

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 (No. 2)

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 the 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 2014 (No. 2)* (Amendment Rule) is being made to amend the rules instruments made under the PGPA Act and the CTP Act. 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 Amendment Rule contains provisions that would:

- provide for the Climate Change Authority (CCA) to retain its status as a corporate Commonwealth entity, but be treated as a non-corporate Commonwealth entity for the purposes of the finance law, and make amendments to harmonise CCA's enabling legislation with the PGPA Act; and
- remove Medibank Private Limited from the list of government business enterprises.

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

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

Consultation

The Department of Finance (Finance) consulted stakeholders from across the Commonwealth in the development of the PGPA Rule. A project board chaired by 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 (No. 2)*

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 (No. 2)* (Amendment Rule).

Section 2—Commencement

This section provides that each provision of the instrument specified in column 1 of the table commences in accordance with column 2 of the table.

Sections 1 to 4 and Schedule 1, Part 1 commence on the day after the instrument is registered.

Schedule 1, Part 2 commences on the later of the beginning of the day after the instrument is registered and the beginning of 1 January 2015.

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 Amendment Rule is amended or repealed as set out.

Schedule 1—Amendments

Part 1 – Amendment commencing on the day after registration

Public Governance, Performance and Accountability Rule 2014 (PGPA Rule)

Item 1 – paragraph 5(2)(c)

This would remove Medibank Private Limited (MPL) from the list of government business enterprises (GBE) in section 5(2)(c). MPL was sold on 1 December 2014 and is no longer a GBE.

Part 2 – Other amendments

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

Item 2 – after section 7BC

This item inserts a new section 7BD into the CTP Rule for the Climate Change Authority (CCA), which has the effect as if the prescribed modifications were part of the *Climate Change Authority Act 2011* (CCA Act) until the end of the first reporting period that commences on or after 1 July 2014.

Item 3 – at the end of the rule

Item 3 adds a new “Schedule 1 – Modifications of the *Climate Change Authority Act 2011*” at the end of the CTP Rule, which references section 7BD discussed above.

Climate Change Authority Act 2011 (CCA Act)

Item 1 – section 10

This item inserts a “(1)” before “The” in section 10 of the CCA Act to provide paragraph numbering for additional paragraphs to be inserted in this section.

Item 2 – at the end of section 10

CCA operated under the *Financial Management and Accountability Act 1997* as an agency with body corporate characteristics. It was intended that CCA would operate as a non-corporate Commonwealth entity under the PGPA Act, but this was not addressed in the transitional legislation and CCA defaulted to corporate Commonwealth entity status.

Item 2 inserts a new paragraph to section 10 to treat CCA as a non-corporate Commonwealth entity for the purposes of the finance law (within the meaning of the PGPA Act). The new paragraph also prescribes CCA as a listed entity, the CEO of CCA as the accountable authority, certain persons as officials of the Regulator and confirms the CCA’s purposes as set out in section 11 of the CCA Act.

This item provides the intended governance framework for the CCA, thereby reducing administrative complexity and providing certainty to CCA.

Item 3 – subsection 13(2) (note)

This repeals the note and substitutes a note that provides for the CCA CEO’s power to enter into contracts on behalf of the Commonwealth, and accurately reference section 23 of the PGPA Act, relating to the power in relation to arrangements and commitments.

Item 4 – sections 26 and 27

Item 4 repeals sections 26 and 27 of the CCA Act, substituting a new section 26 to provide for “Disclosure of interests to the Climate Change Minister” that accords with section 29 of the PGPA Act, which deals with the duty to disclose interests.

Item 5 – paragraph 31(2)(d)

Item 5 repeals this paragraph, substituting a new paragraph that references the disclosure of interest requirements in section 29 of the PGPA Act.

Item 6 – subsection 36(2)

This updates references to disclosure of interest requirements in section 29 of the PGPA Act.

Item 7 – section 48

This repeals section 48, substituting a new section that reflects disclosure of interest requirements in section 29 of the PGPA Act in relation to disclosures of interests by the CEO of CCA.

Item 8 – paragraph 50(2)(c)

Item 8 repeals this paragraph, substituting a new paragraph that provides for the CEO’s compliance with the disclosure of interest requirements in section 29 of the PGPA Act.

Item 9 – Division 8 of Part 2

Item 9 repeals the Division, substituting a new “Division 8 – Corporate plans” that harmonises corporate planning requirements with section 35 of the PGPA Act.

Item 10 – section 56

Item 10 repeals section 56. This section is now redundant as the annual report is provided for in a consistent manner by section 46 of the PGPA Act. This item reduces unnecessary duplication.

Item 11 – paragraph 58(a)

This item updates a reference to the FMA Act with the PGPA Act.

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 Amendment Rule 2014 (No. 2)* (Amendment Rule)**

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

The Amendment Rule contains provisions that:

- provide for the Climate Change Authority (CCA) to retain its status as a corporate Commonwealth entity, but be treated as a non-corporate Commonwealth entity for the purposes of the finance law, and make amendments to harmonise CCA's enabling legislation with the PGPA Act; and
- remove Medibank Private Limited from the list of government business enterprises.

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**