

## EXPLANATORY STATEMENT

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

*Public Governance, Performance and Accountability Act 2013*  
*Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014*

*Public Governance, Performance and Accountability Legislation Amendment Rule 2014*

The *Public Governance, Performance and Accountability Act 2013* (PGPA Act) sets out a framework for regulating resource management by the Commonwealth and relevant entities. Section 101 of the PGPA Act provides that the Finance Minister may make rules by legislative instrument to prescribe matters giving effect to the Act.

The *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014* (CTP Act) amended 242 Acts across the Commonwealth to support the implementation of PGPA Act and its related rules and instruments. Item 6 of Schedule 14 of the CTP Act provides that the Finance Minister may, by legislative instrument, make rules prescribing matters required or permitted by the CTP Act to be prescribed by the rules, or necessary or convenient to be prescribed for carrying out or giving effect to the CTP Act and the PGPA Act.

The *Public Governance, Performance and Accountability Legislation Amendment Rule* (PGPA Amendment Rule) is being made to amend the rules instruments made under the PGPA Act and the CTP Act to support the implementation of the PGPA legislative framework. These rules instruments are the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule) and the *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Rule 2014* (CTP Rule).

The PGPA Amendment Rule contains provisions that relate to:

- Repayments by the Commonwealth,
- Specifying accountable authorities for certain corporate Commonwealth entities,
- A body corporate to be treated as a non-corporate Commonwealth entity for the purposes of the finance law, and
- Clarifying the scope of disclosure provisions.

Details of the PGPA Amendment Rule are set out at [Attachment A](#). A statement of compatibility with human rights is at [Attachment B](#).

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

### Consultation

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. Membership of the steering committees was drawn

from a wide range of Commonwealth entities and Commonwealth companies. Consultation was also undertaken with key stakeholders in regional and remote communities and in Sydney, Melbourne and Adelaide.

Development of the CTP Rule has been closely connected with the process of the development of the CTP Act, which has required consultation with all Commonwealth entities and Commonwealth companies subject to enabling legislation to ensure understanding of the operation of the legislation and how it impacts on the operation of their organisation.

The commencement of substantive provisions of the PGPA Act and associated legislation was accompanied by an extensive programme of training and guidance to assist entities to comply with the new framework. Feedback from entities during this initial implementation process has led to the development of further legislative amendments with the Office of Parliamentary Counsel. The advice of the Australian Government Solicitor has also been sought to ensure both the efficacy of proposed provisions and the maintenance of existing policy intent.

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

**Section 1—Name of instrument**

This section provides that the title of the instrument is the *Public Governance, Performance and Accountability Legislation Amendment Rule 2014* (PGPA Amendment Rule)

**Section 2—Commencement**

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

**Section 3—Authority**

This section states that the instrument is made under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and the *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014* (CTP Act).

**Section 4—Schedules**

This section provides that each legislative instrument that is specified in a Schedule to this PGPA Amendment Rule is amended or repealed as set out.

**Schedule 1—Amendments**

***Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Rule 2014* (CTP Rule)**

**Item 1—Subsection 4(1) (definitions of *FMA Act* and *PGPA Act*)**

This item repeals the definitions of the *Financial Management and Accountability Act 1997* (FMA Act) and the PGPA Act from the definitions section of the CTP Rule as they are already defined in the primary legislation under which the CTP Rule is made.

**Item 2—Subsection 4(1)**

This item inserts a definition of ‘PGPA rules’ into the CTP Rule.

**Item 3—Before section 5**

This item creates a new Division 1 in the CTP Rule for those transitional rules created for subitem 6(2) of Schedule 14 to the CTP Act. These are rules that prescribe matters of a transitional nature relating to the operation of the CTP Act and the PGPA Act.

**Item 4—Section 5 (heading)**

This is an editorial amendment reflecting the creation of a new Division 1 in the CTP Rule.

**Item 5—Section 5**

This is an editorial amendment reflecting the creation of a new Division 1 in the CTP Rule.

**Item 6—After section 7***Section 7AA*

This item inserts a new section 7AA in the CTP Rule to provide that section 77 of the PGPA Act can be used to appropriate the Consolidated Revenue Fund to make a repayment of an amount received by the Commonwealth before 1 July 2014 as well as on or after 1 July 2014.

The transitional arrangements in the CTP Act allow for section 28 of the *Financial Management and Accountability Act 1997* (FMA Act) to be used in relation to repayments of amounts received by the Commonwealth before 1 July 2014, while section 77 of the PGPA Act applies to repayments of amounts received by the Commonwealth on or after 1 July 2014. This arrangement may present administrative difficulties and complexity, in particular where the time between receipt and repayment is significant.

This section permits the Commonwealth to rely on either the appropriation in section 28 of the FMA Act or section 77 of the PGPA Act to repay an amount received by the Commonwealth before 1 July 2014.

*Division 2—Rules made for subitem 6(3) of Schedule 14 to the CTP Act*

A new Division 2 is created in the CTP Rule for those transitional rules created for subitem 6(3) of Schedule 14 of the CTP Act. These are rules that prescribe matters of a transitional nature for the first reporting period to 30 June 2015.

*Section 7BA*

Section 7BA specifies that Division 2 is made for subitem 6(3) of Schedule 14 of the CTP Act.

*Section 7BB*

The Clean Energy Regulator (the Regulator) operated under the FMA Act as an agency with body corporate characteristics. It was intended that the Regulator operates as a non-corporate Commonwealth entity under the PGPA Act, but this was not addressed in the transitional legislation and the Regulator defaulted to corporate Commonwealth entity status.

Section 7BB has the effect as if the prescribed modifications were added at the end of Division 1 of Part 2 of the *Clean Energy Regulator Act 2011* (CER Act). Section 7BB creates a provision to treat the Regulator as a non-corporate Commonwealth entity for the purposes of the finance law (within the meaning of the PGPA Act), to prescribe it as a listed entity, to prescribe the Chair of the Regulator as its accountable authority, to prescribe certain persons as officials of the Regulator and to confirm the Regulator's purposes as set out in section 12 of the CER Act. Section 7BB provides the intended governance framework for the Regulator reducing administrative complexity.

*Section 7BC*

Section 12 of the PGPA Act specifies that the accountable authority of a corporate Commonwealth entity is its governing body unless otherwise prescribed. ‘Governing body’ is defined in section 8 of the Act to mean a board, council or other governing body, or if there is no such body, it refers to all the members of the entity.

Prior to 1 July 2014 the Chief Executive of the Murray Darling Basin Authority (MDBA) performed functions equivalent to the accountable authority for the MDBA. The Chief Executive was not prescribed as the accountable authority for the purposes of the PGPA Act. As the MDBA is a corporate Commonwealth entity, the members of the authority therefore became the accountable authority of the MDBA.

Section 7BC has the effect as if the prescribed modifications were added at the end of section 12 of the PGPA Act to prescribe the Chief Executive of the MDBA as its accountable authority.

It is intended that amendments will be proposed at the next available opportunity in the legislative program to give ongoing effect to sections 7BB and 7BC.

**Item 7—Section 8**

Item 7 is an editorial amendment that improves clarity.

**Item 8—Section 8**

Item 8 is an editorial amendment that clarifies the commencement date of the section.

***Public Governance, Performance and Accountability Rule 2014*****Item 9—Paragraphs 16A(1)(a) and 16B(1)(a)**

Item 9 amends paragraphs 16A(1)(a) and 16B(1)(a) of the PGPA Rule to clarify that sections 16A and 16B (which relate to disclosure requirements for officials appointed to bodies under a law) do not apply **in addition** to sections 14 and 15 of the PGPA Rule (which set out separate disclosure of interest requirements for officials who are members of accountable authorities).

## **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 Legislation Amendment Rule 2014***

The *Public Governance, Performance and Accountability Legislation Amendment Rule 2014* (PGPA Amendment 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) sets out a framework for regulating resource management by the Commonwealth and relevant entities. Section 101 of the PGPA Act provides that the Finance Minister may make rules by legislative instrument to prescribe matters giving effect to the Act.

The *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014* (CTP Act) amended 242 Acts across the Commonwealth to support the implementation of PGPA Act and its related rules and instruments. Item 6 of Schedule 14 of the CTP Act provides that the Finance Minister may, by legislative instrument, make rules prescribing matters required or permitted by the CTP Act to be prescribed by the rules, or necessary or convenient to be prescribed for carrying out or giving effect to the CTP Act and the PGPA Act.

The PGPA Amendment Rule is being made to amend the rules instruments made under these two Acts to support the implementation of the PGPA legislative framework. These rules instruments are the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule) and the *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Rule 2014* (CTP Rule).

The PGPA Amendment Rule contains provisions that relate to:

- Repayments by the Commonwealth,
- Specifying accountable authorities for certain corporate Commonwealth entities,
- A body corporate to be treated as a non-corporate Commonwealth entity for the purposes of the finance law, and
- Clarifying the scope of disclosure provisions.

**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**