EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Public Governance, Performance and Accountability Act 2013

Public Governance, Performance and Accountability Rule 2014

The *Public Governance, Performance and Accountability Act 2013* (PGPA Act) consolidates into a single piece of legislation the governance, performance and accountability requirements of the Commonwealth, setting out a framework for regulating resource management by the Commonwealth and relevant entities. The PGPA Act will replace the *Financial Management and Accountability Act 1997* and the *Commonwealth Authorities and Companies Act 1997*. The substantive provisions of the PGPA Act will commence on 1 July 2014.

Section 101 of the PGPA Act provides that the Finance Minister may make rules by legislative instrument to prescribe matters giving effect to the Act.

The *Public Governance, Performance and Accountability Rule 2014* (the PGPA Rule) is being made to support the implementation of the PGPA Act. The PGPA Rule contains provisions that predominantly relate to significant accountability and control mechanisms, that is, the elements of the framework that support the transactions of the Commonwealth and Commonwealth entities. The provisions relate to:

- government business enterprises;
- listed entities;
- listed law enforcement agencies;
- Commonwealth entities and their accountable authorities – bodies corporate established under a law of the Commonwealth;
- officials;
- preventing, detecting and dealing with fraud;
- recovery of debts;
- officials' duty to disclose interests;
- audit committees for Commonwealth entities and for wholly-owned Commonwealth companies;
- Commonwealth entities ceasing to exist or functions transferred
- commitments of relevant money;
- banking;
- borrowing
- investment by the Commonwealth and by corporate Commonwealth entities;

- insurance obtained by corporate Commonwealth entities;
- authorisations of waiver. modifications of payments terms, set-offs and act of grace payments;
- payment of amount owed to person at time of death;
- Ministers informing Parliament of certain events;
- receipts of amounts by non-corporate Commonwealth entities;
- other CRF money; and
- procurement by corporate Commonwealth entities and wholly-owned Commonwealth companies.

Details of the PGPA Rule are set out at Attachment A. A statement of compatibility with human rights is at Attachment B.

The PGPA Rule is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Consultation

In accordance with section 17 of the *Legislative Instruments Act 2003*, the Department of Finance consulted stakeholders from across the Commonwealth in the development of the PGPA Rule. A project board chaired by the Department of Finance oversaw the development process and five steering committees were constituted to work on specific subjects under the framework. The Australian National Audit Office was engaged as an observer and participated in all committees.

Membership of the steering committees was drawn from a wide range of Commonwealth entities and Commonwealth companies, including Departments of State, prescribed agencies, Parliamentary Departments and statutory authorities.

Consultation was also undertaken with key stakeholders in regional and remote communities and in Sydney, Melbourne and Adelaide.

Once drafted, the components of the PGPA Rule were posted on the Department of Finance website and were open for public comment for at least 30 days.

The PGPA Rule only applies to Commonwealth entities and companies, and does not adversely affect the private sector. The Office of Best Practice Regulation has advised that a regulation impact statement is not required as the PGPA Rule would have no more than a minor regulatory impact on business, community organisations or individuals.

Attachment A

Details of the *Public Governance, Performance and Accountability Rule 2014*

Chapter 1—Introduction
Part 1-1—Introduction

Division 1—Preliminary

Section 1—Name of rule

This section provides that the title of the rule is the *Public Governance, Performance and Accountability Rule 2014*.

Section 2—Commencement

This section sets out the timetable for the commencement of the provisions of the PGPA Rule. Sections 1 to 3 commence on the day after the rule is registered on the Federal Register of Legislative Instruments. Sections 4 to 30 and Schedule 1 commence on either the day after the rule is registered or the day section 101 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) commences, whichever is later. However, if section 101 of the PGPA Act does not commence, the substantive provisions of the PGPA Rule will not commence.

Section 3—Authority

This section states that the PGPA Rule is made under the PGPA Act.

Division 2—Definitions

Section 4—Definitions

This section defines certain terms that are used in the PGPA Rule.

Part 1-2—Provisions relating to the Dictionary in the Act

Each section of the PGPA Rule has a guide that summarises the purpose of the section.

Section 5—Government business enterprise

Section 5 of the PGPA Rule is made for section 8 of the PGPA Act to identify the corporate Commonwealth entities and companies that are government business enterprises for the purposes of the Act.

The relationship between the Commonwealth and its government business enterprises is similar to the relationship between a holding company and its subsidiaries.

Under section 101 of the PGPA Act, the Finance Minister may make rules prescribing matters or making different provisions in relation to particular Commonwealth entities or companies, or classes of Commonwealth entities or companies. It is proposed that under the

scheme to be put in place under the Act and its rule, specific accountability and reporting requirements would apply to government business enterprises in areas like corporate planning, in recognition of the commercial nature of their activities or the entrepreneurial skills required from accountable authorities responsible for the entity.

Subsection 5(1) lists the following corporate Commonwealth entities as government business enterprises for the purposes of section 8 of the PGPA Act: the Australian Government Solicitor, the Australian Postal Corporation, and the Defence Housing Authority. These entities are currently listed in regulation 4 of the *Commonwealth Authorities and Companies Regulations 1997* (CAC Regulations) for the purposes of section 4 of the *Commonwealth Authorities and Companies Act 1997* (CAC Act).

Subsection 5(2) lists the following Commonwealth companies as government business enterprises for the purposes of section 8 of the PGPA Act: ASC Pty Limited, Australian Rail Track Corporation Limited, Medibank Private Limited, Moorebank Intermodal Company Limited; and NBN Co Limited. The section ensures that a change in the name of a company will not affect its government business enterprise status. These Commonwealth companies are currently listed in regulation 4 of the CAC Regulations for the purposes of section 5 of the CAC Act.

Section 6—Listed entities

Section 6 is made for the purposes of section 8 of the PGPA Act to define listed entities as those set out in Schedule 1 to the rule. Schedule 1 lists bodies, persons, groups or organisations that are listed entities for the purposes of the PGPA Act.

Section 7—Listed law enforcement agency

Section 7 is made under paragraph 105D(1)(b) of the PGPA Act to prescribe certain Commonwealth entities as listed law enforcement agencies for the purposes of the Act. The section is made for section 8 of the PGPA Act to define listed law enforcement agencies.

Under section 105D of the PGPA Act, the Finance Minister may make modifications for the application of particular elements of the PGPA Act in relation to designated activities of listed law enforcement agencies in recognition of the sensitivities that apply to particular law enforcement operations. These could include the level of public reporting required in relation to operational activities and banking in certain operational contexts.

This section lists the following Commonwealth entities as law enforcement agencies for the purpose of the PGPA Act: the Australian Federal Police, the Australian Commission for Law Enforcement Integrity, and the Australian Crime Commission. These entities are currently listed in Schedule 3 to the *Financial Management and Accountability Regulations 1997* (FMA Regulations) in relation to regulation 28 for the purposes of section 58 of the *Financial Management and Accountability Act 1997* (FMA Act).

Chapter 2—Commonwealth entities and the Commonwealth
Part 2-1—Core provisions about Commonwealth entities and the Commonwealth

Section 7A – Commonwealth entities and their accountable authorities – bodies corporate established under a law of the Commonwealth

Section 7A identifies the bodies corporate, established under a law of the Commonwealth, that are Commonwealth entities. It also identifies the accountable authority of the entity where the accountable authority is not the governing body of the entity. This section is made for paragraph 10(1)(e) and item 4 of the table in subsection 12(2) of the PGPA Act.

The four Land Councils identified in this section are established by the issuing of gazettal notices under section 21 of the *Aboriginal Land Rights (Northern Territory) Act 1976.* The accountable authority for each Land Council comprises the Chair and Chief Executive Officer of the Land Council, except in the case of the Central Land Council, whose accountable authority is the Chair and the Director.

Section 8—Accountable authorities—listed entities

Section 8 provides that the accountable authorities of listed entities are as specified in Schedule 1 to the rule. The section is made for item 3 of the table in subsection 12(2) of the PGPA Act.

Section 9—Officials

Subsection 9(1) identifies individuals who are officials of certain Commonwealth enties and is made for paragraphs 13(3)(c) of the PGPA Act. The subsection specifies:

- a list of persons whose services are made available to a Commonwealth entity in connection with the performance of any of the entity's functions are officials of that entity;
- that a person involved in performing the functions of the Independent Auditor under Part 7 of the *Auditor General Act 1997* is an official of the Department of Prime Minister and Cabinet;
- that members of the Australian Defence Force are officials of the Department of Defence, except for members whose services have been made available to the Chief Executive Officer of the Defence Materiel Organisation (members in the latter category are officials of the Defence Material Organisation);
- that consultants engaged under section 34 of the *Coal Mining Industry (Long Service Leave) Administration Act 1992* are officials of the Coal Mining Industry (Long Service Leave Funding) Corporation if they are able to significantly affect the Corporation as specified; and
- that officers, instructors and cadets in the Australian Air Force Cadets, the Australian Army Cadets or the Australian Navy Cadets are officials of the Department of Defence.

Subsection 9(2) identifies which individuals are not officials of certain Commonwealth entity and is made for paragraph 13(4)(d) of the PGPA Act. The subsection specifies that a person appointed to an Advisory Council or advisory committee of the Australian Broadcasting Corporation is not an official of that Corporation.

Part 2-2—Accountable authorities and officials

Division 1—Requirements applying to accountable authorities

Section 10—Preventing, detecting and dealing with fraud

Section 10 is made for paragraphs 102(a), (b) and (d) of the PGPA Act to prescribe the minimum standard for managing fraud risk and incidents under the Act. The section requires the accountable authority of a Commonwealth entity to take all reasonable measures to prevent, detect and deal with fraud relating to the entity. The section provides for the continuity of effective Commonwealth fraud control arrangements.

The *Financial Management and Accountability Regulations 1997* included provision for the Minister for Justice to issue the Commonwealth Fraud Control Guidelines (Guidelines). The Guidelines were a binding legislative instrument that set out the Commonwealth's fraud control policy and requirements for managing fraud within FMA Act agencies.

Under the PGPA Act, Commonwealth fraud control is underpinned by the rules. Section 10 of the PGPA Rule provides a legislative basis for Commonwealth fraud control arrangements and sets out clear, consistent and unambiguous requirements for fraud risk management and controls, to assist accountable authorities to meet their obligations under the PGPA Act. The section draws on the Guidelines, which are based on established principles of fraud control necessary for maintaining minimum standards within entities.

Paragraphs (a) and (b) of the section require accountable authorities to conduct fraud risk assessments and develop fraud control plans. Paragraph (c) requires that accountable authorities have an appropriate mechanism for preventing fraud, including by ensuring that the risk of fraud is taken into account in planning and conducting the activities of the entity. Paragraph (c) also requires accountable authorities to ensure that officials in the entity are made aware of what constitutes fraud.

Paragraphs (d) and (e) require that accountable authorities have appropriate mechanisms for detecting, investigating and dealing with incidences of fraud or suspected fraud. Paragraph (f) requires that accountable authorities have an appropriate mechanism for recording and reporting incidences of fraud or suspected fraud.

Section 11—Recovery of debts

Section 11 is made under paragraph 103(c) of the PGPA Act to require the accountable authorities of non-corporate Commonwealth entities to pursue the recovery of debts owing to the Commonwealth.

A debt owing to the Commonwealth is money that the holder is not lawfully entitled to keep. It is desirable, from the point of view of having a common scheme governing the proper use of public resources, to ensure that consistent requirements apply to the recovery of

Commonwealth money. This includes imposing a responsibility to pursue the recovery of a debt except in limited and specified circumstances.

The section provides that the accountable authority of a non-corporate Commonwealth entity must pursue recovery of each debt for which the accountable authority is responsible unless the accountable authority considers that it is not economical to pursue recovery of the debt; the accountable authority is satisfied that the debt is not legally recoverable; or the debt has been written off by an Act.

Comparable provisions currently apply to the chief executives of FMA Act agencies by virtue of section 47 of that Act. The non-corporate Commonwealth bodies that would be subject to this section currently fall under the ambit of the FMA Act.

Division 2—Officials' duty to disclose interests
Subdivision A—When duty does not apply

Section 12—When duty does not apply

The duty to disclose material personal interests related to the affairs of an entity is an accepted standard of good governance and management. It is a feature of the CAC Act, the *Corporations Act 2001*, and the enabling legislation of a number of Commonwealth entities. The sections in the PGPA Rule on the disclosure of interests replace the requirements under the CAC Act and under the enabling legislation of numerous Commonwealth entities, and complement the requirements in the *Public Service Act 1999* and the *Parliamentary Service Act 1999*.

The term 'material' is not defined in the PGPA Act or the PGPA Rule. Guidance on the duty of disclosure deals with the concept of materiality, drawing on the existing precedents established through the common law, Australian accounting standards and other relevant references. These existing precedents generally note that materiality depends on the size and nature of the interest and the surrounding circumstances.

The requirements to disclose interests are spread across several sections. Section 12 explains when the duty does not apply. Section 13 describes how and when officials who are themselves the accountable authority of the entity are to disclose interests. Section 14 relates to how and when officials who are members of the accountable authority of the entity are to disclose interests. Section 15 relates to the consequences of having an interest for officials who are members of the accountable authority. Section 16 relates to other officials. Then sections 16A, 16B and 16C relate to disclosure requirements for officials who are members of a body.

Section 12 is made for paragraph 29(2)(a) of the PGPA Act and prescribes circumstances when an official of a Commonwealth entity is not required to disclose details of a material personal interest that relates to the affairs of the entity. Section 12 of the PGPA Rule applies to officials who are the accountable authorities or who are members of accountable authorities.

Subsection 12(1) provides that an official who is the accountable authority or a member of the accountable authority is not required to disclose a material personal interest if the interest relates to:

- the official's remuneration; or
- a contract that insures, or would insure, the official against liabilities the official incurs as an accountable authority or as a member of the accountable authority (but only if the contract does not make the entity or a subsidiary of the entity the insurer); or
- relates to any payment by the entity, or a subsidiary of the entity, in relation to an indemnity permitted under section 61 of the PGPA Act, or any contract relating to an indemnity permitted under section 61 of the PGPA Act.

Subsection 12(1) also provides that an official who is a member of the governing body of a subsidiary is not required to give notice of an interest if it arises in a contract, or a proposed contract, with, or for the benefit of, or on behalf of, the subsidiary and it arises merely because the official is, or is a member of, the governing body of the subsidiary.

These provisions continue exceptions contained in paragraph 27F(2)(a) of the CAC Act that, in turn, correspond to exceptions that apply to directors of companies in section 191 of the *Corporations Act 2001*.

Subsection 12(2) provides that if the material personal interest arises because the official is a member of an indigenous Land Council who has a traditional ownership right in relation to land, then, to the extent that they are a 'traditional Aboriginal owner' of the land within the definition of that term in the *Aboriginal Land Rights (Northern Territory) Act 1976*, the interest does not need to be disclosed under the PGPA Act. Land Council members also do not have to disclose any traditional rights they have to the use or occupation of Aboriginal land provided under section 71 of the *Aboriginal Land Rights (Northern Territory) Act 1976*. These exemptions from disclosure are provided because it is expected that they are already known among Land Council members.

Subdivision B—Officials who are the accountable authority

Section 13—Officials who are the accountable authority – how and when to disclose interests

Section 13 ensures that there are consistent requirements for how and when an official who is the accountable authority of a Commonwealth entity must disclose material personal interests that relate to the affairs of the entity. It is made for paragraph 29(2)(b) of the PGPA Act.

Subsection 13(1) of this section requires that the official disclose the interest, in writing, to the entity's responsible Minister.

Subsection 13(2) requires that the disclosure include details of the nature and extent of the interest and how it relates to the affairs of the entity.

Subsection 13(3) requires that the official make the disclosure as soon as practicable after the official becomes aware of the interest and, if there is a change in the nature or extent of the interest after the official has disclosed it, as soon as practicable after the official becomes aware of that change.

Subdivision C—Officials who are members of the accountable authority

Section 14—Officials who are members of the accountable authority—how and when to disclose interests

Section 14 ensures that there are consistent requirements for how and when an official who is a member of the accountable authority of a Commonwealth entity must disclose material personal interests that relate to the affairs of the entity. It is made for paragraph 29(2)(b) of the PGPA Act.

Subsection 14(1) of this section requires that the official disclose the interest, orally or in writing, to each other member of the accountable authority.

Subsection 14(2) requires that the disclosure include details of the nature and the extent of the interest and how it relates to the affairs of the entity.

Subsection 14(3) requires that the official make the disclosure at a meeting of the members of the accountable authority as soon as practicable after the official becomes aware of the interest, and, if there is a change in the nature or extent of the interest after the official has disclosed it, as soon as practicable after the official becomes aware of that change.

Subsection 14(4) requires an official to ensure that the disclosure is recorded in the minutes of the meeting.

These requirements are based on the requirements in sections 27F and 27G of the CAC Act, but simplify those arrangements.

Section 15—Officials who are members of the accountable authority—consequences of having interests

Section 15 restricts members of an accountable authority of a Commonwealth entity who have a material personal interest in a matter relating to the affairs of the entity from being present, or voting, at a meeting on the matter. It is made for paragraph 29(2)(c) of the PGPA Act.

Subsection 15(1) states that section 15 applies to an official who is a member of an accountable authority of a Commonwealth entity and who has a material personal interest.

Subsections 15(2) and (3) set out the consequences of having an interest.

Subsection 15(2) requires that if a matter in which the official has the interest is being considered at a meeting of the members of the accountable authority, the official must not be present while that matter is being considered at the meeting, or vote on the matter.

Subsection 15(3) provides that the official may be present or vote at a meeting in two circumstances, namely, if the responsible Minister for the entity has declared, in writing, that the official may be present or vote or both, or if the members of the accountable authority who do not have a material interest in the matter have decided that the official is not disqualified from being present or voting or both, and the decision is recorded in the minutes of a meeting of the members. However, the official may be present or vote, or both, only in accordance with the declaration or decision.

Subsection 15(4) provides for the scope of the declaration by the responsible Minister. The responsible Minister may declare that the official may be present while the matter is being considered at the meeting, or that the official may vote on the matter, or both.

Subsection 15(5) provides that the responsible Minister may only make the declaration in three situations:

- if the number of members of the accountable authority entitled to be present and vote on the matter would be less than the quorum for a meeting of the accountable authority if the official were not allowed to be present or vote on the matter at the meeting;
- the matter needs to be dealt with urgently; or
- if there is a compelling reason for the matter being dealt with at the meeting. This is to ensure that ministerial declarations are only made in limited circumstances or for urgent matters.

Subdivision D—Other requirements to disclose material personal interests

Section 16—Officials who are not the accountable authority or a member of the accountable authority

This section ensures that there are consistent requirements for how and when other officials of Commonwealth entities must disclose material personal interests that relate to the affairs of the entities. It is made for paragraph 29(2)(b) of the PGPA Act. It provides that an official of a Commonwealth entity must disclose an interest in accordance with any instructions given by the accountable authority.

The guide to the section mentions that if the *Public Service Act 1999* also applies to the official, there is a similar, but separate, requirement in subsection 13(7) of that Act to disclose material personal interests in connection with APS employment.

Section 16A – Certain officials appointed under a law to a body – how and when to disclose interests

This section ensures that there are consistent requirements for how and when officials of Commonwealth entities who are appointed to bodies under a law, such as a committee or council, disclose material personal interests that relate to the affairs of the entities. It is made for paragraph 29(2)(b) of the PGPA Act. It provides that these officials must disclose to each other appointed member of the body.

Section 16B – Certain officials appointed under a law to a body – consequences of having interest

Section 16B restricts officials of a Commonwealth entity who are appointed under a law to a body and have material personal interests in a matter relating to the affairs of the entity from being present at any consideration of the body on the matter or voting on the matter. It is made for paragraphs 29(2)(c) of the PGPA Act.

Section 16C – Application of sections 16A and 16B to accountable authorities or members of accountable authorities who are also ex officio members of a body

Section 16C operates to apply sections 16A or 16B to accountable authorities or members of accountable authorities who are also ex officio members of a body under those sections as if they were like any other member appointed to that body. It is made for paragraphs 29(2)(b) and (c) of the PGPA Act.

Subdivision E – Effect of contravention of duty to disclose interests

Section 16D – Effect of contravention of duty to disclose interests

This section provides that the contravention of an official's duty to disclose a material personal interest that relates to the affairs of their entity under section 29 of the PGPA Act or Division 2 of the PGPA Rule does not affect the validity of anything.

Part 2-3—Planning, performance and accountability

Division 1 – Audit Committee for Commonwealth entities

Section 17—Audit committee for Commonwealth entities

Section 17 is made for subsection 45(2) of the PGPA Act to set out the minimum requirements for establishing an audit committee for a Commonwealth entity. It applies to both non-corporate and corporate Commonwealth entities. Under subsection 45(1) of the PGPA Act, each entity is required to have an audit committee. Section 17 of the PGPA Rule helps to ensure that the committee provides independent advice and assurance to the entity's accountable authority. Audit committees have no management function - the value of a committee is that it is independent of management and can provide advice from that perspective.

Subsections 17(1) and (2) outline the functions of an audit committee that is established under subsection 45(1) of the PGPA Act. Subsection 17(1) requires the accountable authority to determine the functions of an audit committee in a written charter. Subsection 17(2) states that the functions of an audit committee must include reviewing the appropriateness of the accountable authority's financial reporting, performance reporting, system of risk oversight and management, and system of internal control for the entity.

Subsections 17(3) and (4) outline the membership of an audit committee. Subsection 17(3) states that the audit committee must consist of at least three persons who have appropriate

qualifications, knowledge, skills or experience to assist the committee to perform its functions.

Subsection 17(4) provides that, from 1 July 2015, the majority of the members of the audit committee of a non-corporate Commonwealth entity must not be officials of the entity; and for the audit committee of a corporate Commonwealth entity, the majority of members must not be employees of the entity. This is a change to existing legislative requirements. The FMA Act requires the Chief Executive to ensure, as far as practicable, that the audit committee includes at least one member who is not an employee of the entity. The CAC Act limits membership to one person who is an executive director of the authority. The requirement for independent membership is intended to help ensure that the audit committee is able to provide independent advice and assurance to the entity's accountable authority.

Subsection 17(5) states that the following persons must not be a member of an audit committee: the accountable authority, or, if the accountable authority has more than one member, the head of the accountable authority; the chief financial officer of the entity; or the chief executive officer of the entity, however these persons are described. The purpose of this requirement is to help ensure that there is a degree of independence between an audit committee and particular senior leadership and management roles in an entity. This requirement does not limit the ability of a corporate Commonwealth entity to appoint non–executive board members, other than the chair, to an audit committee.

While the PGPA Act requires an accountable authority to ensure that the entity has an audit committee and this section of the PGPA Rule requires the accountable authority to determine the committee's functions, neither the PGPA Act nor the PGPA Rule prevents the same audit committee being established for multiple Commonwealth entities.

Current provisions on audit committees are contained in regulation 22C of the FMA Regulations for non-corporate Commonwealth entities and in regulation 6A of the CAC Regulations for corporate Commonwealth entities. This single section of the PGPA Rule replaces these separate requirements. It simplifies the requirements on membership and functions currently set out under regulation 22C for non-corporate Commonwealth entities, and, in contrast to regulation 6A, spells out the functions of an audit committee for corporate Commonwealth entities.

Division 2 – Special reporting requirements

Section 17A – Commonwealth entities ceasing to exist or functions transferred

Section 17A allows the Finance Minister to nominate who should report on the functions of Commonwealth entities that cease to exist or on function that have been transferred to another Commonwealth entity. It is made for paragraph 102(1)(h) of the PGPA Act and replicates the current arrangements in subsections 51(1) and (2) of the FMA Act.

Subsections 17A(1) and (2) provide that when a Commonwealth entity ceases to exist, the Finance Minister may nominate the accountable authority of another Commonwealth entity to prepare the annual performance and financial statements and the annual report for those functions of the old entity that have not been transferred to another entity.

Subsection 17A(3) provides that if the functions of one Commonwealth entity have been transferred to another, the accountable authority of the other Commonwealth entity can be nominated by the Finance Minister to prepare the annual performance and financial statements and annual reports that relate to that function.

Part 2-4—Use and management of public resources

Division 1—Commitments of relevant money

Section 18—Approving commitments of relevant money

Section 18 is made for section 52 of the PGPA Act to prescribe matters relating to the commitment or expenditure of relevant money by the Commonwealth or a Commonwealth entity. It relates to both non-corporate and corporate Commonwealth entities. Relevant money is defined in section 8 of the PGPA Act as money standing to the credit of any bank account of the Commonwealth or a corporate Commonwealth entity or money that is held by the Commonwealth or a corporate Commonwealth entity.

The accountable authority responsible for public resources, including relevant money, has a duty to promote the proper use and management of the relevant money under paragraph 15(1)(a) of the PGPA Act. Under section 8 of the PGPA Act, 'proper' in this context means 'efficient, effective, economical and ethical'. For non-corporate Commonwealth entities, section 21 of the PGPA Act adds the requirement that the use and management of public resources under paragraph 15(1)(a) not be inconsistent with the policies of the Australian Government. The accountable authority also has a duty to implement measures directed at ensuring officials of the entity comply with the finance law under section 16 of the PGPA Act.

If the accountable authority delegates its power to approve the commitment of relevant money to an official, or otherwise authorises an official to exercise that power, the accountable authority will be able to manage the proper use of relevant money through instructions, and through an appropriate system of internal control, which it must establish and maintain under subsection 16(b) of the PGPA Act. The accountable authority will be able to achieve this whether the official is of the same entity as the accountable authority or a different Commonwealth entity. The delegation of authority to a different Commonwealth entity can occur in situations where there are machinery of government changes or in joined-up activities between entities.

Officials, including the accountable authority or individual members of the accountable authority, are also required to comply with the general duties of officials set out in sections 25 to 29 in the PGPA Act when they are performing their duties. When considering approving the commitment of relevant money the following duties are of particular importance:

- duty of care and diligence (section 25 of the PGPA Act); and
- duty to act in good faith and for proper purpose (section 26 of the PGPA Act).

Subsection 18(1) requires that an accountable authority or official of a Commonwealth entity who is approving the commitment of relevant money for which the accountable authority of a Commonwealth entity is responsible, must record the approval in writing as soon as practicable after giving it. Under section 12 of the *Electronic Transactions Act 1999*, if, under a law of the Commonwealth, a person is required to record an approval in writing, that requirement is taken to have been met if the person records the information in electronic form, and that record could be accessible for subsequent reference. Recording an approval in an Commonwealth entity's electronic financial management system or by an e-mail that was properly stored and readily accessible for future reference, would, therefore, meet the requirements of this provision.

Subsection 18(2) requires that the official must also approve the commitment and record the approval consistently with any written requirements, including any requirements that might relate to the proper use of that money and any spending limits, specified by the accountable authority. These requirements may be set out in the instrument that delegates to the official under section 20A of the PGPA Act, or otherwise authorises the official to exercise, the accountable authority's power to approve the commitment of relevant money; or in a direction to the official in relation to the exercise of that power or in instructions given by the accountable authority. It is expected in setting its system of internal control for the commitment of relevant money, the accountable authority of an entity, will have proper regard to the overall risk environment of the entity, and the particular risks that attach to particular transactions or classes of transactions.

This section of the PGPA Rule replaces the current requirements under regulations 9 and 12 of the FMA Regulations for FMA Agencies (non-corporate entities under the PGPA Act). In summary, those regulations provide that an approver of a spending proposal must be satisfied, after making reasonable inquiries, that giving effect to spending proposals would be a proper use of Commonwealth resources, and that the terms of the approval must be recorded in writing as soon as practicable after giving the approval. No provisions exist in relation to the commitment and expenditure of money for corporate Commonwealth entities under the CAC Act or the CAC Regulations. The extension of requirements for approving commitments of relevant money to all Commonwealth entities improves the coherence of arrangements across the Commonwealth for the management of public resources.

Division 2—Banking or dealing with relevant money received by officials

Section 19—Banking of bankable money received by officials

Section 19 is made for subparagraph 55(2)(a)(i) of the PGPA Act to require officials who receive relevant money that can be banked to deposit the money in a bank either by the next banking day or within the period prescribed in the accountable authority's instructions. The section helps to ensure that relevant money in the form of cash is held in proper custody and can yield commercial returns to the advantage of the Commonwealth or corporate Commonwealth entities.

Certain money cannot be banked. A separate section of the rule is made for money that cannot be banked.

Subsection 19(1) requires an official of a Commonwealth entity who receives bankable money to deposit the money in a bank before the end of the next banking day, or, if the instructions of the accountable authority that is responsible for the money prescribe a different, before the end of that period.

The provision in subsection 19(1) that allows an accountable authority to prescribe a period in which the money must be deposited other than before the next banking day is to allow for officials of entities who operate in regional and remote areas of Australia where banking facilities are not readily accessible, or in overseas countries that operate banking systems with different access arrangements to Australia's, to hold the money until they can access a bank. Similar provisions are found in the current arrangements that are made in relation to section 10 of the FMA Act under regulation 17 of the FMA Regulations.

Section 20—Otherwise dealing with bankable money received by officials

Section 20 is made for the paragraph 55(2)(b) of the PGPA Act to require officials who receive relevant money that can be banked to deal with the money in accordance with the accountable authority's instructions as an alternative to banking it as required under section 19.

The section requires an official of a Commonwealth entity who receives bankable money that is to be held for the purposes of making payments in relation to a Commonwealth entity to deal with the money in accordance with any requirements prescribed by the instructions of the accountable authority that is responsible for the money.

This allows for arrangements under which cash floats are managed by an entity or under which money received is used to pay for goods and services purchased, which may be the case in regional and remote areas of Australia or in overseas locations. It also allows for situations when an accountable authority considers it uneconomical to bank money—for example, when coins of a small denomination are collected in a remote location. An accountable authority may decide to store the coins until enough are collected to warrant the cost of transporting them to a bank.

Section 21—Dealing with unbankable money received by officials

Section 21 is made for subsection 55(3) of the PGPA Act to require officials who receive relevant money that cannot be banked to deal with the money in accordance with the instructions of the accountable authority that is responsible for the money. Certain money cannot be banked—for example, money in the form of foreign coins, money that is not accepted by a bank because it is damaged, or money that is not recognised as legal tender.

Regulation 18 of the FMA Regulations, which contains the current arrangements for money that cannot be banked, requires that 'an official who receives public money in a non-bankable currency must take reasonable steps to safeguard the money'. In order to meet this requirement, a number of entities have been found to have incurred disproportionate costs in securing such money.

Under the proposed scheme, any instruction made by an accountable authority in relation to relevant money that cannot be banked, must be made in accordance with the duty on an accountable authority under paragraph 15(1)(a) of the PGPA Act to promote the proper use

and management of public resources for which the authority is responsible, and the requirement for an accountable authority under section 16 of the PGPA Act to establish and maintain an appropriate system of risk oversight and management and an appropriate system of internal control for the entity.

Division 2A – Borrowing

Section 21A – Borrowing by corporate Commonwealth entities

Section 21A deals with borrowing by corporate Commonwealth entities. This section authorises the borrowing of money by a corporate Commonwealth entity by way of a credit card, credit voucher or other credit facility if the agreement requires the borrowed amount to be repaid within 90 days. This section is made for paragraph 57(1)(c) of the PGPA Act and permits corporate Commonwealth entities to have the same power to borrow as currently provided in section 28A of the CAC Act

Division 3—Investment

Section 22—Investment by the Commonwealth

Section 22 is made for subparagraph 58(8)(a)(iii) of the PGPA Act and sets out the additional forms of investment that the Finance Minister and the Treasurer are authorised to make on behalf of the Commonwealth.

Section 58 of the PGPA Act gives authority to the Finance Minister and the Treasurer to invest relevant money on behalf of the Commonwealth. By implication, no other person may invest on behalf of the Commonwealth, unless expressly authorised by legislation or through a delegation made by the Finance Minister under section 107 or the Treasurer under section 108 of the PGPA Act.

Delegations of investment powers by the Finance Minister are sometimes given to the accountable authorities of non-corporate Commonwealth entities in relation to specified moneys. The Treasurer has currently delegated investment powers to the Australian Office of Financial Management in relation to the management of the Commonwealth's public debt. A small number of non-corporate Commonwealth entities have enabling legislation that permits investment activities. These arrangements are not limited by the provisions in section 58 of the PGPA Act.

Section 58 enables the making of investments by describing the technical arrangements for investments in relation to trusts, special accounts and the Consolidated Revenue Fund more broadly, and to enable investment in particular securities guaranteed by an Australian government and deposits with a bank.

Paragraph 58(8)(a) of the PGPA Act defines the types of investments that the Finance Minister and the Treasurer are authorised to make. These authorised investments are:

- securities of, or guaranteed by, the Commonwealth, a State or a Territory (subparagraph 58(8)(a)(i) of the PGPA Act); or

- a deposit with a bank, including a deposit evidenced by a certificate of deposit (subparagraph 58(8)(a)(ii) of the PGPA Act).

Subparagraph 58(8)(a)(iii) allows for rules to prescribe any other form of investment as an authorised investment.

Subsection 22(1) of the PGPA Rule provides that the Finance Minister and the Treasurer are authorised to invest in the following additional forms of investment: a bill of exchange, a professionally managed money market trust, and a dematerialised security (a security that exists in book-entry form, as opposed to paper form). The section provides limitations in relation to each of these forms of investment.

Under paragraph 22(1)(a), a bill of exchange may be invested in only if it is of a type that is accepted or endorsed by a bank. 'Bank' is defined in section 8 of the PGPA Act as an authorised deposit-taking institution within the meaning of the *Banking Act 1959*, the Reserve Bank of Australia; or a person who carries on the business of banking outside Australia.

Under paragraph 22(1)(b), investments in a professionally managed money market trust may be made only if the Finance Minister or the Treasurer are satisfied that the only investments managed by the trust are investments referred in paragraph 22(1)(a) or in subparagraph 58(8)(a)(i) or 58(8)(a)(ii) of the PGPA Act, and a charge over trust assets does not support any borrowing by the trustee in relation to the trust.

Under paragraph 22(1)(c), a dematerialised security can be invested in only if it is deposited in the Austraclear System and is the equivalent of an investment referred to in paragraph 22(1)(a) or in subparagraph 58(8)(a)(ii) of the PGPA Act.

Subsection 22(2) defines a dematerialised security as a dematerialised security that is deposited in the Austraclear System. At this time, securities in a dematerialised form only exist in the Austraclear System, and, given that the Austraclear System is the system adopted by Australia's financial markets, this is not expected to change in the foreseeable future. The Austraclear System is specified in the provision to give the Parliament confidence that should any other system be established for depositing dematerialised securities, the Parliament will be consulted before Commonwealth investments can be made in that system.

The arrangements under section 58 of the PGPA Act and section 22 of the PGPA Rule are comparable to the existing arrangements for the investment of public money by the Commonwealth in section 39 of the FMA Act and regulation 22 of the FMA Regulations.

Section 22A – Investment by corporate Commonwealth entities

Section 22A relates to investment by corporate Commonwealth entities. The section provides the authority that corporate Commonwealth entities may invest in dematerialised securities that are equivalent to securities guaranteed by the Commonwealth or a State or Territory (referred to in subparagraph 59(1)(b)(ii) of the PGPA Act). These dematerialised securities must be held in the name of the entity and in Australian currency.

The arrangements under section 58 of the PGPA Act and section 22A of the PGPA Rule are comparable to the existing arrangements for the investment of surplus money in sections 18 and 19 of the CAC Act.

Division 4—Insurance

Section 23—Insurance obtained by corporate Commonwealth entities

Section 23 is made under section 62 of the PGPA Act and applies to corporate Commonwealth entities that are not members of the Comcover self-managed fund. The Australian Government's policy requires non-corporate Commonwealth entities in the general government sector to be members of the Comcover fund, while corporate Commonwealth entities in the general government sector are encouraged to be members of the Comcover fund. The section restricts corporate Commonwealth entities from insuring officials of the entity against liabilities relating to a breach of duty.

Paragraph 23(1)(a) provides that a corporate Commonwealth entity must not insure an official of the entity against a liability, other than one for legal costs, arising out of conduct involving a wilful breach of duty arising at common law, under the law of equity or under the finance law in relation to the entity. Finance law is defined in section 8 of the PGPA Act as meaning the Act itself, the rules or any instrument made under the Act or an Appropriation Act.

Paragraph 23(1)(b) provides that a corporate Commonwealth entity must not insure an official of the entity against a liability, other than one for legal costs, arising out of any contravention of section 27 (duty in relation to position) or section 28 (duty in relation to use of information) of the PGPA Act.

Subsection 23(2) provides that anything that purports to insure a person against, or exempt a person from, a liability is void to the extent that it contravenes section 23.

Section 23 prevents an entity from obtaining insurance, including the payment of premiums for a contract in relation to insurance, for the breaches of duty outlined in the section. This requirement is consistent with the legislative arrangements under section 27N of the CAC Act that currently apply to certain corporate Commonwealth entities. Other forms of insurance can be obtained in line with standard business practice, including insurance for officials, or former officials, against any other liabilities incurred by that person as an official.

Division 5—Authorisations and payments by the Finance Minister

Section 24—Authorisations of waivers, modifications of payment terms, set-offs and act of grace payments

Section 24 is made for subsection 63(2), proposed new subsection 64(1A) and subsection 65(2) of the PGPA Act to require the Finance Minister to consider the report of an advisory committee before making authorisations for waivers, set-offs and act of grace payments relating to the Commonwealth involving amounts of money above $500,000.

Waivers of the Commonwealth's right to payment of amounts owed to it can occur when a debt arises as a direct result of an act of omission by a Commonwealth entity, or when repayment could be inequitable or cause severe ongoing financial hardship. Set-off arrangements represent a cost-effective mechanism for handling debts in particular

circumstances. Act of grace arrangements are discretionary payments to a person because of special circumstances under which it is appropriate to provide redress.

Subsection 63(1) of the PGPA Act allows the Finance Minister, on behalf of the Commonwealth, to waive an amount owing to the Commonwealth or otherwise modify the terms and conditions on which an amount owing to the Commonwealth is to be paid to the Commonwealth. Subsection 64(1) allows the Finance Minister, on behalf of the Commonwealth, to set-off amounts owing to the Commonwealth by a person against amounts owing by the Commonwealth to that same person. Subsection 65(1) allows the Finance Minister, on behalf of the Commonwealth, to authorise an act of grace payment to be made to a person if the Finance Minister considers it appropriate to do so because of special circumstances.

Subsection 24(1) provides that section 24 applies if the Finance Minister proposes to authorise the waiver of an amount owing to the Commonwealth, the setting off of an amount owing to the Commonwealth or an act of grace payment, and the amount is more than $500,000.

Subsection 24(2) requires that before making a decision to authorise a waiver, set-off or payment of an amount under subsections 63(2), 64(1) and 65(1) of the PGPA Act, the Finance Minister must consider a report of the advisory committee established under subsection 24(3) in relation to the authorisation.

Subsection 24(3) provides that the Finance Minister must establish an advisory committee to report on the appropriateness of an authorisation of an amount under subsections 63(2), 64(1) and 65(1) of the PGPA Act. The advisory committee must consist of the Chief Executive Officer of the Australian Customs and Border Protection Service, the Secretary of the Department of Finance, and the accountable authority of the Commonwealth entity to which the authorisation relates. There is the provision for the Finance Minister to nominate alternative members of the advisory committee if the Australian Customs and Border Protection Service or the Department of Finance is responsible for the matter that is the subject of the decision, or if there is no Commonwealth entity responsible for the matter.

Subsection 24(4) allows the member of the advisory committee to appoint a deputy to act in their place if the member is, for any reason, unable to perform the duties of the member. Such acting appointments are required to be consistent with sections 33AB and 33A of the *Acts Interpretation Act 1901*.

Subsection 24(5) allows the advisory committee to conduct itself as it sees fit and allows the advisory committee to prepare its report having a meeting. This provision recognises the ability to communicate and decide issues electronically.

Section 24 replaces the provisions of regulation 29 made under the FMA Regulations which relates to sections 33 and 34 of the FMA Act. Section 24 extends the current arrangements by requiring the Finance Minister to consult an advisory committee in relation to set-off amounts, and by raising the minimum amount before requiring an advisory committee to report from $250,000 to $500,000.

Section 25—Payment of amount owed to person at time of death

Section 25 is made under paragraph 103(f) of the PGPA Act to allow the Finance Minister to authorise a payment of an amount that is owed by the Commonwealth to a person who has died. It allows the Finance Minister to decide who to make the payment to, and to authorise the payment without needing probate or letters of administration.

The section supplements arrangements in various statutory payment schemes that allow payments owed to a recipient who has died to be made to the deceased person's estate or to others. The section applies when there is no other provision to make such a payment.

Subsection 25(1) states that the Finance Minister can make the payment of the amount owed to the deceased person to another person who the Finance Minister considers should receive the payment.

Subsection 25(2) empowers the Finance Minister to authorise the payment without requiring production of probate of the will of the deceased person or letters of administration of the estate of the deceased person.

Subsection 25(3) provides that in deciding who should receive the payment, the Finance Minister must consider the people who are entitled to the property of the deceased person under the deceased person's will and the law relating to the disposition of the property of the deceased person.

Subsection 25(4) provides that after the payment is made, the Commonwealth has no further liability in relation to the amount that was owed.

Subsection 25(5) provides that the section does not relieve the recipient from a liability to deal with the money in accordance with the law.

This section replaces regulation 30 of the FMA Regulations. Practically, the provision has been mostly used when a Commonwealth employee with accrued salary and entitlements has died, and payment is required to be made to a spouse or immediate family member to satisfy a debt or other requirement before probate or letters of administration can be produced.

Division 6—Special provisions applying to Ministers only

Section 26—Minister to inform Parliament of certain events

Section 26 is made under subsection 72(3) of the PGPA Act to ensure that notice is given to the Parliament about government operations relating to companies. In the interests of transparency, Ministers are required to table in the Parliament a notice with particulars prescribed in the rules about certain events relating to the Commonwealth or a corporate Commonwealth entity that involve a company.

Section 72 of the PGPA Act provides that the Minister who has responsibility for any of the following events must cause a notice of the event to be tabled in each House of the Parliament as soon as practicable after the event occurs: the Commonwealth or a corporate Commonwealth entity forms or participates in forming, or becomes or ceases to be a member

of, a company or relevant body; a variation occurs in the rights of the Commonwealth or a corporate Commonwealth entity as a member of a company or a relevant body; or the Commonwealth or a corporate Commonwealth entity acquires or disposes of shares in a company or a variation occurs in the rights attaching to such shares. Exclusions to the operation of the section are contained in subsection 72(4).

The table in section 26 requires any notice tabled by a Minister and particulars to include details on five items. These are the name and portfolio of the Minister who has the responsibility for the event; the nature and reasons for the event; the consequences of the event, including a range of particulars about the amounts of money involved and liabilities, duties, obligations and interests that arise or are affected as the result of the event; the identity of the company and whether it is a public company; and if the company is a foreign company, details of that company. The particulars relating to the identity of either a company or foreign company are referenced to the meaning of section 9 of the *Corporations Act 2001*.

Subsection 72(2) allows the term 'relevant body' to be prescribed by the rules, but this has not been done for the purposes of section 26 of the rule, which relates only to companies.

A provision requiring a Minister to inform Parliament of involvement in a company by the Commonwealth or a prescribed body is at section 39A of the FMA Act. Together with regulation 22AA of the FMA Regulations, it provides a similar scope to section 72 of the PGPA Act and section 26 of the rule.

Part 2-5—Appropriations

Section 27—Receipts of amounts by non-corporate Commonwealth entities

Section 27 is made under subsection 74(1) of the PGPA Act. It sets out which amounts received by a non-corporate Commonwealth entity may be credited to increase an appropriation made by the Parliament and which appropriations can be increased. The section is necessary as the Constitution provides that no money shall be drawn from the Treasury of the Commonwealth except under appropriation made by law.

Subsection 27(1) establishes that the section applies to amounts received by a non-corporate Commonwealth entity.

Subsections 27(2) to (5) provide when received amounts of the kind set out in subsection 74(1) of the PGPA Act can be credited to an appropriation.

Subsection 27(2) provides that a received amount can be credited to an appropriation if it is specified in the table entitled 'Kinds of amounts' that forms part of the subsection, and if it is received by the entity in relation to the entity's departmental activities. Eight items are identified in the table. They are:

- an amount that offsets costs in relation to an activity of an entity;
- an amount that is a sponsorship, subsidy, gift, bequest or similar contribution;
- an amount that is a monetary incentive or rebate in relation to a procurement;
- an amount that is an insurance recovery;

- an amount that is in satisfaction of a claim for damages or other compensation;
- an amount that relates to an employee's leave, including paid parental leave;
- an amount that relates to a sale of departmental assets of the entity; and
- an amount received in relation to an application to the entity under the *Freedom of Information Act 1982*.

Subsection 27(3) provides that a received amount can be credited to an appropriation if it relates to a trust or similar arrangement.

Subsection 27(4) provides that a received amount can be credited to an appropriation if it is a repayment of the whole or part of an amount paid by the entity and the most recent departmental item for the entity in an Appropriation Act, another item in an Appropriation Act, another appropriation or a special account was debited in relation to the amount paid by the entity.

Subsection 27(5) provides that if another item in an Appropriation Act, another appropriation or a special account was debited in relation to the amount paid, then that item, appropriation or special account is prescribed for paragraph 74(1)(b) of the PGPA Act.

Subsections 27(6) and (7) deal with the circumstances under which received amounts may not be credited.

Subsection 27(6) provides that despite subsections 27(2) and (3), a received amount is not of a kind for subsection 74(1) of the PGPA Act if a departmental or administered item for the entity in an Appropriation Act has been appropriated in relation to the amount; or it is a tax, levy, fine or penalty; or it relates to GST. Departmental and administered items for entities are defined in the Appropriation Acts.

Subsection 27(7) provides that despite subsection 27(2), if the total of the amounts received by the entity in a financial year in relation to a sale of departmental assets less the costs incurred by the entity in relation to the sale reaches 5 per cent of the total of all departmental items for the entity provided in an Appropriation Act in that financial year, then any further amount of that kind received by the entity in that financial year is not an amount of a kind for subsection 74(1) of the PGPA Act.

Section 27 of the PGPA Rule and section 74 of the PGPA Act replace the current provisions under sections 30 and 31 of the FMA Act. Section 30 provides that when an amount is repaid to the Commonwealth, the appropriation that was used earlier to make the related payment can be increased by the repaid amount. Section 31 permits FAMA Act agencies to increase their most recent departmental item with the types of receipts prescribed in regulation 15 of the FMA Regulations.

In contrast to regulation 15, section 27 does not make provision for an appropriation to be credited in relation to GST. Separate arrangements are being made to appropriate entities for payments of GST. Neither does the section provide for appropriations to be increased with schemes determined by the Finance Minister. Schemes provide a mechanism for administered appropriations or special appropriations to be used on expenses of a departmental nature,

which may not be consistent with Parliament's intent in making an appropriation. Nor does the section provide for a departmental item to be credited with amounts debited from a special account. Amounts can only be debited from a special account if permitted by the legislative purposes of that special account. If the purposes of a special account permit making payments of a departmental nature, then debiting a special account and crediting a departmental item with amounts does not broaden the purposes of the special account and represents an unnecessary transfer of money.

Chapter 3—Commonwealth companies

Section 28—Audit committee for wholly-owned Commonwealth companies

This section is made for section 92 of the PGPA Act to set out the minimum requirements for establishing an audit committee for a wholly-owned Commonwealth company. Under subsection 92(1) of the PGPA Act, the directors of a wholly-owned Commonwealth company must ensure that the company has an audit committee.

Subsection 28(1) provides that section 17 of the rule relating to audit committees for Commonwealth entities also applies to wholly-owned Commonwealth companies in the same way as it applies to corporate Commonwealth companies. Subsection 28(2) provides that a reference in section 17 of the rule to the accountable authority of the entity is taken to be a reference to the governing body of the company.

Chapter 4—Miscellaneous

Section 29—Other CRF money

Money held by a private person for and on behalf of the Commonwealth forms part of the Consolidated Revenue Fund (CRF) for the purposes of section 81 of the Constitution. For the purposes of the FMA Act, the concept of 'public money' extended to money held or controlled by an outside person for or on behalf of the Commonwealth, but the concept of 'relevant money' for the purposes of the PGPA Act does not. 'Other CRF money' is a new concept introduced under the PGPA Act. Accordingly, there is a need to regulate the new category of other CRF money.

Section 29 is made for subsection 105(1) of the PGPA Act to set out matters relating to arrangements for the receipt, custody or expenditure of other CRF money by a person outside the Commonwealth or a Commonwealth entity. It relates to non-corporate Commonwealth entities.

Subsection 29(1) provides that the accountable authority of a non-corporate Commonwealth entity must ensure that any arrangement entered into related to other CRF money comply with the requirements prescribed in subsection 29(2).

Subsection 29(2) sets out the obligations and matters that must be included in an arrangement for the purposes of the receipt, expenditure or custody of other CRF money by a person outside the Commonwealth. These requirements are designed to help ensure that any arrangement made in relation to other CRF money meets essential requirements for control, accountability and transparency.

Paragraph 29(2)(a) is designed to help ensure that the accountable authority applies the principles on proper use and management to the making and administering of an arrangement in relation to other CRF money. Subsection 29(3) defines 'proper' in this context as 'efficient, effective, economical and ethical'. Paragraph 29(2)(a) makes clear that when an accountable authority enters into an arrangement for other CRF money, the accountable authority does not 'outsource' its obligations in terms of the promotion of proper use and management. In light of this, an accountable authority making the arrangement should consider terms and conditions beyond those specified in this section of the rule that will enable the accountable authority to fulfil reporting requirements on the use of resources. For example, when a person outside the Commonwealth is making grant payments for or on behalf of the Commonwealth, the arrangement will need to include requirements to enable the entity to fulfil its obligations for reporting on grants.

Paragraph 29(2)(b) requires the arrangement to be in writing. This requirement aims to provide accountability and transparency for the arrangement and to minimise risks to the Commonwealth related to the proper management of the money.

Paragraph 29(2)(c) requires other CRF money to be banked as soon as practicable. This provision aims to minimise the risk to the Commonwealth. 'As soon as practicable' is not defined; however, it would generally have its ordinary meaning. If the other CRF money is to be held by the person for any length of time, the accountable authority making the arrangement should consider specifying that interest should be earned on the money for the benefit of the Commonwealth (see further at paragraph 29(2)(e)).

Paragraph 29(2)(d) recognises that an accountable authority making the arrangement will still need to report on, and account for, the other CRF money received, in the custody of, or spent by the person outside the Commonwealth. Therefore, paragraph 29(2)(d) provides that the arrangement must require the person to keep proper records in relation to the receipt, custody or expenditure of the money. The arrangement will also need to require those records to be kept a form that will allow them to be conveniently and properly audited to ensure appropriate accountability.

Paragraph 29(2)(e) requires that any interest earned on other CRF money must be remitted in full to the Commonwealth. It also requires that the arrangement specify requirements in relation to the timing and frequency of remittance. It would be inappropriate for a person outside the Commonwealth to receive any financial gain from the other CRF money they hold. The interest earned on the other CRF money will become relevant money once held by, or standing to the credit of, a bank account of the non-corporate Commonwealth entity receiving the money.

Paragraph 29(2)(f) deals with the timing and frequency of any remittance of other CRF money to the Commonwealth under the arrangement, and paragraph 29(2)(g) deals with the timing and frequency of any payments of other CRF money to another person under the arrangement.

Generally, the length of time and frequency of remittance to the Commonwealth should be based on an assessment of the risk of holding other CRF money in a non-Commonwealth bank account and the best cash management outcome for the Commonwealth. These considerations should be balanced against any savings or cost advantages for remittances of greater or lesser frequency. Ideally, other CRF money should remain in a non-

Commonwealth bank account for the shortest period of time that is reasonable in all the circumstances. When money is remitted to the Commonwealth entity, the money becomes 'relevant money' and must be handled in accordance with PGPA legislative requirements.

When the person acting for or on behalf of the Commonwealth is making payments to a third party from the other CRF money (for example, the recipient of a grant), the arrangement must identify requirements for the timing and frequency of payments to the third party. These requirements would usually require the person to make specific payments at particular times to the third party. Generally, these requirements should also identify the third party and identify the purpose of the payments.

The concept of other CRF money and this section are comparable to the existing arrangements for 'outsiders' contained in section 12 of the FMA Act.

Subsection 29(3) defines the term 'proper' in relation to the use or management of other CRF money as meaning efficient, effective, economical and ethical.

Section 29A — Money that is prescribed not to be other CRF money

Section 29A is a new rule relating to 'other CRF money. This section is designed to make it explicit that an amount of a levy payable under section 883D, 889J and 889K of the *Corporations Act 2001* is not other CRF money. This section is for the avoidance of doubt, and does not create an exhaustive definition of items to be exempt from provisions in the PGPA Act relating to 'other CRF money'.

Section 30 — Procurement by corporate Commonwealth entities

Section 30 prescribes corporate Commonwealth entities that are subject to the procurement instrument made by the Finance Minister under section 105B of the PGPA Act.

Schedule 1—Listed entities

Clause 1— Guide to this Schedule

Schedule 1 prescribes certain bodies, persons, groups or organisations to be listed entities for the purposes of the PGPA Act. The listed entities on this schedule have been placed on this list because they have not otherwise been prescribed by another Act.

Each of the following clauses sets out who comprises the listed entity, establishes its accountable authority and officials, and provides a non-exhaustive statement of purpose for each of the following entities:

Clause 2 - Australian Office of Financial Management

Clause 3 - Australian Transaction Reports and Analysis Centre

Clause 4 - Australian National Preventive Health Agency

Clause 5 - Australian Public Service Commission

Clause 6 - Australian Security Intelligence Organisation

Clause 7 - Australian Taxation Office

Clause 8 - Corporations and Markets Advisory Committee

Clause 9 - CrimTrac Agency

Clause 10 - Defence Materiel Organisation

Clause 11 - Geoscience Australia

Clause 12 - IP Australia

Clause 13 - Migration Review Tribunal and Refugee Review Tribunal

Clause 14 - National Competition Council

Clause 15 - National Mental Health Commission

Clause 16 - Office of the Auditing and Assurance Standards Board

Clause 17 - Office of the Australian Accounting Standards Board

Clause 18 - Office of the Fair Work Ombudsman

Clause 19 - Old Parliament House

Clause 20 - Royal Australian Mint

Clause 21 - Seafarers Safety, Rehabilitation and Compensation Authority

Attachment B

Statement of compatibility with human rights

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

Public Governance, Performance and Accountability Rule 2014

The *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011.*

Overview of the legislative instrument

The *Public Governance, Performance and Accountability Act 2013* (PGPA Act) consolidates into a single piece of legislation the governance, performance and accountability requirements of the Commonwealth, setting out a framework for regulating resource management by the Commonwealth and relevant entities. The PGPA Act will replace the *Financial Management and Accountability Act 1997* and the *Commonwealth Authorities and Companies Act 1997*. The substantive provisions of the PGPA Act will commence on 1 July 2014.

Section 101 of the PGPA Act provides that the Finance Minister may make rules by legislative instrument to prescribe matters giving effect to the Act.

The PGPA Rule is being made to support the implementation of the PGPA Act. The PGPA Rule contains provisions that relate to accountability and control mechanisms, that is, the elements of the framework that support the transactions of the Commonwealth and Commonwealth entities. The provisions relate to:

- government business enterprises;
- listed entities;
- listed law enforcement agencies;
- Commonwealth entities and their accountable authorities – bodies corporate established under a law of the Commonwealth;
- officials;
- preventing, detecting and dealing with fraud;
- recovery of debts;
- officials' duty to disclose interests;
- audit committees for Commonwealth entities and for wholly-owned Commonwealth companies;
- Commonwealth entities ceasing to exist or functions transferred
- commitments of relevant money;
- banking;

- borrowing;
- investment by the Commonwealth and by corporate Commonwealth entities;
- insurance obtained by corporate Commonwealth entities;
- authorisations of waiver. modifications of payments terms, set-offs and act of grace payments;
- payment of amount owed to person at time of death;
- Ministers informing Parliament of certain events;
- receipts of amounts by non-corporate Commonwealth entities;
- other CRF money; and
- procurement by corporate Commonwealth entities and wholly-owned Commonwealth companies.

Human rights implications

The legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

The legislative instrument is compatible with human rights as it does not raise any human rights issues.

Senator the Hon Mathias Cormann
Minister for Finance