs 76(c) and (d)

Omit “this Act and the rules apply”, substitute “the finance law applies”.

60 Section 80 (heading)

Repeal the heading, substitute:

80 Special accounts established by an Act

61 Subsection 80(1)

Omit “another Act”, substitute “an Act (including this Act)”.

62 Subsection 89(2)

Omit “controls” (first occurring), substitute “*controls*”.

63 Paragraph 95(1)(a)

Omit “entity”, substitute “company at least once each reporting period for the company”.

64 At the end of section 95

Add:

Variation of corporate plan

- (5) If the directors vary the plan, the directors must comply with any requirements relating to variations of corporate plans that are prescribed by the rules.

65 Section 102

Before “The”, insert “(1)”.

66 Paragraph 102(c)

Repeal the paragraph.

67 After paragraph 102(g)

Insert:

- ; (h) for a Commonwealth entity that has ceased to exist or whose functions have been transferred to another Commonwealth entity:
 - (i) the preparation and giving of a report for the entity; and
 - (ii) the preparation, auditing and giving of financial statements and performance statements for the entity.

68 At the end of section 102

Add:

- (2) The rules may prescribe that a contravention of the finance law by an official of a Commonwealth entity does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing.

69 Paragraph 103(e)

Repeal the paragraph, substitute:

- (e) the name or purposes of a non-corporate Commonwealth entity that is prescribed by the rules to be a listed entity;

70 Section 104

Repeal the section, substitute:

104 Rules relating to the Commonwealth Superannuation Corporation

The rules may modify the operation of the following in relation to the Commonwealth Superannuation Corporation (within the meaning of the *Governance of Australian Government Superannuation Schemes Act 2011*):

- (a) this Act;
- (b) the rules;
- (c) an instrument made under section 105B or 105C (which deal with procurement and grants).

71 Subsection 105(3)

Omit “or a Commonwealth entity”.

72 After Part 4-1

Insert:

Part 4-1A—Other instruments

Division 1—Guide to this Part

105A Guide to this Part

This Part is about some other instruments that may be made under this Act.

It provides a power to make instruments about procurement by the Commonwealth, certain corporate Commonwealth entities or certain wholly-owned Commonwealth companies (see section 105B).

It also provides a power to make instruments about grants by the Commonwealth (see section 105C).

Finally, it provides a power to make instruments modifying the operation of this Act, the rules and instruments made under sections 105B and 105C in relation to intelligence or security agencies and listed law enforcement agencies (see section 105D).

Division 2—Instruments relating to procurement

105B Instruments relating to procurement

- (1) The Finance Minister may, by written instrument, make provision about procurement by:
 - (a) the Commonwealth; or
 - (b) corporate Commonwealth entities prescribed by the rules; or
 - (c) wholly-owned Commonwealth companies prescribed by the rules.
- (2) An instrument under subsection (1) is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to it.

Division 3—Instruments relating to grants

105C Instruments relating to grants

- (1) The Finance Minister may, by written instrument, make provision about grants by the Commonwealth.
- (2) An instrument under subsection (1) is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to it.

Division 4—Instruments relating to intelligence or security agencies or listed law enforcement agencies

105D Instruments relating to intelligence or security agencies or listed law enforcement agencies

- (1) This section applies in relation to an activity (the *designated activity*) determined under subsection (2) of the following entities:
 - (a) an intelligence or security agency that is a Commonwealth entity;
 - (b) a listed law enforcement agency that is a Commonwealth entity;

- (c) a Commonwealth entity of which a part is an intelligence or security agency.

Determination of designated activities

- (2) The responsible Minister for a Commonwealth entity referred to in subsection (1) may, by written instrument, determine that an activity of the entity is a designated activity if the Minister is satisfied that the activity is engaged in for the purposes of:
 - (a) for paragraph (1)(a) or (b)—the entity; or
 - (b) for paragraph (1)(c)—the part of the entity.

Determination modifying this Act and other instruments

- (3) The Finance Minister may determine, by written instrument, modifications of the following in relation to a designated activity of a Commonwealth entity:
 - (a) Part 2-3 (which deals with planning, performance and accountability);
 - (b) Part 2-4 (which deals with the management of public resources);
 - (c) Part 2-7 (which deals with companies, subsidiaries and new corporate Commonwealth entities);
 - (d) Chapter 3 (which deals with Commonwealth companies);
 - (e) any other provision of this Act prescribed by the rules;
 - (f) the rules;
 - (g) an instrument made under section 105B or 105C (which deal with procurement and grants).

Note: *Modifications* is defined in section 2B of the *Acts Interpretation Act 1901*.

- (4) A determination under subsection (3) that relates to a Commonwealth entity may also include:
 - (a) a delegation of a power, function or duty under section 107 to an official of the entity; and
 - (b) any direction to the official under that section.

Review of determinations

- (5) A determination under subsection (2) or (3) must be reviewed:
-

- (a) at least once every 3 years; or
- (b) if the activities of the entity change significantly.

Determinations not legislative instruments

- (6) A determination under subsection (2) or (3) is not a legislative instrument.

73 Paragraph 107(2)(b)

Omit “(3)”, substitute “(2)”.

74 At the end of subsection 107(2)

Add:

- ; or (i) Part 4-1A (which is about some other instruments made under this Act).

75 After paragraph 110(2)(a)

Insert:

- (aa) section 20A (which is about accountable authority instructions); or

*[Minister’s second reading speech made in—
House of Representatives on 29 May 2014
Senate on 16 June 2014]*

(126/14)
